



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email (response@hkex.com.hk) and by post

9 November 2012

Our Ref.: [REDACTED]

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Re: Consultation Paper on Board Diversity

Dear Sirs,

Consultation Paper on Board Diversity

The Hong Kong Institute of Certified Public Accountants has considered the above consultation paper and our comments on the proposals are set out in the questionnaire attached to this letter.

While, in principle, we support the objective of bringing diversity into boardroom, and the direction to adopt a broad concept of diversity is also welcome, we believe that more information and guidance is needed to help listed companies understand what this means for them in practice. This view also has implications for the way in which the changes should be introduced and for the timing of implementation.

Our recommendations are set out in more detail in the responses to the questionnaire.

Should you have any questions on this submission, please feel free to contact [REDACTED]

Yours faithfully,

[REDACTED]

[REDACTED]

[REDACTED]

Encl.

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209q.doc>.

Where there is insufficient space provided for your comments, please attach additional pages.

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

Yes

No

Please give reasons for your views.

In principle, we support bringing the concept of "diversity" into the boardroom, to encourage broader thinking and the expression of different perspectives, which may enable boards to understand better and respond to the concerns and interests of range of stakeholders.

The proposed direction to adopt a broad approach to "diversity" is welcome. The concept of diversity should not focus just on gender and potential quotas and should encompass different characteristics, such as age, education, ethnicity, religion, industry background, etc.

However, we believe that more information and guidance should be given to listed companies as to what is expected of them if, as proposed, "comply or explain" and mandatory disclosure requirements on board diversity are to be introduced in the corporate governance code.

It is important that in promoting diversity, sight should not be lost of the need to consider the suitability and relative merit of candidates for the board. If two candidates are effectively equal in terms of, for example, standing, ability and relevance of experience, then it would be justified to select the candidate who adds greater diversity to the board. If they are not equal, then the question becomes less clear cut. Is there a pecking order between factors such general capability and integrity, and diversity? Rightly or wrongly, opportunities within society may not be equal for people of all backgrounds and so the numbers of people from different backgrounds who reach the level at which they might be considered for the boards of listed companies may also differ. Is there to be an obligation on companies and nomination committees to actively seek out candidates who bring diversity when they may not be coming forward through normal channels? We should certainly not equate good corporate governance solely with the demographics of the board members, rather than their capabilities and integrity.

It is important to also consider the background context. The legislative and cultural framework and of non-discrimination may also have a part to play in encouraging better

opportunities for certain categories of people and this may be more well developed in a number of those countries mentioned in the consultation paper.

For the above reasons, we suggest that additional information and guidance is needed to support the proposed changes, otherwise, many companies may only be able to pay lip service to any new requirements.

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?

Yes

No

Please give reasons for your views.

Yes, provided that more guidance is given as to what is expected of listed companies. If no more than a generic statement that companies should have and should disclose a policy on diversity is to be included for the time being, then, in our view, either it should be introduced as a recommended best practice ("RBP") first (for, say, one year) or the implementation of the proposal should be deferred until 2014 to allow more time for discussion and debate on the specifics and for "capacity building". If this is not done then, as indicated above, we consider there will be practical difficulties for some companies to develop a meaningful policy and this important issue could effectively be reduced to a "box-ticking" exercise in many instances.

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*)? Please give reasons for your views.

Yes

No

Please give reasons for your views.

At the right time, "yes", but only after more information and guidance on developing a diversity policy has been provided and/or sufficient time has been allowed for discussion and debate on diversity in the community. See also our responses to questions 1 and 2 above. Consideration should be given to introducing an RBP first. That way, those companies that adopt best practice will take the lead and others will have benchmarks to which they can refer.

4. Do you agree (i) with our proposal to introduce a note under CP A.5.6 to clarify what we mean by diversity; and (ii) with the content of the note? Please give reasons for your views.

- | | | | |
|--------------------------|-----|--------------------------|-----|
| (i) | | (ii) | |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | Yes |
| <input type="checkbox"/> | No | <input type="checkbox"/> | No |

Please give reasons for your views.

- (i) We have no objection to more information being provided by way of a note, although the status of the note would need to be made clear. Please also refer to the responses to questions 1-3 above.
- (ii) We are doubtful whether the proposed content of the note, without further guidance, will assist companies to understand what is expected of them. If the concept of diversity is explicitly stated to differ according to the circumstances of each company, as suggested above, we would be concerned that this would not do anything to discourage "box-ticking".

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? Please give reasons for your views.

- Yes
- No

Please give reasons for your views.

In principle "yes", but, in terms of timing, only when the concept of diversity and the expectations on listed companies are more clearly understood. See also our responses to questions 1-3 above.

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

- 1 January 2013
- 1 April 2013
- 1 June 2013

1 September 2013

Other, please specify and give reasons.

If the proposal is really trying to steer listed companies to move in the direction suggested, adequate time should be allowed. A requirement for the composition of boards to comprise at least one-third independent non-executive director will be effective by the end of December this year and some companies may be struggling to meet this requirement already.

As indicated above, we suggest that, if more concrete guidance is not introduced at this stage, the proposal should be introduced as an RBP first (say, in April 2013) with a commitment to upgrading it to a Code Principle/ Provision after one year.

- End -