香 港 上 市 公 司 商 會
THE CHAMBER OF HONG KONG LISTED COMPANIES

29 May 2015

Securities and Futures Commission
35/F, Cheung Kong Centre
2 Queen's Road Central
Hong Kong

Dear Sirs,

**Re: Consultation Paper on the Principles of Responsible Ownership**

The Chamber of Hong Kong Listed Companies ("Chamber" or "CHKLC") is pleased to submit our views to the consultation paper on the Principles of Responsible Ownership (the "CP") as follows.

Summary

As an organisation representing Hong Kong listed companies, CHKLC welcomes dialogue between listed companies and investors, both retail and institutional. This is an essential part of maintaining transparency and accountability to all shareholders. However, in CHKLC's submission, the proposed measures contained in the Consultation Paper are, at this stage in Hong Kong's regulatory environment, unnecessary, and potentially harmful for the functioning of the market in Hong Kong.

Unnecessary

Hong Kong is a very sophisticated financial market which is widely respected internationally. There is no shortage of information on which to make investment decisions. While direct engagement between investors and listed companies takes place regularly, and is encouraged, much information for investors is already publicly available. Hong Kong has an engaged media, and company news is quickly and widely reported. Electronic disclosures and online news have created a platform where investors can be very informed, even without direct contact with the listed companies themselves.

As far as direct engagement is concerned, Hong Kong already provides well-established channels for investors to engage with the company directors and senior management and to exercise their rights as shareholders. For example, a lot of listed companies have specialized investor relations teams which communicate with shareholders and handle their enquiries. Company information, strategies and plans are provided at company visits, management meetings, conference calls and published materials.

As far as legal protections are concerned, the protection and championing of shareholder rights are enshrined in the Companies Ordinance and HKEx's Listing Rules. Such rights as voting at general meetings, requisitioning of general meetings, nomination and voting of board directors are well provided for.

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Only in the last four years, a series of wide-ranging revisions to the Companies Ordinance, the Securities and Futures Ordinance, and the Listing Rules have been introduced, all of which have the combined objectives of increasing transparency and improving corporate governance; examples include:

- enhancements to the Corporate Governance Code attached to the Listing Rules in 2011, 2012, and 2014 to (inter alia) strengthen the role of INEDs, improve Corporate Governance generally, introduce a guide on ESG policies, as well as board diversity;
- statutory backing for the requirement to disclose inside information;
- statutory codification of director's duties, as well as other company law reforms designed to increase transparency, and strengthen reporting obligations.

Against this very sophisticated market and regulatory background, it is unclear what objective the proposals in the CP are designed to achieve. If anything is now needed in Hong Kong, it is not yet more stifling regulation or regulatory intervention against investors or listed companies, but more education of investors, and analysis of the abundance of information already available, so that they are more knowledgeable about the risks of investments, the different funds and other investment vehicles available, their relative advantages and disadvantages, and their legal rights as an investor.

The CP refers to the 2008 financial crisis as a catalyst for calls for more institutional investor engagement in western jurisdictions that resulted in the introduction of codes of behavior for institutional investors, including the UK Stewardship Code, on which the proposals in the CP are largely based. However, the 2008 financial crisis originated in the US was a result of corporate behavior very different from that of Hong Kong. What was needed in its aftermath is not necessarily applicable to our market. Companies' adherence to corporate governance requirements is high, and there have been no major corporate mishaps that have significantly impaired investors' interests. Besides, it has been reported that the implementation of the Stewardship Code in the UK has not been successful, and that it is itself currently the subject of a review. U.K. aside, such codes have not been introduced in the U.S. and even in Australia, it only exists in the form of industry best practice principles. Even if further regulatory intervention in this area were necessary (which as explained above is not the case in Hong Kong), now is not the appropriate time, when such measures are being called into question or non-existent in other major financial centres.

Potentially Harmful

External monitoring by shareholders, while welcome in principle, if excessively done, would degenerate into intrusion and interfere with the directors' job to manage company affairs. Directors are obliged to run the company in its best interests, and INEDs are there to provide the necessary checks and balances, representing minority shareholders and other shareholders. They should be allowed to continue to do so. The CP's proposals could result in an unnecessary confusion between the roles of shareholders, and the directors to whom they have delegated the task of running the company.

Another issue that might arise out of the proposal would be possible "selective or inside information dissemination" that might be inadvertently passed on to aggressive fund managers or analysts. It is difficult to see what significant additional information could be given to investors, other than information which is already publicly available, given the legal obligation of listed companies to disclose price sensitive information.

Certain fund managers, in particular the hedge funds, trade on very short time horizons. However, companies tend to take a long term investment approach in growing the business. Therefore, a most important concern is that the proposal would pressurise company directors into taking a very short-term approach to running their business, catering mainly to share price performance and "short-termism". This creates strategic conflict for the company management and could potentially impair the long term value of the company. In fact, this has recently been a topic of major concern in the corporate world.

The proposed principles are said to be non-mandatory, but operate on a comply-or-explain basis. Since non-compliance needs to be explained, investors who sign up to them would be under pressure to be "seen as doing something" or face demands of explanation. In practical effect, therefore, they would not be voluntary. It can be foreseen that requests for meetings and information from investors would increase significantly, so that they can be seen to be complying with the monitoring and reporting principles. This strains not only company's resources in responding to these requests but also those of investors, thereby increasing costs for both. This might eventually create a cost-inefficient market environment which would be counter-productive to the principles of an international financial centre.

Although the principles suggested in the CP may be well-intentioned, they would produce inadvertent negative effects, and they are definitely not suitable to be made mandatory or quasi-mandatory in the form of the "comply or explain" approach. Some fund managers take an active approach to engaging with the companies they invest in, while others prefer to take a more passive approach, and buy or sell based on their information, trust in the companies' management, priorities, and research. This diversity is good for the market and competition, and is to be welcomed and encouraged. Hong Kong should not seek to eliminate this diversity by imposing a set of standard principles on investors on a "comply or explain" basis.

Fund managers invest in a wide portfolio of companies and if they are to exercise their monitoring to the extent proposed by the principles, it would be a major cost in time and efforts. The current flexible regime, whereby investors can engage with investee companies on an "as needs" basis is, we submit, preferable for HK to a new set of principles which would introduce extra rigidity and costs, or even more litigations, as the proposed principles would do.

Conclusions

In conclusion, while the proposals in the CP are undoubtedly well-intentioned, we believe that they are unnecessary in the current Hong Kong regulatory context, and would even be harmful and counter-productive, as allowing short-term oriented investors to influence company strategies will induce strategic conflict. In addition, the chances of unintended disclosure of inside information are increased, which could de-stabilise Hong Kong's international

reputation as a major financial centre. We therefore submit that the proposals in the CP should not be implemented.

Yours faithfully,
For and on behalf of
The Chamber of Hong Kong Listed Companies

Mike Wong
Chief Executive Officer