Hong Kong



GLASS LEWIS

2026 Benchmark Policy Guidelines

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About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make informed decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and benchmark policy recommendations.

Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over $40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' **Viewpoint** platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading **Proxy Paper** product provides comprehensive research and benchmark policy recommendations weeks ahead of voting deadlines. Public companies can also use our innovative **Report Feedback Statement** to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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Purpose

The purpose of the Benchmark Policy proxy research and advice is to serve as a framework that facilitates shareholder voting in favor of governance structures that will drive performance and promote and maintain long-term shareholder value.

Guidelines Introduction

Corporate Governance Background

The Benchmark Policy uses local laws, regulations, listing rules, as well as best corporate governance practices for developing policy guidelines, while the guidelines may go beyond legal minimum requirements. Specifically, the Benchmark Policy considers global corporate governance best practices and is reviewed annually to ensure it remains current with market practice, regulations, governance codes, and the evolving standards of best practices for corporate governance. Accordingly, unless specifically noted otherwise, a failure to meet these guidelines should not be understood to mean that the company or individual involved has failed to meet applicable legal requirements.

Regulations and Governance Code

Hong Kong corporate governance is centered primarily upon the Companies Ordinance, the Securities and Futures Ordinance, the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules), and the Corporate Governance Code (the Code). In December 2014, the Stock Exchange of Hong Kong Limited (the Exchange, or HKEX) published amendments to the Corporate Governance Code and Corporate Governance Report contained in Appendix 14 of the Main Board Listing Rules in their consultation conclusions on risk management and internal controls. In 2016, Hong Kong's Securities and Futures Commission (SFC) published new stewardship guidelines for investors with the launch of its Principles for Responsible Ownership (the Principles). In 2018, the Exchange published (i) amendments to the Code and related Listing Rules; and (ii) a new publication "Guidance for Boards and Directors", which provides some practical advice to boards and directors on their roles and responsibilities.

On December 10, 2021, the Exchange published conclusions to its consultation on Review of the Corporate Governance Code (CG Code) and Related Listing Rules (Consultation Conclusions) along with the resulting amendments to the Listing Rules and CG Code. The key changes effected by the amendments were in the areas of board tenure/refreshment, gender diversity and ESG reporting.

On November 19, 2021, the Exchange published conclusions to its consultation on Review of the Listing Regime for Overseas Issuers along with the resulting amendments to the Listing Rules. The aim of the consultation and resulting amendments was to simplify the listing regime for companies incorporated outside Hong Kong and the People's Republic of China (the PRC) (Overseas Issuers) and extending opportunities for Chinese listings on the HKEX. Under the revised HKEX Listing Rules, all HKEX listed issuers are required to provide the 14 Core Standards set out in revised Appendix 3 to the HKEX Listing Rules. These apply to all issuers listed on the HKEX, including issuers incorporated in Hong Kong, the PRC, Bermuda and the Cayman Islands. The Core Standards are based on

standards set out in the Hong Kong Companies Ordinance (Cap. 622) or already required under the HKEX Listing Rules. Existing Issuers, including issuers incorporated in Hong Kong, Bermuda, the Cayman Islands and the PRC, have until their second annual general meeting (AGM) after January 1, 2022, to make any necessary amendments to their Articles of Association (or other constitutional documents) to ensure they conform to the Core Standards.

On July 21, 2023, the Exchange published conclusions to its consultation on amendments to the Listing Rules consequential to the changes in the PRC regulatory framework. The new PRC regulations repealed the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies and the Mandatory Provisions for Companies Listing Overseas. The change will see holders of a PRC issuer's domestically listed shares (A shares) and holders of its Hong Kong listed shares (H shares) being treated as the same class of shareholders. As a result of this change, any proposal to vary the rights of a particular class that previously required the approval of at least two-thirds of each class of shareholders in separate class meetings, will now only need to be approved by at least two-thirds of all shareholders in a general meeting. The Listing Rule amendments brought about by the PRC regulatory updates and the market consultation have been effective since August 1st. However, HKEX has clarified that PRC issuers listed on the Exchange must comply with both the Listing Rules and their articles of association. As such, the repeal of the Mandatory Provisions for Companies Listing Overseas and changes to the Listing Rules don't invalidate the existing articles of association, including class meeting requirements, which means that the class meeting requirements in the existing articles of association remain valid and binding upon PRC issuers until and unless they amend their articles of association to remove the requirements.

In June 2024, the Exchange released a Consultation Paper on Review of Corporate Governance Code and related Listing Rules and invited feedback from market participants and interested parties, with proposals including positive changes to improve board effectiveness, strengthening board independence, promoting board and workforce diversity of issuers, enhancing risk management and internal control, and ensuring better capital management. In December 2024, the Exchange published the conclusions to the consultation paper, implementing the following notable changes which will take effect for financial years beginning on or after July 1, 2025[1]: (i) imposing a hard cap of nine years on the tenure of independent non-executive directors (INEDs), with a three-year cooling-off period; (ii) introducing a limit of six public company boards on which a director may serve on simultaneously; (iii) introducing a new Code Practice requiring issuers to have at least one director of a different gender serving on the nomination committee; (iv) imposing new rules for mandatory director training; and (v) mandating annual review and disclosure of the implementation of the board diversity policy, as well as separate disclosures of the gender ratios of senior management and the workforce. In addition to these rules, issuers without an independent board chair are encouraged to appoint one independent director as a lead INED. Furthermore, companies are required to maintain and disclose a board skills matrix in their Corporate Governance Report (as a Code Practice), together with enhanced transparency on the board's skills. Other changes include enhanced disclosures on risk management and internal control systems, as well as specific disclosures regarding dividend policy and the board's dividend decisions.

Following a market consultation on the expansion of the Paperless Listing Regime, the adoption of mandatory electronic dissemination of listed issuers' corporate communications to their securities holders, became

[1] Changes regarding overboarding have a three-year transition period. Hard cap on INED tenure has a phased implementation over a transition period of six years: (i) phase one: issuers must not have long serving INEDs representing a majority of the INEDs on the board by July 1, 2028; and (ii) phase two: issuers must not have any long serving INED on the board by July 1, 2031.

effective on December 31, 2023. Under the new regulations issuers must disseminate corporate communications to their securities holders electronically, either by sending or making corporate communication available to the holders using electronic means or, making corporate communication accessible on their websites and the HKEX website. Listed issuers whose constitutional documents restricted the electronic dissemination of corporate communications were required to make the necessary changes at first annual general meeting after December 31, 2023. In August 2024, the Exchange released a consultation paper with proposals to further expand the Paperless Listing Regime and Other Rule Amendments, in which the Exchange considers expanding the use of electronic channels to further enhance operational efficiencies and sustainability.

Summary of Changes for 2026

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis.

For 2026, the language in this document has been updated to clarify that these guidelines contain the views of the Benchmark Policy. The Benchmark Policy reflects broad investor opinion and widely accepted governance principles and is intended to provide clients with nuanced analysis informed by market best practice, regulation, and prevailing investor sentiment. This change better conveys Glass Lewis' role as a service provider to a diverse, global client base with a wide spectrum of viewpoints and objectives. The Benchmark Policy represents just one of Glass Lewis' policy offerings.

In addition, the following noteworthy revisions have been made to the Benchmark Policy, which are summarized below and discussed in greater detail in the relevant sections of this document.

Regulations

The discussion has been updated to reflect the new amendments to listing regulations regarding the enhancement of corporate governance.

A Board of Directors that Serves the Interests of Shareholders

Board and Committee Structure

The traditional structure of Hong Kong companies is based on the presence of the board of directors, and three committees thereunder, the audit,[2] remuneration[3] and nomination[4] committees. The board of directors includes executive, non-executive non-independent and independent members. At least one-third of the board of directors must stand for re-election at the general meeting of shareholders, and every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.

In accordance with the Listing Rules, an audit committee should comprise a minimum of three directors, all of whom are non-executive directors and a majority of whom are independent, and both remuneration and nomination committees should consist of a majority of independent directors. All the committees should be chaired by independent directors although a nomination committee may be chaired by the chairperson of the board regardless of their independence status.

Board of Directors

Market best practice preferred talented boards with a proven record of protecting shareholders and delivering value over the medium- and long-term. It is believed that boards working to protect and enhance the best interests of shareholders typically possess the following three characteristics: (i) independence; (ii) a track record of performance; and (iii) a breadth and depth of experience.

To facilitate shareholder voting in favor of governance structures that will create shareholder value and maintain a highly functioning independent board, various aspects of the board and its committee structure and the qualifications of the respective members are considered.

Director Independence

The Benchmark Policy examines everyone on the board and their relationships with the company, the company's executives and other board members. The purpose of this inquiry is to determine whether pre-existing personal, familial or financial relationships (apart from compensation as a director) are likely to impact a board member's decisions. Many investors believe the existence of these types of relationships make it difficult for a board member to put the interests of the shareholders whom he/she is elected to serve above his/her own interest, or those of the related party.

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[2] The Listing Rules require the committee to be majority independent. Listing Rules, Rule 3.21.
[3] Listing Rules, Rule 3.25.
[4] (New) Listing Rule 3.27A.

To that end, directors are classified in three categories based on the type of relationships they have with the company:

Independent Director — Independent director has no material, financial, familial or other current relationships with the company, its executives or board members, and any related entities including substantial shareholder of the company. An individual who has been employed[5] by the company, the group or their connected entities in the previous five years[6] is not considered to be independent. For other relationships, a three-year look-back period will be applied. However, a director may not be considered independent if they have progressively been re-designated from an executive director to an independent director despite never leaving the board. Where a director transitions from an executive position (of the company or group entities) to an independent director, in addition to a five-year look back period, they must leave the board for a period of at least two years before re-joining the board with a designation as independent director.

Serving more than 9 years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, his/her further appointment is subject to a separate resolution to be approved by shareholders.[7] However, after 12 years of service, a director will not be considered independent. Ultimately, criteria for assessing director independence are based on a director's track record indicative of making objective decisions as well as the director's compliance with the applicable independence listing requirements.

Affiliated Director — In assessing non-executive non-independence directors, the following will be taken into consideration, when appropriate:

(1) Previous employment relationship between the director and the company, the group or their connected entities within the most recent five years [5] [6];

(2) Beneficial ownership in the company or the group; family relationship with the company's insider(s). In particular, a director who owns more than 1%[8] of a company's share capital is believed to have the power to exert disproportionate influence on the board and should not serve on the board as an independent non-executive director while the Listing Rules impose over 5% shareholding when assessing a director's independence status;

[5] The Benchmark Policy reserves the right to discretion in applying these guidelines based upon the director's previous position and the extent of their involvement in the company and/or the group's businesses.

[6] Listing Rules, Rule 3.13(7) applies a two-year look back period. Market best practice indicates that a five-year standard is appropriate because the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. However, the five-year look-back period may not be applicable to directors who have previously served as executives of the company on an interim basis for less than one year.

[7] (New) Corporate Governance Code B.2.3. The papers to shareholders accompanying that resolution should include the reasons why the board believes they are still independent and should be re-elected.

[8] The Benchmark Policy view 1% shareholders as affiliates because they typically have access to and involvement with management in a fundamentally different manner than that of ordinary shareholders. More importantly, 1% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings or personal tax issues.

(3) Material interest[9] in any principal business activity; executive position holding in any substantial shareholders, subsidiaries, or related entities; and

(4) A director, partner, employee or principal of a professional advisor that provided services or has provided services within the most recent three years to: (i) the company, its holding firm, its subsidiaries, or connected persons; or to (ii) any person who was a controlling shareholder, the chief executive or a non-independent director (other than an independent director) of the company or any of their associates.[10]

In addition, where independent non-executive directors are found receiving additional compensation in the form of salaries, allowances and/or emoluments that exceed 50% of a director's normal fee-based compensation, such independent directors may be considered as being affiliated.

Insider — An executive director simultaneously serves as a director and employee of the company. This category may include a board chair who acts as an employee of the company, or a director paid as an employee of the company.

Voting Recommendations Based on Independence

Every listed issuer in Hong Kong is subject to comply with the Listing Rule 3.10A, a provision mandating one-third independence on the board, as of December 31, 2012. In addition, pursuant to Listing Rule 3.10, every board of directors of a listed issuer must include at least three independent non-executive directors. If a board is not sufficiently independent, shareholders are recommended to vote against certain insiders and/or affiliated directors in order to satisfy the independence threshold. The Benchmark Policy typically recommends voting against affiliates rather than insiders, but if a significant portion of the board represents an entity, family or persons working together, the Benchmark Policy may recommend voting against an insider if that director is affiliated with such entities. In addition, where a board is less than one-third independent, and/or has less than three independent directors, shareholders are recommended to hold the chair of the nomination committee responsible for failing to nominate enough independent directors and recommend voting against their election. When the information regarding the chair of the nomination committee is not disclosed, shareholders are recommended to vote against the committee member with the longest tenure on the board. If the board does not have a nomination committee, the chair of the board should be held responsible for the insufficient board independence.

In determining recommendation as to who shareholders vote against for board independence, the Benchmark Policy will reserve discretion to not recommend against a company's CEO, or a CEO-equivalent role such as president, general manager, or managing director. Given the importance of this executive role, if the executive has no other issues that would warrant a negative recommendation, the Benchmark Policy will exempt such directors from receiving an against recommendation. However, should the executive have additional issues that

[9] Listing Rules, Rule 2.16. In determining whether a shareholder has a material interest, relevant factors include: (1) whether the shareholder is a party to the transaction or arrangement or an associate of such a party; and (2) whether the transaction or arrangement confers upon the shareholder or his associate a benefit not available to the other shareholders of the issuer. There is no benchmark for materiality interests nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case-by-case basis, having regard to all the circumstances of the transaction concerned.

[10] The Listing Rules use a two-year look-back period for most relationships.

would warrant against recommendations, the Benchmark Policy will generally oppose the re-election of such executives based on the board being insufficiently independent. Nonetheless, the Benchmark Policy will reserve the right to discretion in applying these guidelines in recommending voting against a director on a case-by-case basis.

Supervisor Independence

A decent number of companies that are listed in Hong Kong are also listed on exchanges in mainland China. These dual-listed companies often have a two-tier corporate governance structure that includes a board of supervisors in addition to a board of directors. A board of supervisors normally comprises employee representatives and shareholder representatives. Shareholder representatives may include an independent representative, while most of them are affiliated with the company or its substantial shareholders. The current laws and regulations neither provide any basis for evaluation of supervisor independence nor do they require a supervisor to be independent. However, for effective oversight to protect the interests of shareholders, market best practice prefer that at least one-third of a board of supervisors should be independent. In case a board of supervisors does not meet the minimum independence, the Benchmark Policy may recommend voting against shareholder representative nominees until the board reaches a composition that is one-third independent.

Director Commitments[11]

Many investors believe that directors should have the necessary time to fulfill their duties to shareholders. An overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade. As a result, from 2024, the Benchmark Policy may recommend that shareholders vote against a director who serves as an executive officer of any public company while serving on more than one additional external public company boards, and any other director who serves on more than five public company boards. Directors who serve as board chairs in select other non-Asian markets, per global policies, will be counted as two board seats given the time commitment of directorship in those markets. Academic literature suggests that one board takes up approximately 248 hours[12] per year of each member's time.

While the market expects that executives will primarily devote their attention to executive duties, it is also believed that an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. To that end, shareholders will be recommended to refrain from voting against over-committed directors at the companies where they serve as an executive unless the concerned director's external commitments exceed four boards. When determining whether a director's service on an excessive number of boards may limit the ability of the director to devote sufficient time to board duties, relevant factors may be considered, such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards in question, and the director's attendance record at all companies.

[11] Directorship and supervisorship in public companies are considered.
[12] NACD Public Company Governance Survey 2015-2016 p. 22.

The Benchmark Policy may also refrain from recommending against certain directors if the company provides sufficient and specific rationale for their continued board service. The rationale should allow shareholders to evaluate the scope of the directors' other commitments as well as their contributions to the board, including specialized knowledge of the company's industry, strategy or key markets, the diversity of skills, perspective and background they provide, and other relevant factors. The Benchmark Policy will also generally refrain from recommending voting against a director who serves on a potentially excessive number of boards within a consolidated group of companies comprising parent and controlled subsidiaries, in related industries, provided that the director's total commitment does not exceed ten public company boards. In these cases, investors nevertheless believe that it is incumbent on companies to proactively address potential shareholder concerns regarding a director's overall commitment level.

Director Performance and Conflict of Interest

The performance of these individuals in their capacity as board members and executives of the company, and in their roles at other companies where they may have served, will be closely considered. In addition, irrespective of the overall presence of independent directors on the board, a board should be wholly free of people who have identifiable conflicts of interest. Accordingly, shareholders are recommended to vote against the following types of affiliated or inside directors in nearly all circumstances:

Voting Recommendations Based on Performance and Conflict of Interest

Professional Services and Business Transactions — Market best practice suggests that a director, especially an independent director, who has provided material professional services, or a director who is an immediate family member of whom has provided such services, during the last fiscal year or on an ongoing basis, should not serve on the board. Material professional services may include legal, consulting or financial services to the company. Also, an executive director or non-independent non-executive director who engages – or has a family member of whom engages – in business contracts with the company such as purchase, or sales agreement will have to make unnecessarily complicated decisions that may pit their interests against those of the shareholders they serve. The Benchmark Policy may recommend voting against a director if his/her direct/indirect related party transactions exceed any of the following thresholds: (i) HK$300,000 or no disclosure for personal direct transactions; (ii) HK$3,000,000 for indirect transactions with an entity in which a director holds more than 50% interest; (iii) HK$3,000,000 for indirect professional services transactions with a professional services firm in which a director works for; or (iv) 1% of a company's consolidated gross revenue for indirect transactions with an entity in which a director serves as an executive.

Poor Attendance — The Benchmark Policy disfavors directors who have a record of not fulfilling their responsibilities to attend meetings held by the board or its committees and typically recommend voting against any director who fails to attend a minimum of 75% of the board meetings or 75% of total applicable committee meetings and board meetings. In addition, if a nominee has failed to attend 75% of their applicable meetings in the past two consecutive fiscal year, the Benchmark Policy recommends voting against the chair of the nomination committee. Likewise, where a nominee failed to attend any meetings in the past fiscal year, unless his/her attendance was inhibited by health-related matters, shareholders are recommended to vote against the chair of the nomination committee.

Where companies fail to disclose the complete attendance records of the board and its required committees, the Benchmark Policy may recommend shareholders vote against the board chair. Further, when the attendance record is not disclosed, executives may not be exempted from serving on more than two public company boards.

Insufficient Board Meetings — The Benchmark Policy recommends voting against the chair of a board in cases where the board held less than four meetings during the last fiscal year. The board chair should be accountable for holding board meetings frequently enough to review all essential matters and make more efficient and well-informed decisions by the board members. While the appropriate number of board meetings necessary for a company may vary depending on the complexity of the company and other factors, market best practice suggests that four times a year should be the minimum.

Legal Disputes — Shareholders should be concerned with any type of lawsuit or regulatory investigation involving the board or the company as such matters could potentially expand in scope and prove to dampen shareholder value. As such, if members of management or the board are implicated in any such legal proceedings, the Benchmark Policy may recommend that shareholders vote against certain directors on that basis.

Board Size

While there is no universally applicable optimum board size, market best practice generally preferred boards to have at least five directors to ensure sufficient diversity in decision-making and enable the formation of key board committees with independent directors. Conversely, boards with more than 20 members will typically suffer under the weight of "too many cooks in the kitchen" and have difficulty reaching consensus and making timely decisions. Sometimes the presence of too many voices can make it difficult for boards to properly draw on the wisdom and experience in the room by virtue of the need to limit the discussion so that each voice may be heard.

Market best practice indicates that optimal board sizes are between five and 20 and as such, shareholders are typically recommended to vote against the nomination committee chair if a board has more than 20 directors. However, while a minimum board size of five directors is more preferrable, the Benchmark Policy will not recommended against the chair of the nomination committee, but instead the preference for a larger board size will be noted.

Separation of the Roles of CEO and Board Chair

The Corporate Governance Code stipulates that the roles of board chair and CEO or any CEO-equivalent role, should be separated to ensure that no one individual has unfettered powers of decision. Further, listed companies are required to disclose the identities of the board chair and CEO, as well as the nature of any relationships between them (e.g., business or familial).

Separating the roles of corporate officer and board chair creates a better governance structure than a combined executive/board chair position. An executive manages the business according to a course the board charts. Executives should report to the board regarding their performance in achieving the board's goals for the

company. This process is needlessly complicated when a CEO sits on or chairs the board, as a CEO will presumably have a significant influence over the board.

It can become difficult for a board to fulfill its role of overseer and policy setter when a CEO/board chair controls the agenda and boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of business operations and limitations on independent, shareholder-focused goal setting by the board.

A CEO should set a strategic course for the company, with the board's approval, and the board should enable the CEO to carry out his/her vision for accomplishing the board's objectives. Failure to achieve the board's objectives should lead the directors to replace their top executive with someone in whom the board has confidence.

Similarly, an independent chair can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO or other executive would often face. Such oversight and concern for shareholders allows for a more proactive and effective board of directors that is better able to look out for the interests of shareholders.

Thus, where a high-ranking executive director (MD/CEO or CEO-equivalent roles) holds the position as board chair, the board should have appropriate safeguards in place, such as appointing one or more independent vice chairs or a leading/senior independent director to carry out the role of overseer and policy setter. Absent at least one independent vice chair or leading independent directors, shareholders may be recommended to vote against the chair of the nomination committee.[13]

Board Evaluation and Refreshment

Market best practice supports routine director evaluation, including independent external reviews, and periodic board refreshment to foster the sharing of diverse perspectives in the boardroom and the generation of new ideas and business strategies. Further, the board should evaluate the need for changes to board composition based on an analysis of skills and experience necessary for the company, as well as the results of the director evaluations, as opposed to relying solely on age or tenure limits. When necessary, shareholders can address concerns regarding proper board composition through director elections.

A director's experience can be an asset to shareholders because of the complex, critical issues that boards face. This said, in rare circumstances, a lack of refreshment can contribute to a lack of board responsiveness to poor company performance.

On occasion, age or term limits can be used to remove a director for boards that are unwilling to police their membership and enforce turnover. Some shareholders support term limits to force change in such circumstances.

While age limits can aid board succession planning, the long-term impact of age limits restricts experienced and potentially valuable board members from service through an arbitrary means. Shareholders are better off

[13] When the information regarding committee chair is not disclosed, the Benchmark Policy may recommend voting against the committee member with the longest tenure on the board. If a board does not have a nomination committee (or a committee that serves such a purpose), it may recommend voting against the chair of the board on this basis.

monitoring the board's overall composition, including its diversity of skill sets, the alignment of the board's areas of expertise with a company's strategy, the board's approach to corporate governance, and its stewardship of company performance, rather than imposing inflexible rules that don't necessarily correlate with returns or benefits for shareholders.

However, if a board adopts term/age limits, it should follow through and not waive such limits. If the board waives its term/age limits, Benchmark Policy will consider recommending shareholders vote against the nominating and/or governance committees, unless the rule was waived with sufficient explanation, such as consummation of a corporate transaction like a merger.

Ratification of the Co-option of Board Members

Board of directors is allowed to fill a vacancy through co-option by appointing an individual as a board member until the next annual meeting of shareholders. All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.[14]

Director Insurance and Indemnification

A listed company may arrange appropriate insurance cover in respect of legal action against its directors.[15] However, such liability insurance should not cover liabilities that arise in connection with a director's violation of laws, regulations, or the company's articles of association. Hong Kong law is silent on the indemnification of directors. In practice, the indemnification of directors, if approved or stipulated in the articles of association, is possible, and additional indemnities may also be agreed to in the engagement agreements between the company and relevant members of the board.

Board Gender Diversity

The Benchmark Policy recognizes the importance of ensuring that the board is comprised of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights.

The Guidance for Board and Directors (the Guidance)[16] encourages companies to advance norms surrounding board diversity, which includes board member skills and gender diversity. From December 31, 2024, the Listing Rules will require that all companies have at least one gender-diverse director on their board.[17] Also, the Guidance states that companies should disclose their board diversity policies and progress toward achieving those policies in their corporate governance report. The diversity policy should outline the numerical targets and timelines set for achieving gender diversity on its board. To that end, despite the long timeline afforded to

[14] Corporate Governance Code Article A.4.2.
[15] Corporate Governance Code Article A.1.8.
[16] The Guidance for Board and Directors Section 4 discusses different elements of diversity which include board, gender, and skillset diversity which may be displayed in a board skills matrix.
[17] Listing Rule 13.92.

companies to diversify boards, market best practice indicates that all companies should have at least one gender-diverse director.

It is expected that companies disclose their diversity policies, including board gender diversity. As board diversity, particularly gender diversity has become a well-established global best practice, it is expected that all Hong Kong listed companies have at least one gender-diverse director on their board. Where a company does not have at least one gender-diverse director on their board, the Benchmark Policy may recommend shareholders hold the chair of the nomination committee or board chair in the absence of such nomination or similar committee responsible for the lack of sufficient board gender diversity.

Independent Director Board Tenure

The Code provides that an independent director's tenure should generally be limited to 9 years. Thereafter, the appointment of a long-serving independent director should be subject to a separate resolution that is approved by shareholders.[18] While the Code permits independent directors serving beyond nine years, it does not discuss at what point an independent director should not be considered independent based on their tenure of service after 9 years, notwithstanding a vote on a director's independence based on tenure.

Given the trend in corporate governance practices to otherwise limit independent director board tenure,[19] companies should have policies in place to periodically refresh their independent directors after a long period of service. This is especially the case if minority shareholders lack the voting power to decide on a director's independence. Therefore, the Benchmark Policy will no longer view a director as being independent if they have served 12 or more consecutive years on board.

However, for assessing the independence of a director between 9 and 12 years, the following will be considered:

- The extent of a company's explanation of a director's independence, which must not be limited a director meeting the legal requirement or definition of being independent; and
- Whether the director meets the Benchmark Policy's definition of independence.

As such, it will be noted if an independent director has served on the board for more than 9 consecutive years. However, independent directors who have served 12 or more cumulative years will be re-classified to become affiliated, while policies relating to board and committee independence will be applied. Where a company would seek to re-appoint a director as an independent director after 12 or more years of service, best practice indicates that there should be a three-year period where a director leaves a board before being re-appointed.

[18] Corporate Governance Code, New CP B.2.3.

[19] To date, markets in Asia are by regulation or code implementing limits on tenure. These include firm limits on tenure being 6 years in China, 6 years for a company in South Korea, 10 years in India, 9 years for financial institutions in Singapore, while Malaysia, Thailand, the Philippines, Singapore, and European markets such as the United Kingdom and France use 9 and 12 years as benchmarks for independent director tenure. Further, Malaysia has adopted a two-tier voting system on director tenure, while Singapore will also adopt a two-tier voting system on independent director tenure from 2022. Unlike regional and global peers, the Exchange in its conclusions to its consultation opted to not allow further shareholder voting on a director's independence based on tenure or set ceilings on an independent director's tenure of service.

Board Committees

Audit Committee Performance

An audit committee plays an integral role in overseeing and monitoring the management and auditors perform in regard to the accounting and financial reporting process. A listed company is required to establish an audit committee with a majority of independent directors in accordance with the Listing Rules.[20] In line with regulations and best practice recommendations, the audit committee should include a minimum of three members, with an independent chair, and should be majority independent. In line with market best practice, company insiders should not serve on the audit committee. Furthermore, directors or affiliates of shareholders who own more than 20% should not serve on the audit committee. Regardless of a company's ownership structure, the interests of all shareholders must be protected by ensuring the integrity and accuracy of a company's financial statements. Allowing significant shareholders, their representatives, or executives to oversee audits could create an insurmountable conflict of interest.

In addition, assessment of an audit committee's performance also takes into consideration that an audit committee performs critical responsibility to provide adequate information and explanation to the auditor for it to be able to conduct proper audit of the company's accounts. The quality and integrity of the financial statements and earnings reports, the completeness of disclosures necessary for investors to make informed decisions, and the effectiveness of the internal controls should provide reasonable assurance that the financial statements are materially free from errors. The independence of the external auditors and the results of their work also provide useful information by which to assess the audit committee.

For an audit committee to function effectively, it must include members with sufficient knowledge and to diligently carry out their responsibilities such as financial expertise, and it is expected that audit committee members should possess such expertise as a Certified Public Accountant (CPA), Chief Financial Officer (CFO) or corporate controller or similar experience.

Thus, shareholders may be recommended to vote against the following members under the following circumstances:

- Any audit committee member who is considered insider of the company based on the criteria used by the Benchmark Policy.
- Any audit committee member who is not considered independent based on the criteria used by the Benchmark Policy, if the committee is not majority independent.
- Any member of the audit committee who directly owns or exerts control over 20% or more of the company's stock. In addition, representative directors of substantial shareholders (holding more than 20% of the çompany's stock) will be opposed in cases where audit committee integrity has been compromised by a conflict of interest.
- The audit committee chair who is not considered independent based on the criteria used by the Benchmark Policy.

[20] Listing Rules, Rule 3.21.

- The audit committee chair if the audit committee does not have a financial expert or the committee's financial expert does not have a demonstrable financial background sufficient to understand the financial issues unique to public companies.
- The audit committee chair if the audit committee did not meet at least four times during the previous fiscal year.
- The audit committee chair if the committee has less than three members.
- The audit committee chair, when fees for non-audit services are greater than audit and audit-related fees paid to the auditor for one fiscal year.
- All members of an audit committee in office, when fees for non-audit services are greater than audit and audit-related fees paid to the auditor for two or more consecutive fiscal years.
- The audit committee chair if the company failed to disclose the non-audit fees[21] paid to the independent auditor.
- All members of an audit committee who are up for election and who served on the committee at the time of the audit if the company and the board failed to provide adequate financial information to the independent auditor.
- All members of an audit committee at a time when material accounting fraud occurred at the company or financial statements had to be restated due to serious material fraud.
- All members of the audit committee when there is any disagreement with the auditor over key audit matters that results in the auditor resigning or being dismissed.
- The board chair if the company has not established an audit committee.[22]
- The audit committee chair if any executive is invited to attend all audit committee meetings beyond the instances where the committee seeks clarification or answers on matters pertaining to the company's finances.

Remuneration Committee Performance

Remuneration committees have the final say in determining the compensation of executives. This includes deciding the bases on which compensation is determined, as well as the amounts and types of compensation to be paid. This process begins with the hiring and initial establishment of employment agreements, including the terms for items such as pay, pensions and severance arrangements. In establishing remuneration arrangements, pay levels should be consistent with — and based on — the performance of the company's long-term shareholders returns.

The Remuneration committee is also responsible for overseeing the transparency of compensation structures. This oversight includes the disclosure of compensation arrangements, the matrix used in assessing pay for performance and the use of remuneration consultants. It is important for investors to have a clear and complete disclosure of all the significant terms of compensation arrangements for them to judge the decisions of the remuneration committee.

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[21] Market expectations are such that the company should disclose breakdown of audit and audit-related fees and non-audit fees paid to the independent auditor. Under the Corporate Governance Code C.3.3, the audit committee should ensure that an external auditor's provision of non-audit services does not impair its independence or objectivity.

[22] Listing Rules, Rule 3.21.

Finally, remuneration committees are responsible for the oversight of internal controls in the executive compensation process. This includes controls over gathering information used to determine compensation, the establishment of equity award plans and the granting of equity awards. Lax controls can contribute to conflicting information being obtained, possibly using nonobjective consultants, for example. Lax controls can also contribute to improper awards, such as backdated or spring-loaded options, or bonuses for years when the payment triggers were not met.

Thus, Benchmark Policy may recommend voting against the following members under the following circumstances:

- Any remuneration committee member who is considered insider of the company based on the criteria used by the Benchmark Policy.
- Any remuneration committee member who is not considered independent based on the criteria used by the Benchmark Policy, if the committee is not majority independent.
- All members of the remuneration committee (during the relevant period) if: (i) the company entered into excessive employment agreements and/or severance agreements; (ii) performance goals were lowered when employees failed or were unlikely to meet original goals, or performance-based compensation was paid despite goals not being attained; or (iii) excessive employee perquisites and benefits were allowed.
- The remuneration committee chair, if non-executive directors of the company received compensation other than base fees and equity-based compensation.
- The remuneration committee chair who is not considered independent based on the criteria used by the Benchmark Policy.
- The remuneration committee chair, if the committee has less than three members.
- The board chair if the company has not established a remuneration committee.[23]

Nomination Committee Performance

The nominating committee, as an agency for shareholders, is responsible and accountable for the selection of objective and competent board members.

Regarding the nomination committee, Benchmark Policy may recommend voting against the following committee members under the following circumstances:

- The nomination committee chair,[24] if: (i) the committee chair is not considered independent based on the criteria used by the Benchmark Policy; (ii) less than three independent directors on the board and less than one-third of the board is independent; (iii) there are more than 20 members on the board; (iv) the committee did not hold any meeting during the previous fiscal year; (v) the committee re-nominates a director who did not attended any board meetings in the previous fiscal year and does not provide a reason for such re-nomination despite of the poor attendance; (vi) the committee re-nominated a

[23] Listing Rules, Rule 3.25.

[24] When the information regarding committee chair is not disclosed, shareholders may be recommended to vote against the committee member with the longest tenure on the board. If a board does not have a nomination committee (or a committee that serves such a purpose), shareholders may be recommended to vote against the chair of the board on this basis.

director who attended less than 75% of the meetings held by the board and/or the committees for two or more consecutive years; (vii) where the board chair concurrently holds the position of CEO (or equivalent) and the board does not appoint an independent vice chair or a lead independent director; (viii) where companies do not have at least one gender diverse director on their board; and (ix) where directors have been re-nominated after failing to receive majority support from shareholders.

- Any nomination committee member who is not considered independent based on the criteria used by the Benchmark Policy, if the committee is not majority independent.
- The board chair if the company has not established a nomination committee.[25]

Governance Committee Performance

In performing this role, the board is responsible for overseeing managements and the board's governance practices. It is also responsible for providing leadership on governance policies adopted by the company. In the absence of a nominating committee, the governance committee will be analyzed in the same manner as the nominating committee.

Environmental and Social Risk Oversight

The Benchmark Policy notes the importance of ensuring the sustainability of companies' operations and believes that an inattention to material environmental and social issues can present direct legal, financial, regulatory and reputational risks for companies that could serve to harm shareholder interests. Therefore, these issues should be carefully monitored and managed by companies, and that companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalizing on related opportunities to the best extent possible.

Where companies have not properly managed or mitigated environmental or social risks to the detriment of shareholder value or when such mismanagement has threatened shareholder value, the Benchmark Policy may consider recommending that shareholders vote against members of the board who are responsible with oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, shareholders may be recommended to vote against members of the relevant committee. In making these determinations, the situation at hand will be carefully reviewed, together with its effect on shareholder value, as well as any corrective action or other response made by the company.

Local Environmental & Social Disclosure Practices

ESG reporting requirements are governed by Appendix 27 Environmental, Social and Governance Reporting Guide. The guide was published following the HKEX's publication of the conclusions to its consultation on the 'Review of the Environmental, Social and Governance (ESG) Reporting Guide (ESG Guide) and Related Listing Rules' (ESG Consultation Conclusions) in December 2019.

The Guide comprises two levels of disclosure obligations: (i) mandatory disclosure requirements; and (ii) "comply or explain" provisions. The Guide requires that an issuer must publish its ESG report on an annual basis

[25] Corporate Governance Code Article A.5.1.

and regarding the same period covered in its annual report. An ESG report may be presented as information in the issuer's annual report or in a separate report, however, if presented in a separate report, the ESG report must be published at the same time as the annual report.

The mandatory disclosure requirements require a statement from the board containing the following elements: (i) a disclosure of the board's oversight of ESG issues; (ii) the board's ESG management approach and strategy, including the process used to evaluate, prioritize and manage material ESG-related issues (including risks to the issuer's businesses); and (iii) how the board reviews progress made against ESG-related goals and targets with an explanation of how they relate to the issuer's businesses. In December 2020, Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group announced that TCFD-aligned climate-related disclosures will be mandatory across relevant sectors no later than 2025. The Steering Group indicated its support towards adopting the standard to be developed by the International Sustainability Standards Board in July 2021, and further expressed its support for the Hong Kong's Climate Action Plan 2050 in October 2021.

On November 5, 2021, the HKEX published Guidance on Climate Disclosures. In the announcement, the HKEX noted that while the existing ESG reporting requirements had incorporated certain key recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD") it would review the framework in order to further align with TCFD recommendations, and will collaborate with other regulators to work on a roadmap to evaluate and potentially adopt the new standard(s) to be developed by the International Sustainability Standards Board (ISSB) under the International Financial Reporting Standards Foundation.

On November 25, 2022, the Exchange published findings of its review of issuers' ESG disclosures (2022 Analysis of ESG Practice Disclosure), which focused on the requirements that came into effect in July 2020. Key recommendations of the review include matters relating to board governance and ESG issues, climate change, social issues, and reporting practices.

In November 2023, the Exchange published updates to its April 2023 consultation paper on proposals to enhance climate-related disclosures under the ESG framework. The Exchange proposes to mandate that all issuers make climate-related disclosures in their ESG reports and introduces new climate-related disclosures to align with the ISSB's final IFRS Sustainability Disclosure Standards, which was published in June 2023, and an adoption guide (ISSB Adoption Guide) to be published by the end of 2023. The Exchange proposes interim provisions for certain disclosures relating to financial effects of climate-related risks and opportunities, Scope 3 emissions, and certain cross-industry metrics, considering the recommended approaches on the scaling and phasing-in of requirements available under the ISSB Adoption Guide. Issuers will have until January 1, 2025 to familiarize themselves with the new climate-related disclosure requirements and adopt the Listing Rule amendments.

Initial Public Offering

Where a company recently completed its initial public offering (IPO) and became listed on the stock exchange, the company will be exempted from the Benchmark Policy guidelines for a period of the first financial year or 12 months from the IPO date, whichever is longer.

However, the exemption may be reviewed on a case-by-case basis if: (i) a company and/or its board members are the subject of serious regulatory investigations or actions; and/or (ii) there are significant concerns about overall corporate governance practices.

Virtual Shareholder Meetings

A growing contingent of companies have elected to hold shareholder meetings by virtual means only. Market best practice indicates that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e., a hybrid meeting). However, virtual-only meetings might also have the potential to curb the ability of a company's shareholders to meaningfully communicate with the company's management.

Prominent shareholder rights advocates, including the Council of Institutional Investors, have expressed concerns that such virtual-only meetings do not approximate an in-person experience and may serve to reduce the board's accountability to shareholders. When analyzing the governance profile of companies that choose to hold virtual-only meetings, investors look for robust disclosure in a company's proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Examples of effective disclosure include: (i) addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants; (ii) procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting; (iii) addressing technical and logistical issues related to accessing the virtual meeting platform; and (iv) procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

Section 584 of the Hong Kong Companies Ordinance (Cap. 622) permits a company to hold a general meeting at 2 or more places using any technology that enables members who are not at the same place to listen, speak and vote, subject to the provisions of the company's articles of association.

The Listing Rules do not impose requirement on the format for general meetings. Issuers should ensure that the conduct of their shareholders' meetings follow the company laws of relevant jurisdictions and its own articles of association where applicable. Where allowed under company laws and the issuer's own articles of association, general meetings may be held virtually in entirety. Where virtual meetings are held, issuers should use reasonable best efforts to (a) ensure that shareholders attending remotely are able to speak and vote at the meetings; and (b) explain how they may do so[26]. Where companies seek to adopt virtual or hybrid meetings, amendments to articles or byelaws will be evaluated to ensure they do not limit shareholder participation or rights.

[26] Companies Ordinance Section 584.

The Link Between Compensation and Performance

Regulatory Framework

According to the Corporate Governance Code, all issuers should disclose details of any remuneration payable to each board member and any members of senior management by band in their annual reports[27]; and a significant proportion of executive directors' remuneration should link rewards to corporate and individual performance.[28]

The adoption and refreshment of equity-based compensation plan such as share option scheme[29] must be also approved by shareholders at a general meeting. Under the Listing Rules, the total number of securities which may be issued upon exercise of all options to be granted under the scheme and any other schemes must not in aggregate exceed 10% of the relevant class of securities of the listed issuer. Further, the limit on the number of securities which may be issued upon exercise of all outstanding options granted and yet to be exercised under the scheme and any other schemes must not exceed 30% of the relevant class of securities of the listed issuer in issue from time to time.

Directors' Fees

Non-employee directors should receive compensation for the time and effort they spend serving on a board and its committees. Director fees should be competitive to retain and attract qualified individuals, but excessive fees can represent a financial cost to the company and threaten to compromise the objectivity and independence of non-employee directors. Therefore, a balance is required.

Generally, Hong Kong companies submit proposals to authorize the board to fix the fees of directors without disclosing the amount of the fees to be paid during the next fiscal year. In such cases, a company's recent compensation practices will be analyzed to determine whether the board should be granted such authority. This type of proposal is generally supported except in cases where the proposed fees are excessive relative to those paid by peer companies with similar market capitalizations.

Further, many investors generally question the need to compensate independent non-executive directors with salaries, other allowances and emoluments, which are generally granted only to executive directors. As such, factors determining the additional compensation will be examined, such as the payment amount and method, its quantum in relation to the directors' fees, and the disclosure of a cogent rationale for the additional payment. A company's remuneration committee is believed to be responsible in reviewing its policies for all compensation awarded to directors, and in cases where this responsibility has not been properly carried out, as well as in the event that such compensation may compromise the objectivity and independence of non-

[27] Corporate Governance Code Article B.1.5.
[28] Corporate Governance Code Article B.1.7.
[29] Listing Rules, Chapter 17.

executive directors, the Benchmark Policy may recommend shareholders hold the members of the remuneration committee accountable and recommend voting against their election.

Equity-Based Compensation Plans

Equity compensation awards are useful, when not abused, for retaining employees and providing them with an incentive to act in a way that will improve company performance.

Equity-based compensation programs have important differences from cash compensation plans and bonus programs. Accordingly, research analysis considers factors such as plan administration, the method and terms of exercise, and express or implied rights to re-price.

The research analysis is both quantitative and qualitative. The potential dilution to shareholders, the company's grant history and compliance with best practice recommendations will be examined.

On July 29, 2022, the HKEX published conclusions to its consultation on Proposed Amendments to Listing Rules relating to Share Schemes of Listed Issuers (Consultation Conclusions) and the resulting amendments to the Listing Rules. The HKEX stated that the amendments aim to provide a consistent regulatory framework to govern both share option schemes and share award schemes. The new requirements came into effect from January 1, 2023, and the key changes include the following:

(i) Extend Chapter 17 to govern all share schemes involving grants of share awards and grants of options to acquire new shares of issuers.

(ii) Define eligible participants of Share Schemes to include Employee Participants, Related Entity Participants and Service Providers.

(iii) Apply a Scheme Mandate Limit of not exceeding 10% of an issuer's issued shares to all Share Schemes of the issuer and require the issuer to set a Service Provider Sublimit within the Scheme Mandate Limit and disclose the basis for determining the sublimit and require independent shareholders' approval for refreshment of scheme mandate within a three-year period; and

(iv) Require a minimum vesting period of 12 months. Share Grants for Employee Participants may be subject to a shorter vesting period under specific circumstances as set out in the scheme document. Shares Grants for directors and senior management with a shorter vesting period must be approved by the remuneration committee.

Equity-based compensation will be evaluated based on the following overarching principles:

- Companies should seek more shares only when they need them.
- Plans should be small enough that companies need approval every three years (or less) from shareholders[30].
- Plans should not permit the re-pricing of stock options.

[30] Article 17.03C of the amended Chapter 17 of the Listing Rules requires issuer to seek approval from shareholders to refresh the scheme mandate limit of a share scheme after three years from the date of approval for the last refreshment or adoption of the scheme.

- Plans should not contain excessively liberal administrative or payment terms.
- Plan participants should be limited to employees and directors of the company, its subsidiaries and associates. Performance-based plans should not allow non-executive directors' participation.

In addition, as a rule, the Benchmark Policy does not support granting performance-linked compensation to those who carry out supervisory duties because a non-executive director should hold the same type of securities as ordinary shareholders. Thus, shareholders may be recommended to vote against compensation plans when non-executive directors are eligible to participate in a performance-linked plan.

When evaluating equity-based compensation proposals, it is expected that companies provide complete disclosure surrounding the proposed equity grants. In the absence of complete disclosure, the Benchmark Policy may recommend shareholders oppose either the adoption of an equity-based compensation plan or the granting of equity awards, and will oppose the granting of equity-based compensation awards where:

- The exercise price or discount rate of stock options is determined at the discretion of the plan administrator.
- The exercise price discount for stock options exceeds 20% of the market price.
- The minimum vesting period is less than two years unless vesting occurs immediately after a minimum two-year performance period. However, the Benchmark Policy will refrain from recommending voting against an equity-based compensation plan that has a minimum vesting period of under two years but not less than one year (12 months) if there is a claw back and/or malus mechanism in place.
- The equity-based compensation plans include the acceleration of vesting of awards upon an offer being made on a company's shares without the transaction needing to be completed, along with a further event such as termination of employment of the grantee. However, the acceleration of vesting of awards may be taken into consideration, provided the vesting is in conjunction with the achievement of performance targets as at the time of the transaction leading to a change in control.
- The participants in an equity-based compensation plan are not limited to employees and directors of a company and its affiliated entities, but include a broad range of participants, such as customers, suppliers, sub-contractors or agents of a firm or other persons determined by the directors as being important to the development and growth of the company. The board may abuse its authority and serve its own interests by granting options to a customer of the company who has an affiliation with the board or management. However, the Benchmark Policy will refrain from recommending voting against the granting of equity-based compensation awards to external participants whose nature of work is akin to that of the company's employees,[31] provided that the company provides sufficient disclosure of the participant's work scope.

Proposals to grant individual equity awards may be opposed where:

- The number of shares options or shares to be granted has not been disclosed by the company.
- The plan or plans the awards are being granted under are opposed.

[31] Under Article 17.03A of the amended Chapter 17 of the Listing Rules, service provider participants of share schemes may include persons who work for the issuer as independent contractors where the continuity and frequency of their services are akin to those of employees but should exclude placing agents or financial advisers providing advisory services for fundraising, mergers or acquisitions, professional service providers such as auditors or valuers who provide assurance, or are required to perform their services with impartiality and objectivity.

Performance-Based Options

Shareholders commonly ask boards to adopt policies requiring that a significant portion of future stock option grants to senior executives be based on performance metrics such as performance-based options that have an exercise price linked to an industry peer group's stock-performance index.

Market best practice indicates a preference towards performance-based equity compensation plans for senior executives. Executives should be compensated with equity when their performance and the company's performance warrant such rewards. While best practices do not support the fact that equity-based pay plans for all employees should be based on overall company performance, many investors do support such limitations for equity grants to senior executives.

However, some level of equity-based compensation for senior executives without performance criteria is acceptable, such as in the case of moderate incentive grants made in an initial offer of employment or in emerging industries.

Boards often maintain that basing option grants on performance would hinder their ability to attract talent. Boards can develop a consistent, reliable approach to attract executives who are able to guide the company toward its targets. If the board believes in performance-based pay for executives, then these proposals requiring the same should not hamper the board's ability to create equity-based compensation plans.

Market expectations are such that shareholders vote in favor of performance-based option requirements for senior executives.

Option Exchanges

Many investors view option re-pricing plans and option exchange programs as a problematic governance practice. Shareholders have substantial, real downside risk in owning stock, and the employees, officers and directors who receive options should be similarly situated to align interests optimally. There is a concern that option grantees who believe they will be "rescued" from underwater options will be more inclined to take on unjustifiable risks. Moreover, a predictable pattern of re-pricing or exchanges substantially alters the value of the stock option, as options that will practically never expire deeply out of the money are worth far more than options that carry such a risk. In short, repricings and option exchange programs change the bargain between shareholders and employees after the bargain has been struck. Re-pricing is tantamount to a re-trade.

There is one circumstance in which a repricing or option exchange program is acceptable: if the value of a stock has declined dramatically because of macroeconomic or industry trends (rather than specific company issues) and a re-pricing is necessary to motivate and retain employees. In this circumstance, it is fair to conclude that option grantees may be suffering from a risk that was not foreseeable when the original equity-based compensation "bargain" was struck. In such a circumstance, a re-pricing will be supported only if the following conditions are true:

- Officers and board members do not participate in the program.
- The stock decline mirrors the market or industry price decline in terms of timing and approximates the decline in magnitude.

- The exchange is value-neutral or value-creative to shareholders with very conservative assumptions and a recognition of the adverse selection problems inherent in voluntary programs.
- Management and the board make a cogent case for needing to incentivize and retain existing employees, such as the company's position in a competitive employment market.

Restricted and/or Performance Share Plans

In addition to stock options, companies may also grant "full value" awards which can be tied to performance and/or vesting schedules. Further, dual-listed companies that are listed in both China and Hong Kong may seek to adopt restricted share plans.

Because the value ultimately received under such plans typically depends on achievement of specific performance goals rather than share price gains, market expectations are such that these awards provide better alignment with shareholder interests than stock options. However, because participants receive the full value of vested awards at no cost, an appropriate structure, including appropriate performance targets and vesting schedules, is necessary to ensure that such awards accurately reflect performance.

In assessing the provisions of full-value award plans, the same principles and recommendation will be applied as any equity-based compensation plan. In addition, in recognition of the PRC's regulations, the adoption of a restricted share plan will be opposed where the exercise/grant price discount for restricted shares exceeds 50% of the market price.[32]

Employee Share Purchase Plans

Many investors view participation by employees in a company in the form of share ownership is in the best interests of shareholders. It can help align the interests of employees with those of shareholders by retaining and incentivizing employees to engage in conduct that will improve the performance of a company.

In evaluating employee share purchase plans, it is expected that companies to have complete disclosure regarding the terms for such plans. However, the establishing of an employee share purchase plan may be opposed where:

- The details regarding the administrator of such plans are not disclosed, or the plans are managed by interested parties, as this may raise concerns regarding the objectivity and independence of the administrator.
- The discount to the purchase price provided under such plans exceeds 20% to the market price, or the purchase price is not disclosed but to be determined at the discretion of the plan administrator.
- There are no specified limitations on who may participate in the plan to otherwise prevent executives from being able to purchase a larger portion of shares under the plan than regular employees.

[32] Measures for the Administration of the Equity Incentives of Listed Companies, Article 23.

Transparency and Integrity in Financial Reporting

Accounts and Reports

In Hong Kong, as a routine matter, companies must submit their annual financial statements, director reports and auditor reports to shareholders. A company's consolidated financial statements combine the activities of the company, as well as the activities of its subsidiaries. The financial statements are approved by the board and reported on by the auditors. Approval of such a proposal does not discharge the board from liability.

The Benchmark Policy generally recommends voting for these proposals, except if there are concerns about the integrity of the statements/reports or material weakness. In case these concerns are significant so that the independent auditors are not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion, shareholders may be recommended to vote against the proposal and hold the company's audit committee accountable based on disclaimer of auditor opinion. In addition, if it is not possible to obtain all the necessary documents (e.g., annual financial statements, director reports and auditor reports), shareholders may be advised to abstain from voting on the proposal.

Profit Distribution and Shareholder Return Plan

Investors generally support a company's policy when it comes to the payment of dividends including decisions not to pay them. In most cases, the board is believed to be in the best position to determine whether a company has sufficient resources to distribute a dividend or if shareholders would be better served by forgoing a dividend to conserve resources for future opportunities or needs. As such, the Benchmark Policy will only recommend that shareholders refrain from supporting dividend proposals in exceptional cases.

In 2012, China Securities Regulatory Commission (CSRC) issued the "Notice on Issues Concerning Further Implementing Cash Dividends Distribution of Listed Companies," which requires the listed companies to amend their articles of association to reflect certain provisions regarding profit distribution policy, specifically clearing the decision-making procedures and mechanisms on profit distribution. According to the notice, among others, the accumulated profit to be distributed in cash for any three consecutive years shall not be less than 30% of the average annual distributable profit realized in the most recent three years. Market expectations are such that the most provisions under the notice will further improve the transparency and operability of decision-making on dividend distribution and strengthen the protection of legitimate rights and interests of the shareholders in terms of the company's shareholder return plan.

Appointment/Ratification of Auditor

The auditor's role as gatekeeper is crucial in ensuring the integrity and transparency of the financial information necessary for protecting shareholder value. Shareholders rely on the auditor to ask tough questions and do a

thorough analysis of a company's books to ensure that the information provided to shareholders is a complete, accurate, fair and reasonable representation of a company's financial position. The only way shareholders can make rational investment decisions is if the market is equipped with accurate information about a company's fiscal health.

Shareholders should demand an objective, competent and diligent auditor who performs at or above professional standards. Like directors, auditors should be free from conflicts of interest and avoid situations requiring them to choose between their interests and those of shareholders. Almost without exception, shareholders should be able to annually review an auditor's performance and ratify a board's auditor selection.

The Benchmark Policy generally supports management's choice of auditor, except when the auditor's independence, or the integrity of the audit has been believed to be compromised. Where there has been a material restatement of annual financial statements or material weaknesses in internal controls, shareholders are usually recommended to vote against the auditor. However, the company's auditor will not be held responsible for what is believed to be the company's failure to comply with reporting obligations.

The common reasons for not recommending in favor of the ratification of an auditor include: (i) when audit and audit-related fees total 50% or less of the total fees billed by the auditor; (ii) recent material restatement of annual financial statements, including those resulting in the reporting of material weaknesses in internal controls and including late filings by the company where the auditor bears some responsibility for the restatement or late filing; (iii) when the company has aggressive accounting policies, as evidenced by restatements or other financial reporting problems; (iv) when the company has poor disclosure or a lack of transparency in its financial statements; (v) If the auditor maintains certain relationships or there are concerns that might suggest a conflict between the auditor's interests and those of shareholders; and (vi) if the company has not disclosed sufficient information regarding the appointment or ratification of the auditor (e.g., the name of the auditor).

If the company does not disclose sufficient information regarding the appointment or ratification of the auditor (e.g., the name of the auditor), the Benchmark Policy may recommend voting against the proposal due to insufficient information.

In other situations, shareholders may be recommended to vote on the proposal on a case-by-case basis. For example, where the current auditor has indicated their unwillingness to be reappointed or retires from service and a new auditor must be appointed, the Benchmark Policy will support the appointment of the new auditor unless the auditor is not considered to be independent. However, where the fees paid to the previous auditor were not disclosed, not broken down or considered excessive, the relevant members of the audit committee will be held responsible.

Adoption of Chinese Accounting Standards

For Hong Kong listed companies, the financial history of results and the balance sheet included in the accountants' report must normally be drawn up in conformity with:

- Hong Kong Financial Reporting Standards (HKFRS); or
- International Financial Reporting Standards (IFRS); or
- Generally Accepted Accounting Principles in the United States of America (US GAAP); or

- China Accounting Standards for Business Enterprises (CASBE).[33]

While there have not been any regulatory concerns regarding the adoption of CASBE, many investors believe it is not in the best interest of shareholders. Given that many other countries have already adopted full IFRS as their accounting principles or are in the process of adopting IFRS as their requirements, market best practice is not in favor of the adoption of CASBE by Hong Kong listed companies. Financial statements prepared in accordance with the IFRS and Hong Kong accounting standards, which are recognized as an accounting standard almost identical to the IFRS, would provide investors with more comparable data regarding a company's financial information and resources.

Moreover, there is growing globalization of accounting standards of listed companies with their market expansion across borders. Even though there is no empirical evidence about a decline in audit quality based on the CASBE, considering the growing number of accounting problems at China-based companies which have triggered investigations by non-Chinese authorities, the adoption of CASBE will not necessarily provide reliable and sound financial reporting practice. Thus, IFRS or Hong Kong accounting standards would better protect shareholders' interest and would ensure the uniformity and comparability of financial information of Hong Kong listed companies.

[33] Listing Rules, Rule 4.11.

Governance Structure, Capital Management, and the Shareholder Franchise

Amendments to the Articles of Association

The Benchmark Policy are opposed to the practice of bundling several amendments under a single proposal because it prevents shareholders from judging each amendment on its own merits and is a practice which might negatively limits shareholder rights. In such cases, each proposed change will be analyzed individually. Shareholders will be recommended to vote for the proposal only when, on balance, all the amendments are in the best interests of shareholders.

Communist Party Committee

While proposals amendments are considered on a case-by-case basis, best market practice generally suggests that companies should disclose as much relevant information relating to the interaction between the company and the Communist Party Committee as possible to help shareholders understand the company's decision-making process.

The Benchmark Policy may consider recommending a vote against the article and/or bylaw amendments in cases where there is clear evidence of the board letting Party Committee make material decisions, as party committee's members are not elected by shareholders and thus are not accountable to shareholders.

Overall, decisions regarding management and policy (including those related to governmental interactions), are best left to management and the board as they, in almost all cases, have more information regarding the company's strategy and the associated risks.

Amendments to Procedural Rules/Management Systems

Hong Kong companies commonly request shareholder approval to amend their procedural rules or management systems, which are governance documents that set forth rules and procedures regarding a particular area of business or corporate governance. Companies often adjust their procedural rules and management systems to align with amendments to their articles of association. The same standards are typically applied to these rules as applicable to article amendments.

In the case where the company has not provided documentation of the specific amendments to its rules of procedure but has provided the new draft, the new draft rules will be reviewed to determined whether it follows prevailing regulations as well as the best corporate governance practices. Although a full summary of the

changed content will not be included in this case, a link to the updated draft rules will be provided for shareholder review.

Issuance of Shares and/or Convertible Securities

In general, issuing an excessive number of additional shares and/or convertible securities can dilute existing holders. Further, the availability of additional shares, where the board has discretion to implement a poison pill, can often serve as a deterrent to interested suitors. Accordingly, where it is found that the company has not detailed a plan for use of the proposed shares, or where the number of shares far exceeds those needed to accomplish a detailed plan, the authorization of additional shares may not be supported.

While having adequate shares to allow management to make quick decisions and effectively operate the business is critical, best market practices prefer that, for significant transactions, management come to shareholders to justify their use of additional shares rather than providing a blank check in the form of a large pool of unallocated shares available for any purpose.

Any authorization to issue shares and/or convertible securities with preemptive rights should not exceed 50% of the company's total share capital and any authorization to issue shares and/or convertible securities without preemptive rights should not exceed 20% of the company's total share capital. Likewise, the discount rate for the new issue should not exceed 15% of the average market price.

General Mandate

Pursuant to the Listing Rules,[34] a listed company may issue additional shares amounting up to 20% of issued share capital without preemptive rights, and it may issue repurchased shares of up to 10% of issued share capital for any purpose in one year, provided that a prior shareholders' approval of these mandates has been obtained. Further, such issuances may be implemented with a maximum 20% discount to the market price, which would dilute the interests of existing shareholders.[35]

Under the regulations, most of Hong Kong listed companies submit two separate issuance proposals at their annual general meetings: an authority to issue shares without preemptive rights (the General Mandate), and an authority to issue repurchased shares. It is understood that these proposals allow companies to secure financial flexibility by increasing their levels of equity according to business development and investment needs. However, many investors are concerned that boards may abuse these authorities to serve its own interests by issuing shares to any party.

Research analyses of these types of proposals take into account the following elements to determine if a board may seek to abuse its authorities: (i) the potential for substantial dilution in the company's existing share ownership; (ii) the issue price has been set at a significant discount that is under the maximum legal limit of 20%; (iii) the decision-making process regarding the choice of share subscribers; (iv) the possibility for an

[34] Listing Rules, Rule 13.36 (2) (b).
[35] Listing Rules, Rule 13.36 (5) (b).

improper use of the authority; and (v) the past issuance practices of the company, which may include allocations of a substantial amount of shares to one significant shareholder or third party.

Granting a board such a high level of discretion over a company's capital structure may negatively affect shareholders' interests. These mandates for the equity issuances should be analyzed carefully, and that lower maximum limits will better serve shareholders' interests. Accordingly, the maximum limit of the General Mandate should be limited to 10% and discount rates should be capped at 15% of the market price. Unless these conditions have been met, and the company has provided a detailed plan for such issuances, the Benchmark Policy may recommend voting against these types of authorizations.

Issuance of A Shares

Hong Kong companies based in China may propose to list and trade Renminbi (RMB) denominated shares in Chinese markets (A Shares). Market expectations are such that boards are in the best position to determine the capital structure of a company within the context of its business. In addition, granting boards the authority to issue A Shares can benefit shareholders by providing companies with the flexibility to finance operations and future business opportunities. Furthermore, such issuances of A Shares could broaden a company's capital base and enable it to access Chinese capital markets.

Authority to Repurchase Shares

A company may want to repurchase or trade in its own shares for a variety of reasons. A repurchase plan is often used to increase a company's stock price, distribute excess cash to shareholders or provide shares for equity-based compensation plans for employees. In addition, a company might repurchase shares in order to offset a dilution of earnings caused by the exercise of stock options. The Benchmark Policy may recommend voting in favor of a proposal to repurchase and trade in company stock when the following conditions are met: (i) the board has set a maximum limit on the number of shares that may be purchased; (ii) there is a set maximum price that may be paid for each share (as a percentage of the market price)[36]; and (iii) the plan has an expiration date of 12 months. Further, the Listing Rules limit the number of shares that may be repurchased to no more than 10% of the company's capital.[37] In conjunction with a share repurchase program, companies often subsequently cancel the repurchased shares.[38]

Issuance of Debt Instruments

Policies relating to the company's equity structure should be left to the judgment of the board, absent a showing of egregious or illegal conduct that might threaten shareholder value. It is the responsibility of the

[36] Pursuant to the Listing Rules, Rule 10.06 (2), an issuer shall not purchase its shares on the Exchange if the purchase price is higher by 5% or more than the average closing market price for the 5 preceding trading days on which its shares were traded on the Exchange.

[37] Listing Rules, Rule 10.06 (1).

[38] Pursuant to the Listing Rules, Rule 10.06 (5), the listing of all shares which are purchased by a company shall be automatically cancelled upon purchase.

company's management to select the most appropriate combination of forms of finance and the proportion of each in the most cost-effective way.

Nonetheless, when companies seek shareholder approval to issue debt, the terms of the issuance, the requested amount, and any convertible features, among other aspects, will be evaluated to determine whether the company's debt levels, including long-term debt to assets and total debt to equity, are in line with or lower than those of its peers. If the requested authority to issue debt is reasonable, the amount of leverage used by the company is within the general reasonable issuance limit, and there are no reason to believe that the increase in debt will weaken the company's financial position, the Benchmark Policy will usually recommend in favor of such proposals. However, where companies provide insufficient information about debt to be issued, the Benchmark Policy may recommend that shareholders vote against the proposal. This includes instances where companies either do not provide a specific amount of debt to be issued, or state that the amount to be issued is within their overall borrowing limits.

Corporate Guarantees

In Hong Kong, companies may seek shareholder approval to provide corporate guarantees to subsidiaries, joint ventures and/or associate companies. Where shareholders are asked to approve corporate guarantees, assessment will take the following into consideration:

- The overall disclosure relating to the corporate guarantees.
- The relationship between the company providing the corporate guarantees and those entities receiving the corporate guarantees.
- The benefits for the provision of guarantees to the company itself and its shareholders, ensuring that the provision of guarantees will not only benefit selective major shareholders.
- The size of the corporate guarantees in proportion to a company's net assets; and/or
- The rationale for the provision of guarantees.

Proposals to provide corporate guarantees may be opposed if companies do not disclose the corporate guarantees amount they intend to grant. Furthermore, transactions where a company and guaranteed entity only share common directors or common shareholders, but there is no equity relationship or other business relationship between the company and guaranteed entity, may also be opposed.

For entities to be guaranteed that are related to the guaranteeing company and the corporate guarantees amounts are disclosed, the size of corporate guarantees as a percentage of a company's audited net assets (provided standalone financial reporting is available) or consolidated audited net assets will be evaluated, as based on the most recent audited financial statements. Where the proposed corporate guarantees and existing guarantees (if any) are less than 100% of audited net assets, the Benchmark Policy will support the provision of corporate guarantees. In contrast, where the proposed guarantees and existing corporate guarantees (if any) exceed 100% of audited net assets, the provision of corporate guarantees may be opposed.

Related Party Transactions

In Hong Kong, many companies are family controlled. It is common to have a controlling shareholder or group of controlling shareholders in a listed company. For this reason, the regulation of connected transactions is of utmost importance in Hong Kong and all connected transactions between the excluded business and the applicant after listing must strictly comply with the requirements of chapter 14A. Chapter 14A of the Listing Rules requires that certain transactions entered into between "connected persons" of a listed company (Connected Transactions) be disclosed to or approved by independent shareholders.[39] A connected person is a person who is a promoter, supervisor, director, CEO, former director (within the past 12 months) or shareholder controlling 10% or more of the voting rights of a company or any of its subsidiaries or affiliates, or a relative of such persons.

Several companies listed on the Hong Kong Stock Exchange routinely seek shareholder approval of agreements to enter into new Connected Transactions or continue to enter into existing Connected Transactions in order to comply with Chapter 14A of the Listing Rules. Such agreements generally outline: (i) the pricing terms; (ii) annual limits; and (iii) the terms and conditions of sales and services to be provided among affiliate entities such as the parent company, subsidiaries and other entities that have material interests in the company. Such agreements are usually for a term of no more than three years.

Listed companies are required to employ an independent financial advisor to evaluate and provide an independent opinion of Connected Transactions. A report from the independent financial advisor must contain, among other items, a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the company and its shareholders.

Pursuant to the Listing Rules, shareholders with material interests in Connected Transactions are not permitted to vote on the proposal to approve such transactions and all transactions must be authorized by the board of directors and included within the special report of the company's independent auditors. Subsequently, this report is presented to shareholders at the annual meeting for the ratification of each transaction.

In determining whether or not to support a related party transaction, the following factors will generally be examined: the approval process; the identity and independence of the approval authority; the amount of the transaction relative to shareholding; affiliation between the parties and the extent of company directors' interests in the transactions; the term of the transactions; the effects on the company's financial condition and business performance for the current financial year and beyond; specific rationale of each transaction and explanation where there is any difference between the transaction price and the book value, assessed value or market price; and other factors, which will be evaluated on a case by case basis.

In evaluating proposed related party transactions, these general principles will be considered:

- Transactions must be part of the company's ordinary course of business.
- Clear disclosure regarding the proposed transactions, including relationships between the parties, description of the transactions, review procedures and length of time must be provided. The review committee must be independent, along with disclosure that interested parties must refrain or abstain

[39] Independent shareholder means shareholders who do not have material interests in the transactions being approved. Shareholders who have interests in such transactions are not allowed to vote on proposals to approve the transactions.

from voting for such transactions. Where the transaction terms are partially disclosed, or no details of the transactions have been disclosed, the Benchmark Policy may recommend shareholders oppose the proposed transactions.

- For transactions involving a major shareholder, entities affiliated with a major shareholder, or entities with overlapping directors, the transaction(s) must be related to or necessary for the ordinary day-to-day operations of the company.
- Where the transaction is between a parent company and/or fellow subsidiary or controlled subsidiary, the Benchmark Policy will generally support the transaction unless the transaction is not part of the day-to-day operations of a company.

The Benchmark Policy generally would not oppose a transaction which falls within the company's regular course of business, so long as the independent financial advisor's opinion or independent directors' opinion confirms that these transactions are regular commercial transactions, and the terms of the transactions are fair and reasonable. With a limited exception noted below, the Benchmark Policy may recommend voting against a director if his/her direct/ indirect related party transactions exceed any of the following thresholds:[40] (i) HK$300,000 or no disclosure for personal direct transactions; (ii) HK$3,000,000 for indirect transactions with an entity in which a director holds more than 50% interest; (iii) HK$3,000,000 for indirect professional services transactions with a professional services firm in which a director works for; or (iv) 1% of a company's consolidated gross revenue for indirect transactions with an entity in which a director serves as an executive.

In addition, the Benchmark Policy generally recommends shareholders vote against any deposit transaction of a company and a financial arm of their non-controlling parent company (or within their groups). Such pooling of the group's cash through an unlisted financial vehicle may give the parent company control over the listed company's finances. In addition, such practices may lead to lax lending practices within the parent group, potentially exposing the shareholders of a listed company to undisclosed risks. Accordingly, the Benchmark Policy generally do not support such financial services transactions absent compelling economic rationale.

Considering the nature of intragroup transactions of a controlled entity, in which the parent entity controls more than 50% of the shares, the Benchmark Policy will refrain from recommending shareholders vote against such transactions.

Multi-Class Share Structures

As provided under Listing Rules Chapter 8A, listed companies in Hong Kong Stock Exchange or applicants for listing in HKEX are permitted to adopt a weighted voting rights structure (WVR).

Listed companies or applicants for listing face a tighter scrutiny on corporate governance matters including responsibilities and retirement of independent directors, establishment of nomination committee and corporate governance committee, and information disclosure. Currently, beneficiaries of weighted voting rights are limited to members of the board of directors, in other words, individual shareholders.

In January 2020, HKEX published a consultation paper seeking market views on a proposal to extend the current WVR regime to permit the addition of corporate shareholders to become beneficiaries of WVR, of which aims to

[40] HKEX Listing Rules 14A.76.

primarily attract the listing of high-growth companies from emerging and innovative sectors. As of October 2020, the outcome of the consultation suggests that as a way forward, the stock exchange will enable qualifying issuers with Corporate WVR to seek secondary listings in Hong Kong without having to amend their existing WVR structures (including Corporate WVR structures) to meet the stock exchange's own requirements. The qualifying issuers refer to Greater China Issuers that are controlled by corporate WVR beneficiaries and are primarily listed on a qualifying exchange.

For listed companies seeking to adopt a WVR structure, many investors believe that multi-class voting structures are typically not in the best interests of common shareholders. Allowing one vote per share generally operates as a safeguard for common shareholders by ensuring that those who hold a significant minority of shares can weigh in on issues set forth by the board. Furthermore, the economic stake of each shareholder should match their voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders. On matters of governance and shareholder rights, shareholders should have the power to speak and the opportunity to effect change. That power should not be concentrated in the hands of a few for reasons other than economic stake.

A multi-class share structure is generally believed to reflect negatively on a company's overall corporate governance. Because companies should have share capital structures that protect the interests of non-controlling shareholders as well as any controlling entity, the Benchmark Policy will generally recommend against proposals to adopt a new class of common stock with differential voting rights.

With regards to evaluation of corporate governance following an IPO or spin-off within the past year, where there are significant corporate governance concerns, the Benchmark Policy may recommend shareholders vote against certain members of the board, including the board chair if shareholder rights are being severely restricted.

When analyzing voting results from meetings of shareholders at companies controlled through dual-class structures, the level of approval or disapproval attributed to unaffiliated shareholders will be carefully examined when determining whether board responsiveness is warranted. Where vote results indicate that most unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, the board should demonstrate an appropriate level of responsiveness.

Routine Items

Transaction of Other Business

Shareholders are not typically recommended to give their proxy to management to vote on any other business items that may properly come before the annual meeting, since granting unfettered discretion is unwise.

Ratification of Board Acts

In Hong Kong, as a routine matter, shareholders are usually asked to grant management with the authority to complete all formalities needed to carry out decisions made at the meeting, such as required filings and registrations. In general, this type of proposal is typically supported in order to help management complete the formalities necessary to validate the decisions made at the annual meeting.

Ratification of Management Acts

Market expectations are such that management of the business and the decisions associated with business operations, such as investment projects and utilization of the proceeds; and change of company name or its business line, are best left to management or the board, absent a showing of egregious or illegal conduct that might threaten shareholder value. It is believed that board members can be held accountable on these issues when they face re-election and that managements are in the best position to determine what operational decisions are the best in the context of the business.

Overall Approach to Environmental, Social & Governance

All environmental and social issues are evaluated through the lens of long-term shareholder value. Many investors expect that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated. Governance is a critical factor in how companies manage environmental and social risks and opportunities and that a well-governed company will be generally managing these issues better than one without a governance structure that promotes board independence and accountability.

According to prevailing market practice, part of the board's role is to ensure that management conducts a complete risk analysis of company operations, including those that have material environmental and social implications. Directors should monitor management's performance in both capitalizing on environmental and social opportunities and mitigating environmental and social risks related to operations to best serve the interests of shareholders. Companies face significant financial, legal and reputational risks resulting from poor environmental and social practices, or negligent oversight thereof. Therefore, in cases where the board or management has neglected to act on a pressing issue that could negatively impact shareholder value, shareholders should take necessary action in order to effect changes that will safeguard their financial interests.

Given the importance of the role of the board in executing a sustainable business strategy that allows for the realization of environmental and social opportunities and the mitigation of related risks, relating to environmental risks and opportunities, shareholders should seek to promote governance structures that protect shareholders and promote director accountability. When management and the board have displayed disregard for environmental or social risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental and social risks that threaten shareholder value, shareholders should consider holding directors accountable. In such instances, shareholders are recommended to vote against responsible members of the board that are specifically charged with oversight of the issue in question.

The evaluation of environmental and social factors that may be relevant to a given company are conducted in the context of the financial materiality of the issue to the company's operations. All companies face risks associated with environmental and social issues. However, these risks manifest themselves differently at each company because of a company's operations, workforce, structure, and geography, among other factors. Accordingly, a significant emphasis will be on the financial implications of a company's actions regarding impacts on its stakeholders and the environment.

When evaluating environmental and social issues, the following should be examined:

Direct environmental and social risk — Companies should evaluate financial exposure to direct environmental risks associated with their operations. Examples of direct environmental risks include those associated with oil or gas spills, contamination, hazardous leakages, explosions, or reduced water or air quality, among others. Social risks may include non-inclusive employment policies, inadequate human rights policies, or issues that adversely affect the company's stakeholders. Further, firms should consider their exposure to risks emanating

from a broad range of issues, over which they may have no or only limited control, such as insurance companies being affected by increased storm severity and frequency resulting from climate change.

Risk due to legislation and regulation — Companies should evaluate their exposure to changes or potential changes in regulation that affect current and planned operations. Regulation should be carefully monitored in all jurisdictions in which the company operates. Relevant and proposed legislation are looked at closely to evaluate whether the company has responded proactively.

Legal and reputational risk — Failure to act on important environmental or social issues may carry the risk of inciting negative publicity and potentially costly litigation. While the effect of high-profile campaigns on shareholder value may not be directly measurable, it is prudent for companies to carefully evaluate the potential impacts of the public perception of their impacts on stakeholders and the environment. When considering investigations and lawsuits, such matters may involve unadjudicated allegations or other charges that have not been resolved. The Benchmark Policy does not assume the truth of such allegations or charges or that the law has been violated. Instead, it focuses more broadly on whether, under the particular facts and circumstances presented, the nature and number of such concerns, lawsuits or investigations reflects on the risk profile of the company or suggests that appropriate risk mitigation measures may be warranted.

Governance risk — Inadequate oversight of environmental and social issues carries significant risks to companies. When leadership is ineffective or fails to thoroughly consider potential risks, such risks are likely unmitigated and could thus present substantial risks to the company, ultimately leading to loss of shareholder value.

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