

Issuance of the Code of Corporate Governance 2018 and Consequential Changes to the Listing Rules

The Corporate Governance Council ("**Council**") was established on 28 February 2017 to conduct a comprehensive review of the *Code of Corporate Governance* ("**Code**"). Public consultations on the Council's recommendations were conducted between January 2018 to March 2018 (The consultation paper is available [here](#)).

On 6 August 2018, the Monetary Authority of Singapore ("**MAS**") announced that it had accepted all the recommendations by the Council and issued a revised Code ("**2018 Code**") which will supersede and replace the existing Code that was issued in May 2012. The 2018 Code will apply to annual reports covering financial years commencing from 1 January 2019.

Following MAS' acceptance of the Council's recommendations, the Singapore Exchange ("**SGX**") has announced that it will make consequential amendments to the listing rules ("**Listing Rules**"). Save for certain amendments relating to director independence and board composition to which a longer transition period of three years has been provided, the revised Listing Rules will take effect from 1 January 2019. The responses to the consultation and recommendations of the Council, including the 2018 Code and the proposed amendments to the Listing Rules are available [here](#).

This Update sets out some of the key changes proposed in the 2018 Code and the Listing Rules.

Changes to the Code

The key changes to the Code are as follows:

(a) **Structure of the Code:** The 2018 Code has been streamlined to focus on key tenets of corporate governance and to encourage more thoughtful and meaningful application. The

2018 Code comprises (i) an *Introduction*, which explains the broad intent of the 2018 Code, and clarifies how companies should apply the comply-or-explain regime; (ii) *Principles*, which are overarching and non-disputable statements which embody the fundamentals of good corporate governance that companies must comply with; and (iii) *Provisions* (renamed from existing Guidelines), which are actionable steps to guide companies in complying with the substance of the Principles. A set of Practice Guidance has also been issued to provide guidance on the application of the 2018 Code and to set out best practices for companies. Adoption of the Practice Guidance is voluntary.

(b) **Comply or Explain Regime:** Rule 710 of the revised Listing Rules will require companies to describe their corporate governance practices with reference to both the Principles and the Provisions underpinning each Principle. Compliance with the Principles is compulsory while 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.

(c) Director Independence

(i) **Definition of Independence:** The Code provides for an overarching principle-based definition of an independent director and places the onus on the Board and the Nominating Committee ("**NC**") to determine if a director is independent. Under the 2018 Code, an independent director is one who is "*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". Certain objective and baseline tests relating to employment in the existing Code have been shifted to the Listing Rules and will have to be complied with without any exceptions. The remaining tests of director independence that are presently listed in the Code will be shifted to the non-binding Practice Guidance, to provide more flexibility for companies.

- (ii) **Substantial Shareholding Threshold:** The shareholding threshold to determine director independence under the 2018 Code has been revised from 10% to 5%, in alignment with the definition of "substantial shareholders" under the Securities and Futures Act.
- (iii) **Nine-year Rule:** For independent directors that have served beyond nine years, their continued appointment will be subject to a two-tier vote to be approved by the majority of (A) all shareholders; and (B) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates). This new Listing Rule will only come into effect from 1 January 2022.

(d) Board Composition

- (i) **Independent Directors:** The current Guideline 2.1 of the Code which provides, *among others*, that independent directors should make up at least one-third of the

Board will be shifted to the Listing Rules and will take effect from 1 January 2022. Under Provision 2.2 of the 2018 Code, where the Chairman is not independent, a majority of the Board (instead of "at least half" in the current Code) should comprise independent directors.

- (ii) **Non-Executive Directors:** A new Provision provides that non-executive directors must make up a majority of the Board.
 - (iii) **Board Diversity Policy:** Companies must disclose their board diversity policy and the progress made towards implementing it, including objectives, in their annual report.
- (e) **Remuneration Disclosures:** Companies will have to disclose the link between remuneration and value creation. In addition to disclosures of remuneration for employees who are immediate family members of a director or the CEO, companies will also have to make disclosures for employees who are substantial shareholders and immediate family of substantial shareholders, 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).
- (f) **Stakeholder Engagement:** A new Principle and accompanying Provisions have been introduced for companies to consider and balance the needs and interests of material stakeholders. This is intended to be complementary to the requirements for sustainability reporting.

Changes to the Listing Rules

As part of the efforts to streamline the Code, certain important requirements or baseline market practices will be shifted to the Listing Rules for

mandatory compliance. In addition to the changes that have been highlighted above, the other key proposed amendments to the Listing Rules are as set out below:

(a) **Mandatory Training for First-Time**

Directors: Persons who have no prior experience as directors of an issuer listed on the SGX will be required to undergo mandatory training as prescribed by the SGX on their roles and responsibilities. When announcing the appointment of the director, the issuer must confirm that the director has undertaken the mandatory training, or if the NC has assessed that training is not required as the director has other relevant experience, the basis of the NC's assessment must be disclosed.

(b) **Establishment of Board Committees:** To ensure minimum standards of corporate governance, the Listing Rules provide that one or more committees must be established to perform the functions of an audit committee ("AC"), NC, and remuneration committee, with written terms of reference which clearly set out the authority and duties of the committees.

(c) **Relationship between Chairman and CEO:** The relationship between the chairman and the CEO must be disclosed in the annual report if they are immediate family members.

(d) **Identification of Directors:** All directors, including their designations (i.e. independent, non-executive, executive, etc.) and roles (as members or chairmen of the Board or Board committees), must be identified in the company's annual report.

(e) **Re-nomination and re-appointment of directors:** To encourage board renewal and rejuvenation, all directors must submit

themselves for re-nomination and re-appointment at least once every three years.

(f) **Key information regarding appointment of**

directors: Where a candidate is standing for election as a director for the first time or an existing director is seeking re-election to the Board, the company will have to provide certain information relating to the candidate (as set out in Appendix 7.4.1 of the Listing Manual) in the notice of meeting, annual report, or relevant circular distributed to shareholders prior to the general meeting. The outcome of the shareholder vote must also be announced.

(g) **Adequacy and Effectiveness of Internal Controls and Risk Management Systems:**

A company will be required to have adequate and effective systems of internal controls (including financial, operational, compliance and informational technology controls) and risk management systems. The AC may commission an independent audit for its assurance, or where it is not satisfied with the internal controls and risk management systems. The Board will also be required to comment on the adequacy and effectiveness of the company's internal controls and risk management systems, and the AC will be required to confirm its concurrence with the Board. Any identified material weaknesses and the steps taken to address them must be disclosed.

(h) **Internal Audit Function:** Companies are required to establish and maintain on an ongoing basis an effective internal audit function that is adequately resourced and independent of the activities it audits. The AC will be required to comment in the annual report on whether the internal audit function is independent, effective and adequately resourced.

- (i) **Disclosure of reasons for not paying dividends:** If directors decide not to declare or recommend a dividend, this must be announced together with the reason(s) for such decision.

Establishment of Corporate Governance Advisory Committee

In connection with the proposed revisions to the Code, the Council has also recommended the establishment of an industry-led Corporate Governance Advisory Committee ("**CGAC**") to advocate good corporate governance practices. The CGAC will not have any formal regulatory

powers, but will help, *among others*, to monitor the quality of listed companies' corporate governance disclosures (identifying areas for improvement), provide support to companies by promulgating good practices and areas for improvement, and advise regulators on corporate governance issues. The CGAC is expected to be established by the end of 2018, and will likely comprise senior practitioners with experience as board Chairmen or directors, corporate governance experts and representatives from diverse stakeholder groups. The MAS is expected to announce further details on the CGAC in due course.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



Annabelle YIP

Joint Head – Corporate Governance & Compliance Practice
d +65 6416 8249
e annabelle.yip@wongpartnership.com
Click [here](#) to view Annabelle's CV.



Vivien YUI

Joint Head – Employment Practice
Partner – Corporate Governance & Compliance Practice
d +65 6416 8009
e vivien.yui@wongpartnership.com
Click [here](#) to view Vivien's CV.



Kevin HO

Partner – Corporate Governance & Compliance Practice
d +65 6416 2555
e kevin.ho@wongpartnership.com
Click [here](#) to view Kevin's CV.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Corporate Avenue 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous International Legal Practice
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

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Al Aidarous International Legal Practice
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

Zambrano Gruba Caganda & Advincula
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw