

# CONSULTATION CONCLUSIONS BOARD DIVERSITY

**December 2012**



**Hong Kong Exchanges and Clearing Limited**  
**香港交易及結算所有限公司**

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# TABLE OF CONTENTS

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	<b>Page No.</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>CHAPTER 1: ... INTRODUCTION .....</b>	<b>3</b>
<b>CHAPTER 2: ... MARKET FEEDBACK AND CONCLUSIONS.....</b>	<b>4</b>
<b>CHAPTER 3: ... OTHER COMMENTS AND SUGGESTIONS .....</b>	<b>15</b>
<b>APPENDIX I: ... LIST OF RESPONDENTS.....</b>	<b>16</b>
<b>APPENDIX II: . LISTING RULE AMENDMENTS.....</b>	<b>19</b>

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# EXECUTIVE SUMMARY

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1. This paper presents the results of the consultation on board diversity.
2. We received 139 submissions from issuers, market practitioners, professional bodies and industry groups, non-governmental/non-profit-making organisations (**NGOs**), institutional investors, individuals and others.
3. Almost all respondents welcomed the Exchange's proposal to promote board diversity and agreed with the benefits of board diversity outlined in the Consultation Paper. Nearly all respondents supported the inclusion of board diversity as a new measure in the Corporate Governance Code and Corporate Governance Report (**Corporate Governance Code**)<sup>1</sup>.
4. A substantial majority of respondents supported a Code Provision, i.e. subject to "comply or explain"; a small number of respondents thought that the provision on board diversity should be a Recommended Best Practice.
5. A significant majority of respondents agreed to add a note under Code Provision A.5.6 to explain what is meant by board diversity but a majority of the respondents held views which differed from our proposal with regard to the content of the note.
6. Given the broad market support, we will adopt the proposals outlined in the Consultation Paper. The revised Listing Rule amendments form **Appendix II**.
7. The implementation date will be 1 September 2013.

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<sup>1</sup> Appendix 14 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited and Appendix 15 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited.

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## CHAPTER 1: INTRODUCTION

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8. On 7 September 2012, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**) published its “Consultation Paper on Board Diversity” (**Consultation Paper**). The Exchange sought views from the market on proposed amendments to the Corporate Governance Code to include measures to promote board diversity.
9. The proposals included the introduction of a Code Provision that the issuer should have a policy concerning diversity in the board, and should disclose the policy or a summary of the policy in the corporate governance report. To comply with the Code Provision, the issuer should also include any measurable objectives that it had set for implementing the policy, and progress on achieving those objectives. The proposal further sought to include a note under the Code Provision to clarify how the Exchange intended diversity to be defined.
10. The principal objective of the proposed amendments is the enhancement of board effectiveness and corporate governance.
11. By the end of the two-month consultation period, on 9 November 2012, we received written submissions from a total of 139 respondents (including late submissions). **Chapter 2** of this paper sets out a breakdown of the categories of respondents, and a list of the respondents who sent in submissions is set out at **Appendix I** to this paper. Of the 139 respondents who made submissions to this consultation, 50 requested that their submissions be published without disclosing their names. We would like to take this opportunity to thank all respondents for their feedback and comments.
12. Chapter 2 also sets out the main comments and responses to the six specific questions raised in the Consultation Paper, which relate to the following:
  - Should the Exchange promote board diversity?
  - Is the Corporate Governance Code the right place for the new measure?
  - Code Provision or Recommended Best Practice?
  - A note to clarify the meaning of diversity, and its content
  - Mandatory disclosure provision – a policy on board diversity should include any measurable objectives and progress on achieving the objectives
  - Implementation date
13. **Chapter 3** discusses other comments, suggestions and concerns received which do not directly relate to the six specific questions raised in the Consultation Paper.
14. This paper should be read in conjunction with the Consultation Paper itself which is available on the Exchange’s website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/marketconsultation.htm>.
15. We have finalised the revised Corporate Governance Code to implement the detailed proposals. The Listing Rule amendments form **Appendix II**.

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## CHAPTER 2: MARKET FEEDBACK AND CONCLUSIONS

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16. The 139 respondents can be grouped into broad categories as follows:

Category	No. of respondents	%
Issuers	28	20%
Market practitioners	14	10%
Professional bodies/Industry groups	11	8%
Institutional investors	7	5%
NGOs	6	4%
Individuals	66	48%
Others	7	5%
<b>Total</b>	<b>139</b>	<b>100%</b>

17. We set out below the respondents' key comments, our responses and conclusions in relation to the six specific consultation questions. The respondents' other comments and suggestions are set out in Chapter 3.

**Q.1 Do you agree that the Exchange should promote board diversity?**

Comments received

18. Nearly all respondents agreed that the Exchange should promote board diversity. The main reasons for their support echoed those set out in the Consultation Paper. A majority of supporters considered board diversity important because it would enable the board to consider an issue from different perspectives, a process which is conducive to a well-considered decision. As noted by one respondent<sup>2</sup> the quality of board level decision-making is impacted by the scrutiny to which proposals are subjected prior to their adoption. If the range of perspectives represented on the decision-making body is narrow, then proposals may not receive an appropriate level of examination and evaluation. This may result in a decision that is not in the best interests of the company and its stakeholders.
19. Supporters also noted that a significant number of jurisdictions are taking steps to improve diversity on boards, and that if Hong Kong does not follow suit it may become increasingly isolated in this area. A number of respondents<sup>3</sup> observed that Hong Kong aspires to be Asia's world city and prides itself as being one of the world's leading financial centres, and as such it should align with international best standards with regard to corporate governance.

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<sup>2</sup> A professional body.

<sup>3</sup> This view was expressed by a number of NGOs and individuals.

20. Another respondent commented that, with the city's sophisticated labour market and a high percentage of highly qualified, experienced professionals and women already in senior management, Hong Kong should position itself as a leader in our region addressing board diversity.
21. One respondent noted that it is of particular importance for Hong Kong that both the UK and the US have undergone corporate governance reforms in this area. Given that Hong Kong has positioned itself within the world's top three major international financial and business centres, together with London and New York, it cannot afford to ignore the corporate governance reforms in those two markets. The same respondent commented that the suggestion that such reforms were somehow contrary to local business culture and traditions was not a good argument against aligning ourselves with international best practices.
22. Another respondent, a market practitioner, noted that investors are factoring corporate governance into their valuation of companies, and further noted that it has been widely accepted that a diversified board would improve corporate governance. This was echoed by a couple of institutional investor respondents, one of which commented that: "*board diversity in terms of gender, age, nationality, background and skills is very important element of good corporate governance practice that we engage on with our investee companies globally*".
23. A majority of supporters also considered board diversity good for business, citing research that linked diversity to better financial performance, enhanced creativity, greater innovation, increased employee and customer satisfaction and loyalty.
24. Others have said that board diversity could be seen as an extension to equal opportunity of employment, with the result that the reasons for enforcing equal opportunity in the work place should also be applicable to the board.
25. Some respondents<sup>4</sup> were of the view that primary emphasis should be placed on increasing gender diversity, given the "chronic under-representation" of women on Hong Kong issuers' boards.
26. There were a handful of opponents. Some thought it unnecessary for issuers to have a policy on diversity because it was not important, whilst others stated that the current Rule and Code requirements on diversity were sufficient. One issuer respondent considered the imposition of requirements for demographic and other characteristics of directors would impose unnecessary constraints on the choice of directors, which could also affect the overall decision-making ability of the board and add costs to issuers. The process of choosing new directors and retaining existing directors to ensure the need to cater for their demographic characteristics may cause unnecessary sacrifices and costs. Similar sentiments were echoed by another issuer respondent.
27. One respondent believed that this initiative was not practical for family-controlled Hong Kong issuers. In those companies, diversity would not be considered because the majority shareholders tend only to appoint people connected to them. The respondent also queried whether the policy would apply to State-Owned Enterprises (SOEs), and raised as an

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<sup>4</sup> The view was mainly expressed by NGOs.

issue the shortage of qualified directors in Hong Kong. The respondent also claimed that the boards of Hong Kong's listed issuers are already functioning well without diversity or a diversity policy. Another respondent opined that there are insufficient capable women who are "board-ready" in China.

#### Our response

28. We note the overwhelming support for the Exchange to promote board diversity.
29. Whilst we note the suggestion on placing greater focus on gender diversity (paragraph 25), we found that a majority of the respondents favoured our proposal defining diversity in the broad sense, not emphasising gender or any other characteristics.
30. Regarding the concern that the proposed new measure would impose constraints on the board's choice of directors (paragraph 26), we believe this may have arisen from a possible misunderstanding of the meaning and purpose of "comply or explain". It is important to recognise that Code Provisions are not Rules. Each issuer must consider its own individual circumstances, the size and complexities of its operations and the nature of the risks and challenges it faces. The purpose of Code Provisions is not to prescribe particular corporate structures and compliance with a number of hard and fast rules. Instead, it should be seen as a means of communication with investors and stakeholders. The disclosure, or the explanation, is aimed at securing sufficient disclosure of information so that investors and stakeholders can understand the company's performance and governance practices, and respond accordingly.
31. We disagree that board diversity is not relevant to issuers with majority shareholders or which are family-controlled (paragraph 27). These companies, as well as SOEs, should also practise good corporate governance and promote board effectiveness. They would also benefit from a diversity of views, skill sets, knowledge and experience. Since the new measure is a Code Provision, the issuer will have the flexibility to explain if it considers compliance not to be in the interest of the company.
32. As for the costs of compliance (paragraph 26), we do not expect the issuer to incur a great deal of expense because under the current Corporate Governance Code, the board is already expected to evaluate the board's balance of skills and experience. The new measure only encourages the issuer to also consider the benefits of board diversity and draw up a policy, and disclose it in the corporate governance report.

#### Conclusion

33. We will promote board diversity in the Listing Rules.

**Q.2 If your answer to Q.1 is “yes”, do you agree that our Corporate Governance Code and Corporate Governance Report is the appropriate place for the new measures on board diversity?**

Comments received

34. A significant majority of the respondents agreed that the Corporate Governance Code is the appropriate place to include measures to promote board diversity.
35. Supporters believed that the main benefit of the Corporate Governance Code was the flexibility it would provide on the degree of compliance. This was said to be essential as it would allow the issuer to promote board diversity at its own pace and to adapt to its unique situation, and at the same time would permit the company to disclose the rationale behind their position on board diversity.
36. A number of the respondents noted that including the new measures in the Corporate Governance Code would also align Hong Kong with international best practice, especially the UK, Australia and Singapore.

Conclusion

37. In view of the overwhelming support, we will include new measures on board diversity in the Corporate Governance Code.

**Q.3 Do you agree with our proposal to introduce CP A.5.6 (*the nomination committee or the board should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report*)?**

Comments received

- Code Provision or Recommended Best Practice
38. A number of respondents observed that, in the absence of appropriate regulatory pressure, Hong Kong issuers would continue to operate without the necessary consideration for diversity.
  39. A substantial majority of the respondents, including a majority of the issuer respondents, thought a Code Provision would strike the right regulatory balance. It was observed that some issuers may have sound reasons for not having such a policy and it would be inappropriate to compel them to have one. So, a Rule requirement would not be suitable.
  40. A number of issuer respondents commented that CP A.5.6 should not be prescriptive as to the nature, extent or detail of the diversity policy, as this is a matter for each board answerable to its shareholders. According to one respondent, a diversity policy should be



a set of high-level principles to be observed by the issuer (unless an issuer itself chooses to be more specific).

41. For transparency purposes, it was suggested that the issuer should publish its board diversity policy on its website so that shareholders can form their own judgment as to whether that policy is satisfactory. A number of the respondents commented that issuers should be transparent and accountable to their shareholders, and disclosure of board diversity policies would help shareholders to monitor the progress and effectiveness of the issuer's policy implementation.
42. A number of respondents suggested revising the proposed Code Provision to cover diversity at all levels of the company. They believed that improving gender diversity at all levels of an organisation would help to build a "pipeline" of qualified and experienced women, a development which is critical to improving gender diversity on boards. Also, Australia's Corporate Governance Principles and Recommendations (**Australian Code**) includes a company-wide diversity policy of this nature.
43. A couple of respondents considered that the proposed Code Provision would be ineffective, and they advocated mandatory requirements.
44. In contrast, a number of respondents<sup>5</sup> suggested board diversity should only be introduced as Recommended Best Practice. They considered that, in terms of gender diversity, Hong Kong is not performing poorly when compared with a number of countries such as the UK, Singapore and Malaysia. They were of the view that European countries have a relatively high female representation on boards as a result of legislation. Hong Kong should allow more time, some suggested three years, for the community to develop a better understanding and consensus on board diversity before elevating the Recommended Best Practice to a Code Provision.
45. Opponents also thought a new Code Provision would be disruptive to issuers given the new requirement (effective 31 December 2012) for boards to comprise at least one-third independent non-executive directors.
46. A small number of respondents advocated a Code Provision that the issuer should have a diversity policy, whilst leaving it voluntary for the issuer to decide whether to disclose the policy. These views arose from concerns that the disclosure would not be meaningful because one cannot measure or compare varying degrees of diversity due to the fact that all companies have unique factors. Another issuer compared the diversity policy with shareholder communication policy and observed that the latter did not attract an obligation to disclose.
47. A number of respondents suggested that the Exchange should provide training on this initiative.

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<sup>5</sup> This view was expressed by one professional body, a handful of issuer and individual respondents.

- Quota

48. Almost all the respondents agreed with the Exchange’s position that there should not be quotas for female representation on the issuers’ boards. However, one respondent<sup>6</sup> considered the proposed Code Provision was in the nature of “voluntary or business-led diversity initiatives” and, as such, it would have little, if any, effect on gender diversity. The respondent advocated mandatory quotas for female representation on the issuers’ boards as the most effective way to deal with the gender diversity issue. The respondent suggested that quotas should initially be imposed on the largest issuers and be extended to others in time. Another respondent<sup>7</sup> thought that a quota of 25% of the board being female should be introduced as a Recommended Best Practice.
49. The respondents who believed that no quotas should be imposed agreed with the rationale in the Consultation Paper. In addition, some respondents<sup>8</sup> noted that imposing quotas for gender diversity would diminish opportunities for boards to embrace other forms of diversity, and would encourage “tick-box” compliance or the appointment of relatives and friends to satisfy the requirement. It may cause an influx of inexperienced directors which would affect the overall effectiveness of the board. Similarly, well-known female directors may be invited to sit on a greater number of boards, which would dilute their time commitments and meaningful impact. One respondent suggested addressing the root cause of the issue and developing a credible supply of board-ready women through a variety of means including leadership and development programmes, networking and mentoring opportunities and flexible working practices.

#### Our response

- Code Provision or Recommended Best Practice

50. After careful consideration, we favour the majority view on this issue and believe that a Code Provision would strike the right balance between the burden imposed on issuers and the information communicated to investors and stakeholders. We do not consider Recommended Best Practice an effective regulatory tool for this important corporate governance issue.
51. We note the suggestion to require the issuer to publish the board diversity policy on its website (paragraph 41). However, we do not expect the issuer’s diversity policy to change frequently and would therefore consider the proposed level of disclosure (in the issuer’s corporate governance report) appropriate.
52. We appreciate the suggestion that a diversity policy should cover all levels of the company (paragraph 42). However, we believe that promoting diversity at the board level would have the effect of encouraging diversity at all levels of the company. Also, we are mindful that expanding the Code Provision in this way may place a greater administrative burden on the issuer. We will keep this issue under review.

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<sup>6</sup> This view was expressed by an NGO.

<sup>7</sup> An advisory body.

<sup>8</sup> These comments were mainly made by issuers.

53. We note the requests from some respondents for the imposition of mandatory requirements on gender diversity (paragraph 43). However, we understand that most respondents, including issuers and professional bodies would like to see diversity being defined broadly and issuers being given the flexibility to decide on their diversity policy or otherwise explain their position. Moreover, we consider the issue of diversity should not be regulated by hard and fast rules, and as a new measure, issuers need to understand the rationale for diversity. Otherwise, it would easily become a “box-ticking” exercise.
54. We are aware that some issuers might have recently re-arranged their boards as a result of the imminent Rule change requiring independent non-executive directors to form one-third of the issuers’ boards (paragraph 45). However, the new measure does not entail an immediate re-shuffle of the board. Based on the provisions in the current Corporate Governance Code, the issuer should already conduct regular reviews of the board’s balance of skills, experience and knowledge. The new measure encourages the issuer to also take into account diversity of perspectives of the board and to form a policy on diversity. We appreciate that formulating a policy takes time but consider eight to nine months (implementation date 1 September 2013) would allow sufficient time for issuers.
55. As commented by many respondents, disclosure of diversity policy would help investors monitor the progress and effectiveness of the policy, and would be important for promoting transparency and accountability. We do not therefore consider that disclosure of diversity policy should be voluntary (paragraph 46), and we concur with the majority view that it should be subject to “comply or explain”.
56. Training on the new measures will be provided as a part of the regular training on Listing Rules and Corporate Governance Code (paragraph 47).
- Quota
57. We note the call for quotas from a small minority of respondents (paragraph 48), whether mandatory or voluntary by way of a Recommended Best Practice. We also note that this is not a popular view, even amongst many of the NGOs that promote women on boards. So, for reasons stated in the Consultation Paper, we will not introduce quotas at this stage but will keep this matter under review.

### Conclusion

58. In view of the substantive support, we will adopt the proposal to introduce a new Code Provision A.5.6 as proposed.

**Q.4 Do you agree with our proposal to introduce a note under CP A.5.6 to clarify what we mean by diversity and do you agree with the content of the note?**

Comments received

59. Most respondents agreed with the inclusion of a note to explain what is meant by “diversity”. A number of respondents commented that the subject of diversity is new for most Hong Kong issuers and a definition was necessary to promote an understanding of what is being asked. It would also provide some clearly defined indicators of diversity.
60. As for the content of the note, a majority of respondents held views which differed from our proposal. These respondents suggested adding more diversity indicators including race, ethnicity, nationality, disability, sexual orientation and religion. One respondent suggested the note to be placed in the Principle paragraph under A.3 so that the concept of board diversity is introduced before the Code Provision.
61. One respondent<sup>9</sup> was concerned that the proposed note’s broad definition of diversity would mean that in practice, companies would be able to side-step or ignore completely the issue of gender diversity, since they would be able to fulfil the Code Provision’s obligations by showing diversity as to matters other than gender. The respondent added that research indicated the commercial benefits of board diversity were almost exclusively restricted to the benefits of gender diversity. A similar view has been expressed by a couple of other respondents.
62. In contrast, a couple of respondents<sup>10</sup> commented that there has been too much focus on gender diversity, because diversity should also include race, geographic/cultural backgrounds.

Our response

63. Despite the majority view on the content of the note (paragraph 60), we consider the proposed note strikes the right balance and do not consider it appropriate to emphasise gender or any other characteristics. The proposed note, as drafted, already states that the list of factors is non-exhaustive.
64. As stated in our Consultation Paper (at paragraph 62), we are of the view that consideration of diversity should not be restricted to gender. Diversity of perspectives can be achieved by a broad spectrum of characteristics and attributes. For the purpose of this disclosure requirement, we decided to leave it to the issuers to define diversity according to their own perspectives.

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<sup>9</sup> This view was expressed by an NGO.

<sup>10</sup> This view was expressed by one issuer and one individual.

65. We appreciate the suggestion to move the content of the note to Principle A.3 (paragraph 60), but consider that the note is explanatory in nature and, as a guidance on the meaning of diversity, it should remain as a note.

#### Conclusion

66. We will introduce a note under Code Provision A.5.6 as proposed in the Consultation Paper.

**Q.5 Do you agree with our proposal to introduce a new mandatory disclosure provision in the Code stating that if the issuer has a policy concerning diversity, it should disclose details of the board’s policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives?**

#### Comments received

67. A substantial majority of respondents supported the proposal. Supporters commented that disclosing measurable objectives that the issuer has set for implementing the policy and progress on achieving the objectives is important in terms of companies being accountable to their stakeholders on diversity at board level.
68. One respondent commented that there is no point in having a policy on diversity if there is to be no subsequent disclosure by the issuers on what is actually being done in practice.
69. Nevertheless a number of respondents<sup>11</sup> who agreed with the proposal cautioned that this should not turn into a quota-based approach. Each issuer should adopt a meritocracy-based approach and should ensure the best fit for all board positions. A number of the respondents<sup>12</sup> thought that Hong Kong should follow Australia’s mandatory disclosure requirement which also includes reporting on the proportion of women in the company and senior management. The same respondents also suggested following the UK in adding that the board nomination process should be conducted in an open and professional manner and referring to external search consultancy for the appointment of directors.
70. Some issuer respondents thought that the proposed provision too prescriptive and burdensome to issuers and a couple of issuer respondents queried the concept or meaning of “measurable objectives”.
71. Some respondents<sup>13</sup> suggested removing the proposed provision as it would likely encourage companies to set artificial and/or low-bar targets that made little difference

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<sup>11</sup> This view was expressed by an industry group, some issuers and individuals.

<sup>12</sup> This comment was made by some NGOs and individuals.

<sup>13</sup> This view was expressed by some institutional investors and an NGO.

to their boards. According to the same respondents, the issuers could claim to already have sufficiently diverse boards and set targets that reinforce the status quo.

72. A few opponents<sup>14</sup> of the proposal observed that there is no disclosure requirement for shareholder communication policy<sup>15</sup> and the board diversity policy should not be more important. The respondent thought that it would be adequate if the nomination committee or the board confirms whether it has a board diversity policy.

#### Our response

73. The proposed Mandatory Disclosure Requirement under Section L of the Code is only relevant if the issuer has a policy on board diversity. The proposed wording was intended to set out the details to help issuers comply with the proposed Code Provision. Unless the issuers wish to, there is no requirement to set quotas (paragraph 69).
74. As for the comments in the second part of paragraph 69, we refer to paragraph 52 in which we stated that we will keep this policy issue under review.
75. We appreciate the respondents' comments in paragraphs 70 and 71 but believe that the requirement for basic details to be included may give issuers some indications on what the diversity policy should contain. The proposed disclosure requirement is aimed at securing sufficient disclosure so that investors and stakeholders may respond to the information accordingly. If an issuer decides to include "artificial and/or low-bar" targets, these would be disclosed and judged by investors and stakeholders.
76. We do not agree with the respondents (paragraph 72) who argued that board diversity policy should not be more important than shareholder communication policy.

#### Conclusion

77. We will adopt the proposal set out in the Consultation Paper.

**Q.6 Which of the following would you prefer as the implementation date of the amendments set out in this paper?**

- (i) 1 January 2013**
- (ii) 1 April 2013**
- (iii) 1 June 2013**
- (iv) 1 September 2013**
- (v) other (please specify)**

<sup>14</sup> A professional body and a few issuers expressed this view.

<sup>15</sup> Code Provision E.1.4 states that issuers should establish a shareholder communication policy which is regularly reviewed by the board to ensure its effectiveness.

### Comments received

78. We sought views on the implementation date of the amendments set out in the paper.
79. We set out a summary of the responses below:-

	No. of respondents	%
01 January 2013	8	6%
01 April 2013	7	5%
01 June 2013	13	10%
01 September 2013	78	56%
01 January 2014	10	7%
Others (6 months after date of consultation conclusions)	2	1%
Others (12 months after date of consultation conclusions)	2	1%
After 2014	2	1%
Other views	4	3%
No comment	13	10%
Total	139	100%

80. 56% of respondents suggested 1 September 2013 as the implementation date. They commented that, as the subject matter would be new to most of the issuers in Hong Kong, it would be preferable to allow time for companies to understand the business rationale so that their diversity strategy is well considered and aligned to their business strategy.
81. A significant majority of respondents suggested implementing the new measures on board diversity in year 2013. Those advocated early implementation dates generally believe that the changes should be implemented as soon as possible. These respondents considered that a diversity policy could be quite simple and need not be very long, provided that it has been thoroughly discussed at the board level and consensus of its implementation has been reached.
82. Respondents preferring a 2014 date argued that it would take time for the boards to discuss the policy, re-shuffle the boards again, considering they have just done so as a result of the recent Rule change on the requirements for one-third of the board to be independent non-executive directors.

### Our response

83. We agree that the issuers should be given sufficient time to understand the rationale behind the proposals and to discuss thoroughly at board level before implementation.

### Conclusion

84. We consider the 1 September 2013 implementation date the most appropriate.

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## CHAPTER 3: OTHER COMMENTS AND SUGGESTIONS

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85. We received valuable feedback, comments and suggestions on further revising the Corporate Governance Code and corporate governance related Rules which were not covered in the Consultation Paper. We set out below a summary of the main suggestions:
- require the issuer to publish their board diversity policy on its website;
  - mandatory quota for gender diversity;
  - voluntary quota for gender diversity;
  - additional Code Provision (similar to that of the Australian Code) encouraging companies to report on proportion of women on the issuer’s board,, senior management and in the whole company;
  - require the issuer to describe what skills the current board members possess both in terms of professional and diversity perspectives, why these are important and the constituency they represent in terms of the company’s key investors, other stakeholders, industries and interest groups/customer base;
  - amend the terms of reference of nomination committee (Code Provision A.5.2) to include diversity as one of the factors to consider when reviewing the structure, size and composition of the board;
  - remove “of perspectives” from the proposed amendments to the A.3 Principle as it may water down the concept of diversity; and
  - add factors in the proposed note under CP A.5.6 to include: culture, race and ethnicity, nationality, disability, sexual orientation, gender identity, religion, etc..
86. The above suggestions were received after the publication of the consultation paper and since no substantive Listing Rule change can be implemented without the formal process of consultation, these suggestions will be subject to future review and consultation. We thank the respondents for their thoughtful and valuable contributions.



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## **APPENDIX I: LIST OF RESPONDENTS**

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### **Issuers (28 in total)**

1. AIA Group Limited
2. CapitaMalls Asia Limited
3. Cathay Pacific Airways Limited
4. Cheung Kong (Holdings) Limited
5. CLP Holdings Limited
6. Hainan Meilan International Airport Company Limited
7. Hong Kong Aircraft Engineering Company Limited
8. HSBC Holdings Plc
9. MTR Corporation Limited
10. Qualipak International Holdings Limited
11. Sa Sa International Holdings Limited
12. SHK Hong Kong Industries Limited
13. Standard Chartered Plc
14. Standard Chartered Bank (Diversity and Inclusion Division)
15. Swire Pacific Limited
16. Swire Properties Limited
17. TOM Group Limited
- 18-28. 11 issuers requested anonymity

### **Market Practitioners (14 in total)**

29. Baker & McKenzie
30. BlackRock
31. Deloitte
32. Ernst & Young
33. Goldman Sachs (Asia) L.L.C.
34. KPMG
35. Mayer Brown JSM
36. Protiviti Hong Kong Limited
37. Shinewing Risk Services Limited
38. VECO INVEST (Asia)
39. Yu Ming Investment Management Limited
- 40-42. 3 market practitioners requested anonymity

### **Professional Bodies / Industry Groups (11 in total)**

43. Association of Chartered Certified Accountants
44. Hong Kong Association of Banks
45. Hong Kong Corporate Counsel Association
46. Hong Kong Institute of Certified Public Accountants
47. Hong Kong Investor Relations Association
48. The Chamber of Hong Kong Listed Companies
49. The Hong Kong Institute of Chartered Secretaries
50. The Hong Kong Institute of Directors
51. The Hong Kong Society of Financial Analysts
52. The Law Society of Hong Kong
53. 1 professional body requested anonymity

**Institutional Investors (7 in total)**

54. California Public Employees' Retirement System
55. F&C Asset Management
56. Hermes Equity Ownership Services Limited
57. Legal & General Investment Management
58. Ontario Teachers' Pension Plan Board
59. PGGM Investments
60. Sabita Prakash

**NGOs (6 in total)**

61. Asian Corporate Governance Association
62. Community Business Limited (1<sup>st</sup> submission)
63. Community Business Limited (2<sup>nd</sup> submission)
64. International Corporate Governance Network
65. The International Women's Forum-Hong Kong
66. The Women's Foundation

**Individuals (66 in total)**

67. Amanda Yik
68. Anna J H Fang
69. Anne Marie Francesco
70. Andrew Mcgregor
71. Angelina Kwan
72. Angela Mackay
73. Belinda Hau
74. Charles Lau
75. Clare Goodchild
76. Elaine J Cheung
77. Eleni Wang
78. Elizabeth Thomson
79. Fern Ngai
80. Fong Chi Wah
81. Gina McLellan
82. Gordan Jones
83. Hanah Paik
84. Janet Yap
85. Judy Tsui
86. Julya Elliot
87. Kevin James Burns
88. Mary Kwan
89. Mary Melville
90. Matt Flynn
91. Poonkodi Thirumalai
92. Rosemary Halfhead
93. Shalini Mahtani
94. Sharon Etherington
95. Suen Chi Wai
96. Takako Inada
97. Tian CJ
98. Tina Arcilla

- 99. 5 partners at Linklaters
- 100-132. 33 individuals requested anonymity

**Other Entities (7 in total)**

- 133. Brunswick Group Asia
- 134. DHR International Asia Limited
- 135. Tenet World Hong Kong Limited
- 136. Guardian Regulatory Consulting Limited
- 137. iEdge Consulting Ltd
- 138. Women's Commission
- 139. 1 other entity requested anonymity

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# APPENDIX II: LISTING RULE AMENDMENTS

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## Main Board Listing Rules

### Appendix 14

#### CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT

...

#### A.3 Board composition

##### **Principle**

The board should have a balance of skills, ~~and~~ experience and diversity of perspectives appropriate ~~for~~ to the requirements of the issuer's business. It should ensure that changes to its composition can be managed without undue disruption. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.

#### A.4 Appointments, re-election and removal

##### **Principle**

There should be a formal, considered and transparent procedure for the appointment of new directors. There should be plans in place for orderly succession for appointments. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director.

##### **Code Provisions**

...

#### A.5 Nomination Committee

##### **Principle**

In carrying out its responsibilities, the nomination committee should give adequate consideration to the Principles under A.3 and A.4.

## Code Provisions

...

A.5.6 The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report.

Note: Board diversity will differ according to the circumstances of each issuer. 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. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.

...

## L. BOARD COMMITTEES

The following information for each of the remuneration committee, nomination committee and audit committee, and corporate governance functions:

- (a) ...
- (d) a summary of the work during the year, including:
  - (i) ...
  - (ii) for the nomination committee, determining the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year. The nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year. If the nomination committee (or the board) has a policy concerning diversity, this section should also include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives;

(The same amendments will be made to Appendix 15 of the GEM Listing Rules).

