



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Paper on the Principles of Responsible Ownership

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Introduction

1. The promotion of the concept of share ownership engagement is pivotal for the Hong Kong financial market. Whilst the primary responsibility for a company's success rests with the company's board, investors in the company also play a significant role by holding the board to account for the fulfilment of its responsibilities. Recognising the importance of responsible ownership benefits the company, its investors and the economy as a whole.
2. In any mature market economy there is reliance upon shareholders to evaluate investment opportunities and allocate their capital according to their assessment of risk and likely returns and to then monitor the performance of the company and assess the effectiveness of their capital allocation. In order for them to do so they need to seek information and monitor the progress of their investee companies. By so doing, responsible shareholders carry out a function that is essential for effective capital allocation that contributes to economic growth of a society.
3. Directors are required by law to act in the interests of the shareholders of the company and their obligations are contained in statute (such as the Securities and Futures Ordinance and the Companies Ordinance), in common law as well as in non-statutory provisions such as the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited.
4. Shareholders are expected to take action where they believe that directors are not acting in the interests of the company or its shareholders. The law therefore provides all shareholders with voting and other rights to enable them to engage with directors and to monitor the progress of their investment in the company.
5. In the past several decades there has been a notable increase in institutional ownership of publicly listed companies. The term "institutional investor" covers, without limitation: retirement funds, insurance companies, mutual funds and similar foreign organisations. These are by far the biggest owners of shares of listed companies in Hong Kong. Given the significance of their holdings, the way in which such institutional shareholders use their rights is of fundamental importance to the health and stability of an investee company and ultimately to our economy.
6. Following the global financial crisis of 2008, the importance of the roles and responsibilities of institutional investors in corporate governance has been placed under the scrutiny of a number of financial regulators the world over. As a leading financial market, it is important that in Hong Kong we play our part as a world citizen and encourage proactive ownership engagement between investors and publicly listed companies.
7. The extent to which any shareholder engages with a company, irrespective of whether they are an individual, a corporate owner or an institution, will depend on the degree to which they are willing to take on the responsibilities of being shareholders of their company.
8. Where investors have entrusted funds for investment to institutional investors, the power to exercise shareholder rights will vest with those institutional investors. However to protect their interest and in the interest of society, the providers of the funds should ensure that institutional investors exercise their shareholder rights responsibly. To do

this it is necessary for institutional investors to be transparent as to their policies and actions relating to the exercise of shareholder rights.

9. Whilst the Hong Kong market retains a relatively high proportion of shares held directly by individuals, like all markets much of each individual's wealth invested in listed companies is not held directly. Individuals are dependent on others to exercise shareholder rights in a way that benefits them individually and society generally. We therefore believe that there should be guidance:
- (a) to assist investors in determining how best to meet their ownership responsibilities whether these are exercised directly or through intermediaries; and
 - (b) for intermediaries on whom investors are depending to exercise ownership responsibilities.

We have provided this guidance in the form of Principles of Responsible Ownership (**Principles**) set out in **Appendix A** and are seeking market comments on the Principles.

10. We understand and accept that investors pursue different investment objectives. We are therefore not proposing principles which advocate any particular investment strategy or which prescribe, quantify or identify the degree of investor engagement necessary to qualify an investor as a responsible investor or good corporate citizen. Instead, the Principles encourage each investor to consider the shareholder engagement policies that are suitable to its circumstances and to then implement these policies, either directly or by selecting intermediaries that will do so on its behalf.
11. We strongly encourage investors to recognise that by utilising their rights as shareholders and behaving in a responsible manner towards their investee companies they can create positive financial returns and market growth. However, we are not seeking to impose any obligations on shareholders.
12. In general, we are of the view that there are certain basic shareholder rights which are entrenched in company and common law which will promote active participation by shareholders such as the election of board members. By encouraging shareholders to actively participate no matter where in the investment chain their interests lie, we believe the proposed Principles can only serve to enhance the overall position of Hong Kong as a major international financial centre.

Policy objectives

13. Our proposal is to provide guidance (in the form of the Principles) on how shareholders should fulfil their ownership responsibilities in relation to their investment in a listed company. Establishing an investment culture where conscious engagement with investee companies is seen as paramount and fundamental, is important for the health of our financial market.
14. The Principles are non-binding and are voluntary in that they operate on a “comply-or-explain” basis. Investors are encouraged to “sign up” to the Principles by disclosing that they have done so, and then they either comply with the Principles in their entirety and disclose how they have done so, or explain why some or all of the Principles do not, or cannot, apply to them.
15. The Principles are relevant to individual and retail investors in that they provide guidance on share ownership engagement. Certain elements of the Principles, such as disclosure, reporting and accounting to stakeholders, will not expressly apply to individuals. Nonetheless, we hope that the importance of share ownership engagement is communicated to individuals through the Principles. By utilising the Principles as a point of reference, active engagement by individual and retail investors can be achieved by monitoring their investee companies, participating and voting in general meetings and generally engaging with their investee companies, such as voicing any genuine concerns at general meetings or in writing to an investee company.
16. We believe that the Principles can contribute to an improvement in the stewardship of Hong Kong listed companies. The potential benefits of this are significant for the health and stability of our financial market. Effective engagement between shareholders and their investee company can aid the long-term success of the listed company thereby benefitting the ultimate providers of its capital. Active participation by shareholders will improve the governance and performance of investee companies that will, in the long term, enhance the efficient operation of our capital markets and contribute towards an increase in the confidence of the Hong Kong financial market as a whole.
17. We believe that all owners of share capital should assume responsibility and a sense of ownership for their investments. We understand that the level, willingness and ability to engage with an investee company is very subjective and dependent on many factors including the size of a holding, the mandate and corporate structure of the investor, the business model behind the investment and the anticipated investment period. The level of engagement can also turn on the costs and allocation of human resources. However, no matter what these factors are, active engagement is to the overall benefit of all providers of the capital.
18. In the last couple of decades there has been a notable increase in institutional ownership of publicly listed companies, with these institutions increasingly demanding a voice in corporate governance. In many instances, institutional investors exert rights traditionally held by individuals, families or bloc alliances. Given the significance of their votes, the way in which these institutional shareholders use their rights is of fundamental importance for the health of their investee companies. Strengthening the accountability of such institutional shareholders towards their own principal positions and those of their clients will strengthen trust in the overall financial system.

19. The extent to which a shareholder engages a company, irrespective of whether they are an individual, a corporate owner or an institution, turns on the degree to which they are willing to take on the responsibilities of being owners of the listed company. In this regard, we believe the promulgation of the Principles will promote awareness of the fundamental duties to exercise ownership responsibilities that investors owe to themselves or towards those parties who have entrusted them with their capital and, in some cases, their life savings.
20. As institutional investors hold significant portions of listed shares in the Hong Kong market it is important that they fulfil their ownership responsibilities on behalf of their clients. It is also important that their clients are aware of these responsibilities and take steps to understand how the institutional investors are fulfilling these responsibilities on their behalf. Institutional investors' policies on fulfilling ownership responsibilities should be a factor for investors in making investment decisions or in choosing whether to grant an institutional investor a mandate to invest. Clients should hold asset managers accountable for how they fulfil ownership responsibilities.
21. The Principles aim to encourage all shareholders to engage with their investee companies and provide general guidance on engagement. The Principles seek to provide guidance for all shareholders. To the extent a shareholder feels unwilling or unable to adopt the guidance in the Principles or where a shareholder, after serious consideration, finds the Principles not relevant to its circumstances, the Principles will have fulfilled their purpose if they make investors aware of and deliberate on the discharge of their ownership responsibilities.
22. We accept that the anticipated benefits of the Principles cannot be achieved if shareholders choose not to fulfil their ownership responsibilities. Given the diversity of investors we do not think that principles designed to provide guidance to investors generally can seek to mandate compliance. However, there may be certain categories of investors, such as entities authorized, licensed and/or regulated by the Hong Kong Monetary Authority (**HKMA**), the Mandatory Provident Fund Schemes Authority (**MPFA**), the Office of the Commissioner of Insurance (**OCI**) and the SFC, where there should be a requirement for those investors to comply with the Principles or to provide details of and reasons for their non-compliance, ie, a "comply-or-explain" obligation.

Background to proposals

23. In drafting the Principles we drew upon the experience of other jurisdictions around the world that have established similar codes and regulations or are in the process of doing so. In particular, we looked at the experiences of the United Kingdom and Australia in promoting shareholder engagement (as discussed further in paragraphs 39 to 48 below).
24. In discussing the approaches taken by other jurisdictions we are not suggesting their positions are necessarily the right direction for Hong Kong to take as we are mindful that cultural differences can dictate the manner and extent of a shareholder's engagement with the investee company. However, the experiences of jurisdictions with similarly established financial markets to our own serve as a useful starting point in guiding Hong Kong as we embark on a similar exercise.
25. When looking at the experiences of other jurisdictions, we have noted that in a number of major markets, including the United Kingdom and Australia, a significant portion of listed companies have a dispersed shareholder base with no single shareholder holding a significant stake. In contrast, companies listed in Hong Kong are disproportionately dominated by family and state-controlled ownership. In a market dominated by controlling shareholders, there is evidence to support the view that investors will often find it more productive to engage directly with the controlling shareholder rather than seek to engage with the board of directors as a whole through the usual voting channels. Investors may also engage a listed company through an industry body rather than on an individual basis.
26. A comparison table which summarises the shareholder engagement models adopted in the United Kingdom, Australia and Japan is set out in **Appendix B**. For ease of reference it compares in broad terms each respective code/guide with the proposed Principles.

Organisation for Economic Co-operation and Development (OECD)

27. The OECD Principles of Corporate Governance (2004)¹ (**OECD Principles**) note the role investors, in particular institutional investors, play in promoting good corporate governance practices. They discuss the need to facilitate shareholders to exercise their ownership rights. In particular, the OECD Principles expect institutional investors acting in a fiduciary capacity to disclose their overall corporate governance and voting policies and how they manage their conflicts of interests.
28. The OECD Principles state that “the effectiveness and credibility of the entire corporate governance system and company oversight will ... to a large extent depend on institutional investors that can make informed use of their shareholder rights and effectively exercise their ownership functions in companies in which they invest”².
29. Encouraging shareholder engagement is one of the six priorities for corporate governance reform agreed at the 2011 OECD-Asian Roundtable meeting, which is set out in the OECD's report, 'Reform Priorities in Asia: Taking Corporate Governance to a

¹ OECD Principles of Corporate Governance (2004): <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>

² Annotations to the OECD Principle II.F, page 37, OECD Principles of Corporate Governance (2004)

Higher Level³. This “priority” recommends that regulators encourage and facilitate shareholder engagement and, in particular, that institutional investors play a greater role in influencing the corporate governance practices of their investee companies. Participants at the meeting noted that institutional investors need to be encouraged to accept their obligations as responsible shareholders toward the companies they invest in and to participate effectively at shareholder meetings. The report suggests that Asian policy makers consider codes for institutional investors that are being used in some jurisdictions to highlight shareholder responsibilities.

30. Currently one element missing in Hong Kong’s corporate governance regime is shareholder engagement. In Hong Kong, there is no requirement, or means of encouragement, for institutional investors to engage with investee companies, to vote or even to disclose how they exercise their voting rights.

International regulatory development

31. In the aftermath of the 2008 financial crisis, 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. A significant aspect relates to institutional investors voting against excessive director remuneration. A number of jurisdictions have introduced codes of behaviour to promote institutional investors’ shareholder engagement⁴. In this respect, Hong Kong lags behind other international financial markets.
32. In 2010, the United Kingdom’s Financial Reporting Council (**FRC**) introduced the Stewardship Code⁵ (**UK Stewardship Code**) which sets out good practices for institutional investors when they engage with their investee companies. Institutional investors that sign up to the UK Stewardship Code are required to report how they have complied with or explain their reasons for non-compliance with the UK Stewardship Code (as discussed further in paragraphs 39 to 43 below).
33. In Australia, although there is no direct equivalent of the UK Stewardship Code, there are some comparable best practice principles promulgated by industry bodies (as discussed further in paragraphs 44 to 48 below).
34. In Japan, the Financial Services Agency (**FSA**) published its Stewardship Code: Principles for Responsible Institutional Investors⁶ in February 2014. The Japanese code is broadly aligned with the UK Stewardship Code and is also applied on a “comply-or-explain” basis. It primarily targets institutional investors (investment managers and asset owners) investing in Japanese listed shares and covers proxy advisors commissioned by institutional investors. The Japanese code is not law or legally binding regulation. The FSA expects those institutional investors who support the Japanese code and are prepared to accept it to publicly disclose their intention.

³ OECD (2011), Reform Priorities in Asia: Taking Corporate Governance to a Higher Level: <http://www.oecd.org/daf/ca/49801431.pdf>

⁴ Table 1.5. Summary of the status of the Principles, OECD (2011), The Role of Institutional Investors in Promoting Good Corporate Governance, page 33: www.oecd.org/daf/ca/49081553.pdf

⁵ The UK Stewardship Code (revised in September 2012): <https://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx>

⁶ <http://www.fsa.go.jp/en/refer/councils/stewardship/20140407/01.pdf>

35. Likewise, the Securities Commission Malaysia and the Minority Shareholder Watchdog Group issued the Malaysian Code for Institutional Investors⁷ in June 2014. The Malaysian draft code by and large follows the UK approach. It sets out the broad principles of effective stewardship by institutional investors which apply to asset owners and asset managers with equity holdings in Malaysian listed companies (including service providers in the investment chain such as custodians and proxy advisors). Institutional investors are encouraged to be signatories of the code and those that sign up are expected to explain how they have complied with the principles in the code.
36. The European Commission (**EC**) published a proposal in April 2014 to revise the existing Shareholder Rights Directive and aims to strengthen shareholder engagement for European listed companies⁸. Key aspects of the proposals include requiring institutional investors and asset managers to develop a shareholder engagement policy and publicly disclose (on a “comply-or-explain” basis) their engagement policy, how it has been implemented and the results. The proposed Directive will need to be considered and adopted by the EC and European Parliament before it becomes effective.
37. Some European Union countries already place certain disclosure obligations on shareholders, for example Portugal, the Netherlands and France. Other countries have chosen to apply international standards instead – for example, the Danish Financial Supervisory Authority has recently required institutional investors to report against the UN Principles for Responsible Investment.
38. In the United States, although there is no specific provision requiring shareholder engagement, retirement fund managers and registered fund managers have a fiduciary duty to vote all their portfolio shares. The Securities Exchange Commission has proposed that institutional managers should report annually on how they vote proxies relating to executive compensation matters pursuant to the Dodd-Frank Act⁹.

United Kingdom and Australian approach and experience

United Kingdom

39. The UK Stewardship Code, which was first published in July 2010 and revised in September 2012, sets out good practices on engagement with investee companies. It is addressed to institutional investors, including both asset owners (such as retirement funds, insurance companies, investment trusts and other collective investment vehicles) and asset managers (firms who manage assets on behalf of institutional owners). It also applies, by extension, to service providers, such as proxy advisors and investment consultants. The UK Stewardship Code is voluntary in that it operates on a “comply-or-explain” basis. As recommended in the Walker Review¹⁰, the FRC undertakes annual monitoring of the take-up and application of the UK Stewardship Code.

⁷ http://www.sc.com.my/wp-content/uploads/eng/html/cg/mcii_140627.pdf

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2014:213:FIN&from=EN>

⁹ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010): <http://www.sec.gov/rules/proposed/2010/34-63123.pdf>

¹⁰ Walker Review (2009): A review of corporate governance in UK banks and other financial industry entities: http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/d/walker_review_261109.pdf

40. The Financial Services Authority introduced a requirement¹¹ in December 2010 for all Financial Services Authority authorized firms (other than venture capital firms) which manage assets on behalf of professional clients (that are not natural persons) to disclose a statement on their own website (or in another accessible form) of the nature of their commitment to the UK Stewardship Code or their alternative investment strategy. This was to implement Recommendation 20 of the Walker Review and help embed the UK Stewardship Code in industry practice. The rule does not require compliance with the UK Stewardship Code itself but only requires for asset managers to report on whether or not they apply it.
41. The FRC clarified in its Feedback Statement¹² in September 2012 that the UK Stewardship Code is directed in the first instance to institutional investors with equity holdings in UK-listed companies and is not intended to apply extraterritorially. The FRC encourages UK investors, on a best effort basis, to apply the principles of the UK Stewardship Code to their overseas equity holdings, and welcomes overseas investors who might seek to apply the UK Stewardship Code to their holdings of UK equities. It is also stated in the Walker Review that the aim of its recommendations is to “embed commitment to the Stewardship Code (on a “comply-or-explain” basis) on the part of UK-authorized entities and thereafter to encourage voluntary participation by ... non-resident investors on the basis that this is likely to be in their own interest and in that of their clients as ultimate beneficiaries”¹³.
42. The UK Stewardship Code embodies seven principles for institutional investors to:
- (a) publicly disclose their policy on how they will discharge their stewardship responsibilities;
 - (b) have a robust policy on managing conflicts of interests in relation to stewardship and disclose this policy;
 - (c) monitor their investee companies;
 - (d) establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value;
 - (e) be willing to act collectively with other investors where appropriate;
 - (f) have a clear policy on voting and disclosure of voting activity;
 - (g) report periodically on their stewardship and voting activities.
43. The FRC conducted reviews on the impact and implementation of the UK Stewardship Code¹⁴ and observed that there is growing demand from investors for their investment managers to apply a stewardship approach. There are also encouraging signs that more engagement on a wider range of issues is taking place between large companies

¹¹ Financial Conduct Authority Conduct of Business Rule 2.2.3: <http://fshandbook.info/FS/html/handbook/COBS/2/2>

¹² FRC's Feedback Statement (September 2012): Revisions to the UK Stewardship Code: <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Feedback-Statement-UK-Stewardship-Code-September-2.pdf>

¹³ Paragraph 5.41, pages 84 to 85, Walker Review (2009)

¹⁴ FRC's Developments in Corporate Governance 2013: The impact and implementation of the UK Corporate Governance and Stewardship Codes: <https://frc.org.uk/Our-Work/Publications/Corporate-Governance/Developments-in-Corporate-Governance-2013.pdf>

and their major shareholders. However, this is not the case across the listed sector as a whole and there are real and perceived barriers to effective stewardship, such as resource constraints and perceived lack of appropriate skills and experience within investment management firms. Further, the quality of reporting by the UK Stewardship Code signatories remains variable.

Australia

44. Australia has a combined law and voluntary codes approach. Responsible entities (manager) of a unit trust and superannuation trustees have fiduciary duties to act in their clients' best interests under the Corporations Act and the Superannuation Industry (Supervision) Act 1993. The law is supplemented by best practice guidance developed by industry bodies, such as the Financial Services Council (**FSC**) (which represents investment managers) and the Australian Council of Superannuation Investors (which represents asset owners).
45. The FSC's Guidance Note No. 2 – Corporate Governance: A Guide for Fund Managers and Corporations¹⁵ (commonly known as the Blue Book) provides guidance for FSC members (including companies in fund management, superannuation, life insurance, financial advice businesses and trustee services) in relation to their own operations and investment activities in Australia. Compliance with the Blue Book is voluntary but strongly encouraged. The FSC also encourages fund managers who are engaged in investment activities internationally to regard the content and spirit of the Blue Book to promote good governance practices outside Australia¹⁶.
46. In determining their approach to corporate governance, including environmental and social issues and voting in the companies in which they invest, the Blue Book provides that fund managers should:
 - (a) have a written corporate governance policy;
 - (b) establish direct contact with companies in accordance with their corporate governance policy;
 - (c) vote on all Australian company resolutions where they have the voting authority and responsibility to do so;
 - (d) report on voting and other corporate governance activities where required; and
 - (e) engage companies on significant environmental and social issues that have potential to impact on companies' reputation and performance.
47. In addition, FSC's Standard No.13: Voting Policy, Voting Record and Disclosure¹⁷ also sets out compulsory standards for its members relating to shareholder voting policy and disclosure. FSC members are required to formulate and disclose their voting policies,

¹⁵ FSC's Guidance Note No. 2 (2009): Corporate Governance: A Guide for Fund Managers and Corporations: http://www.fsc.org.au/downloads/file/IFSAGuidanceNotes/2GN_2_Corporate_Governance_2009.pdf

¹⁶ Page 5, FSC's Guidance Note No. 2 (2009) - Corporate Governance: A Guide for Fund Managers and Corporations

¹⁷ <http://www.fsc.org.au/downloads/file/FSCStandards/FINALStandard13VOTINGPOLICYVOTINGRECORDANDDISCLOSURE.pdf>

whether or not they engage a consultant (voting or proxy) in exercising their voting rights, and details of the exercise of such voting rights.

48. Independent research commissioned by the Australian Institute of Company Directors¹⁸ observed that institutional investors in Australia have been increasingly active in voting their shares and are increasingly willing to vote “against” company resolutions if it is in their interests to do so. The research found that share voting policies of institutions, proxy advisers and industry groups published by industry bodies are important influences on institutional share voting. Almost all industry participants say these share voting policies are (or should be) guidelines only and that votes should be determined according to companies’ individual circumstances. Furthermore, proxy advisory firms are an important influence on institutional share voting in Australia¹⁹.

¹⁸ AICD (2011): Institutional Share Voting and Engagement: http://www.companydirectors.com.au/Director-Resource-Centre/Research-reports/-/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx

¹⁹ Findings 3, 5 and 6, AICD (2011): Institutional Share Voting and Engagement

The Principles

Relevant to all investors

49. In considering the approach for these Principles we note that the approach in the UK, Australia, Japan, Malaysia, the USA and the EU has been to set expectations of institutional investors, generally those institutions that are regulated. In considering whether the same approach was appropriate for Hong Kong we took into consideration the more ostensible dispersed shareholder base of the companies listed on the Stock Exchange of Hong Kong.
50. As discussed earlier ownership of shares brings with it important responsibilities, particularly the right to speak and vote on matters that can influence the ways in which a business is conducted. The principal reasons for calling for shareholders to engage with their investee companies are that it results in improved governance of companies which leads to better performance and it facilitates effective capital allocation. We believe that by utilising their rights as shareholders and behaving in a responsible manner towards their investee companies, investors can create positive financial returns and market growth. These benefits apply whether or not the person exercising these rights is an institutional investor or a beneficial owner. Accordingly we consider that any guidance should be aimed at all investors and we have drafted the Principles on that basis.

Seven Principles

51. The Principles in essence ask an investor to have a policy on this important issue, implement the policy and tell stakeholders what its policy is and how it was implemented. The Principles call on investors to:
- (a) establish and report to their stakeholders their policies for discharging their ownership responsibilities;
 - (b) monitor and engage with their investee companies;
 - (c) establish clear policies on when to escalate their engagement activities;
 - (d) have clear policies on voting;
 - (e) be willing to act collectively with other investors when appropriate;
 - (f) report to their stakeholders on how they have discharged their ownership responsibilities; and
 - (g) when investing on behalf of clients, have policies on managing conflicts of interests.
52. The Principles are non-binding and are voluntary in that they operate on a “comply-or-explain” basis. Investors are encouraged to “sign up” to the Principles by disclosing that they have done so, and then they either comply with the Principles in their entirety and disclose how they have done so, or explain why some or all of the Principles do not, or cannot, apply to them.

53. The Principles do not aim at detailed prescription as to the appropriate policy to adopt. Rather they seek to identify a policy objective and suggest means to achieving it. Their purpose is to serve as a reference point and are expected to be evolutionary in nature in that the Principles will evolve over time to adapt to current market needs, trends and practices.
54. The Principles are relevant to individual and retail investors in that they provide guidance on share ownership engagement. Notwithstanding a minority shareholding, an individual can nonetheless effectively engage with an investee company. As a shareholder, an individual has a right to participate and vote in general meetings, to engage with their investee companies and to voice genuine concerns. We believe that share ownership engagement by any shareholder is important and will have an impact on the governance of an investee company, irrespective of the size of shareholdings or being an individual shareholder.

Obligation for institutional investors

55. There is a separate question of whether certain types of institutional investors should be required to comply in some form with the Principles.
56. We believe that institutions that are authorized to manage assets for others should disclose their policies on shareholder engagement in a manner that is readily accessible. In this regard we wish to consult the market whether they think it is necessary for Hong Kong to follow the example set out in the UK Stewardship Code and introduce a “comply-or-explain” requirement for relevant investment management firms. Such a rule would result in a new mandatory requirement being imposed on Hong Kong investors, albeit one that can be met by stating that an entity does not engage with investee companies and by providing the reasons for not doing so.
57. We would encourage all Hong Kong institutional investors to apply and report on the Principles regardless of whether or not they support mandatory requirements and would welcome views on whether there are any barriers or other reasons that would prevent or discourage them from doing so.

Proxy advisors

58. Some commentators have pointed out that setting an expectation that institutional investors will vote on all issues becomes in effect a requirement. For some institutional investors this presents significant problems as they invest in a number of companies and they do not have the resources to devote to considering how to vote on every ballot. This problem is exacerbated by the fact that a large proportion of listed companies have financial year ends in December and so their general meetings are bunched around the same time. As a consequence institutional investors may decide to outsource the voting decisions to a proxy advisor. As there are two proxy advisors that dominate the market, issues put to votes are dominated by just two views instead of attracting the views of a wide spread of investors.
59. Some institutional investors we spoke to commented that whilst they use the services of proxy advisors they do not necessarily follow their recommendations. Rather they use the services of proxy advisors to identify the key issues that are subject of shareholder votes. On these issues they determine, independently of the advice they received, how

to vote and whether it is necessary to engage on these issues with the companies concerned.

60. Views are invited on whether agents such as voting services agencies and investment consultants should be encouraged to commit to the spirit of the Principles and, if so, how this could be done.

Foreign investors

61. Foreign investors also play an increasingly important role in the Hong Kong market; their ability to influence the Hong Kong companies in which they invest is potentially significant. We therefore recommend that foreign investors should be encouraged to commit to the Principles as this is likely to be in their own interests and in the interests of their clients as ultimate beneficiaries.

Reporting

62. As discussed in paragraph 20 it is important for clients to take steps to understand how institutional investors fulfil ownership responsibilities on behalf of clients. This requires disclosure by institutional investors. We note that in most markets, documents aimed at retail investors generally do not include details relating to engagement with listed companies. Views are invited on whether documents aimed at retail investors should make reference to the policies relating to responsible ownership and, if so, which ones.

Seeking comments

63. We welcome comments from the public on the proposals made in this consultation paper. Comments should be submitted to us in writing by no later than 2 June 2015.
64. In committing the Principles to writing we are hoping to open up dialogue with all interested stakeholders and to seek market views on a number of issues. In particular we would like interested parties to share their views on the following discussion points and bring to our attention anything else you view as in the spirit of this public consultation. Views are invited on the following:
- Do you agree with the approach (paragraphs 49 to 50) to aim the Principles at all investors and not just institutional investors? If the scope of the Principles is too broad which investors should be excluded or, alternatively, which investors should be included?
 - Given that the Principles will not achieve their objectives unless listed companies welcome both the Principles and the greater engagement from shareholders that will follow, do listed companies and their representatives have any suggestions for the Principles that are likely to encourage the appropriate level of shareholder engagement?
 - What do institutional shareholders active in investing in Hong Kong companies expect will be the likely costs and benefits arising from their compliance with the proposed Principles?
 - Whilst we do not wish to encourage a close-ended list of the type of institutions which will qualify as “institutional investors” and their agents, we would encourage views from the market as to their understanding of the types of institutions which may well fall within or outside of such a broad characterisation.
 - Should institutional investors be encouraged or obliged to apply the Principles on a “comply-or-explain” basis and, if so, which institutional investors and what should they be asked to disclose and to whom?
 - Will individual or retail investors find the Principles useful? We welcome views on whether there are any particular aspects of the Principles that individual or retail investors would like further guidance on.
 - Should certain types of organisations be required to disclose whether or not they comply with the Principles and, if not, why they do not do so (ie, on a “comply-or-explain” basis)? For example, should the following be required to comply with the Principles on a “comply-or-explain” basis: (i) institutions authorized and regulated by the HKMA, (ii) approved trustees of MPF schemes, trustees of ORSO²⁰ schemes and trustees of pooled investment schemes approved for MPF purposes, (iii) insurers, insurance intermediaries and MPF intermediaries authorized and/or regulated by the OCI and (iv) entities licensed and regulated by the SFC?

²⁰ Occupational Retirement Schemes Ordinance

- Should entities such as voting services agencies and investment consultants be encouraged to commit to the spirit of the Principles, and if so how this should be facilitated?
- As all Hong Kong institutional investors will be encouraged to apply the Principles, are there any hurdles or other reasons that would prevent or discourage them from doing so?
- The Principles are aimed at investors of Hong Kong listed companies and are not intended to apply extraterritorially. Should investors based in Hong Kong be encouraged to abide by the codes or principles of other jurisdictions relating to their foreign investment?
- How can foreign investors in Hong Kong listed companies be encouraged to commit to the spirit of the Principles in respect of their holdings in Hong Kong companies? Do foreign investors foresee any barriers or difficulties in doing so?
- Do investors who operate on a cross-border basis envisage any potential conflicts which might arise between requirements or codes in place in other countries and the proposed Principles?
- What are institutional investors' current practices on disclosing information on their engagement policy, including any national or international standards they follow?
- We would also welcome views on the policy objectives against which the SFC should judge its approach to the Principles. The proposed objectives are to:
 - promote a sense of ownership amongst institutional investors in order to encourage Hong Kong and foreign shareholders to voluntarily apply and report against the Principles;
 - ensure that engagement is closely linked to the investment process;
 - contribute towards improved communication between shareholders and the boards of the companies in which they invest;
 - secure sufficient disclosure to enable institutional shareholders' prospective clients to assess how those managers are acting in relation to the Principles so that this can be taken into account when awarding and monitoring management mandates.
- Should compliance with the Principles be monitored? If so, which regulator should be responsible for doing so? For example, should it be the SFC or should it be the primary regulator in each respective industry?

Other issues

65. In addition to clarifying the position of responsible ownership, there are other questions which merit review concerning the extent to which any set of principles governing share ownership should be codified and brought within the ambit of regulation in Hong Kong. Following on from the responses and considerations of this consultation process, we intend to address these and other issues as part of a separate consultation paper.
66. We are of the view that eventually for Hong Kong institutional investors of listed companies there will be an introduction of a “comply-or-explain” code similar to the practices in other developed financial markets. We believe a code setting out good practices of shareholder engagement for institutional investors will assist in encouraging such shareholders to act responsibly not only towards their investee companies but to support the health and stability of the Hong Kong financial market as a whole.

Principles of Responsible Ownership

Introduction

1. The Principles of Responsible Ownership (**Principles**) are a set of principles and guidance to assist investors to determine how best to meet their ownership responsibilities.
2. The Principles are non-binding and are voluntary in that they operate on a “comply-or-explain” basis. Investors are encouraged to “sign up” to the Principles by disclosing that they have done so, and then they either comply with the Principles in their entirety and disclose how they have done so, or explain why some or all of the Principles do not, or cannot, apply to them.
3. The Principles are relevant to individual and retail investors in that they provide guidance on share ownership engagement. Certain elements of the Principles, such as disclosure, reporting and accounting to stakeholders, will not expressly apply to individuals.
4. Ownership of shares brings with it important responsibilities, particularly the right to speak and vote on matters that can influence the way in which a business is conducted. Owners of company equity should not blindly delegate these responsibilities. Even when they employ agents, directly or indirectly, to act on their behalf, owners should ensure that their ownership responsibilities are appropriately discharged by those agents.
5. Investors may choose to appoint external service providers to help them perform some of their shareholder engagement activities but they cannot delegate their responsibilities as shareholders to the service providers. In particular, investors remain responsible for ensuring those activities are carried out in a manner consistent with their own policies.

The Principles of Responsible Ownership

6. To discharge their ownership responsibilities investors should engage with the companies in which they invest to promote the long-term success of these companies; investors should:
 - (a) establish and report to their stakeholders their policies for discharging their ownership responsibilities;
 - (b) monitor and engage with their investee companies;
 - (c) establish clear policies on when to escalate their engagement activities;
 - (d) have clear policies on voting;
 - (e) be willing to act collectively with other investors when appropriate;
 - (f) report to their stakeholders on how they have discharged their ownership responsibilities; and

- (g) when investing on behalf of clients, have policies on managing conflicts of interests.

Principle 1

Investors should establish and report to their stakeholders their policies for discharging their ownership responsibilities

- 7. Investors should establish policies on how they will discharge the ownership responsibilities described in Principles 2 to 7. In determining its policies an investor should consider what policies best reflect its role and the scope of its activities taking into account the costs of implementing a policy. It may be appropriate for an investor to have a nuanced policy that applies different policies to its investments depending on factors such as their size, nature and location.

Stakeholders

- 8. Where a company or entity invests its own funds, its stakeholders will include the board of directors or equivalent body. Depending on the size and relevance of the overall holdings to the entity, stakeholders may include shareholders. In cases where the entity is accountable to the public, stakeholders may also include the public generally.
- 9. Where an investor manages clients' funds, stakeholders will include such clients. Insurance companies that issue investment-linked assurance schemes, retirement funds and investors who accept funds from third parties for investment fall into this category of investors, whether or not they have direct responsibility for investment decisions or appoint third party asset managers to manage their investments.
- 10. An investor's stakeholders will include the beneficiaries of the funds received from the investor's direct clients. Therefore where an asset manager is responsible for portfolios of funds on behalf of a retirement fund, an investment-linked assurance scheme or a unit trust holder, the asset manager's stakeholders will include the members of such retirement scheme, the investors in such investment-linked assurance scheme and the holders of such unit trust.

Reporting

- 11. In deciding how best to report to stakeholders an investor should consider whether it is more efficient to do so generally by disclosure on a website rather than to stakeholders individually.
- 12. Where investment activities are outsourced, for instance where funds are placed with asset managers, the report on the engagement policy to stakeholders should disclose what steps are taken to ensure that the ownership responsibilities are discharged in accordance with the policy. Investors should disclose what minimum policy requirements are expected of those discharging ownership responsibilities. An investor should inform its stakeholders how and where its asset managers disclose their policies on discharging ownership responsibility or should include information provided by the asset manager in its reports.
- 13. It is generally sufficient for an investor to disclose its ownership responsibility policy when this is established and only update this disclosure when changes are made to the policy.

Principle 2

Investors should monitor and engage with their investee companies.

14. Investors' ownership responsibilities extend beyond voting. They include monitoring and engaging on matters such as strategy, performance, risk, capital structure and corporate governance. Engagement with investee companies is a process through which shareholders as owners share their views and concerns directly with their investee companies.
15. Investors should have clear policies on corporate governance principles and practices and on how they will engage with their investee companies if they have concerns about their investee companies' corporate governance practices. Investors should consider carefully any departures from the Corporate Governance Code¹ set out in the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (**Listing Rules**).
16. Investors should encourage their investee companies to have policies on environmental, social and governance (**ESG**) issues and engage with investee companies on significant ESG issues that have the potential to impact on the companies' goodwill, reputation and performance.
17. When monitoring companies, investors should aim to:
 - (a) keep abreast of the company's performance;
 - (b) keep abreast of developments, both internal and external to the company, that drive the company's value and risks;
 - (c) satisfy themselves that the company's leadership is effective;
 - (d) satisfy themselves as to the corporate governance structures and practices adopted by the company;
 - (e) consider the quality of the company's reporting; and
 - (f) attend shareholder meetings of companies where appropriate and practicable.
18. Engagement mechanisms include:
 - (a) direct private communication with the companies such as writing letters to and dialogue with management;
 - (b) more public strategies such as using the media and proposing shareholder resolutions at general meetings;
 - (c) exercising their rights to speak and vote at general meetings;
 - (d) selling their shares; and
 - (e) in extreme cases, litigation.

¹ Or from other similar codes against which a company discloses its corporate governance practices.

19. Where the shareholder engagement activities are outsourced, investors should ensure these activities are compatible with the investors' engagement policies and take steps to ensure that these activities are carried out in a manner consistent with their shareholder engagement policies.
20. Engagement should not include actively seeking inside information². Investors should manage their communication with their investee companies or potential investee companies so that they do not obtain inside information that has not been disclosed to the market in accordance with Part XIVA of the Securities and Futures Ordinance (**SFO**) or the Listing Rules.
21. Where an investor considers that material information has been provided during discussions with a company, it must implement appropriate mechanisms to ensure that the information is strictly safeguarded and insulated from any other activity. This may include a temporary ban on trading in the company's shares or implementing 'Chinese Walls' until appropriate disclosures have been made to the market. The investor should consider whether it is necessary to warn the company that it may have breached the inside information provisions in the SFO.

Principle 3

Investors should consider and establish clear policies on when they will escalate their engagement activities

22. Investors' engagement policies should set out the circumstances in which they will actively engage and regularly assess the outcomes of doing so. Shareholder engagement should be considered regardless of whether an active or passive investment policy is followed. Instances when investors may want to engage include, but are not limited to, when they have concerns about the company's strategy, performance, governance, remuneration or approach to risks, including those that may arise from social and environmental matters.
23. Initial discussions should take place on a confidential basis. However, if companies do not respond constructively when investors engage them, then investors should consider whether to escalate their action, for example, by:
 - (a) holding additional meetings with management specifically to discuss concerns;
 - (b) expressing concerns through the company's advisers;
 - (c) meeting with the chairman or other board members;
 - (d) collaborating with other investors on particular issues;
 - (e) making a public statement in advance of general meetings;
 - (f) submitting resolutions and speaking at general meetings; and
 - (g) requisitioning a general meeting and, in some cases, proposing to change board membership.

² As defined in Part XIVA of the Securities and Futures Ordinance.

Principle 4

Investors should have clear policies on voting guidance

24. Investors should seek to vote all shares held. They should not automatically support the board.
25. Unless acting under a client-specific mandate an institutional investor should vote all shares it holds in a company. Where shares are held for different purposes it may be appropriate for an investor to vote some shares in favour of a resolution and some against. In these cases it should vote all shares and not just a net number.
26. If they are unable to achieve an appropriate outcome through their engagement with an investee company, an investor should abstain or vote against relevant resolutions at shareholder meetings.
27. Where investors use proxy voting or other voting advisory services, they should consider whether the advice reflects their assessments of the issues before voting their shares.

Principle 5

Investors should be willing to act collectively with other investors where appropriate

28. At times collaboration with other investors may be the most effective manner in which to engage.
29. Collective engagement may be most appropriate at times of significant corporate or wider economic stress, or when the risks posed threaten to destroy significant value.
30. Investors should indicate their readiness to work with other investors through formal and informal groups where this is necessary to achieve their objectives and to ensure companies are made aware of their concerns. Investors should also indicate the kinds of circumstances in which they would consider participating in collective engagement.

Principle 6

Investors should report to their stakeholders on how they have discharged their ownership responsibilities

31. At least annually investors should report to stakeholders on how they have discharged their ownership responsibilities. An investor may choose to give details of its voting on a company by company basis or to report on the extent to which it complies with its stated policy on voting with details of specific cases where significant departures from its stated policy were appropriate.
32. Where investment activities are outsourced, for instance where funds are placed with asset managers, the report on the engagement activities to stakeholders should disclose what steps have been taken to ensure that the ownership responsibilities are discharged in accordance with the policy. An investor should inform its stakeholders how and where its asset managers disclose their periodic reports on discharging ownership responsibilities or should include information provided by the asset managers in its report.

Principle 7

When investing on behalf of clients, investors should have policies on managing conflicts of interests

33. An investor investing funds on behalf of clients has a duty to act in the interest of its clients and/or the beneficiaries of the funds provided by its clients.
34. Conflicts of interests will inevitably arise from time to time, including votes that directly or indirectly impact the interest of the investor's group, and/or those of a client or the beneficiaries of the funds provided by a client.
35. Institutional investors³ are obliged to have a policy for identifying and managing conflicts of interests in order to ensure that interests of clients, or where applicable the beneficiaries of those funds provided by its clients, are put first. The policy should address how matters are handled when the interests of clients diverge from those of the beneficiaries of the funds provided by its clients. They must manage material conflicts of interests that may affect the exercise of key ownership rights regarding their investments.

³ General Principle 6 of the Code of Conduct for Persons Licensed or Registered with the Securities and Futures Commission requires that when conflicts of interests arise a licensed or registered person should ensure that its clients are fairly treated.

Summary of the United Kingdom, Australia and Japan shareholder engagement models

	United Kingdom	Australia	Japan
Organisation	Financial Reporting Council	Financial Services Council (FSC)	Financial Services Agency
Code/Guide	UK Stewardship Code ¹	Blue Book – Corporate Governance: A Guide for Fund Managers and Corporations ²	Principles for Responsible Institutional Investors «Japan’s Stewardship Code» ³
Application	Institutional investors (asset owners, asset managers and service provider)	FSC members (fund managers)	Institutional investors (investment managers, asset owners and proxy advisors)
Status	Comply or explain ⁴	Voluntary but strongly encouraged	Comply or explain
Draft SFC Principles:			
1. Establish and report to their stakeholders their policies for discharging their ownership responsibilities	Yes	Yes	Yes
2. Monitor and engage with their investee companies	Yes	Yes	Yes

¹ <https://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx>

² http://www.fsc.org.au/downloads/file/IFSAGuidanceNotes/2GN_2_Corporate_Governance_2009.pdf

³ <http://www.fsa.go.jp/en/refer/councils/stewardship/20140407/01.pdf>

⁴ Financial Conduct Authority Conduct of Business Rule 2.2.3 requires authorized asset managers to disclose the nature of its commitment to the UK Stewardship Code; or where it does not commit to the UK Stewardship Code, its alternative investment strategy. See: <http://fshandbook.info/FS/html/handbook/COBS/2/2>.

	United Kingdom	Australia	Japan
3. Establish clear policies on when to escalate their engagement activities	Yes	Yes	Yes
4. Have clear policies on voting	Yes	Yes	Yes
5. Be willing to act collectively with other investors when appropriate	Yes	No	No ⁵
6. Report to their stakeholders on how they have discharged their ownership responsibilities	Yes	Yes	Yes
7. When investing on behalf of clients, have policies on managing conflicts of interests	Yes	No ⁶	Yes

⁵ However, Guidance 7-3 of Principle 7 stated that “Exchanging views with other investors and having a forum for the purpose may help institutional investors conduct better engagement with investee companies and make better judgements.”

⁶ FSC Standard No 1: Code of Ethics & Code of Conduct paragraph 3.5 requires FSC members to have in place adequate arrangements for the management of conflicts that may arise as part of their financial services businesses. See: [http://www.fsc.org.au/downloads/file/FSCStandards/1S_CodeofEthicsandConduct\(updated4May2012\).pdf](http://www.fsc.org.au/downloads/file/FSCStandards/1S_CodeofEthicsandConduct(updated4May2012).pdf)



Personal information collection statement

1. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes –
 - (a) to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) in performing its statutory functions under the relevant provisions;
 - (c) for research and statistical purposes;
 - (d) for other purposes permitted by law.

Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submissions on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

² The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.