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**HKEX CONSULTATION
PAPER ON THE REVIEW OF
CORPORATE GOVERNANCE
CODE AND RELATED
LISTING RULES**



OVERVIEW

BACKGROUND

On 16 April 2021, the Hong Kong Stock Exchange published a consultation paper on the Review of Corporate Governance Code and Related Listing Rules

MAIN GOALS

- highlight the importance of corporate culture in alignment with the listed company's vision and strategy to deliver long-term sustainable performance



OVERVIEW

MAIN GOALS

- enhance board independence, promote board refreshment and succession planning, and strengthen the role of the nomination committee
- promote board diversity
- highlight the importance of effective communication with shareholders
- elaborate on the linkage between corporate governance and environmental, social and governance
- improve the flow and readability of the Corporate Governance Code



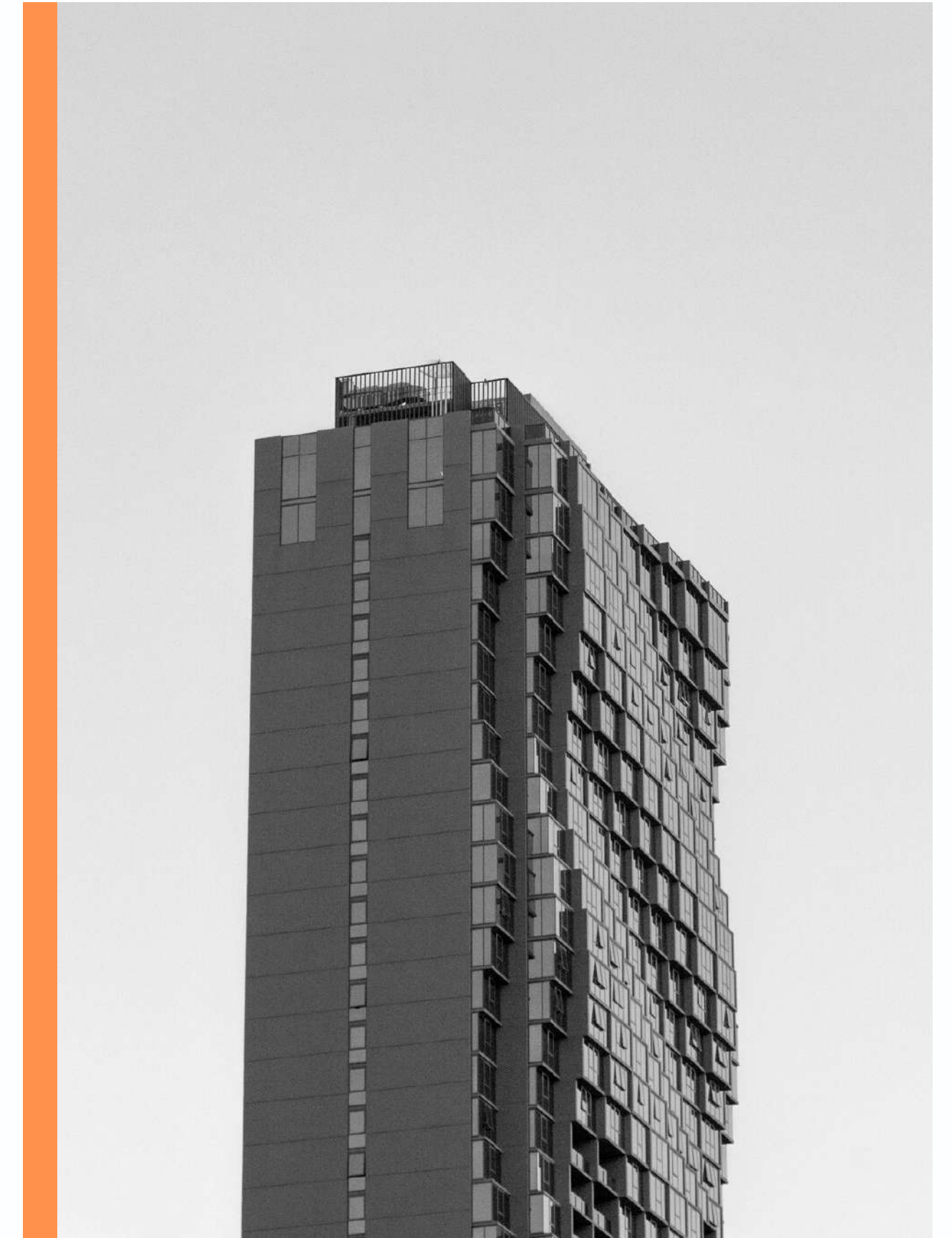
OVERVIEW

- HKEX is committed to reviewing the corporate governance framework to ensure it remains fit for purpose
- improve the quality of governance
- maintain investor confidence
- HKEX has amended the Corporate Governance Code once every few years to take into account market developments



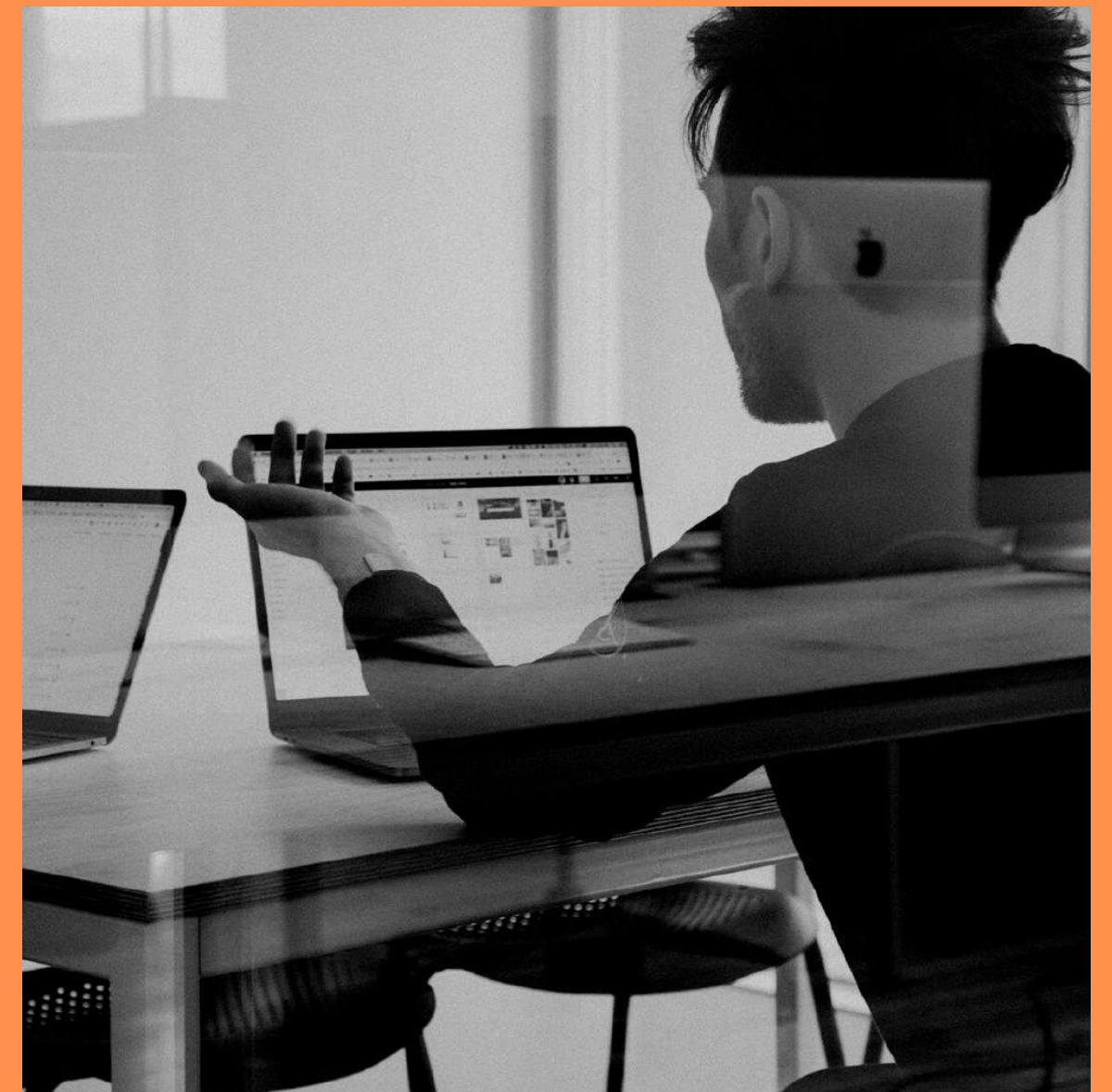
PROPOSED CHANGES

- CORPORATE CULTURE OF HONG KONG-LISTED COMPANIES
- BOARD DIVERSITY
- COMMUNICATION WITH SHAREHOLDERS
- ESG-RELATED AMENDMENTS
- BOARD INDEPENDENCE
- NOMINATION COMMITTEE
- OTHER ENHANCEMENTS REGARDING CG
- STRUCTURE OF CG CODE



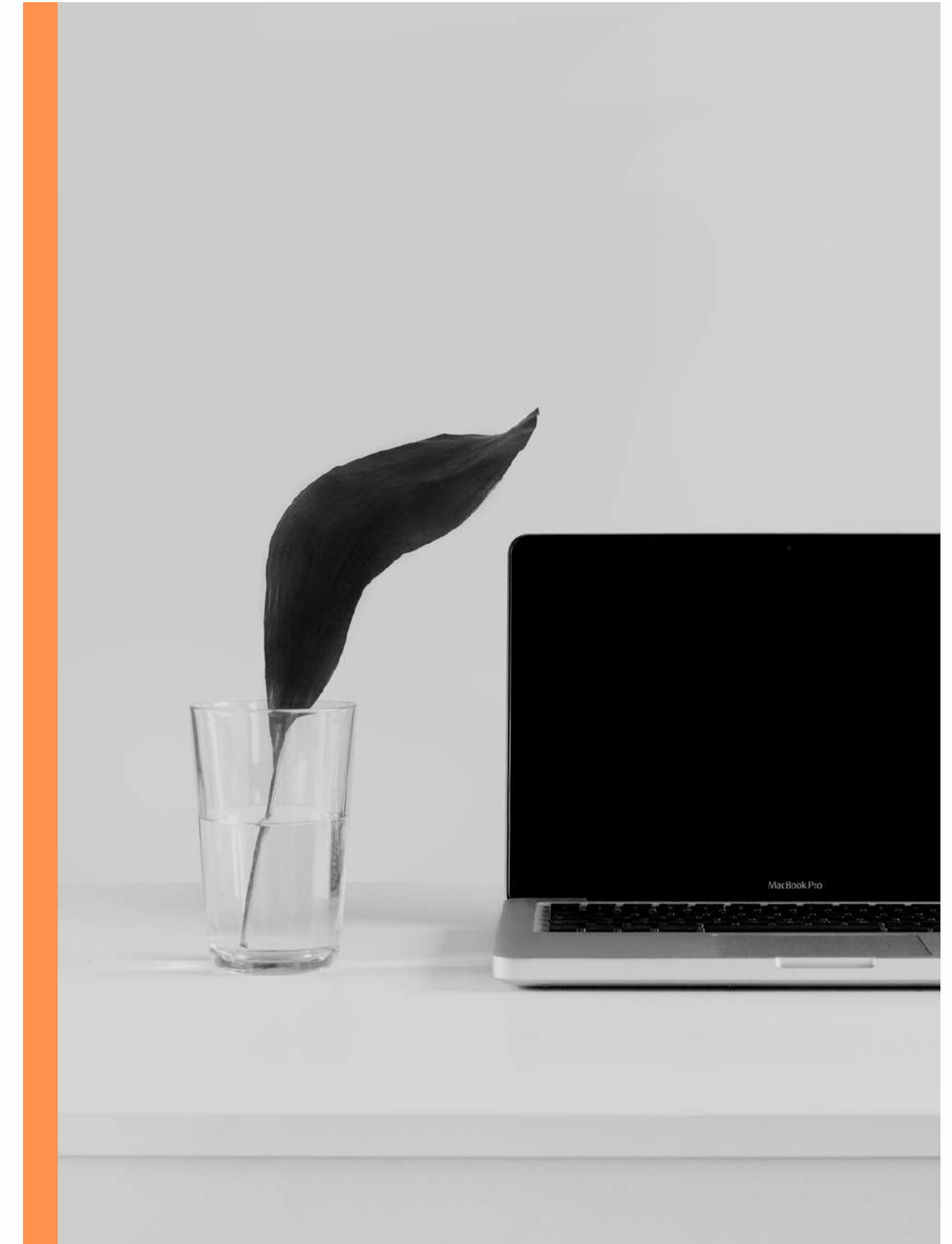
I. CULTURE OF HKEX COMPANIES

- require the board to align the company's culture with its purpose, value and strategy as established by the board
- HKEX will provide guidance
- amendments are in line with global trends and other jurisdictions



I. CULTURE OF HKEX COMPANIES

- 01** board should set the tone from the top and be responsible for setting the company's culture and ensuring it is embedded at all levels
- 02** board should conduct periodic reviews of the culture & employees should be able to perform their roles and be held accountable
- 03** company should facilitate effective communication
- 04** company can use financial and non-financial incentives to encourage and maintain companies' desired culture



I. CULTURE OF HKEX COMPANIES

■ HKEX ENCOURAGES LISTED COMPANIES TO DISCLOSE INFORMATION ABOUT THEIR CULTURE

- vision, value and strategy and the culture
- indicators of success
- measures used for assessing and monitoring culture
- measures to ensure the desired culture is communicated to all employees
- information on the forums available for sharing ideas on misconduct and how it is dealt with
- incentives which support the desired culture



I. CULTURE OF HKEX COMPANIES

ANTI-CORRUPTION AND WHISTLEBLOWING POLICIES



Current position

HKEX listed companies are required on a “*comply or explain*” basis to make anti-corruption related disclosures under the ESG Guide, including in relation to their anti-corruption policies, whistleblowing procedures, and compliance with relevant laws and regulations



Consultation paper's proposal

HKEX is proposing to introduce a new code provision requiring companies to establish an anticorruption policy and to upgrade an existing recommended best practice requiring companies to establish a whistleblowing policy to a code provision under the Corporate Governance Code

I. CULTURE OF HKEX COMPANIES

- HKEX will provide further guidance as to the factors that need to be taken into consideration when formulating anti-corruption and whistleblowing policies
- HKEX will include references to the SFC's guidance on anti-money laundering and counter-financing of terrorism and the ICAC's guidance materials on anti-corruption



II. INDEPENDENCE OF DIRECTORS OF HKEX COMPANIES

BOARD INDEPENDENCE



January 2019 amendments

- extending cooling off periods
- including immediate family members in the independence assessment
- introducing a recommended best practice that companies should disclose an INED's cross-directorships or significant links with other directors

Consultation paper's proposal



- HKEX is proposing to introduce a new code provision requiring companies to adopt and disclose a policy to ensure that independent views and input are available to the board
- the code provision will also require company boards to conduct an annual review of the implementation and effectiveness of the policy

II. INDEPENDENCE OF DIRECTORS OF HKEX COMPANIES

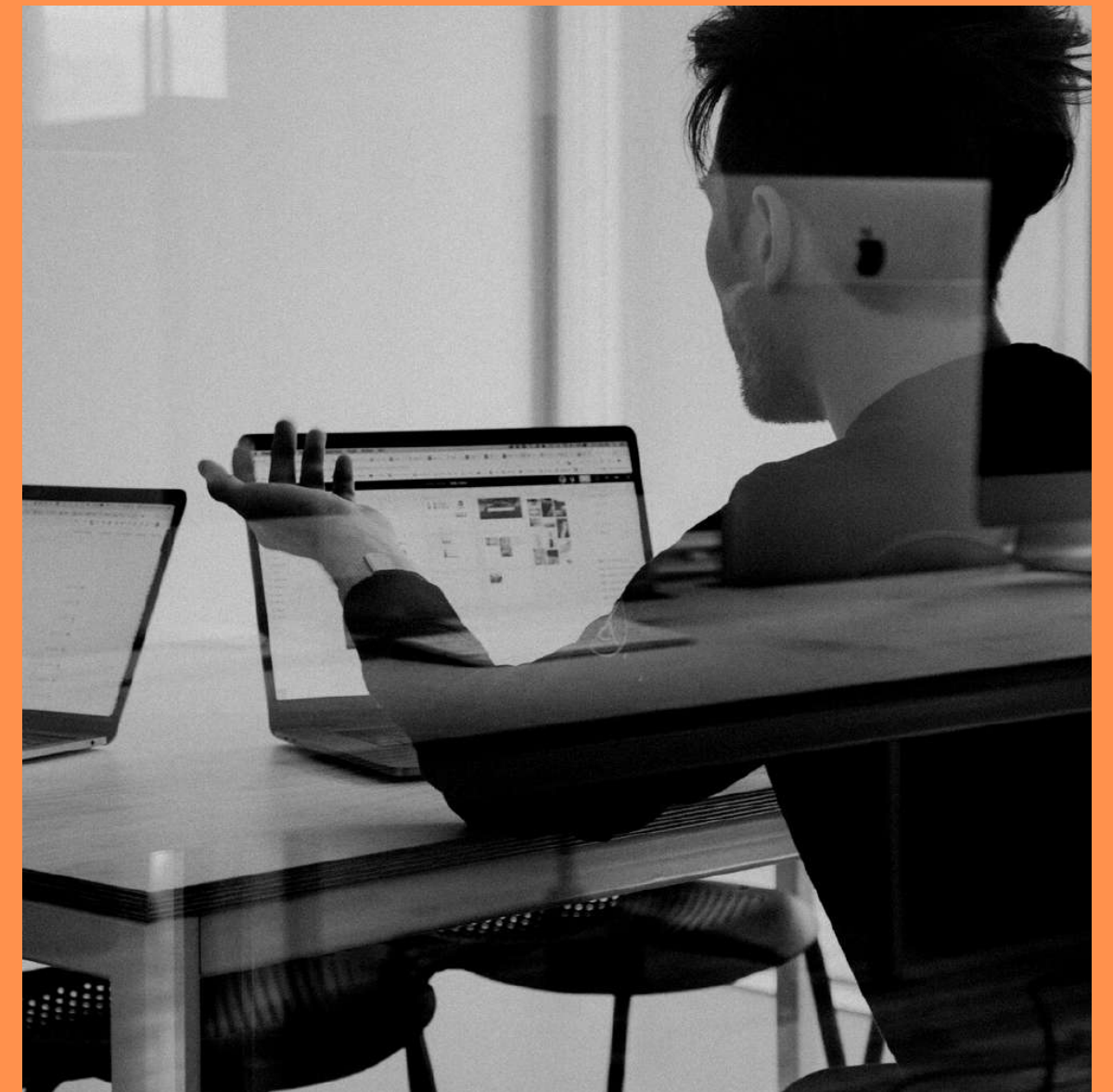
HKEX proposes to strengthen listed companies' board refreshment and succession planning:

17.8% of the independent non-executive directors of listed companies were Long Serving INEDs

There were 153 companies where every INED on the board was a Long Serving INED

II. INDEPENDENCE OF DIRECTORS OF HKEX COMPANIES

- over dependence and complacency
- Periodic board refreshment can bring fresh perspectives which improve board effectiveness and enhance accountability
- currently, a further appointment of an INED who has already served nine years or more must be passed by a separate shareholders' resolution



II. INDEPENDENCE OF DIRECTORS OF HKEX COMPANIES

- revising the existing code provision on the re-appointment of Long Serving INEDs
- requiring additional disclosure on why the Long Serving INED is independent and should be elected and factors considered in reaching this decision

II. INDEPENDENCE OF DIRECTORS OF HKEX COMPANIES

- • if all the INEDs on a listed company's board are Long Serving INEDs, a proposed new code provision would require the listed company to:
 - appoint a new INED
 - disclose the length of the tenure of the Long Serving INEDs on the board on a named basis
- HKEX proposes to introduce a new recommended best practice that companies generally should **not** grant equity-based remuneration with performance-related elements to INEDs to avoid conflict of interest



III. BOARD DIVERSITY REQUIREMENT FOR HKEX-LISTED COMPANIES

Current Corporate Governance Code requires listed company boards to have a balance of skills, experience and diversity of perspectives.

However the definition of diversity is broadly defined:

“Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience.”



III. BOARD DIVERSITY REQUIREMENT FOR HKEX-LISTED COMPANIES



Since 2019

- HKEX has required listing applicants to disclose their board diversity policy in the listing applicant's prospectus
- listing applicants with a single gender board are required to make additional disclosures



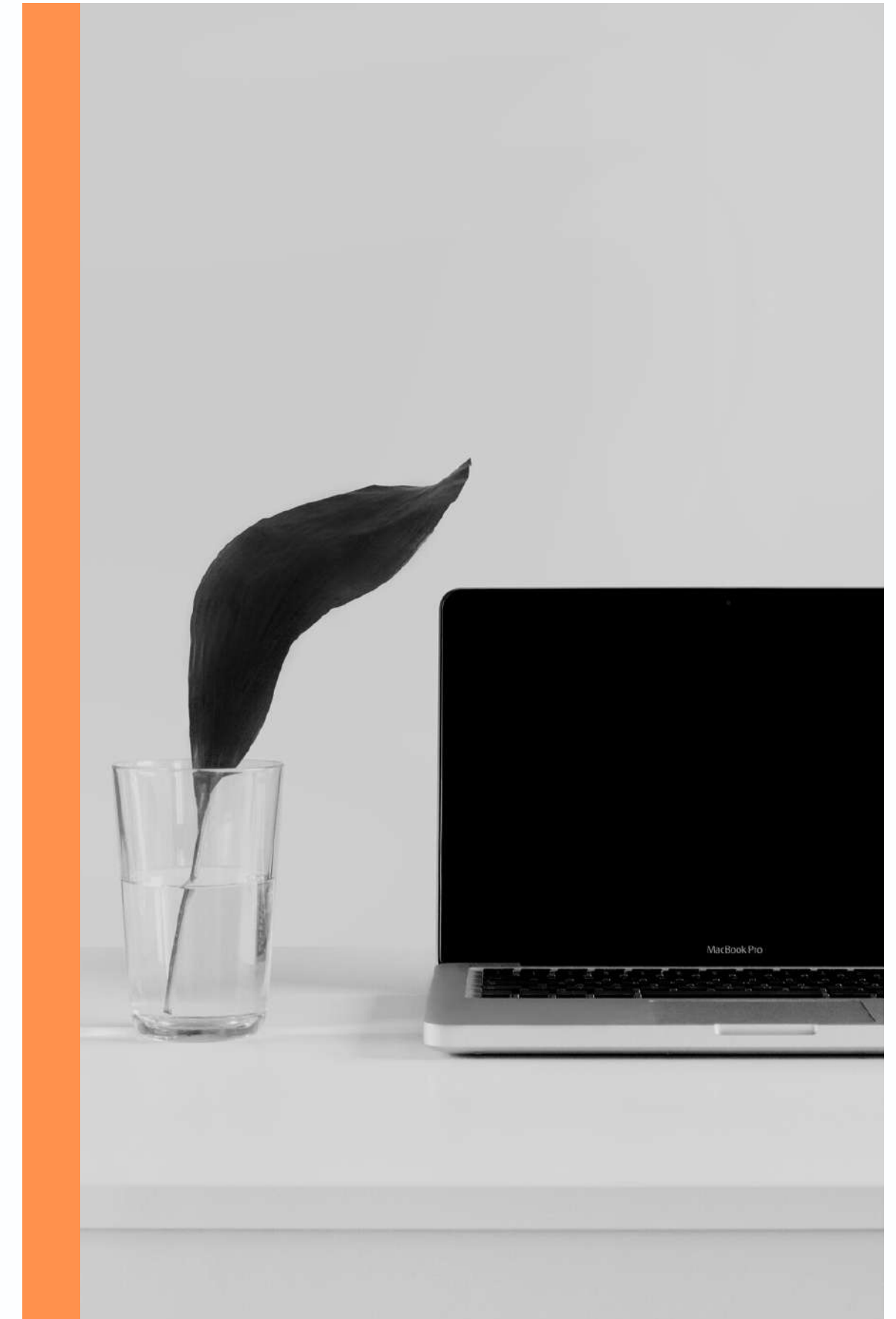
As of December 2020

- women held only 12.7% of Hong Kong listed companies' directorships & around 32.1% of listed companies had no female directors on their boards, and a further 37.4% had just one female director

III. BOARD DIVERSITY REQUIREMENT FOR HKEX-LISTED COMPANIES

HKEX IS PROPOSING TO:

- 01** expressly highlight that diversity is not considered to be achieved by a single gender board in the Listing Rules
- 02** introduce mandatory disclosure requirements
- 03** require companies to disclose the measures adopted to develop a pipeline of potential successors to the board and senior management to achieve gender diversity



III. BOARD DIVERSITY REQUIREMENT FOR HKEX- LISTED COMPANIES

- three year transition period
- IPO applicants should not have single gender boards
- display of board diversity related information on the HKEX website
- annual review of the board diversity policy



III. BOARD DIVERSITY REQUIREMENT FOR HKEX-LISTED COMPANIES

The HKEX's proposals aimed at promoting gender diversity in the boardroom are in line with trends in other major financial centres:

Australia:

- the “30% Club” which promotes greater representation for women on the board of ASX 200 and ASX 300 companies

the UK:

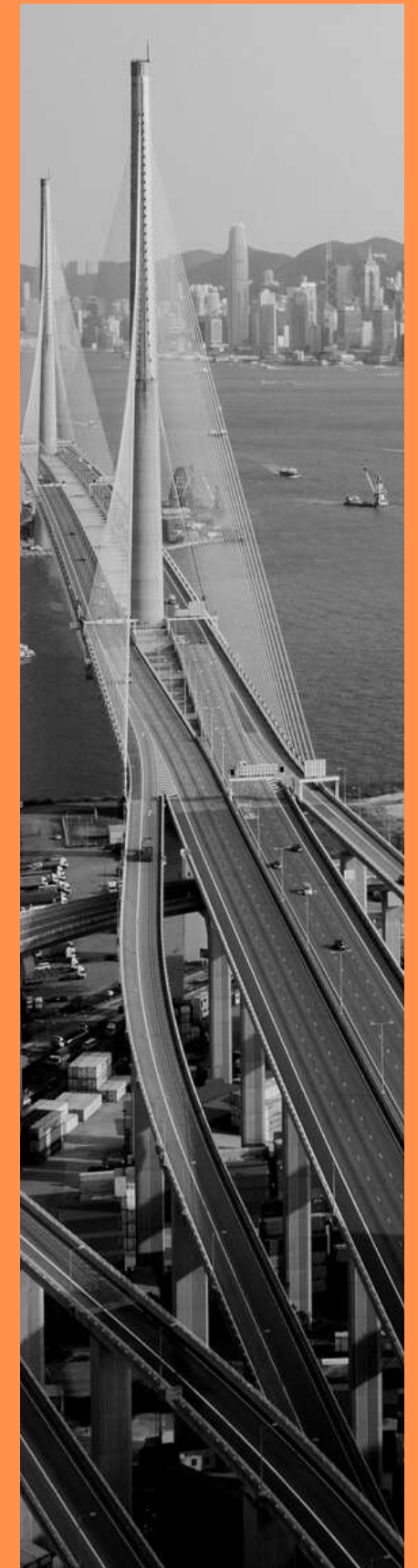
- UK Government launched the Treasury Women in Finance Charter

U.S.:

- NASDAQ filed a proposal for new listing rules with respect to gender diversity and the disclosure thereof (the “**NASDAQ Proposal**”)
- the NASDAQ Proposal included a “comply or explain” mandate in relation to board diversity and also included a ‘disclosure’ mandate

III. BOARD DIVERSITY REQUIREMENT FOR HKEX-LISTED COMPANIES

- the importance of board diversity is gaining traction and positive steps are being taken to promote and further encourage the transformation of boards
- Consultation Paper aims at promoting and accelerating board diversity for HKEX Listed Companies are likely to be welcome
- strong support from organisations which are established with an aim to improve diversity



IV. NOMINATION COMMITTEE REQUIREMENT FOR HKEX- LISTED COMPANIES

- currently, companies are required to set up a nomination committee on a “*comply or explain*” basis
- nomination committee chaired by the chairman of the board or an INED and comprise a majority of INEDs
- companies should disclose their policy for nominating directors
- 95% of the companies have established a nomination committee with a majority of INEDs and chaired by the board chairman or an INED



IV. NOMINATION COMMITTEE REQUIREMENT FOR HKEX-LISTED COMPANIES

HKEX is now proposing that the code provision should be upgraded to a Listing Rule

- US exchanges require a nomination committee to comprise entirely of INEDs under the NYSE and Nasdaq Rulebooks and listing rules
- Australia, Singapore and the UK adopt a position similar to Hong Kong



IV. NOMINATION COMMITTEE REQUIREMENT FOR HKEX- LISTED COMPANIES

- the HKEX will further set out in guidance to be issued the expected disclosures regarding INED nomination and appointment
- the HKEX believes that the proposals taken together with the current requirements would enhance transparency and independence of the INED nomination and appointment process and promote better standards



V. COMMUNICATIONS WITH SHAREHOLDERS

- currently under the HKEX Corporate Governance Code, the board should:
 - be responsible for maintaining an on-going dialogue with shareholders
 - use AGMs or other general meetings to communicate with the shareholders and encourage their participation
 - establish a shareholder communication policy and review it on a regular basis
- the HKEX's proposal:
 - upgrade code provision to a Mandatory Disclosure Requirement, requiring boards to establish a shareholders' communication policy and review it on a regular basis



V. COMMUNICATIONS WITH SHAREHOLDERS

- shareholder communication policy
- Guidance to be provide on areas where companies may provide more information, including:
 - the company's business strategies going forward, and its plan to cope with an economic downturn
 - commercial rationale behind commercial transactions
 - directors' appointment process and succession planning
 - remuneration structure (including for directors and executives)
 - dividend distribution



V. COMMUNICATIONS WITH SHAREHOLDERS

- HKEX addresses market discussions in relation to appointing a lead or senior INED:
 - a lead or senior INED may facilitate the communication between the company and its investors and enhance the INED's accountability

BUT:

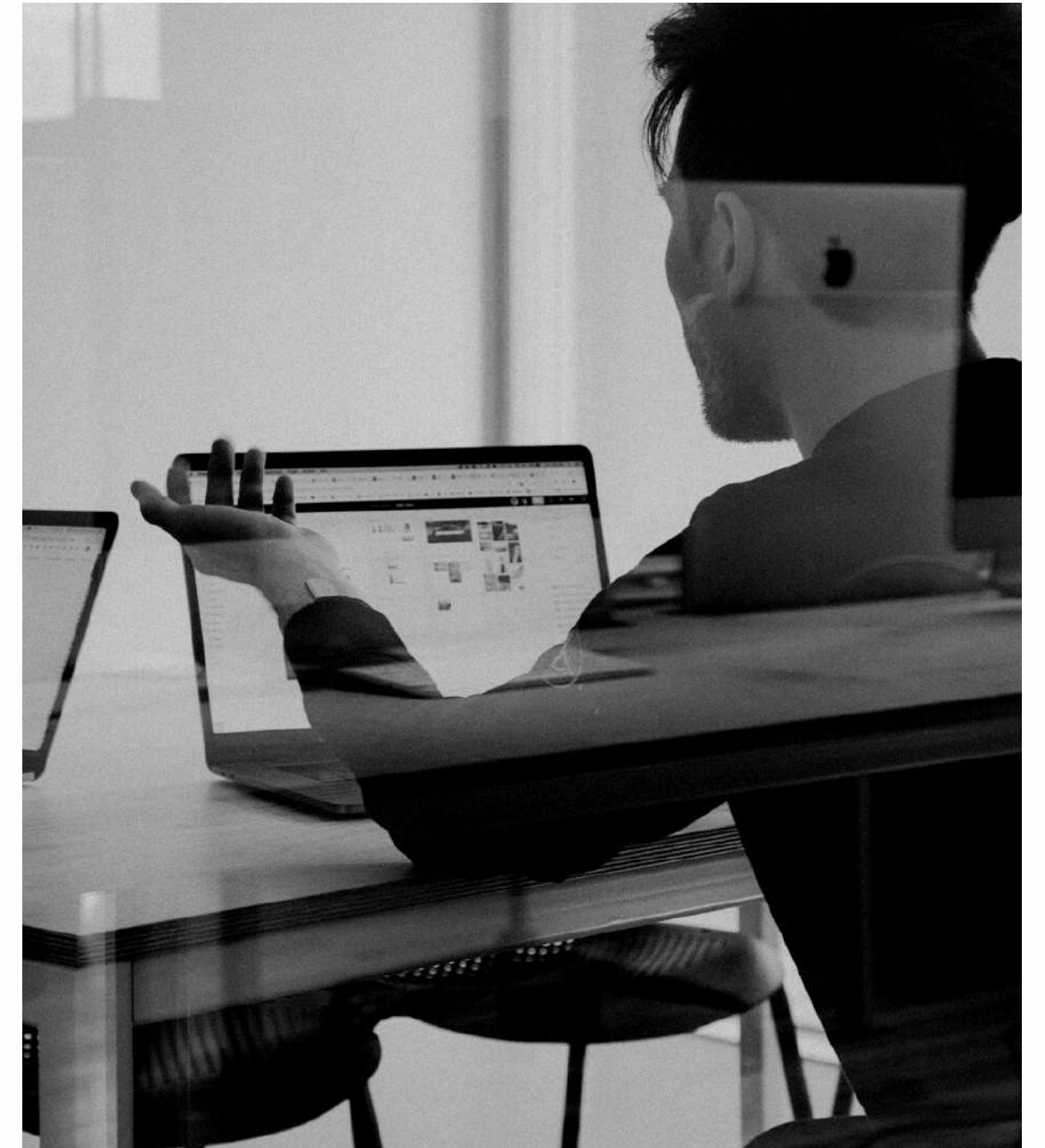
- difficult to find candidates who are willing to take up the position of a lead or senior INED
- may create a hierarchy amongst INEDs



V. COMMUNICATION WITH SHAREHOLDERS

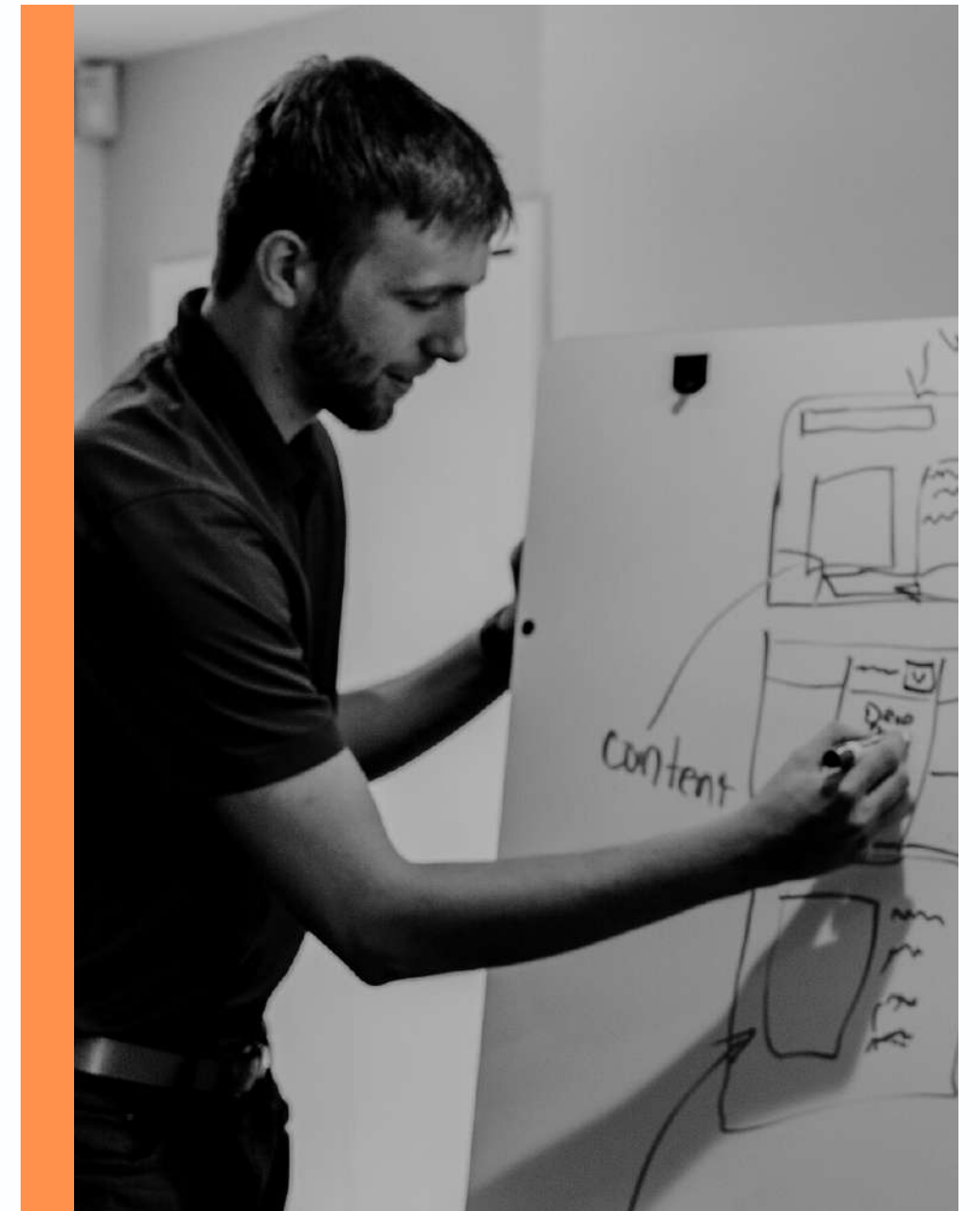
The HKEX to suggest other practical methods which companies may consider adopting to improve communication with its shareholders, including:

- appointing a senior investor relations officer who has access to the board
- formalising periodic meetings with stakeholders
- enhancing disclosure in respect of INED's contribution
- conducting evaluation of board performance and disclose a summary of it in the annual report



VI. OTHER AMENDMENTS

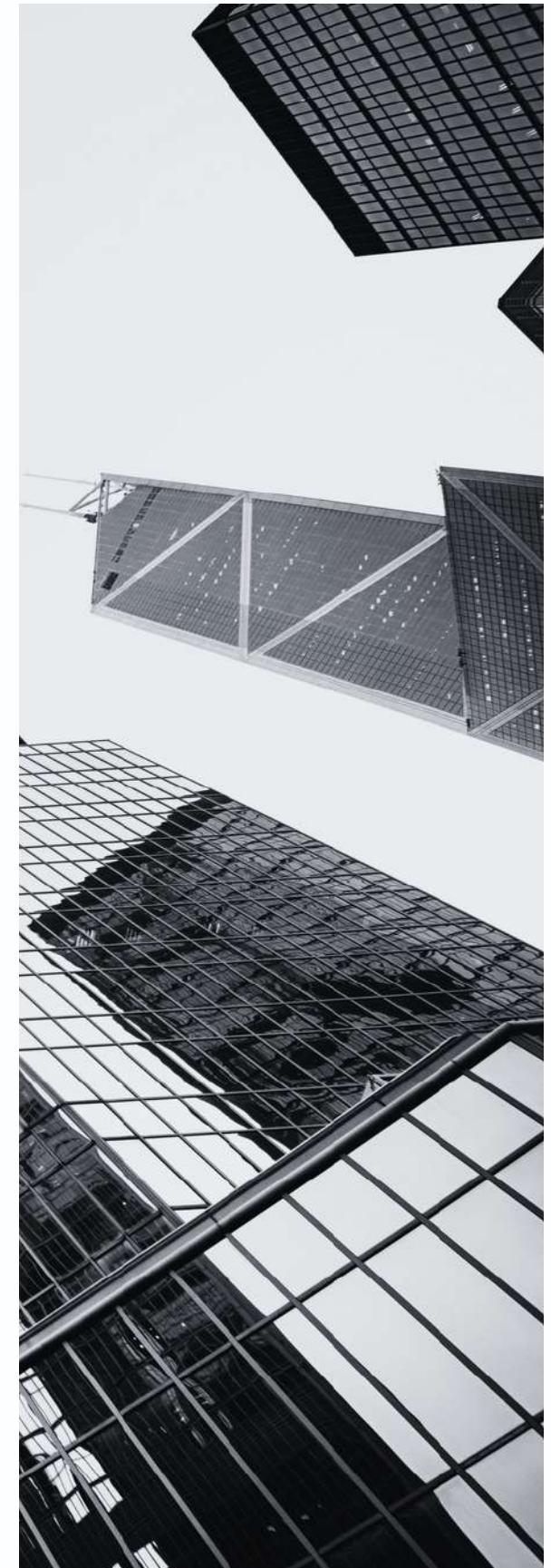
- (a) disclosure on directors' attendance records at general meetings
- (b) disclosure on audit committee's work
- (c) deletion of specific term of directors



VI. OTHER AMENDMENTS

■ Disclosure on directors' attendance records at general meetings

- currently, directors' attendance at general meetings must be published in the company's Corporate Governance Report at the year end
- timely disclose of directors' attendance at general meetings in the poll results announcements



VI. OTHER AMENDMENTS

■ Disclosure on audit committee's work

- companies have provided limited disclosure on the audit committee's work
- audit committee should have clear terms of reference
- Mandatory Disclosure Requirements require companies to disclose in a report a summary of the audit committee's work and how it met its responsibilities



VI. OTHER AMENDMENTS

- HKEX encourages companies to provide informative summaries of work done by each of the board committees in order to enhance corporate transparency and accountability
- HKEX will set out in the proposed guidance what the HKEX expects to be disclosed in relation to the audit committee's work performed



VI. OTHER AMENDMENTS

■ Deletion of specific term of directors

- current code provision A.4.1 of the Corporate Governance Code:
 - companies are required to appoint non-executive directors for a specific term, subject to re-election on a “comply or explain” basis
- under current code provision A.4.2 of the Corporate Governance Code:
 - all directors should be subject to retirement by rotation at least once every three years



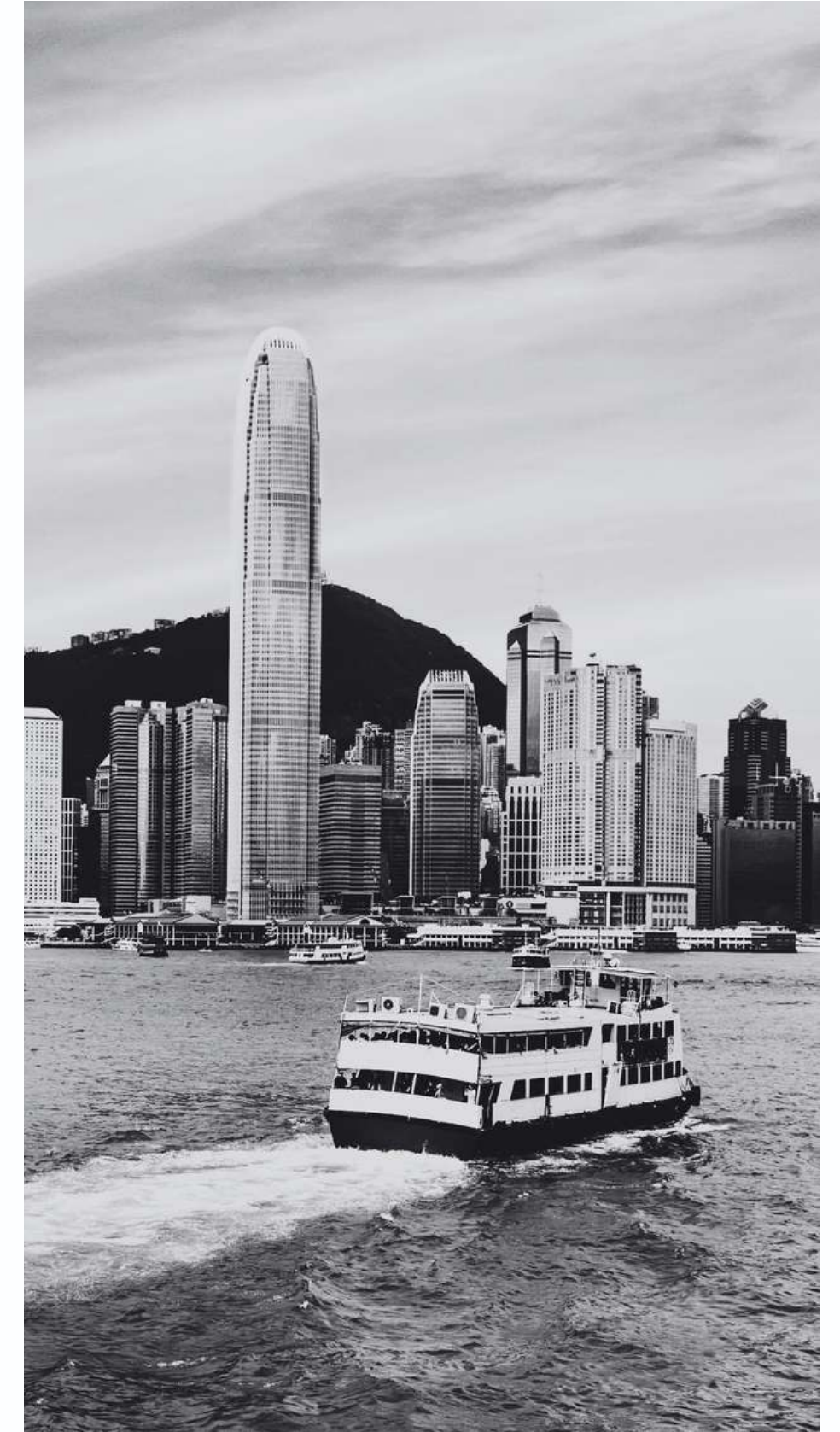
VI. OTHER AMENDMENTS

- overlap of code provisions
- most companies align the appointment term with the period for rotation for administrative convenience
- HKEX proposes to delete the current code provision A.4.1 which required companies to appoint non-executive directors for a specific term



VII. ESG-RELATED AMENDMENTS

- HKEX reminds companies that the ESG measures are more than a “tick-box exercise”
- the HKEX have explained that they are committed to continuing to assist companies by holding workshops and publishing guidance materials on Corporate Governance and ESG related matters
- HKEX will review the Corporate Governance/ESG disclosures in the prospectuses of listing applicants to provide further guidance to IPO applicants this year



VII. ESG-RELATED AMENDMENTS

- HKEX to provide further guidance on the relationship between Corporate Governance and ESG
- Principle C.2 of the Corporate Governance Code:

“the board is responsible for evaluating and determining the nature and extent of the risks it is willing to take in achieving the issuer’s strategic objectives, and ensuring that the issuer establishes and maintains appropriate and effective risk management and internal control systems. The board should oversee management in the design, implementation and monitoring of the risk management and internal control systems, and management should provide a confirmation to the board on the effectiveness of these systems.”



VII. ESG-RELATED AMENDMENTS

- the ESG Reporting Guide provides a framework for companies to identify and consider what environmental risks and social risks may be material to them
- the board should be responsible for governance of ESG matters to ensure oversight of ESG matters
- companies are required to disclose environmental and social matters in ESG reports



VII. ESG-RELATED AMENDMENTS

- different companies face different risks, operate on different scales and in different geographical locations
- HKEX proposes to include ESG risks in Principle C.2 (new Principle D.2)
- ESG risks to be brought into the scope of the responsibility of the board



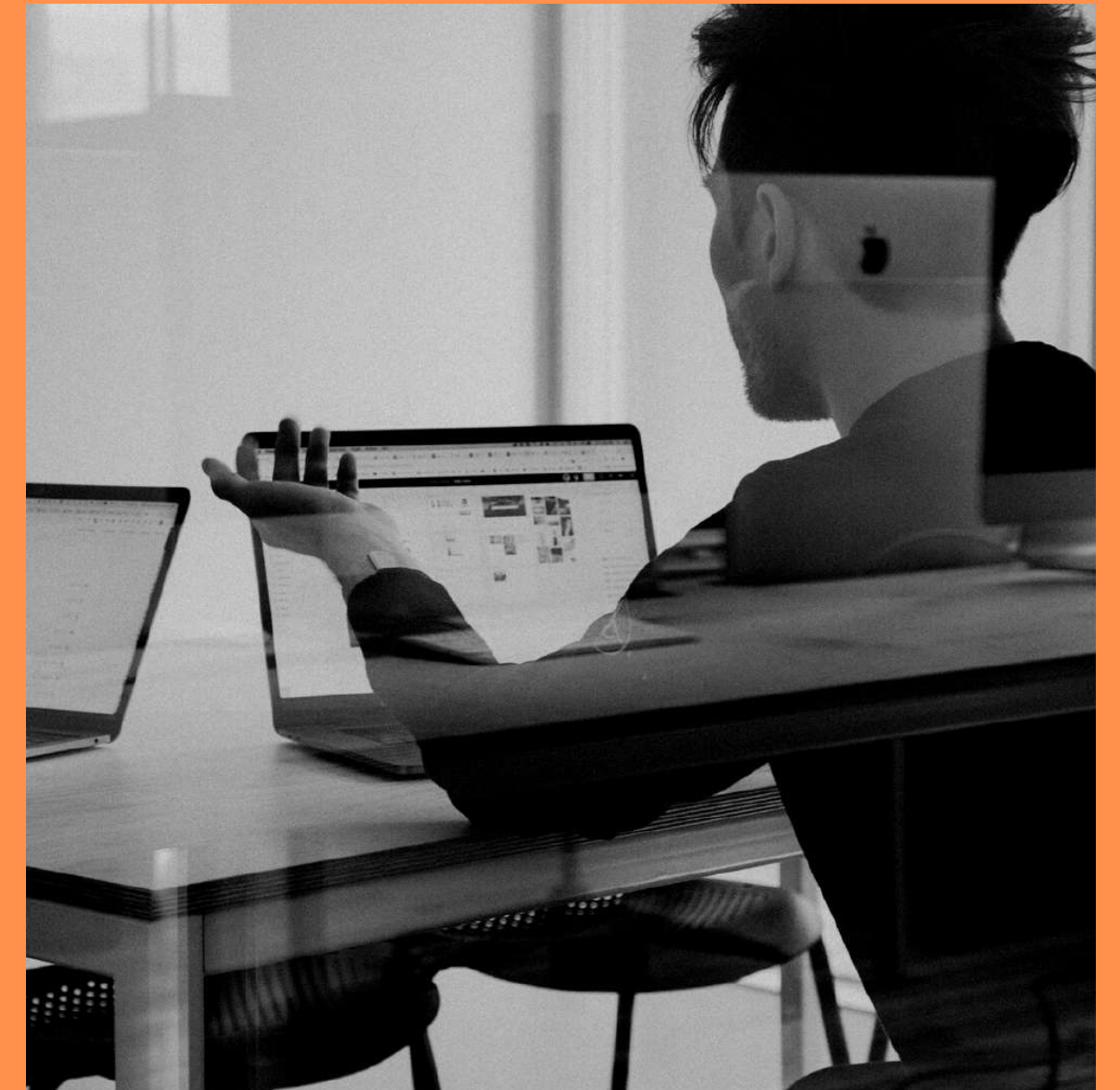
VII. ESG-RELATED AMENDMENTS

- aligning publication timeframe of ESG reports with annual reports
- trend amongst regulators of different jurisdictions calling for the adoption of the recommendations of the Task Force on Climate-related Financial Disclosures (i.e. “**TCFD Recommendations**”) while reporting on climate-related information or making investment decisions
- the HKEX’s ESG reporting requirements that came into effect in July 2020 have incorporated certain elements of the TCFD Recommendations



VII. ESG-RELATED AMENDMENTS

- Hong Kong Green and Sustainable Finance Cross-Agency Steering Group announced its plan towards mandatory TCFD-aligned climate-related disclosures by 2025
- SFC and HKMA launched their initiatives on enhancing disclosure of climate-related risks (referencing the TCFD Recommendations)
- ESG reports to be published with the publication of annual reports
- effective for companies' financial years starting on or after 1 January 2022



VII. ESG-RELATED AMENDMENTS

- the HKEX encourages companies to adopt the TCFD Recommendations when making climate change-related disclosure under the ESG Guide. Companies should consider:
 - whether the company has assigned climate-related responsibilities to management or committees
 - processes by which management is informed about climate-related issues
 - how management (through specific positions and/or committees) monitors climate-related issues



VII. ESG-RELATED AMENDMENTS

- TCFD Recommendations suggest companies to disclose:
 - information of what they consider to be the relevant short-, medium-, and long-term time horizons, taking into consideration the useful life of the organisation's assets or infrastructure and the fact that climate-related issues often manifest themselves over the medium and longer terms
 - specific climate-related issues for each time horizon (short, medium, and long term) that could have a material financial impact on the organisation



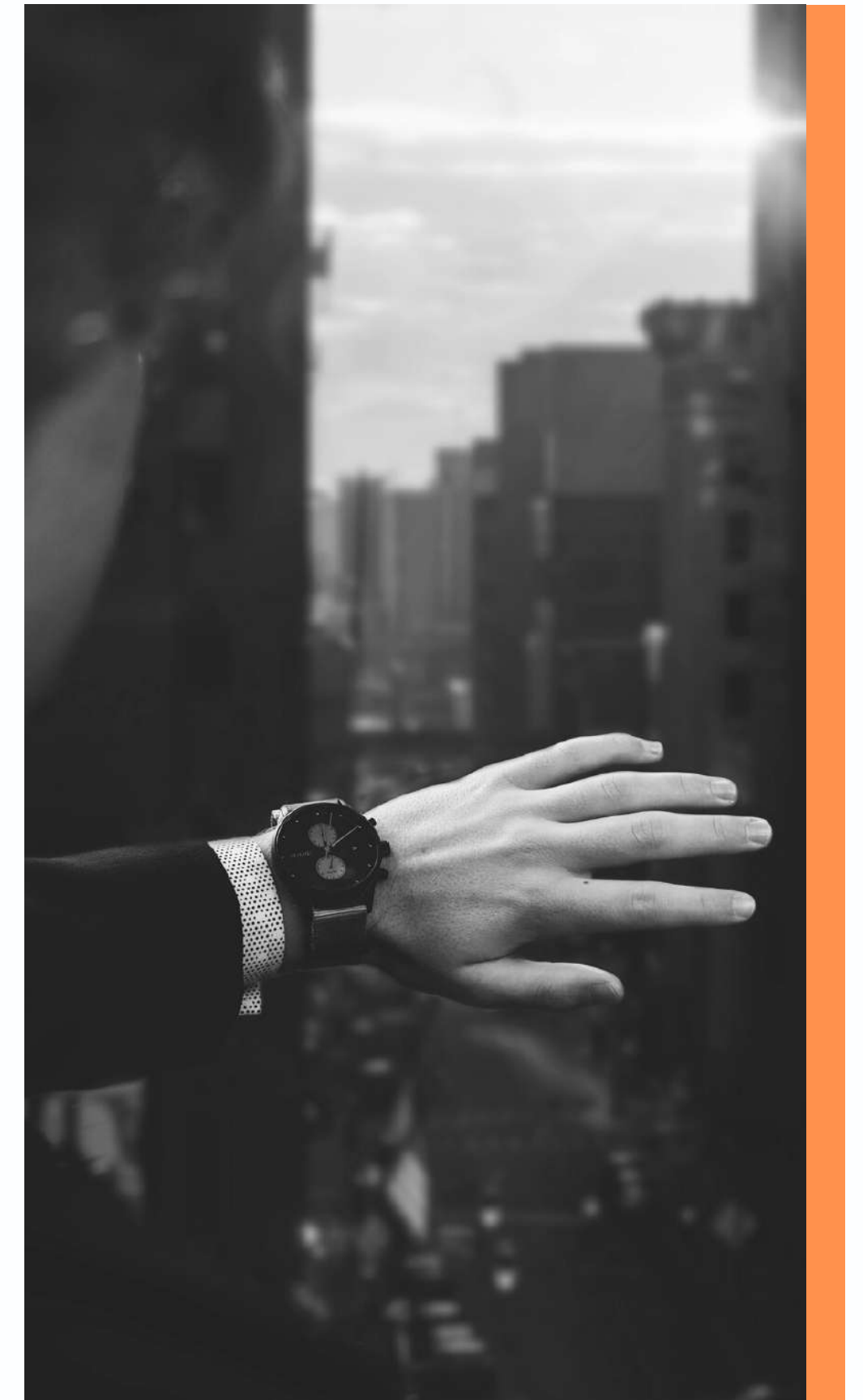
VIII. STRUCTURE OF THE HKEX CORPORATE GOVERNANCE CODE

- the HKEX proposed the following amendments in the Consultation Paper:
 - renaming Appendix 14 to the MBLR and Appendix 15 to the GEM LR as “Corporate Governance Code” to reflect market practice
 - repositioning mandatory disclosure requirements
 - re-organising the structure to improve the overall readability and flow of the Corporate Governance Code
 - amending the introductory paragraphs to reflect the Corporate Governance reporting framework

VIII. STRUCTURE OF THE HKEX CORPORATE GOVERNANCE CODE

The HKEX will also issue a new guidance letter, which consolidates:

- the additional guidance proposed in the Consultation Paper
- the Guidance for Boards and Directors published in July 2018
- several notes currently in the Corporate Governance Code which the HKEX says would be more appropriately contained in the new guidance letter
- certain market feedback received



VIII. STRUCTURE OF THE HKEX CORPORATE GOVERNANCE CODE

- important for companies to carry out meaningful discussions
 - helps the company to comply with Listing Rules and Corporate Governance Code
 - helps the company to assist shareholders in making assessments of the company's corporate governance quality and the board's contributions
- companies should set out the reasons for the deviations from code provision (if any) and how an alternative approach is more suitable for the company

Deadline for comments to the Consultation Paper: 18 June 2021

