HKGCC

Hong Kong General Chamber of Commerce
香港總商會1861

香港總商會
香港金鐘道統一中心廿二樓
Hong Kong General Chamber of Commerce
22/F United Centre,
95 Queensway, Hong Kong
Tel (852) 2529 9229
Fax (852) 2527 9843
Email chamber@chamber.org.hk
www.chamber.org.hk

*Helping Business since 1861*

2 June 2015

Mr Ashley Alder, JP
Chief Executive Officer
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Mr Alder,

**Re: Consultation Paper on the "Principles of Responsible Ownership" ("the CP")**

Hong Kong General Chamber of Commerce ("HKGCC") welcomes the opportunity to respond to the CP.

HKGCC believes that, as with any new regulatory initiative, there must be a clearly identified problem that needs to be addressed. Once the problem has been identified, the means used to solve the problem must be the least intrusive needed for this purpose. These principles are generally recognized as international regulatory best practice, and have been adopted in Hong Kong in the form of, for example, the Government's "Be the Smart Regulator initiative".

This is not just a matter of international best practice. Any regulatory intervention designed to change business practices imposes extra costs, and must justified by clear benefits. Such costs are to be avoided, especially in a small economy like Hong Kong. In HKGCC's submission, the CP does not clearly identify a problem that needs to be addressed in Hong Kong, whereas this initiative would create clear and unnecessary costs. We explain the reasons for our views below.

No Benefits

The CP does not identify any problem in Hong Kong that needs to be addressed in the form of the principles of "Responsible Ownership". The immediate objective seems to be to encourage institutional investors and fund managers to engage more actively with the companies in which they invest. But for what purpose?

One possible explanation is a perception that investors do not have enough information on which to base their investment decisions. Another is that existing corporate governance mechanisms have not proved sufficient in Hong Kong to achieve good corporate governance, and that an additional layer of scrutiny, in the form of intervention by investors, is required.

Neither of these explanations seem plausible in the Hong Kong context. As far as information is concerned, investors have an abundance of publicly available information on which to base their investment decisions, and investors can, and do, directly engage with the companies in which they invest if they need further information, within the limits of the strict rules on disclosure of price-sensitive information.

As for the theory that a lack of investor activism has created a weakness in corporate governance in Hong Kong which requires regulatory intervention, such a theory is even less plausible. Hong Kong already has a Code of Corporate Governance which has been updated and enhanced at regular intervals in the last five years, and there is no evidence of any systemic weakness that needs to be addressed through encouraging greater shareholder activism. In addition, there are also Independent Non-Executive Directors (INEDs) who may be called upon to protect the interests of minority shareholders.

Definite Costs

The Commission has described the principles as voluntary and non-mandatory. This may be true in the sense that there will be no penalties if investors do not observe them. However, they will be binding in effect. If they are enunciated, the "comply or explain" principle will effectively ensure that companies will feel the pressure to comply, or be seen to comply, with them. Indeed, if they were not intended to change corporate behaviors, there would be no point in issuing them. This amounts to regulatory intervention, which needs to be justified on a proper cost versus benefits analysis.

As noted above, there is no clear policy rationale for this regulatory intervention. In other words, no clear benefit that would be achieved. On the other hand, there are clear potential costs. These include:

1. The probability that institutional investors will feel pressurised to spend more time trying to engage with investee companies, even if they feel no need to do so, just to be seen to be compliant with the principles. In other words, extra costs for investors.
2. The commensurate resources expended by companies in having to deal with such unnecessary enquiries.
3. The confusion which would arise between the role of investors, INEDs, NEDs and executive directors in monitoring and delivering company performance.

Conclusion

In the absence of any clear policy rationale, and any assessment demonstrating that there are benefits of this initiative which exceed the definite costs, HKGCC is unable to support the SFC's proposals.

Yours sincerely,

Shirley Yuen
CEO