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2 June 2015

Submission on Principles of Responsible Ownership
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Central, Hong Kong

BY EMAIL (ResponsibleOwnership@sfc.hk)

Dear Sirs,

Re: Consultation on proposed Principles of Responsible Ownership: Response of Woo Kwan Lee & Lo

We, a firm of solicitors in Hong Kong (see www.wkll.com), are delighted to be given the opportunity to submit our comments on the proposals discussed in the Consultation Paper on the Principles of Responsible Ownership published on 2 March 2015 (the "Consultation Paper"), which we hereby respectfully do so.

1. The Consultation Paper calls for investors to abide by seven principles of responsible ownership (collectively, the "Principles"), namely:-

- (a) to establish and report to their stakeholders their policies for discharging their ownership responsibilities;
- (b) to monitor and engage with their investee companies;
- (c) to establish clear policies on when to escalate their engagement activities;
- (d) to have clear policies on voting;
- (e) to be willing to act collectively with other investors when appropriate;
- (f) to report to their stakeholders on how they have discharged their ownership responsibilities; and
- (g) when investing on behalf of clients, to have policies on managing conflicts of interests.

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Overall – No stated benefits

2. Our overall submission is while it is appreciated that the Principles are designed to encourage investors (in particular institutional investors) to be more proactive with the companies in which they invest, there seems to be no stated benefits for doing so. We trust you will agree that a regulatory initiative should demonstrate that there will be benefits and that such benefits will exceed the costs.

More transparency?

3. A possible benefit as one might argue is that the Principles may help disclosing more information available to all investors. However, this argument does not have merits because there has already been plenty of publicly available information that investors may base their decisions on, and so it is doubtful whether more information will be made available by reason of the Principles. Therefore, it appears that the added Principles are not necessary for this purpose.

Improving corporate governance?

4. Paragraph 27 of the Consultation Paper highlighted the importance of investors (especially institutional investors) and its role in promoting good corporate governance practices. While we agree that active engagement between investors and a listed company may resolve any lack of proper corporate governance in the company, evidence shows that:

- (a) Hong Kong already has one of the most sophisticated and well-respected corporate governance regime;
- (b) engagement between investors and listed companies has already been taking place in Hong Kong in a healthy manner, on an “as needs” basis; and
- (c) there have been no major failure in corporate governance in Hong Kong due to lack of investors’ oversight.

5. It appears that there is no explanation in the Consultation Paper on how the added Principles may help further improving corporate governance.

Catching up with international regulatory trend?

6. Paragraph 31 of the Consultation Paper mentioned that there have been calls for more institutional investor shareholder activism and engagement in a number of international financial markets including the United States, the United Kingdom and Australia. As the Hong Kong SAR Government has acknowledged in various occasions in the past, the investing environment in Hong Kong is significantly different from those mentioned jurisdictions. We trust it is universally agreed that introducing a new “code” simply because other countries have one cannot be a proper or relevant policy justification.

7. It is worth noticing, Singapore, bearing a number of similarities to Hong Kong in economic structure, reliance on finance and trade, as well as size of territory and population, has not followed this and has not implemented such a “code”.

Investors’ right to be passive

8. Investments in listed companies are chosen in action, most commonly in the form of stocks, which are private property. Article 105 of the Basic Law of the Hong Kong Special Administrative Region protects the right of individuals and legal persons to the use of property. The use of property includes obviously the manner of using the property.

9. Therefore, as enshrined in the letter as well as the spirit of Article 105, investors are entitled to decide whether to be active or passive.

10. Moreover, very often, investors have every good, rational and/or informed reason such as having confidence in the companies’ leadership and/or their track records of their own when deciding to remain passive in their investments. They should not be forced to be active.

Costs of investors

11. Even though it is stated in the Consultation Paper that the Principles are non-binding and voluntary, the Commission seems also making it clear that the Principles would be operating on a “comply or explain” basis. As such, it is anticipated that investors must follow the Principles, or otherwise they may need to explain their rationale for not doing so or why some of the Principles have not been complied. On the one hand, this means that the Principles are mandatory in effect. On the other hand, this also means forcing the investors to disclose how they “use” their properties, the right of which is protected by Article 105.

12. Moreover, implementing the Principles in the suggested manner will inevitably pressurize the investors to engage in more direct dialogue with listed companies, even when there is no need to do so, but just for the purpose of demonstrating their compliance of the Principles, particularly that they have performed a monitoring role in the listed companies they have purchased stocks.

13. In our respectful submission, firstly this is simply unnecessary, because all the independent non-executive directors as well as the non-executive directors of all the listed companies in Hong Kong are already incumbent to perform the monitoring and scrutinizing function; and secondly this will impose additional costs on both investors and listed companies which are unnecessary. Lastly, as explained above, the investors have the right not to incur these costs.

Conclusion

14. In light of the above analysis, given there is no clear benefit, vis-à-vis the otherwise burdensome costs; this appears to be not an initiative which should be implemented.

We hope the above submissions help in the Commission's consideration of this subject. If we could be of further assistance, please do not hesitate to contact

Yours faithfully,

WOO, KWAN, LEE & LO