



November 9, 2012

BY MAIL AND BY EMAIL (response@hkex.com.hk)

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

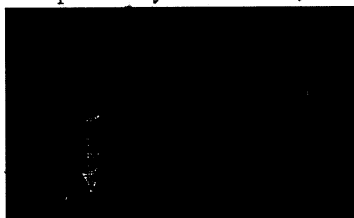
Dear Sirs

Comments on "Consultation Paper on Board Diversity" (Consultation Paper) issued on 7 September 2012

The Hong Kong Corporate Counsel Association (HKCCA) was established in March 2003 as the pioneer association representing in-house lawyers in Hong Kong. A working group was formed to review the Consultation Paper. Our submissions in response to the Consultation Paper are enclosed herewith.

The HKCCA gratefully acknowledges the pro-bono assistance and support of the law firm of Mayer Brown JSM in preparation of the HKCCA submissions.

Respectfully submitted,



Hong Kong Corporate Counsel Association

cc



PO Box 895, General Post Office, Central, Hong Kong.
Tel (852) 2517 8248
Email: secretariat@hkcca.net
<http://www.hkcca.net/>



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Dear Sirs,

Consultation Paper on Board Diversity (Consultation Paper)

The Hong Kong Corporate Counsel Association ("HKCCA") established in March 2003, is the leading association representing in-house lawyers in Hong Kong. It is Hong Kong's only association of in-house counsel run for in-house counsel by in-house counsel and has more than 600 members.

The HKCCA welcomes the Consultation Paper issued on 7 September 2012. Generally, subject to our comments below, we support the promotion of board diversity which is an important topic attracting more and more attention and discussion globally. We consider that board diversity can enhance effectiveness of the board as well as encourage higher corporate governance standards for the benefits of listed companies, and the constituents they serve.

We would like to set out our responses to the Consultation Questions as follows:

Question 1

Question: Do you agree that the Exchange should promote board diversity?

Reply: Yes. We are of the view that a board should reflect the diversity of the organization's staff, customers and shareholders. A diverse board can encourage a wide range of perspectives, present a better mix of leadership skills, provide a wider pool of talent, enhance innovation and provide the necessary checks and balances required to ensure strong unbiased corporate governance.

However, the diversity of Hong Kong's population is not currently reflected in its boards and we consider that it should be.

Generally, we are of the view that diversity should be defined as inclusively as possible. In particular, we would suggest race/ethnic background, disability, sexual orientation, gender orientation and present nationality be included specifically in the list of factors for consideration. Also, although various factors should be considered in achieving diversity of perspectives, gender should be a major focus with particular emphasis.

Global and regional consistency, relevance and competitiveness should also be taken into account. We refer to paragraphs 26 to 33 of the Consultation Paper setting out global and regional practices. We note in particular that Malaysia aims to have 30% female directors by 2016 (paragraph 30) and Singapore's revised Code on Corporate Governance effective November 2012 (paragraph 31) promotes diversity as a 'comply or explain' requirement. The 'comply or explain' provision has also been included in the Australia's Corporate Governance Principles and Recommendations as of 2010.

In Hong Kong, by end December 2012, listed company boards must have at least one-third independent non-executive directors. This requirement represents an ideal opportunity for companies to ensure that they consider diversity when making these appointments.

Adopting the proposal would also provide Hong Kong listed companies with a globally competitive edge by anticipating increased global Environmental, Social and Governance (ESG) reporting requirements e.g. it fits in well with the spirit of The Principles for Responsible Investment which were developed in a UN-convened process by a group of large institutional asset owners with a major purpose of helping investors to integrate the consideration of ESG issues into investment decision-making and ownership practices. Also, board diversity is regarded as a key catalyst for increased business sustainability and is included as a Global Reporting Initiative (GRI) Indicator.

Another possible benefit is to enhance readiness for Hong Kong listed companies wishing to participate in the United Nations Global Compact, which is gaining increasing traction and participation: <http://www.unglobalcompact.org/>

As an added benefit, a diverse board can also incentivize and motivate women and demographic minorities to aspire to progress through seeing people like them succeed and represented on boards.

Question 2

Question: *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?*

Reply: Yes. We support having the Corporate Governance Code and Corporate Governance Report as the starting point for improving board diversity in Hong Kong. The affected parties should be given the opportunity to rectify what is clearly an imbalance of representation at board level. With public reporting and disclosure encouraged, we are optimistic that public 'naming and shaming' of diversity laggards will give sufficient incentive to each listed company to rectify diversity imbalance relatively quickly.

We do not believe that legislated quotas are the correct first approach for Hong Kong to rectify diversity imbalance at board level.

A similar corporate governance approach has worked well in Australia and should hopefully work well in Hong Kong, provided the approach is tailored to suit Hong Kong's business culture. In our view, having aspirational guidelines to achieve balance at board level, without being overly prescriptive, seems to be a good, balanced first step.

Question 3

Question: *Do you agree with our proposal to introduce CPA.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.*

Reply: Yes. The major duties of a nomination committee include reviewing the structure, size and composition (including the skills, knowledge and experience) of the board and identify individuals suitably qualified to become board members. We agree that if there is a nomination committee, it should have a board diversity policy as it fits in well with its duties.

Accountability and transparency are both key to good corporate governance. Accordingly, we agree that the board diversity policy or at least a summary of such policy should be disclosed in the Corporate Governance Report. Such a policy also sends out the right signal to all stakeholders, especially employees, about the board's commitment to meritocracy and diversity.

There should also be a requirement to describe what skills the current board members possess both in terms of professional and diversity perspectives, why these are important and what constituency they represent in terms of the companies' key investors, other stakeholders, industries and interest groups/customer base.

Question 4

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

Reply: (i) Yes.
(ii) No. We are of the view that:

- diversity should be defined as inclusively as possible;
- the current proposed Note to CPA.5.6 only specifies gender, age, cultural, education background and professional experience as the factors to be considered for board diversity. We are of the view that more inclusive criterion be expressly set out. Such diversity categories should also specifically include race, disability, sexual orientation, religious background, gender orientation and present nationality and gender should be a major focus with particular emphasis; and
- a diversity 'dashboard' (or list) should be developed which each company can complete, setting out its rationale for selecting the diversity aspects they focus on and whether and how their current board represents those focus areas. Such a list should include the following options:

Diversity Dashboard:

- Industry background
- Professional experience and areas of expertise

- Non-profit/Community service experience and areas of expertise
- Educational background
- Gender
- Age bracket (20s/30s/40s/50s/60s/70s)
- Language skills
- Present nationality
- Permanent Hong Kong resident/not
- Race/Ethnic background
- Cultural background
- Family status
- Sexual orientation
- Gender orientation
- Disability

We believe that having this accentuated focus on diversity will encourage a broader and more inclusive search to be conducted when recruiting new board members, and encourage a more diversified pool of qualified candidates to come forward. Having a set of clear guidelines for board diversity requirements would also facilitate recruiters and other relevant service providers who put forth board candidates, to provide more appropriate services.

Question 5

Question: *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.*

Reply: Yes. Generally, we agree with the proposal to introduce a new mandatory disclosure provision in the Code (i.e. not complying with such provision will be regarded as a breach of the Listing Rules requirement) to disclose the board diversity policy and the measurable objectives as it would enhance fairness, transparency and accountability and improve corporate governance. In particular, we consider that having measurable objectives is important to allow the board and shareholders to keep track of the progress in implementing the policy. Accordingly, without prescribing the measurable objectives in the Code, we would suggest that for each listed company with a board diversity policy, it should also set out its own measurable objectives for implementing the policy. Such measurable objectives together with the progress on achieving the objectives should be disclosed in the Corporate Governance Report.

We would suggest the proposed wording of paragraph (d)(ii) of Section L be amended as follows:

"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. In such case, the nomination committee (or the board) should also set out its own measurable objectives for implementing the policy. The measurable objectives and the progress on achieving such objectives should also be reported on."

Question 6

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

Reply: 01 September 2013. We consider that sufficient time should be given to listed companies to let them think carefully about their business strategies and needs in order to tailor-make their own board diversity policies and the measurable objectives for implementing such policies. It is meaningless to be just another "cut and paste" exercise.

If you have any queries, please do not hesitate to contact the undersigned at [REDACTED]



[REDACTED]

Hong Kong Corporate Counsel Association

cc HKCCA EXCO

[REDACTED]