

CONSULTATION PAPER

P002 - 2018

January 2018

Recommendations of the Corporate Governance Council

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1 Preface

1.1 This consultation paper sets out the recommendations of the Corporate Governance Council (“Council”), which include proposed revisions to the Code of Corporate Governance (“Code”). Arising from the Council’s recommendations, the Singapore Exchange Limited (“SGX”) is proposing amendments to the SGX-ST Listing Rules (Mainboard) and SGX Listing Rules (Catalist) (collectively the “SGX LR”).

1.2 The Council and SGX invite interested parties to submit views and comments on the proposals made in this paper.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request the Council not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to the Council. In addition, the Council reserves the right not to publish any submission received where the Council considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive. Feedback pertaining to the SGX Listing Rules will be forwarded to SGX.

- a. Please submit written comments by 15 Mar 2018 to –

The Secretariat, Corporate Governance Council
c/o Markets Policy & Infrastructure Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: MAS_MCP@mas.gov.sg

- b. Electronic submission is encouraged. We would appreciate that you use this [suggested format](#) for your submission to ease our collation efforts.

2 Introduction

2.1 The Code, which is applicable to listed companies in Singapore on a comply-or-explain basis, was first introduced in March 2001 and came into effect on 1 January 2003. The Code has since been revised twice, in 2005 and 2012.

2.2 Since the last revision of the Code, corporate governance practices globally have continued to evolve. In Singapore, corporate governance practices of listed companies have improved. The industry has also created a set of stewardship principles (known as the Singapore Stewardship Principles for Responsible Investors) to guide engagement between investors and companies.

2.3 However, some market participants¹ have observed that there is still room for listed companies to improve on their corporate governance disclosures and practices. Given that the last Code review was five years ago, MAS decided to convene the Council in February 2017 to review the Code and enhance corporate governance standards and practices in Singapore. The Council is chaired by Mr Chew Choon Seng and comprises representatives from various stakeholder groups. Please refer to Annex B for the composition of the Council.

2.4 The Council has reviewed the Code to ensure that it remains effective and relevant, and continues to support business growth and innovation. The Council also considered how the comply-or-explain regime that the Code operates under can be enhanced, and mechanisms to strengthen engagement between companies and their stakeholders on corporate governance matters.

2.5 Overall, the Council believes that its package of recommendations is balanced and calibrated to support listed companies in achieving sustained corporate performance and innovation. The Council has sought to strike a balance between the need to keep the Code progressive and on par with international developments, while tailoring it to Singapore's context and the profile of the listed companies in Singapore. In particular, the Council has sought to enhance corporate governance standards through three levers as follows:

¹ This includes a SGX-commissioned review conducted by KPMG which found room for improvement in the state of corporate governance disclosures by listed companies in Singapore. Please refer to the following link for the report: <https://assets.kpmg.com/content/dam/kpmg/pdf/2016/07/sg-Review-of-Mainboard-Companies-Code-of-Corporate-Governance-Disclosures-Jul16.pdf>.

- **Focusing on what is important in Singapore’s context**: The Council is mindful that corporate governance should lead to good performance and support companies’ growth; it should not be perceived by companies as a compliance exercise. As such, the Council has taken a deliberate approach to streamline the Code to focus companies’ attention on the key tenets of good corporate governance. A concise Code will encourage more meaningful and thoughtful application as opposed to a box-ticking mentality. A less prescriptive Code will also give companies greater latitude to explore appropriate ways to comply with the spirit and intent of the Code.
- **Strengthening board quality**: Given the centrality of the board to good corporate governance, the Council believes that a well-rounded board with the appropriate mix of skills, experience and independence is key. A key focus of the Council’s recommendations is therefore to strengthen board quality in two areas: encouraging board renewal and enhancing board independence. Focusing attention on these two areas serves to remind boards to continually refresh and strengthen their capabilities for the future economy. Further, given that a majority of SGX-listed companies have concentrated ownership structures, it is important for independent directors (“IDs”) in such companies to not be beholden (perceived or otherwise) to certain controlling shareholders but to take into account the interests of all stakeholders in discharging their board responsibilities.
- **Fostering a supportive eco-system**: Fostering sound corporate governance practices requires long-term commitment and ongoing effort by all stakeholders. The Council therefore has gone beyond Code revisions to recommend measures to enhance the eco-system to advocate good corporate governance practices in Singapore. The Council is of the view that a series of capacity building initiatives should be rolled out along with the Code revisions to help companies understand and implement the changes.

2.6 This consultation paper sets out the Council’s key recommendations. The proposed Code (“Revised Code”) is set out in Annex C, along with a document mapping the changes to the Code in Annex D.

2.7 In its deliberations, the Council has also garnered views from a range of stakeholders, including investors, the business community, professionals who work closely with companies, and industry organisations. The views were diverse, and reflect the differing concerns of the various stakeholders, which the Council has carefully weighed in formulating the recommendations. The Council would like to express its gratitude to all who have offered their perspectives. This consultation is an opportunity

for the Council to seek views from all interested parties before finalising its recommendations for submission to MAS.

3 Structure of the Code

3.1 The Code has become lengthy as more requirements were added over the years with each review. It also lacks a high-level explanation to help companies better understand the expectations of and their application of the Code. An overly prescriptive Code gravitates companies towards a box-ticking mind-set in complying with the Code. It also tends to result in boilerplate disclosures which do not provide meaningful information to the company's stakeholders.

3.2 The current Code also contains some requirements which replicate those in the SGX LR, which could have caused confusion and resulted in non-compliance with the SGX LR.

3.3 **Key Recommendation 1:** The Council recommends that the Code includes a simple *Introduction* to explain the broad intent of the Code, and clarify how companies should apply the comply-or-explain regime (see recommendations on the comply-or-explain regime in Section 8). Please refer to the Revised Code in Annex C for the proposed *Introduction*.

3.4 **Key Recommendation 2:** The Council recommends streamlining the Code to focus on key tenets of corporate governance and for more thoughtful and meaningful application. The requirements can be rationalised according to the following hierarchy of compliance:

- (a) **SGX LR:** Guidelines in the current Code which are in effect important requirements or baseline market practices are recommended to be shifted to the SGX LR for mandatory compliance. There are 12 such requirements (see Annex E, Table 1) and the details are explained in Section 10 of this document (SGX's proposed SGX LR amendments).
- (b) **Code:** The Code will continue to apply on a comply-or-explain basis (see recommendations on the comply-or-explain regime in Section 8). The Principles and Guidelines in the current Code are recommended to be re-calibrated as follows:
 - Principles are overarching and non-disputable statements which embody the fundamentals of good corporate governance that companies should comply with.

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- Provisions (renamed from existing Guidelines) are actionable steps which guide companies in complying with the substance of the Principles. However, companies can take other steps (i.e. vary from the Provisions) that are appropriate to their circumstances to comply with the Principles.
- The Code has been re-drafted to shift away from an instructive style and the use of “should”. This drafting change is intended to shift companies’ focus away from complying with an “instruction manual” and a box-ticking mind-set.
- 15 existing Guidelines which are overly-prescriptive, or replicate requirements already in SGX’s LR, are recommended to be removed from the Code (see Annex E, Table 2).

(c) **Practice Guidance:** To provide guidance to companies on compliance with the Code as well as set out best practices, the Council recommends the introduction of the Practice Guidance (see Annex F). The Practice Guidance complements the Code but is non-binding i.e. it will apply on a voluntary basis. 24 prescriptive or less essential details in the current Code are recommended to be incorporated in the Practice Guidance (see Annex E, Table 3).

3.5 With the changes outlined above, the Revised Code is just over half the length of the current Code based on word count², and has a net reduction of 3 Principles and 30 Provisions (or Guidelines).

Question 1. The Council seeks comments on the draft *Introduction*.

Question 2. The Council seeks comments on its proposed approach to streamline the Code as outlined in Paragraph 3.4. In particular, the Council would like to seek views on:

- a. the 12 Provisions (or Guidelines) set out in Annex E, Table 1 to be shifted to the SGX LR;
- b. the 15 Provisions (or Guidelines) set out in Annex E, Table 2 to be removed from the Code; and

² The Principles and Guidelines in the current Code comprise 6,471 words, while the Principles and Provisions in the Revised Code comprise 3,787 words (excluding the Glossary and Annexes to the current Code and the *Introduction* in the Revised Code).

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- c. the 24 Provisions (or Guidelines) set out in Annex E, Table 3 to be shifted to the Practice Guidance.

Question 3. The Council seeks views on whether the Practice Guidance provides useful guidance, albeit non-binding, to help companies comply with the Code and adopt best practices. The Council also welcomes suggestions on the topics to be covered by the Practice Guidance.

4 Director Independence

4.1 Globally, corporate governance codes emphasise the importance of IDs. IDs are essential in furthering the overall interests of a company, and providing checks and balances for effective corporate governance. IDs who can make objective judgments, without any vested interest or undue influence from interested parties, are an essential component of a well-constituted board. This is particularly pertinent in Singapore as ownership in SGX-listed companies is relatively more concentrated compared to companies listed in other jurisdictions³.

Rationalisation of tests of director independence

4.2 The current Code sets out a list of six tests of director independence which are detailed and prescriptive in nature⁴. While this is not an exhaustive list, some companies have adopted a checklist mind-set and used this list as the basis for assessing the independence of directors. The Council is of the view that adding more independence tests is not a sustainable approach.

4.3 **Key Recommendation 3:** The Council recommends rationalising the tests of director independence in the Code to provide clarity on considerations which companies should apply their minds to when assessing the independence of each director as follows:

- (a) The Code sets out an overarching principle-based definition of director independence which would state that “An ‘independent’ director is one who is
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³ Based on the OECD Corporate Governance Factbook 2017, the majority of listed companies in Singapore have a block shareholder holding 15% or more. In comparison, Australia, the UK and the US tend to have dispersed shareholdings without a major shareholder.

⁴ Guideline 2.3 of the current Code defines an ID as “one who has no relationship with the company, its related corporations, its 10% shareholders or its officers that could interfere or be reasonably perceived to interfere with the exercise of the director’s independent business judgement with a view to the best interest of the company”.

independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company" (see Provision 2.1 of the Revised Code in Annex C). The onus is on the Nominating Committee to determine if a director is independent bearing in mind this definition and any other salient factors;

- (b) Objective and baseline tests setting out circumstances which deem directors not to be independent are shifted to the SGX LR (please refer to Section 10), to reflect that companies should apply these without any exceptions:
- (i) a director who was employed by the company or its related corporations for the current or any of the past three financial years;
 - (ii) a director whose family member was employed by the company or its related corporations for the current or any of the past three financial years, with the family member's remuneration determined by the remuneration committee;
 - (iii) a director who is, or has an immediate family member who is, a substantial shareholder of the company (further elaborated in Paragraphs 4.4 to 4.7);
 - (iv) a director who has served on the board for more than nine years since the date of the director's first appointment (further elaborated in Paragraphs 4.8 to 4.16); and
- (c) The remaining tests of director independence are shifted to the non-binding Practice Guidance, to provide companies with flexibility in applying these tests while adhering to the overarching principle-based test in the Code (please refer to draft Practice Guidance 2 on Director Independence in Annex F). The Practice Guidance will therefore set out additional circumstances to guide companies in considering whether a director may be deemed non-independent:
- (i) a director who, or whose immediate family member, in the current or immediate past financial year, provided to or received from the company or any of its subsidiaries any significant payments or material services, other than compensation for board service;
 - (ii) a director who, or whose immediate family member, in the current or immediate past financial year, is or was a substantial shareholder, partner, executive officer or director of any organisation which provided to or received

from the company or any of its subsidiaries any significant payments or material services; or

- (iii) a director who is or has been directly associated with a substantial shareholder (see recommendation on shareholder threshold in Paragraphs 4.4 to 4.7) of the company in the current or immediate past financial year.

For the purposes of determining the significance of payments in Paragraph 4.3(c)(i) and (ii), the Council recommends that the Practice Guidance set out a threshold of S\$50,000 for payments to or from the director or immediate family in Paragraph 4.3(c)(i) and S\$200,000 for payments to or from any organisation which the director or immediate family member is a substantial shareholder, partner, executive officer or director of in Paragraph 4.3(c)(ii). These thresholds are, however, non-binding and serve as a guide for companies in assessing the significance of payments.

Question 4. The Council seeks comments on its proposed approach to rationalise the tests of director independence as outlined in Paragraph 4.3 above.

Shareholder threshold

4.4 In the 2012 Code review, the then-Council had recommended a 5% shareholding threshold in relation to determining director independence, acknowledging that relationships with substantial shareholders may influence directors' exercise of objective judgment and affect board effectiveness. A 5% level of control was regarded as the appropriate threshold to trigger considerations on the independence of directors, as opposed to say 15% which may be more relevant for determining effective control. However, as it was the first time the concept of independence from substantial shareholders was introduced in the Code, MAS decided to implement the recommendation at a higher threshold of 10%, with a view to reviewing the threshold in the future.

4.5 The concept of director independence from substantial shareholders is gaining acceptance worldwide and companies in Singapore have had time to adjust to the Guideline, given that it has been more than five years since the concept of independence from shareholders was introduced. The Council is of the view that it is appropriate to now lower the threshold to 5%.

4.6 **Key Recommendation 4:** The Council recommends lowering the shareholding threshold in relation to determining director independence from 10% to 5%, and including this in the SGX LR (elaborated under Paragraph 4.3(b)). This will bring Singapore in line

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with similar thresholds in Hong Kong⁵ and Australia⁶ and also align with the definition of “substantial shareholder” in the Companies Act and the Securities and Futures Act⁷.

4.7 To provide sufficient time for companies to adjust their board composition and source new IDs, the Council recommends that a transition period of three years be provided if the recommendation to lower the shareholder threshold is implemented.

Question 5. The Council seeks comments on the recommendation to lower the shareholding threshold for assessing director independence from 10% to 5%, and the adequacy of a three-year transition period.

Nine-year rule on director independence

4.8 Under the current Code, the independence of any director who has served on the board beyond nine years from the date of his first appointment should be subject to a “particularly rigorous review” (“nine-year rule”). In practice, almost 30% of IDs⁸ serve over nine years, of whom some have served for more than 30 or 40 years. In assessing the independence of such directors, the factors constituting a “particularly rigorous review” remain ambiguous, and boilerplate disclosures with scant justifications underlying the independence assessments were common.

4.9 While it is widely acknowledged that after a long period of service the independence of a director might be compromised given the familiarity with management, the approach taken by various jurisdictions in relation to long-tenured ID varies. The approach ranges from the requirement for boards to conduct regular assessments (in Australia), to a disclosure of reasons for determining a director who has served more than nine years to be independent (in the UK) and requirements to subject such IDs to shareholders’ votes (in Hong Kong and Malaysia, and for certain companies in the UK).

⁵ Hong Kong Listing Rule 5.09(1) states that the independence of a director is more likely to be questioned if he holds more than 1% of the number of issued shares of the issuer, and he holds more than 5%, the director will normally not be considered independent.

⁶ Australia Code of Corporate Governance states that a relevant factor in assessing the independence of a director is whether the director is a substantial security holder (i.e. 5% holder) of the entity.

⁷ Section 81 of the Companies Act and sections 2(5) and (6) of the Securities and Futures Act define a substantial shareholder as one who has an interest in voting shares with attached total votes not less than 5% of the total votes attached to all voting shares in the company.

⁸ Based on data for all SGX-listed entities as of September 2017.

4.10 The Council debated at length on whether the nine-year rule should be a *hard* limit such that directors who serve more than nine years can no longer be considered as independent. This is not new in Singapore as MAS has implemented a similar requirement for Singapore-incorporated banks and insurers⁹. Having a clear limit directly addresses ambiguities related to boards' assessments of the independence of long-tenured directors. It also facilitates board renewal and rejuvenation, which is in line with national efforts to strengthen capabilities for the future economy. The Council would like to emphasise that this proposal is not a term limit as it does not preclude a director from continuing to serve on the same board after nine years, albeit as a non-independent director.

4.11 An alternative to a hard nine-year limit, which would provide some flexibility to companies, is to subject appointment of IDs beyond nine years to an *explicit* shareholders' vote as a SGX LR requirement. The Council notes varying ways of implementing this. In Hong Kong, the appointment of IDs who have served more than nine years is required to be approved by a separate resolution in a vote by *all* shareholders¹⁰. In Malaysia, the appointment of IDs beyond nine years is subject to annual shareholders' approval, and if the board continues to retain the ID after the twelfth year, the board has to implement a two-tier voting process to seek approval from *large* shareholders¹¹, and shareholders other than *large* shareholders¹². The UK also has, in its listing rules, a two-tier voting process for premium-listed companies with controlling shareholders (holding 30% or more shares)¹³; under this *all* ID appointments (regardless of tenure) require approval by all shareholders, and also by independent shareholders¹⁴.

⁹ These requirements are set out for banks in the Banking (Corporate Governance) Regulations 2005 and for insurers in the Insurance (Corporate Governance) Regulations 2013.

¹⁰ Hong Kong Code of Corporate Governance, Provision A.4.3

¹¹ Large shareholders refer to shareholders who hold no less than 33% of voting shares, the largest shareholder, and any shareholder who has the power to appoint the majority of directors, or has the power to make decisions on business or administration of the company.

¹² Malaysian Code of Corporate Governance, Practice 4.2

¹³ UK FCA Listing Rule 9.2.2E R

¹⁴ Independent shareholders refer to shareholders who are not controlling shareholders. Under UK FCA Listing Rule 9.2.2F R, where the election or re-election of an ID is not approved by both the shareholders and the independent shareholders, but the listed company wishes to propose that person as an ID, the listed company must obtain the approval of all shareholders to elect or re-elect the proposed ID in a further resolution (between 90 and 120 days of the original vote).

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4.12 Given the significant proportion of SGX-listed companies with controlling shareholders¹⁵, the Council notes the importance of ensuring an appropriate balance of powers among controlling and non-controlling shareholders. In companies with controlling shareholders, IDs might be beholden to such shareholders, who can effectively influence the outcome of the vote especially in cases where they hold more than 50% of voting shares in the company. On the other hand, the controlling shareholders could be disenfranchised if they are excluded from having a vote in the appointment of IDs. It is also important that IDs do not see themselves as representing the interests of non-controlling shareholders only, but act in the best interest of the company and all shareholders.

4.13 Hence, the Council is of the view that if this alternative to a hard nine-year limit is to be adopted, ID appointments beyond nine years should require majority approval by non-controlling shareholders (shareholders holding less than 15%) , in addition to all shareholders (which is the case now). In other words, IDs who wish to serve beyond nine years will need to get majority approval from both sets of shareholders in order to continue as IDs.

4.14 **Key Recommendation 5:** The Council proposes two options to address current issues of ambiguity related to the “particularly rigorous review” of the independence of IDs who have served more than nine years. The first is to incorporate the nine-year rule in the SGX LR as a hard limit. The second is to subject the appointment of IDs who have served beyond nine years to an annual vote to be approved by: (i) the majority of all shareholders; and (ii) the majority of non-controlling shareholders, in the SGX LR. Please refer to Section 10 for details of the proposed SGX LR amendments.

4.15 While the recommendation could require some companies to adjust their board composition, the Council has not seen any conclusive evidence pointing to a shortage of qualified persons who can serve as IDs. Even if IDs step down from their current boards due to tenure beyond nine years, they are not precluded from being appointed as new IDs on other boards. Further, the Council strongly encourages companies to go beyond established circles and personal networks in sourcing qualified candidates¹⁶.

¹⁵ Based on the OECD Corporate Governance Factbook 2017, a majority of listed companies in Singapore have a shareholder holding a block of 15% or more shares.

¹⁶ The Council notes Singapore Institute of Directors (“SID”) efforts to introduce a convenient match-making service which helps companies tap SID’s network and database to search for suitable directors.

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4.16 Nonetheless, to provide sufficient time for companies, especially small and medium enterprises (SMEs), to adjust their board composition and/or search for new IDs, the Council recommends that a transition period of three years be provided regardless of the option that is finally adopted.

Question 6. The Council seeks comments on the two options: (i) to incorporate the nine-year rule as a hard limit, or (ii) to subject IDs who would like to serve more than nine years to a two-tier vote – all shareholders and non-controlling shareholders (as defined in the SGX LR). Both options will be SGX LR requirements. The Council also seeks views on the adequacy of a three-year transition period.

Disclosure of non-controlling shareholders' vote on appointment of ID

4.17 Given the considerations outlined in Paragraph 4.12, the Council also considered whether they should apply to IDs that serve less than nine years. Given the issues associated with long-tenured IDs, the Council is of the view that it would suffice for now to require companies to disclose the non-controlling shareholders' votes in relation to the appointment and re-appointment of IDs who serve less than nine years. This would help strengthen the credibility of IDs, and encourage their engagement with non-controlling shareholders.

4.18 **Key Recommendation 6:** The Council recommends introducing in the Code a Provision for companies to separately disclose non-controlling shareholders' votes on appointments and re-appointments of IDs who serve less than nine years, on a comply-or-explain basis. Please refer to Provision 2.3 of the Revised Code set out in Annex C.

4.19 The recommendation does not change the current way in which IDs who serve less than nine years are appointed and re-appointed. In other words, they will continue to be subject to a vote by all shareholders and approved based on the majority vote of all shareholders. Even though the non-controlling shareholders' vote is non-binding, the board is encouraged to take the feedback into account in the appointment and re-appointment of IDs.

4.20 To provide for this separate disclosure, companies could consider including in their proxy forms a request for controlling shareholders to identify themselves and how they have voted. This would facilitate an aggregation of non-controlling shareholders' votes on the appointment, which could then be separately disclosed. This arrangement is especially relevant for cases where the controlling shareholder's shares are held through proxies.

Question 7. The Council seeks comments on the recommendation for companies to separately disclose non-controlling shareholders' votes on appointments and re-appointments of IDs who serve less than nine years.

Question 8. The Council seeks views on any operational issues with the separate disclosure of non-controlling shareholders' votes on ID appointments, and suggestions on how such issues could be addressed.

5 Board Composition

5.1 It is an accepted principle that the board should not be dominated by any individual, or particular group of individuals. The current Code states that IDs should make up at least one-third of the board, or at least half of the board where the board chairman ("Chairman") is not independent. These lag corresponding requirements in the UK, Australia and US which require the proportion of IDs to be at least half or majority, while Hong Kong's requirement for at least one-third of the board to be IDs is set out in its listing rules.

Baseline requirement for at least one-third IDs

5.2 Already, 96% of SGX-listed companies have IDs comprising one-third or more of the board¹⁷. The Council does not see any circumstances in which SGX-listed companies should deviate from this baseline market practice. The Council also contemplated a requirement for IDs to constitute a majority of the board even when the Chairman is independent, to align with standards in other jurisdictions. However, taken with other recommendations to enhance board independence, the changes could be overly burdensome for certain companies.

5.3 **Key Recommendation 7:** The Council recommends shifting the current Guideline for one-third of the board to comprise IDs from the Code to the SGX LR. This sets the baseline requirement for all listed companies and reinforces the importance of minimum ID representation on boards. Please refer to Section 10 for the proposed SGX LR amendments.

¹⁷ Based on data for all SGX-listed entities as of September 2017.

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Question 9. The Council seeks comments on the recommendation to shift the baseline requirement for at least one-third of the board to comprise IDs to the SGX LR.

Revised Provision for majority IDs where Chairman not independent

5.4 Where the board Chairman is not independent, IDs play an even more important role as an effective check and balance mechanism, and assessing management performance. Such non-independent Chairmen are often also the founder and/or controlling shareholders of the company. For such companies, the Council notes that there is a higher risk of concentration of power and greater need to safeguard the interests of minority shareholders.

5.5 **Key Recommendation 8:** The Council recommends revising the Code Provision for IDs to comprise a majority of the board (from “at least half” in the current Code) where the Chairman is not independent, on a comply-or-explain basis. Please refer to Provision 2.2 of the Revised Code set out in Annex C.

Question 10. The Council seeks comments on the recommendation for a majority of the board to comprise IDs, if the Chairman of the board is not independent.

New Provision for majority directors with no management and business relationships

5.6 One of the key functions of the board is to oversee management. On boards where a significant proportion of directors is part of management, there is the concern that management’s accountability to the board might be affected. The Council notes that there is currently no Guideline in the Code for boards to have a minimum proportion of directors who have no management or business relationships with the company.

5.7 **Key Recommendation 9:** The Council recommends the introduction of a new Code Provision for the board to comprise a majority of directors who have no management or business relationships with the company, on a comply-or-explain basis. Please refer to Provision 2.4 of the Revised Code set out in Annex C.

5.8 Companies, including those with a non-independent Chairman, would be able to meet this recommendation if IDs comprise a majority of their boards.

Question 11. The Council seeks comments on the recommendation for a majority of the board to comprise directors with no management or business relationships.

Board diversity

5.9 There is growing recognition that board diversity is associated with improved corporate performance. A diverse board guards against groupthink and fosters more robust discussions, which in turn facilitates better decision-making. The current Code requires the board and its committees to comprise directors who as a group, provide an appropriate balance and diversity of skills, experience, gender and knowledge of the company. The Council recommends adding “age” as one of the aspects of diversity for companies to consider. This reflects the need for companies to keep pace with fast changing trends and developments in the preferences and behaviour of different generations of consumers, and develop capabilities for the future economy.

5.10 There is, however, no existing requirement for the disclosure of the company’s diversity policy, its objectives and how it is achieving the policy. The Council notes that similar disclosure requirements are already set out in the Australia, UK and Malaysia corporate governance codes.

5.11 **Key Recommendation 10:** The Council recommends enhancing the current Code Provision for companies to disclose their board diversity policy and progress made in achieving the board diversity policy (including any objectives set by the companies). This would encourage greater transparency and accountability on board diversity matters.

5.12 Please refer to Provision 2.5 of the Revised Code set out in Annex C.

Question 12. The Council seeks comments on the recommendations for companies to disclose their board diversity policy and progress made in achieving the board diversity policy (including any objectives set by the companies).

6 Remuneration

6.1 Remuneration practices have been cited as one of the key factors contributing to the global financial crisis. Over the last few years, the US, the UK, and Australia have introduced laws to provide shareholders an advisory or binding vote on the remuneration of directors and key executives (“say-on-pay”). Singapore does not have similar requirements in our laws or the Code.

6.2 The Council deliberated on whether it is necessary to introduce provisions for say-on-pay. The Council is of the view that the primary responsibility to ensure that remuneration policies are equitable and incentivise the right behaviour rests with the

board. Hence, the Council does not recommend the introduction of a say-on-pay regime in Singapore for now.

6.3 Instead, the Council considers that it is more important for companies to provide meaningful disclosures so that stakeholders can understand the alignment in the level and structure of remuneration to the companies' long-term objectives, business strategy and performance.

6.4 **Key Recommendation 11:** The Council recommends a revision to the Code for companies to disclose the relationship between remuneration and value creation.

6.5 **Key Recommendation 12:** The Council also recommends a revision to the Code for companies to disclose the names and remuneration of employees who are substantial shareholders or immediate family of substantial shareholders (in addition to employees who are immediate family members of a director or the CEO, as in the current Code), where such remuneration exceeds S\$100,000 during the year (revised from S\$50,000 currently), in bands no wider than S\$100,000 (revised from S\$50,000 currently).

6.6 Please refer to Provision 8.2 of the Revised Code set out in Annex C.

Question 13. The Council seeks comments on the recommendations for companies to disclose:

- a. the relationship between remuneration and value creation; and
- b. the names and remuneration of employees who are substantial shareholders or immediate family of substantial shareholders, where such remuneration exceeds S\$100,000 during the year (revised from S\$50,000), in bands no wider than S\$100,000 (revised from S\$50,000).

7 Stakeholder Engagement

7.1 The long-term success of a company is influenced by its ability to foster and maintain effective relationships with not just shareholders but also other stakeholders such as employees, customers, suppliers, creditors, regulators, and the broader community. The G20/OECD Principles of Corporate Governance (2015) set out clearly that companies' governance frameworks should give due regard to the interests of stakeholders.

7.2 The Council notes that the current Code does not explicitly address a company's engagement with stakeholders beyond shareholders. The corporate governance codes in other jurisdictions, including Australia, South Africa and Malaysia, have incorporated provisions for boards to consider stakeholders other than shareholders.

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7.3 Key Recommendation 13: The Council recommends the introduction of a new Principle for companies to consider and balance the needs and interests of material stakeholders, and accompanying Provisions setting out expectations for companies to:

- (a) have arrangements to identify and manage relationships with material stakeholder groups;
- (b) disclose key focus areas in relation to their management of stakeholder relationships; and
- (c) maintain a current corporate website for all stakeholders to stay informed of material updates in a timely manner.

Question 14. The Council seeks comments on the new Principle and Provisions relating to stakeholder engagement as set out in Paragraph 7.3, and whether there will be practical challenges in implementing them.

8 Comply-or-explain Regime

8.1 The comply-or-explain regime is a common approach for instituting corporate governance requirements across major jurisdictions, including Australia, Hong Kong, and the UK. Broadly, companies are required under the respective listing rules to comply with a set of corporate governance principles, though expectations vary with regard to the disclosures to be made. Companies in Australia are expected to explain why certain recommendations are not appropriate to their specific circumstances, while companies in Hong Kong are expected to disclose alternative ways of achieving compliance with the relevant corporate governance principles, if they choose to deviate from the provisions. In the UK, companies are to disclose how they have applied the principles in the corporate governance code, along with a statement of whether they have complied with the relevant provisions and provide an explanation for any non-compliance, including a clear rationale for the action taken by the companies, and description of any mitigating actions taken to address any additional risk and maintain conformity with the relevant principles¹⁸.

¹⁸ Also, where the deviation from a particular provision is intended to be limited in time, the explanation should indicate when the companies expect to conform with the provision.

8.2 Rule 710 of the SGX LR requires companies to describe their corporate governance practices with specific reference to the Code Principles, and explain deviations, if any. However, box-ticking and boilerplate disclosures, especially for areas like remuneration¹⁹ have been observed. SGX and the Council have also noted a common misperception among companies that there is no need to explain how they have complied with the Code, and only deviations need to be explained. In practice, even where disclosures were made on compliance and/or deviations, many were either boilerplate or inadequate; some companies' description of their corporate governance practices were mere repetitions of the Code Guidelines. These hamper stakeholders looking to understand the company's approach towards corporate governance.

8.3 The Council does not see the need to change the comply-or-explain regime as the intent remains fundamentally sound. The intent is to facilitate proportionate and thoughtful application by companies, to the extent relevant to and appropriate for their business model, size, and complexity. However, the implementation of the regime over the years has created misimpressions ranging from – it is a “comply-or-else” regime” to “there is no need to comply with the Code”.

8.4 The Council also considered the alternative approach of tiering the application of the Code by large and small companies. However, this may create confusion, and requires the setting of blunt thresholds (to differentiate between large and small companies). Applying the intent of comply-or-explain provides maximum flexibility for companies to apply the Code in a manner that is appropriate for their circumstances (which is not a function of size only).

8.5 **Key Recommendation 14:** The Council recommends that the expectations under the comply-or-explain regime be clarified to strengthen the emphasis on thoughtful and meaningful communication between companies and their stakeholders, as follows:

¹⁹ The KPMG review on corporate governance disclosures of SGX-listed companies commissioned by SGX found that disclosures on remuneration has most room for improvement, and the standard for disclosures can be improved if companies ensured disclosures are adequately addressed for all Principles and Guidelines (to be renamed Provisions) of the Code. For example, the review found that companies were not forthcoming with disclosure on remuneration of key management executives, with many citing generic concerns on confidentiality or fear of poaching. The KPMG report recommended that companies could provide a more extensive explanation on why poaching fears in their business or industry is intense, and include disclosures on performance measures on these key executives and the links between performance and remuneration. Please refer to the following link for the report: <https://assets.kpmg.com/content/dam/kpmg/pdf/2016/07/sg-Review-of-Mainboard-Companies-Code-of-Corporate-Governance-Disclosures-Jul16.pdf>

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- (a) compliance with the Code Principles is mandatory;
- (b) companies are required to describe their corporate governance practices with reference to both the Principles and the Provisions underpinning each Principle; and
- (c) variations from the Provisions are acceptable to the extent that companies explicitly state and explain how their practices are consistent with the intent of the relevant Principle.

Please refer to Section 10 for the proposed SGX LR amendments.

Question 15. The Council seeks comments on the expectations of companies under the comply-or-explain regime as set out in Paragraph 8.5.

9 Corporate Governance Advisory Committee

9.1 Fostering sound corporate governance practices requires long-term commitment and ongoing effort by companies and their stakeholders. The effectiveness of a comply-or-explain regime also depends in part on the promulgation of good peer practices and addressing grey areas where these arise, and the monitoring of the effectiveness of companies' implementation over time. These should not be one-off efforts.

9.2 The Council recognises that the Code revisions must be supplemented by a supportive corporate governance eco-system to facilitate companies' adoption of the relevant practices. The Council notes that there are dedicated bodies in Australia (ASX Corporate Governance Council) and the UK (Financial Reporting Council) to monitor and advocate good corporate governance practices²⁰. In Singapore, while SGX performs the role of a frontline regulator for listed companies, and takes regulatory actions where there are breaches of the SGX LR (including those that relate to corporate governance), there is currently no single body to advocate good corporate governance practices.

²⁰ Apart from corporate governance, the UK Financial Reporting Council has a broader mandate of development of corporate reporting, audit, actuarial practice standards, monitoring and enforcement of accounting and auditing standards, and the oversight of regulatory activities of the actuarial profession and professional accounting bodies.

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9.3 **Key Recommendation 15:** The Council therefore recommends establishing an industry-led Corporate Governance Advisory Committee (“CGAC”) to promote good corporate governance practices through the following key functions:

- (a) monitor the quality of listed companies’ corporate governance disclosures and identify areas for improvement;
- (b) opine on corporate governance practices, and highlight good practices as benchmarks for listed companies to aspire to, and deficient practices as lessons learnt;
- (c) issue or revise Practice Guidance, where appropriate, to clarify the Code’s Principles or Provisions;
- (d) monitor international trends and recommend updates to the Code where appropriate; and
- (e) act as a resource to regulators, including advising regulators on corporate governance issues referred to it by regulators²¹.

9.4 As an advisory body, the CGAC would not have any formal regulatory powers. The regulators on corporate governance issues will remain responsible for taking regulatory actions against any rule breaches. The Council notes that independent Listings Advisory Committee and Listings Disciplinary Committee have been established under the Singapore Exchange Regulation to strengthen the listing policy-making and review process. This could be one possible model for structuring the CGAC.

9.5 The Council envisages the CGAC to comprise members who are corporate governance experts, senior practitioners with practical experience as board Chairmen or directors, as well as representatives with diverse background and experience to represent the views of various stakeholder groups. These could include large and small enterprises, institutional and retail investors, audit and legal professionals, and academia. To support its activities, the CGAC should be adequately staffed by a secretariat.

9.6 In addition, the Council also suggests that the regulators work with industry to organise a series of capacity building initiatives prior to the roll-out of the Revised Code to help companies, especially SMEs, understand and implement the changes properly.

²¹ For the avoidance of doubt, the CGAC will not have enforcement powers against companies with regard to their compliance with the SGX LR, which will continue to rest with SGX.

Such initiatives could include training for directors and company secretaries on the Code and Code revisions.

Question 16. The Council seeks comments on the proposed establishment of the CGAC, and the functions and composition of the CGAC as set out in Paragraphs 9.3 to 9.5.

10 Proposed SGX Listing Rule Amendments

10.1 As mentioned in paragraph 3.4, the Council recommends shifting certain important requirements or baseline market practices currently in the Code to the SGX LR for mandatory compliance by all SGX-listed companies. Accordingly, SGX is proposing amendments to the SGX LR in line with these changes to the Code. As distinct from the Code, which operates on a comply-or-explain basis, companies must observe strict compliance with the requirements in the SGX LR.

10.2 The proposed amendments to the SGX LR are as follows (see Annex G for the details):

- (a) **Training for first-time directors** – The board plays an important role in the company by, inter alia, establishing the framework of effective controls, reviewing management’s performance, providing strategic insights and ensuring that obligations to shareholders are met. Accordingly, minimum standards of quality should be imposed on directors being appointed to the board of an SGX-listed company for the first time. In addition to the responsibilities of all board directors, these directors should also be equipped with the knowledge required for them to carry out their roles on specific board committees. SGX proposes to require first-time directors to undergo training in the roles and responsibilities of a director. With such a mandatory requirement, new directors are envisaged to be better equipped to meet the demands of their roles on the boards of listed companies.
- (b) **IDs to make up at least one-third of the board** – As set out in Council’s Key Recommendation 7 (paragraph 5.3), SGX proposes to require that IDs comprise at least one-third of the board.
- (c) **Identification of directors** – To enhance disclosure and accountability to shareholders, SGX proposes to require companies to disclose the designations of all directors (i.e. independent, non-executive, executive etc.) and their roles as members or chairmen of boards or board committees.

- (d) **Tests of director independence** – As mentioned in Council’s Key Recommendation 3 (paragraph 4.3), SGX proposes to set out the objective and baseline tests of director independence²².
- (e) **Nine-year rule** – In addition to the tests of independence in (d) above, a nine-year rule is also proposed to be incorporated in the SGX LR, as set out in Council’s Key Recommendation 5 (paragraph 4.14). Two options are proposed: (i) to incorporate the nine-year rule as a hard limit; or (ii) to subject IDs who would like to serve more than nine years to a two-tier vote which must be approved by the majority of (a) all shareholders; and (b) non-controlling shareholders in separate resolutions. In relation to Option (i), SGX proposes to specify in the SGX LR that a director will not be independent if he has been a member of the board for an *aggregate* period of more than nine years, regardless of whether he was appointed to the board before or after listing. In relation to Option (ii), SGX proposes that the SGX LR will also require that controlling shareholders and their associates (who may be non-controlling shareholders) not vote on the second resolution where only non-controlling shareholders are entitled to vote. This is conceptually similar to the approach for shareholder votes on interested person transactions.
- (f) **Disclosure of relationship between Chairman and CEO** – To increase transparency, SGX proposes to require companies to disclose the relationship between the Chairman and CEO if they are immediate family members.
- (g) **Establishment of board committees** – To ensure minimum standards of corporate governance, SGX proposes to require companies to establish committees to perform the functions of an Audit Committee, Nominating Committee and Remuneration Committee with clear terms of reference.
- (h) **Re-nomination and re-appointment of directors at least once every three years** – To safeguard against entrenchment of directors within the board, SGX proposes to require all directors to submit themselves for re-nomination and re-appointment at least once every three years.
- (i) **Key information regarding directors** – To increase transparency and accountability and to align with the other rule amendments relating to director

²² Provision 2.1 of the Revised Code sets out other qualitative tests for director independence. Companies must explain how the IDs meet those requirements set out in Provision 2.1 or explain how a variation of the requirements are in line with the intent of the Principle.

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appointments, SGX proposes to require specific information to be contained in the announcement made by companies on the appointment and re-election of directors.

- (j) **Adequacy and effectiveness of internal controls and risk management systems** – The SGX LR currently require listed companies to comment on their internal controls. SGX proposes to amend these rules to enhance disclosures on the adequacy and effectiveness of companies' internal controls and risk management systems.
- (k) **Internal audit function** – To ensure sound internal controls are in place, SGX proposes to require companies to establish and maintain an internal audit function that is adequately resourced and independent of the activities it audits.
- (l) **Disclosure on reasons for not paying dividends** – To enable shareholders to understand why companies choose not to issue dividends, SGX proposes to require companies to disclose the reasons for such a decision.
- (m) **Comply-or-explain regime** – SGX proposes to amend the SGX LR to set out the expectations as clarified in Council's Key Recommendation 14 (paragraph 8.5).

Question 17. SGX seeks comments on the proposed amendments to the SGX LR described in paragraph 10.2 above.

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COMPOSITION OF CORPORATE GOVERNANCE COUNCIL

Name	Designation
Mr Chew Choon Seng (Chairman)	Former Chairman, Singapore Exchange Limited
Mr Ramlee Bin Buang	Founder, UYKO Advisory
Mr Willie Cheng	Chairman, Singapore Institute of Directors
Ms Rachel Eng	Deputy Chairman, WongPartnership LLP
Mr Douglas Foo	Chairman, Sakae Holdings Limited
Dr Gerard George	Dean, Lee Kong Chian School of Business, Singapore Management University
Mr David Gerald	President, Securities Investors Association (Singapore)
Mr Hsieh Fu Hua	Chairman, United Overseas Bank Limited
Ms Leong Wai Leng	Chief Financial Officer, Temasek Holdings (Private) Limited
Mr Lawrence Leow	Chairman & Chief Executive Officer, Crescendas Group
Mr David Lim	Chairman, Croesus Retail Trust
Dr Mak Yuen Teen	Associate Professor of Accounting, National University of Singapore
Mr Nick Nash	Group President, Sea Limited
Ms Michelle Quah	Senior Correspondent, The Business Times, Singapore Press Holdings Limited
Dr David Smith	Head of Corporate Governance, Aberdeen Asset Management Asia Limited
Ms Teo Swee Lian	Director, Singapore Telecommunications Limited

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Name	Designation
Mr Tham Sai Choy	Board Member, Accounting and Corporate Regulatory Authority
Mr Kurt Wee	President, Association of Small & Medium Enterprises
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