



# ICGN

International Corporate Governance Network

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To the Secretariat of the Corporate Governance Council

## **RE: ICGN Response to Corporate Governance Consultation Paper**

The International Corporate Governance Network (ICGN) is pleased to respond to the Monetary Authority of Singapore (MAS) consultation on the Recommendations of the Corporate Council with regard to the Singapore Corporate Governance Code (Code). Singapore is an important global market for ICGN and its members, and ICGN is encouraged by the positive focus in Singapore on good corporate governance and keeping its Code up to date. In particular, we recognise the good work taking place under the auspices of Stewardship Asia responsible for the publication of the Singapore Stewardship principles in November 2016. ICGN and its members regularly monitor market developments in Singapore, and have commented in the past on governance related matters in Singapore.<sup>1</sup>

Led by investors responsible for assets under management in excess of \$US 26 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 45 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide. Our policy positions are guided by the ICGN Global Governance Principles and the ICGN Global Stewardship Principles, both of which have been developed in consultation with ICGN Members and as part of a wider peer review.

ICGN is generally supportive of the Corporate Governance Council's recommendations, and our response below will focus on those questions where we may have a different view. We recognise the importance of having corporate governance standards that are relevant in Singapore's specific context, including the concentrated ownership structure in many listed companies. But the importance of overseas investors in Singapore listed companies suggests that Singaporean companies would benefit from understanding the governance preferences and concerns of its global investor base, and this is where we hope that ICGN can play a constructive role.

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<sup>1</sup> See ICGN Comment on SGX's Consultation on a Possible Listing Framework for Dual Class Share Structures:

<https://www.icgn.org/sites/default/files/5.%20ICGN%20response%20Dual%20Class%20Share%20Structures%20SGX%20April2017.pdf>

### **Question 1: The Council seeks comments on the draft Introduction**

The introduction to the draft Code is well-written and establishes the goal of long-term company success, including sustainable value creation for investors alongside the need to maintain positive relationships with key stakeholders, including society at large. The introduction rightly makes reference to ethical and behavioural tone, though you may also wish to make reference to company culture and values as necessary ingredients for good corporate governance. We also support the Comply or Explain dimension to the Code in terms of the Principles and Provisions.

### **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:**

- **the 12 Provisions (or Guidelines) set out in Annex E, Table 1 to be shifted to the SGX LR;**
- **the 15 Provisions (or Guidelines) set out in Annex E, Table 2 to be removed from the Code; and**
- **the 24 Provisions (or Guidelines) set out in Annex E, Table 3 to be shifted to the Practice Guidance.**

In general we support the approach to streamlining the Code and organising it around Principles and Provisions.

### **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.**

The Practical Guidance is generally sensible, and given its relative volume and detail it is appropriate for this to be non-binding. With our focus on investor stewardship and engagement with companies, it is positive to see the Practical Guidance items 11 and 12 on shareholder engagement. We would like to emphasise the important of providing investors the opportunity to have dialogue directly with company board directors as part of the engagement process.

As an additional topic under Practice Guidance 11 on Shareholders and Engagement, you may wish to consider a section on **capital allocation** and how this relates to returns on capital. This could include the company's financial policies on the balance of debt and equity, liquid assets, cross shareholdings, share buybacks or other types of capital transaction.

As a question that is related to capital allocation, we note that the **use of dual class shares** is not addressed by the Code, even though Principle 11 calls for the company to treat all shareholders "fairly and equitably", and in our view the existence of dual class shares can challenge this fundamental principle and tilt the balance of interest away from minority shareholders towards the private interests of controlling shareholders. We recognise that in the first instance this is a matter for the SGX, not the Corporate Governance Code. But to the extent that dual class share structures may be technically allowed by SGX listing rules, we believe that an important part of corporate governance in Singapore is that well-governed companies do not adopt dual class structures or other forms of differential ownership rights. ICGN believes that differential ownership wrongly separates economic versus voting control, and can diminish accountability to and alignment of interests with minority shareholders. This is an opportunity for the Code's Practical Guidance to take a stance against dual class shares as a poor governance practice, even if they are permissible under law. ICGN would welcome this, and we believe most international institutional investors would also support the Code in discouraging differential ownership rights.

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

No further comments.

**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.**

We support this recommendation, and believe a transition period is appropriate.

**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.**

ICGN recognises that independence can be diminished with long board tenure, but we also recognise that a rigid time limit can be arbitrary in terms of the independence of individual directors. A nine-year limit on independence provides an objective standard, but we would not be opposed to the possibility of allowing for “majority of the minority” shareholder approval for independent directors in excess of nine years.

ICGN advocates that board service should be contingent on individual director performance and annual re-election premised on satisfactory evaluations of his or her contribution to the board.

**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.**

We would support this as this would give greater visibility to the voice of non-controlling shareholders.

**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.**

No further comments.

**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.**

We support this recommendation as a basic minimum standard. It is similar to ICGN’s Global Governance Principles in establishing one-third independence as a minimum base line for controlled companies or to have a minimum of three independent directors to allow for fully independent board committees. We would note that our standard for widely held companies, which is common in the UK, USA and other developed markets, is for there to be a majority of independent directors.

**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.**

We support this. We would also support the appointment of a Lead Independent Director who can play a particularly important role in the event that the role of chairman and CEO is combined to help offset the concentration of power in a single individual. The appointment of a LID is also helpful in relaying sensitive issues from the perspective of investors if any contentious issues arise.

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

We prefer to see a majority of independent non-executives as a best practice for board structure. But we do recognise that outside directors need not be independent to provide an objective perspective and add value to a company's board.

As a separate matter, ICGN also believes that audit committees should be comprised 100% by independent directors; this is a stronger position than the Singapore Code, which calls for majority independence of the audit committee. We support the provision that two members of the audit committee have recent and relevant accounting and financial experience; it would be our expectation that all audit committee members are financially literate.

**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).**

ICGN's Global Governance Principles identify director diversity as an important contributor to overall board effectiveness, and we support the Council's recommendations on this point. This includes adding "age" as one of the aspects of diversity. ICGN's own Principles also identify the importance of "cognitive diversity" to the overall diversity mix.

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

- **the relationship between remuneration and value creation; and**
- **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).**

We support the recommendation for companies to disclose the relationship between remuneration and value creation. But we also believe that shareholders should have a voice with regard to executive remuneration, and that a shareholder vote on pay, even if non-binding, can provide companies with an important understanding of investor sentiment.

We believe it is useful to disclose the remuneration of employees who are substantial shareholders or immediate family of substantial shareholders.

**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.**

We support the Council's recommendations relating to building stakeholder awareness, in addition to shareholder accountability, by the company and its board, along with building positive stakeholder relations. These are fundamental to a company's long-term success. While we believe that companies should understand and engage with stakeholders, we believe it is important for a

company to have flexibility in the best way of doing so. In addition to “material stakeholders” the company’s management and board should build a general understanding of its general social and environmental impact. This could include consideration of the UN’s Sustainable Development Goals (SDGs), which address systemic issues that can have long term impacts on economies, financial markets and the health of individual companies. The Code may wish to consider explicit recognition of the SDGs in how companies approach their stakeholder relations and engagements.

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

ICGN is supportive of comply-or-explain regimes, as they encourage governance best practice, while providing some degree of flexibility to take into account individual company circumstances. For comply-or-explain to be effective, a company’s “explanations” should be thoughtful and not boiler plate, and minority investors should have a voice to challenge companies in the event that company explanations are unsatisfactory. It is incumbent on investors themselves to carefully consider explanations provided by companies for deviations to the Code before making their investment or voting decisions.

**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.**

We see clear potential merit in a CGAC as is set out in Recommendation 15 to serve as an independent and informed voice on corporate governance practices and to keep the Code’s principles and provisions updated where relevant. Key to the success of such a body would lie in how it is defined in terms of scope and how the CGAC would be structured, managed and governed.

In the corporate governance “eco system” referred to in the consultation document there are various constituents, including corporate issuers, institutional investors (debt and equity), regulators and other experts and service providers. It would be important for the CGAC to be inclusive of these groups and to be an “honest broker”, in particular with regard to facilitating mutual understanding between companies and their investors. This includes co-ordination with the Stewardship Asia Group which has already been established to promote high standards of corporate and investor stewardship.

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

No further comments.

In conclusion, ICGN applauds the efforts of the MAS, as well as the report of the Corporate Governance Council, and we hope that our feedback and comments are helpful in your deliberations. Should you wish to discuss our comments further, please contact me or George Dallas, ICGN’s Policy Director, by email at [george.dallas@icgn.org](mailto:george.dallas@icgn.org).

Yours faithfully,



Kerrie Waring,  
Chief Executive Officer, ICGN

