

THE  
HONG KONG  
ASSOCIATION  
OF  
BANKS  
香港銀行公會

Room 525, 5/F., Prince's Building, Central, Hong Kong  
Telephone: 2521 1160, 2521 1169 Facsimile: 2868 5035  
Email: [info@hkab.org.hk](mailto:info@hkab.org.hk) Web: [www.hkab.org.hk](http://www.hkab.org.hk)

香港中環太子大廈5樓525室  
電話：2521 1160, 2521 1169 圖文傳真：2868 5035  
電郵：info@hkab.org.hk 網址：www.hkab.org.hk

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By email: [baselcommittee@bis.org](mailto:baselcommittee@bis.org)

Basel Committee on Banking Supervision  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland

Dear Sirs

**Consultation on revised corporate governance principles for banks**

We write to provide our members' comments on the consultative document ("Consultative Document") "Guidelines – Corporate Governance Principles for Banks" published by the Basel Committee on Banking Supervision ("BCBS") in October 2014.

We are supportive of the overall general principles as set out in the Consultative Document. Enclosed please find our specific comments on the Consultative Document for the consideration of the BCBS.

We hope you would find our comments useful.

Yours faithfully



Eva Wong  
Secretary

Enc.

cc. Ms Karen Kemp, Executive Director (Banking Policy), Hong Kong Monetary Authority

*Chairman* Bank of China (Hong Kong) Ltd  
*Vice Chairmen* The Hongkong and Shanghai Banking Corporation Ltd  
Standard Chartered Bank (Hong Kong) Ltd  
*Secretary* Eva Wong Mei Seong

主席 中國銀行（香港）有限公司  
副主席 香港上海匯豐銀行有限公司  
渣打銀行（香港）有限公司  
秘書 黃美嫦

**The Hong Kong Association of Banks (HKAB)**

**Specific comments on BCBS consultative document “Guidelines – Corporate Governance Principles for Banks”**

<b><u>Principle 1: Board’s overall responsibilities</u></b>	
<u>Paragraph number referencing the consultation document</u>	<u>HKAB comments</u>
Paragraph 23 (1 <sup>st</sup> bullet point)	Regarding the responsibility of the board to “establish” the bank’s business objectives and strategy, we suggest adding the wording “endorse” or “approve” given that the objectives and strategy can be prepared by executive teams and the Chief Executive Officer for the board to consider, adopt or approve.
Paragraph 23 (7 <sup>th</sup> bullet point)	<p>Whilst the board should approve the selection of Chief Executive Officer and oversee his/her performance, we consider that not every single senior management member’s selection and performance would be subject to the board’s direct approval or oversight. We suggest that the banks could have their own discretion by deciding which senior management’s position(s) should be subject to the board’s approval.</p> <p>On oversight of the performance, “senior management” should be interpreted as the management team as a whole and the board could assess their performance by monitoring whether their collective priorities have been achieved throughout the year.</p>
Paragraph 40	<p>For flexibility, suggest revising the last sentence as follows:</p> <p><i>The function should also have sufficient authority, stature, independence, resources and access to the board <b><u>or its</u></b></i></p>

	<b><u>delegate.</u></b>
Paragraph 43	For flexibility, suggest revisions as follows: <i>The board <b><u>or its delegate</u></b> should select the CEO and may select other key members of senior management, as well as the heads of the control functions.</i>
<b><u>Principle 2: Board qualification and composition</u></b>	
Paragraph 47 (3 <sup>rd</sup> bullet)	We seek the BCBS's clarification that whilst a bank could consider appointing an independent expert as a director, another alternative is for the bank to hire the independent expert as advisor to the board (not necessarily being appointed as a director). A director owes fiduciary duties to the company but an advisor usually owes a duty of care, diligence and competency to the hiring body.
<b><u>Principle 3: Board's own structure and practices</u></b>	
Paragraph 57	Periodical assessments on the performance of the board as a whole, its committee and individual board members are pivotal for banks to uphold good corporate governance. Since assessment on the suitability of individual board members will take into account his/her performance on the board, we believe the BCBS's guidance on concrete assessment criteria and specific guidelines in determining the suitability of a board member will be pragmatic for banks with different size, structure and nature of business.
Paragraph 57 (4 <sup>th</sup> bullet point)	We assume that only the information that is presented to the board will be shared with the regulators and that the regulators would not seek to obtain copies of each individual's questionnaire or feedback form/interview notes which is intended solely for the Chairman of the Board (or facilitator). Any suggestion that individual's questionnaire or feedback form/interview notes could be viewed by regulators as part of the governance supervisory process could

	<p>have the unintended consequence that directors would be less likely to be “open and honest” in their comments and discussions.</p>
Paragraph 60	<p>If the board chairman is a non-executive director, we cannot see why serving as the chair of any other board committee will have any adverse impact on the bank’s checks and balances. We believe that a committee chair should be selected based on whether he/she has the requisite skills, ability and expertise to chair that committee. We also believe banks should have the flexibility to have an Executive Chairman and the existence of Independent Non-executive Directors would provide the necessary checks and balance.</p> <p>Segregation of duties and appropriate checks and balances are essential ways to avoid undue concentration of power within organisations. Where local rules and regulations impose specific requirements on the segregation of duties of banks, including requirements on chairmanships of the board and board committees, such rules and regulations should also be considered. For example, code provision A.5.2 of Appendix 14 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Hong Kong Listing Rules”) allows a listed company (including listed banks) to “establish a nomination committee which is chaired by the chairman of the board or an independent non-executive director ...”. We believe an appropriate balance between local rules or regulations and the overall corporate governance principles advocated by the BCBS needs to be maintained.</p>
Paragraph 63	<p>This requirement may be too cumbersome for some banks (e.g. small-sized banks) since there may not be sufficient number of directors who have the relevant expertise to chair or act as members of certain board committees (e.g. Audit Committee and Risk Management Committee).</p>

	<p>Moreover, local rules and regulations lay down requirements on the tenure of a director which banks need to take into consideration in determining the term of office of the board member to serve the board committees. For example, code provision A.4.3 of Hong Kong Listing Rules sets out that further appointment of an independent non-executive director who has served more than 9 years would be subject to separate resolution to be approved by shareholders. Thus, the appointment of directors to board committee has to observe the prescribed requirement to avoid non-alignment of rules or regulations. Such consideration might affect the effectiveness on rotation of members of board committees.</p>
Paragraph 66	<p>The BCBS should note that for some executive management committees e.g. Executive Committee, Asset and Liability Committee, the chair is usually the Chief Executive Officer or Chief Financial Officer of the bank. We suggest the BCBS to accommodate such arrangements. Also, the BCBS principles need to take into account the requirements of the local rules or regulations as explained under comments on paragraph 63 above.</p>
Paragraph 68 (1 <sup>st</sup> bullet point)	<p>It is suggested that this point is clarified to read "the Audit Committee is responsible for oversight of the financial reporting process", as the Finance function and ultimately the CFO are directly responsible for the reporting process rather than the Audit Committee.</p>
Paragraph 70	<p>The BCBS principles need to take into account of the local rules or regulations to avoid non-alignment.</p>
Paragraph 70 (2 <sup>nd</sup> bullet point)	<p>The audit committee and risk committee can be a combined set up, especially with the boards of a smaller size. However, if they are separate committees, the Audit Committee should review the effectiveness of the internal control systems relating to financial reporting; while the Risk Committee should review the effectiveness of the rest</p>

	internal control systems.
Paragraph 70 (7 <sup>th</sup> bullet point)	Instead of requesting the board's risk committee to review all the bank's risk policies, we suggest only the key risk policies that require the board's oversight would need to be reviewed by the board risk committee on an annual basis. For the day to day risk management policies, the executive risk committee can review and approve.
Paragraph 74	Effective communication amongst members of the board and board committees would enhance/facilitate oversight of board governance. Periodical meeting between board and/or board committees is one of the ways to promote information exchange within board members. Alternatively, other means of communication channels such as reporting by board committees on major issues during board meetings and other informal information exchange channels could also enable the discharge of respective duties of risk governance as well as the check and balance by the directors.
Paragraph 75	We suggest the BCBS to consider that a bank which is part of a larger banking group could also rely on the group's remuneration committee as long as the local board has set up measures to enable it to exercise competent and independent judgment on compensation policies and practices.
Paragraph 77	It seems that there are board committees and specialised committees. If there are differences between these two types of committees, it should be elaborated.
Paragraph 82	To promote corporate governance, the board should have a formal written policy on conflict of interest. It would be fine to have certain illustrative examples to be included in such conflicts of interest policy which may enable board members to have a better understanding on situations where conflict of interests might arise. However, those

	examples should serve as illustrations on possible conflict of interests which are not an exclusive list for directors' sole reliance.
Paragraph 83	<p>“Supervisor”, though not defined in the Consultative Document, is a management structure of European companies (please also see our comments on Principle 13). If this is in the form of a second tier board, the proposed disclosure appears to be reasonable.</p> <p>However, we have reservation regarding the requirement for banks to disclose “potential” material conflicts of interest to the public since it may have a negative impact on the bank’s reputation; disclosure of such information to the regulators would be more appropriate.</p>
<b><u>Principle 4: Senior management</u></b>	
Paragraph 92	Duties and functions of risk management, compliance and internal audit should have been clearly laid down and followed by respective departments/units. In carrying out management function, senior management will delegate and empower departments/units to discharge their roles and duties with due care and diligence. Appropriate reporting mechanism should be in place to facilitate an effective communication channels to the senior management and the board (if applicable).
Paragraph 92 (2 <sup>nd</sup> bullet point)	We agree that the internal audit function should be independent and the Head of Internal Audit has a direct reporting line to the Audit Committee. However, it may not be practicable for the risk management and compliance functions to be totally independent since it would be prudent and beneficial to the bank for senior management to be involved in the management of these functions.

<b><u>Principle 6: Risk management</u></b>	
Pages 22-23	The BCBS advocates the independence of the risk management function and suggests the Chief Risk Officer (CRO) to report directly to the board or the board risk management committee and the removal of the CRO should be disclosed to the public. We however, do not see much value of adding the disclosure of the identity and we think it may not be beneficial to the bank for the risk management function to be totally independent from senior management.
Paragraph 109	Under the corporate governance framework as well as local rules and regulations, appointments and compensation of directors and certain senior management members of a bank shall be considered and approved by the board or relevant board committees delegated with such duties (such as nomination committee and remuneration committee). Recommendation and approval on the appointment and compensation of CRO, being a member of the senior management, should follow existing governance framework adopted by banks with due consideration on the recommendations or comments from the risk committee.
<b><u>Principle 9: Compliance</u></b>	
Paragraph 136	It may not be beneficial to the bank for the compliance function to be totally independent from senior management. Besides, under section 72B of the Banking Ordinance in Hong Kong, the person in charge of the compliance function is regarded as a “Manager” of the bank and forms part of the management team. Please also refer to our comments on paragraph 92 above.

<b><u>Principle 10: Internal audit</u></b>	
Paragraph 143 (1 <sup>st</sup> bullet point)	Such requirement may be too restrictive and not practicable. We think it makes sense for the internal auditors to discuss with management to clarify any misunderstanding in their findings before they issue the final report to the board/audit committee.
<b><u>Principle 11: Compensation</u></b>	
Paragraph 146	For flexibility, suggest revisions as follows: <i>The board <b><u>or its delegate</u></b> should approve the compensation of senior executives, including the CEO, CRO and the head of internal audit, and should oversee management’s development and operation of compensation policies, systems and related control processes.</i>
Paragraph 151	With regard to the implementation of “clawback” or vested compensation, it would need to be reviewed against the local employment legislation to ensure this can be legally and technically enforced locally.  Also, further guidance on how to ascertain whether a required period be considered as sufficiently long for deferred payment arrangement would be advisable.
<b><u>Principle 12: Disclosure and transparency</u></b>	
Paragraph 154	Whilst we support the minimum disclosure of useful information, disclosure should be restricted to the selection process of the board members <u>as a whole</u> and on the overall board’s knowledge, skills and expertise instead of on an individual director basis. Likewise, the disclosure of a <u>generic board diversity policy</u> should be treated as fulfilling

	the minimum requirements.
<b><u>Principle 13: The role of supervisors</u></b>	
Paragraph 162	<p>We seek the BCBS’s clarification on the definition of “Supervisor” which is not defined in the Consultative Document (please also see our comments on paragraph 83).</p> <p>If “supervisor” means regulator in the general sense for the purposes of this consultation, we consider that it is important for the BCBS to clarify that the board has primarily accountability for ensuring that, as a collective body, it has the appropriate skills, knowledge and experience to perform its role effectively. In relation to banks in Hong Kong, a process already exists whereby the Hong Kong Monetary Authority assesses and approves director appointments. The increasingly active role of regulators in the assessment might create danger that, inadvertently, responsibility for a board appointment decision could shift from the company to the regulator.</p>