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The Hong Kong Institute of Chartered Secretaries

(Incorporated in Hong Kong with limited liability by guarantee)

Submission:

Submission to the Hong Kong Monetary Authority
on Consultation Paper on Empowerment of Independent Non-Executive Directors
in the Banking Industry in Hong Kong

By Email

21 April 2016

The Hong Kong Monetary Authority
55/F, Two International Finance Centre
8 Finance Street
Central
Hong Kong

Attn: Ms. Carmen Chu/Executive Director (Banking Conduct)

Dear Sirs,

Re: Consultation Paper on Empowerment of Independent Non-Executive Directors in the Banking Industry in Hong Kong

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries who are governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS is rooted with the Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions internationally and over 30,000 members and 10,000 students. It is also a Founder Member of the Corporate Secretaries International Association (CSIA), an international organisation comprising 16 national member organisations to promote good governance globally.

Supporting the Consultation Paper

As an Institute focused on good governance, we support, in general, the Consultation Paper on Empowerment of Independent Non-Executive Directors in the Banking Industry in Hong Kong ('Consultation Paper'). As identified under the Consultation Paper, the financial crisis exposed that there may be a lack of understanding of institutional risks exposures, along with a lack of effective management or mitigation thereof by the board. We thus believe that initiatives of the Hong Kong Monetary Authority (HKMA), under the Consultation Paper, would contribute to addressing these governance issues. The challenge remains in identifying INEDs with the right skill sets and independence of mind to contribute to AIs' businesses and strategies.

Major Recommendations under the Consultation Paper

1. We agree that all locally-incorporated authorized institutions (AIs) should have audit, risk management, remuneration and nomination committees.
2. We agree that there must be at least one to two INEDs with accounting or financial background. We are not sure why the requirement for two such INEDs should be restricted to larger AIs as AIs are in the financial business. Please kindly consider.

3. In relation to the risk management committee, it is proposed that the chair with accounting or financial background is also required to have expertise in risk management. We consider it is more appropriate to highlight the relevant experience of the committee members as a whole rather than to focus on one individual.
4. We do not have issues as to the other requirements listed under Major Recommendations under the Consultation Paper.

INEDs of AIs

5. We agree with the important role that INEDs play. The devil is in the details as to who qualifies as an INED. For example, under the current provisions of the Listing Rule for listed issuers, INEDs are simply persons that fulfil certain requirements as to not having material interests (as identified under the Consultation Paper). We will welcome the nomination committee to assess the independence in terms of diversity attributes and state of mind considerations, aside from any technical no conflict requirements.
6. In terms of duties, the primary duties of directors are to their AIs and stakeholders. Directors are seldom asked to consider wider public interests. However, given the importance of AIs in the overall economy, we understand the concern. What is required is clear articulation of what are public interests concerns that directors need to consider.

Qualities and background

7. We agree with the statements as to the attributes required of INEDs. They should serve as the moral compass of AIs.

Time commitment

8. We agree that time commitment is important. In fact, there should also be proper induction to the board candidate carried out for the candidate to understand the time commitment and other regulatory rules and compliance. Please kindly consider this induction aspect in the board appointment process.

Independence and tenure

9. We suggest that the criteria for assessment of independence be aligned with the Listing Rules since the variations being proposed are minor. Any additional criteria for the assessment of independence should be clearly highlighted to avoid any possible confusion.

Remuneration of INEDs

10. The remuneration of INEDs should not be arbitrarily set at a certain minimum level. Remuneration should be based on a methodology which should be approved by the board (and preferably endorsed by shareholders) and disclosed (usually in the Annual Report). For example, remuneration can be set by reference to the complexity of the business, and the responsibility and workloads of the INEDs. We consider a market based approach by each AI based on its own circumstances is preferable to a prescriptive minimum.

Board practices in relation to INEDs

11. We agree with the matters set out under the Consultation Paper though these should be made fully consistent with the Listing Rules, where applicable, to avoid any confusion. We mention that there should be the ability for INEDs to take independent legal advice which the AIs would need to pay in case INEDs feel it necessary.

Consultation questions

From the above it follows that:

- (1) We agree with the recommendations under the Consultation Papers and have hopefully provided further ideas from the above analysis.
- (2) Please see the above analysis for further recommendations.
- (3) The clarification of selection criteria like skill sets in risk management will require the market to respond thereto for the necessary supply of suitable candidates.
- (4) There may be time required to identify and train up board candidates with the appropriate skill sets.
- (5) The timing for implementation should be determined by the availability of those with the requisite skill sets which is for the AIs to comment upon, and HKMA to survey.

We trust the above submission is useful. Please feel free to share it with the public. If you have any questions, please feel free to contact Mohan Datwani, Senior Director and Head of Technical and Research, HKICS at 2881 6177 or mohan.datwani@hkics.org.hk.

Yours faithfully,

Ivan Tam FCIS FCS
President, HKICS