

## **Hong Kong Exchanges and Clearing Limited**

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Submitted via the HKEX's online questionnaire.

## **Re: Our response to the HKEX's consultation paper on "Review of Corporate Governance Code and Related Listing Rules"**

### **Background**

On 16 April 2021, the Stock Exchange of Hong Kong Limited (the Exchange) – a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEX) – issued a consultation paper, and requested public feedback, on the proposed enhancements to the "Corporate Governance Code and Corporate Governance Report (the Code), as well as related amendments to the Listing Rules."<sup>1, 2</sup>

Key proposals include revised or new measures aimed at further enhancing corporate governance standards among listed issuers in Hong Kong focused on:<sup>3</sup>

- Corporate culture
- Board independence, refreshment, and succession planning
- Diversity
- Communication with shareholders
- Environmental, Social and Governance (ESG) disclosures and standards

### **Executive Summary**

BlackRock Investment Stewardship (BIS) advocates for sound corporate governance and business practices that drive the sustainable, long-term financial returns that enable our clients to meet their investing goals. To that end, BIS advocates for market-level corporate governance standards and best practices that help make the financial system more resilient, sustainable, and equitable – such as advancing common standards for how companies publicly report their ESG risks and opportunities. As such, we welcome and agree with most of the proposed enhancements to the Code:

- **Corporate culture** – we agree it is beneficial to have a Code Provision under the Code (CP) that reinforces the role of the board in setting the right culture that aligns purpose, value, and strategy. We also agree with the proposed introduction of a CP requiring the establishment of an anti-corruption policy and the upgrade of Recommended Best Practices under the Code (RBP to CP) requiring the establishment of a whistleblowing policy – we believe both would be conducive to setting a healthy culture.

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<sup>1</sup> HKEX. "Exchange Publishes Consultation Paper on Review of Corporate Governance Code," 16 April 2021.

<sup>2</sup> HKEX. "Consultation Paper – Review of Corporate Governance Code and Related Listing Rules," April 2021.

<sup>3</sup> See footnote #1.

- **Board independence** – we agree with the proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy. However, in order to ensure that such disclosures of policies do not become a mere formality that does not reflect reality, we believe stronger mechanisms, such as subjecting independent directors' re-elections to independent shareholders' approval and mandating boards to be chaired by an independent director, should be in place to ensure independence elements at the board. We also believe more guidance could be given by the Exchange on cooling off periods required when reclassifying non-independent directors as independent directors. In addition, we believe the Exchange should revisit and consider updating the one-third requirement for board independence. Majority independent boards are becoming the norm for more and more markets, including Malaysia, the Republic of Korea, and Singapore. Hong Kong should require a higher level of board independence among its listed companies to commensurate with its position as an international financial centre.
- **Diversity** – we agree with the proposal to introduce Mandatory Disclosure Requirements (MDRs) requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both the board level; and across the workforce level (including senior management). We suggest that the Exchange require issuers to set a minimum medium-term target of 30% female directors at the board level and to disclose a specific timeline regarding how the company is going to make steady progress towards the target in the mid-term. We believe the 30% target is reasonable given the progress and commitments that have been made in Singapore, Malaysia, and mainland China. When promoting workforce diversity, companies should consider multiple dimensions of diversity and be mindful of opportunities for the diverse range of people in their workforce, including people with disabilities.
- **Communication with shareholders** – we agree with the proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy and annual review of such policy to ensure its effectiveness. However, BlackRock's stewardship efforts in Hong Kong have been challenged by the lack of access to independent directors and we believe part of this could be addressed by requiring the appointment of a lead independent director (LID) whose responsibilities include meeting with minority shareholders. An alternative to establishing the role of a LID is to require the designation of an INED responsible for engaging with independent shareholders.
- **ESG disclosures and standards** - We recommend the Exchange formulate and disclose a specific timeline for implementing the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Noting that the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group, of which the Exchange is a member, has announced in December 2020 its plan for mandatory TCFD-aligned climate-related disclosures by 2025, we urge the Exchange to disclose a plan regarding when and how the ESG Reporting Guide will be revised in line with the TCFD recommendations and the 2025 timeline. Apart from TCFD recommendations, we also encourage the Exchange to consider incorporating industry-specific material ESG metrics, such as those identified by SASB. BlackRock believes that SASB provides a clear set of standards for reporting sustainability information across a wide range of issues, from labor practices to data privacy to business ethics. The industry-specific materiality map would enable companies to identify issues and metrics that are financially material to the company.

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BIS submitted the following response to the public consultation on HKEX's "Review of Corporate Governance Code and Related Listing Rules"

**Question 1** Do you agree with our proposal to introduce a CP requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?

- Yes
- BlackRock believes that companies that align their strategies with a clearly articulated purpose are better positioned to weather shocks and disruptions, and in turn, stay focused on long-term value creation. As BlackRock CEO Larry Fink has highlighted for several years in his annual letter to CEOs, purpose, alongside capital management, business strategy, and climate change are issues that are pivotal to long-term value creation. It is beneficial to have a CP that reinforces the role of the board in setting the right culture that aligns purpose, value, and strategy.

**Question 2** Do you agree with our proposal to: (a) introduce a CP requiring establishment of an anti-corruption policy; and (b) upgrade a RBP to CP requiring establishment of a whistleblowing policy?

- (a) Yes. The establishment of an anti-corruption policy would be conducive to setting a healthy culture.
- (b) Yes. The establishment of a whistleblowing policy would be conducive to setting a healthy culture.

**Question 3** Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?

- Yes
- We do not disagree with the requirement to disclose such a policy and to have annual reviews of the implementation and effectiveness of the policy. However, in order to ensure that such disclosures of policies do not become a mere formality that does not reflect reality, we believe stronger mechanisms should be in place to ensure independence elements at the board, for example subjecting independent directors' re-elections to independent shareholders' approval, requiring the appointment of new independent directors where independent levels are low, mandating boards to be chaired by an independent director, setting a higher minimum level of overall board independence, and setting clearer guidelines on assessing directors' independence.
- Regarding the assessment of directors' independence, we believe more guidance could be given by the Exchange on cooling off periods required when reclassifying non-independent directors as independent directors. MB Rule 3.13, GEM Rule 5.09 and CP C.3.2 mention cooling off periods or time frames of one or two years when considering a former audit firm partner to join an issuer's audit committee, or when considering a former controlling shareholder, chief executive, non-independent director, or person with material business interest or business dealings with the

issuer to join an issuer's board as independent director. We believe a cooling off period of three to five years would be more appropriate, and that the Exchange should clearly state that a cooling off period should also be in place when issuers are considering to reclassify any existing non-independent director as independent. For more details on BlackRock's assessment of independence, please refer to p.5 of our Hong Kong voting guidelines:

<https://www.blackrock.com/corporate/literature/fact-sheet/blk-investment-stewardship-guidelines-hong-kong.pdf>

**Question 4(a)** Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders' approval; and (ii) Additional Disclosure?

- Yes
- We welcome the proposal as the new election regime requiring independent shareholders' approval for the re-election of Long Serving INEDs will help ensure that there is heightened scrutiny of and sufficient support for a long-tenured director to continue to serve as an INED, improving their legitimacy while enhancing independent shareholder protection.
- However, there are two questions regarding implementation of this proposal where we would like to seek clarification from the Exchange:
  - Cooling-off period: is there a cooling-off period before a long-serving director can return for election without being subject to independent shareholder vote?
  - Application to secondary listed issuers: secondary listed issuers are currently exempted from complying with the Corporate Governance Code, and we note the requirement for Long Serving INEDs to be subject to independent shareholder vote may not exist in other exchanges e.g. those in the United States. Does the Exchange consider such exemption consistent with the objective of providing the same protection for investors of all issuers? How would the Exchange address the issue of Long Serving INEDs at secondary listed issuers?
- We have two further suggestions:
  - The Exchange could consider expanding the application of an independent shareholder vote to more scenarios, such as the re-election of all INEDs, even those who are not Long Serving, of issuers with weighted voting rights (WVR) structures. Currently, INEDs of WVR issuers are elected on a one-share-one-vote basis in accordance with Listing Rule 8A.24, and the nomination committee should be chaired by an INED in accordance with Listing Rule 8A.28. An independent shareholder vote would further ensure the independence of INEDs and safeguard the interest of independent shareholders under a WVR structure.
  - The Exchange could consider a voting system in the future under which all issuers would be required to make the re-election of all INEDs subject to a vote by independent shareholders. This would effectively hold INEDs accountable to independent shareholders and strengthen their role in vetting "conflicted decisions," where the interests of the controlling shareholders and independent shareholders substantially diverge. Such protection of independent shareholders is important in the region, given the prevalence of controlled companies.

- In fact, in the recent consultation on the review of regulatory provisions related to independent directors by the Securities and Exchange Board of India, a novel proposal was made to subject the appointment and re-appointment of INEDs to both (1) approval of shareholders and (2) approval by ‘majority of the minority’ shareholders. While there is a mechanism in place to allow controlling shareholders to push through the nomination of an INED despite rejection by minority shareholders, that would signal poor governance of the company. For BlackRock’s view on this proposal in India, please refer to p.3-4 of our response:

<https://www.blackrock.com/corporate/literature/publication/our-response-to-the-consultation-paper-on-the-review-of-regulatory-provisions-related-to-independent-directors.pdf>.

**Question 4(b)** Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders’ circular?

- Yes
- We believe it is important for a company to regularly introduce new members to the board in order to refresh the board’s thinking and ensure the board has directors with the most relevant skills and experience given the company’s strategy and business model.

**Question 5** Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?

- Yes
- Remuneration with performance-related elements would compromise the independence of INEDs and, therefore, should not be granted to INEDs. In addition, we consider share options particularly problematic a form of remuneration as the absence of downside risk may lead to bias for more risk-taking decisions and would impair independence. Also, time-based vesting of options would incentivize excessively long tenure, which is the problem both the Exchange and BlackRock are endeavoring to address.
- Furthermore, we believe this should be made a Code Provision to be adopted on a comply-or-explain basis like in other markets instead of only a RBP.
- To clarify, we are not opposed to granting certain types of equity-based remuneration, such as straight shares or restricted stock units (but not stock options) in lieu of cash to compensate INEDs. Granting straight shares or restricted stock units can encourage INEDs to align their interests with those of public shareholders by ensuring they have some “skin in the game” and is, in effect, no different to INEDs buying shares in the market, which is generally permitted.
- We note that INEDs may possess share options of a company before joining its board for different reasons (for example, an INED may have served as senior management of the company in the past and received share options as

remuneration). Following the rationale explained above, we suggest the Exchange consider incorporating the possession of options into the assessment criteria of the independence of an INED, on top of the possession of more than 1% of the equity interest of the company.

**Question 6(a)** Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?

- Yes
- Gender diversity is a key dimension of diversity.

**Question 6(b)** Do you agree with our proposal to introduce a MDR requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both: (a) board level; and (b) across the workforce (including senior management)?

- Yes
- We suggest that the Exchange require issuers to set a minimum medium-term target of 30% female directors at the board level and to disclose a specific timeline regarding how the company is going to make steady progress towards the target in the mid-term. We believe the 30% target is reasonable given the progress and commitments that have been made in Singapore, Malaysia, and mainland China.
  - In Singapore, the Council for Board Diversity, established by the Ministry of Social and Family Development and previously known as the Diversity Action Committee, adopted in 2017 a set of targets to achieve 20% women on board by 2020, 25% by 2025, and 30% by 2030.
  - In Malaysia, the 2021 updates to the Malaysian Code on Corporate Governance extended the requirement of 30% women on board to all listed companies on an “apply or explain an alternative” basis.
  - In mainland China, the “香蜜湖女性董事” initiative is advocating for 20% female boards by 2025 and has received widespread support; whereas in Hong Kong, the 30% Club HK and The Women’s Foundation are advocating for board gender diversity targets of 25% by 2025 and 30% within six years which, if not met by 80% of the market, should be mandated through quotas.
- BlackRock is a keen supporter of gender diversity and has started exercising our voting rights at director re-elections in the Europe, Middle East and Africa, and US markets based on the expectation that boards have at least two female members. As an international financial centre, we believe Hong Kong should set a higher bar sooner rather than later.
- While some companies may have concerns with the availability of female directors in the Hong Kong market, we believe the 30% target is realistic to achieve in the medium-term, especially when companies embrace a multi-dimensional approach to board diversity.
  - Globally, the proportion of senior leadership roles held by women reached 31% in 2021, with APAC not far behind at 28%. It is reasonable to expect the number to pass 30% in the medium term, and that would provide a pool of female business leaders with a wealth of senior management experience. As such, we believe setting the 30% target would not conflict with merit-based appointment.

- Companies are more likely to improve board gender diversity when they also diversify by including younger voices in the board. As shown in the graph on p.18 of the consultation paper, female directors account for a larger proportion of INEDs in the younger age groups. Particularly, there are already 23.8% of female directors in the age group of 20-39, in contrast to 7.2% in the group of 60 or above.
  - BlackRock believes diversity has multiple dimensions. In addition to gender, the board should consider other personal factors such as age, as well as professional characteristics such as a director's industry, area of expertise, and geographic location. There is an opportunity that improving diversity in one dimension may also help improve diversity in another.
- When promoting workforce diversity, companies should similarly consider multiple dimensions of diversity and be mindful of opportunities for the diverse range of people in their workforce, including people with disabilities.
  - We also would like to call for the support of relevant industry associations such as the Hong Kong Institute of Directors to help build capacity and broaden the pool of Hong Kong's INEDs.

**Question 6(c)** Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?

- Yes
- We believe annual independent board appraisal and disclosure of both the appraisal process and result would be beneficial. Apart from gender diversity, we are of the view that the board should ensure that its collective experience and expertise align with the company's long-term strategy and business model. The board should consider diversity in terms of personal factors such as gender and age, as well as professional characteristics such as a director's industry, area of expertise, and geographic location. We suggest the Exchange introduce a mandatory disclosure requirement on the board's skills matrix to improve transparency regarding the skill diversity of the board.

**Question 6(d)** Do you agree with our proposal to amend the relevant forms to include directors' gender information?

- Yes

**Question 7** Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?

- Yes
- We suggest the Exchange require issuers to provide detailed disclosure of the nomination process of INEDs as well as what skills a candidate could fill in the board skills matrix, which we mentioned in question 6(c).

**Question 8** Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as

steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?

- Yes
- To ensure independent directors are not biased towards the controlling shareholder and incumbent management, there should be a clear understanding that independent directors are accountable to and should have adequate communication channels with all shareholders including minority shareholders. The proposed requirement to disclose a shareholders' communication policy can be helpful to improve such accountability.
- BlackRock's stewardship efforts in Hong Kong have been challenged by the lack of access to independent directors and we believe part of this could be addressed by ensuring adequate communication channels and clear contact points between investors and boards. As the concept of a lead independent director is gaining traction among investors and regulators in the region, we believe the Exchange should consider to require that boards be chaired by an independent director or have a lead independent director with clearly defined responsibilities.
- In our view, there are two accepted structures for independent board leadership: an independent chairman, or a lead independent director (LID). We believe it is important for the Hong Kong market to institutionalize the role of a LID partly because we seldom see boards having an independent chair. The duties of an independent chair or a LID should include meeting with minority shareholders to ensure their voice is heard. He/she should have the power to: 1) introduce items on board meeting agendas; 2) call meetings of the independent directors; and 3) preside at meetings of independent directors. This is vital to ensuring there is an independent counterbalance to the dominating presence of non-independent directors and controlling shareholders in the board.
- In Singapore, the 2012 edition of the Code of Corporate Governance already included a provision that the board should have a LID when the chairman is not independent, and that the LID should be available to shareholders where they have concerns. The designation of a LID is meant to strengthen the communication among INEDs, between INEDs and shareholders, and between INEDs and the board; it is not intended to create hierarchy among INEDs as INEDs can take turns to be the LID over time. We highlight that LIDs need to be holding that role for a sufficient amount of time to build the necessary relationships, skills and expertise to be effective.
- Another alternative to establishing the role of a LID is to require the designation of an INED responsible for engaging with independent shareholders. Ultimately, all INEDs should be accessible to shareholders, and the Exchange should build such an expectation among INEDs. To be clear, we do not expect INEDs, who are not full-time employees, to discuss operational issues with shareholders. Instead, we expect INEDs to communicate with shareholders on board-level issues, such as board effectiveness, corporate strategy, ESG risk management, and approval of related-party transactions. It would advance corporate governance practices in the market if this responsibility was specified as part of the INED role.
- We also encourage the Exchange to consider requiring disclosure of quantitative metrics of INEDs' engagement with independent shareholders, such as the number

of meetings held directly with independent shareholders. This would enable investors to better evaluate the accessibility of INEDs.

**Question 9** Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

- Yes

**Question 10** Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?

- Yes
- We suggest the Exchange consider requiring directors to be elected on a more regular basis, ideally annually. Annual re-elections allow shareholders to reaffirm their support for board members or hold them accountable for their decisions in a timely manner. The UK Corporate Governance Code, while deleting the specific term requirement on NEDs, requires all directors to be subject to annual re-election.

**Question 11** Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

- Yes
- In addition to what have been proposed, we suggest the Exchange strengthen the linkage between CG and ESG by encouraging issuers to align remuneration with long-term value creation, including relevant sustainability-related goals of the company.
- Globally, sustainability-related metrics, such as those tied to specific environmental and social targets are increasingly included as performance measures in companies' incentive plans. For example, in France, the Corporate Governance Code of Listed Corporations states that compensation should incorporate one or more criteria related to social and environmental responsibility.
- To facilitate the identification of the most relevant and material sustainability metrics that stakeholders including global investors would agree on, BlackRock recommends that the Exchange provide guidance to issuers on industry-specific material ESG issues to address and to link to incentive plans, such as those developed by the Sustainability Accounting Standards Board (SASB).
- We recognise the Exchange's efforts in producing the Guide for Board and Directors regarding leadership role and accountability in ESG in March 2020 and highlighting the importance of board governance in the updated ESG reporting requirements. We believe the Exchange should continue to encourage boards to strengthen their ESG expertise so as to provide effective oversight on the company's ESG issues. Again, we would like to call for the support of relevant industry associations such as the Hong Kong Institute of Directors in this regard.

**Question 12** Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?

- Yes
- Simultaneous publication would allow investors to better integrate ESG factors into evaluation of companies' overall performance.
- We recommend the Exchange formulate and disclose a specific timeline for implementing the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Noting that the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group, of which the Exchange is a member, has announced in December 2020 its plan for mandatory TCFD-aligned climate-related disclosures by 2025, we urge the Exchange to disclose a plan regarding when and how the ESG Reporting Guide will be revised in line with the TCFD recommendations and the 2025 timeline.
- As demonstrated in Larry Fink's 2020 and 2021 Letters to CEOs, BlackRock is a dedicated advocate of reporting consistent with the recommendations made by TCFD. Globally, we are taking voting actions against certain companies that fail to produce satisfactory TCFD-aligned disclosures. We believe a clearer regulatory signal from the Exchange will accelerate the progress of adoption and enable issuers to better prepare for producing TCFD-aligned reports.
- Apart from TCFD recommendations, we also encourage the Exchange to consider incorporating industry-specific material ESG metrics, such as those identified by SASB, which we mentioned in the response to Question 11, into the ESG Reporting Guide. BlackRock believes that SASB provides a clear set of standards for reporting sustainability information across a wide range of issues, from labor practices to data privacy to business ethics. The industry-specific materiality map would enable companies to identify issues and metrics that are financially material to the company.
- While BlackRock strongly supports moving to a single global standard, which will enable investors to make more informed decisions about how to achieve durable long-term returns, we will continue to endorse TCFD- and SASB-aligned reporting. We suggest the Exchange actively support the global convergence of ESG reporting standards and in the meantime align its ESG reporting requirements with TCFD recommendations and the standards of SASB.

**Question 13** Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to this paper and whether it will give rise to any ambiguities or unintended consequences?

- No

**Question 14** In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?

- We believe the Exchange should revisit and consider updating the one-third requirement for board independence. Majority independent boards are becoming the norm for more and more markets, including Malaysia, the Republic of Korea, and Singapore. Hong Kong should require a higher level of board independence among its listed companies to commensurate with its position as an international financial centre. We believe the argument that Hong Kong does not have big enough a pool of

INEDs to support a majority independent board at every listed company would not stand given the wide range of talent in an international financial centre such as Hong Kong, which also enjoys proximity to talent from mainland China. As a transitional step, the Exchange could require a higher level of independence (e.g. majority independence) at boards where the Chairman is not independent.

- As mentioned in our response to Question 8, where there is no lead independent director acting as a primary point of contact for communicating with shareholders, we believe the Exchange should require that a board be chaired by an independent director, especially when the board has less than a majority of independence. Another alternative to having a lead independent director is to designate an INED to be responsible for engaging with independent shareholders.
- We would like to highlight the need for the Exchange to build the expectations that INEDs are accountable to non-controlling shareholders as much as they are accountable to controlling shareholders, and as such INEDs should be accessible to shareholders who seek to discuss substantive issues. We recommend that the Exchange substantiate current language in CP sections A.2 (section on “Chairman and Chief Executive”) and A.6 (section on “Responsibilities of directors”) to encourage direct engagement between directors, especially INEDs, and independent shareholders. We would also recommend the disclosure of quantitative metrics of INEDs’ engagements with independent shareholders, such as number of meetings held directly with independent shareholders.

**Question 15** Do you agree with our proposed implementation dates of: (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022; and (b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?

- (a) Yes
- (b) No. We believe the proposals on Long Serving INEDs should be implemented the same time as other proposals i.e. for financial years commencing on or after 1 January 2022.