

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.

IWF-HK greatly welcome the initiative taken by the Exchange in proposing steps aimed at increasing diversity on the boards of Hong Kong listed companies. However, they are of the view that primary emphasis should be placed on increasing gender diversity, and that mandatory quotas for female representation on the boards of Hong Kong’s largest listed companies should be introduced. The following paragraphs provide more information and justification.

Need for Greater Emphasis on Gender Diversity

As discussed further in response to question 4 below, IWF-HK feel strongly that the Consultation’s proposals in relation to diversity need to put greater emphasis on the need to bring about greater gender diversity on company boards. Women now make up 46% of the workforce in Hong Kong and 53% of the graduates from local universities. It would be a waste of human capital if recognizing and promoting leadership talents in women are not prioritised.

The business case for increased representation of women at board level is both proven and unequivocal. The UK Government-commissioned report (“Women on Boards” of February 2011 by Lord Davies of Abersoch, CBE (the “**Davies Report**”) sets out the evidence. In particular, McKinsey & Company’s 2007 report “Women Matter: Gender diversity, a corporate performance driver” established the link between the presence of women in corporate management teams and companies’ organizational and financial performance.

More recently, the August 2012 report published by the Credit Suisse Research Institute “Gender Diversity and Corporate Leadership Report”¹ has as its key finding that “in a like-for-like comparison, companies with at least one woman on the board would have outperformed in terms of share price performance, those with no women on the board

¹ Available at https://infocus.credit-suisse.com/data/_product_documents/_articles/360157/cs_women_in_leading_positions_FINAL.PDF

over the course of the past six years”. Furthermore, the report identified that almost all of the outperformance was delivered post-2008, when the macro environment deteriorated and volatility increased so that “stocks with greater gender diversity on their boards generally look defensive: they tend to perform best when markets are falling, deliver higher average ROEs through the cycle, exhibit less volatility in earnings and typically have lower gearing ratios.”

It is therefore essential to appreciate that gender diversity is not simply an issue of fairness and equality, but one which will improve the performance of company boards, and hence lead to improved corporate performance and better economic results. It is particularly important that company boards and investors understand that regulatory measures to increase gender diversity are therefore necessary as a means to promote a greater probability of corporate success and to address skills shortages which may result as a consequence of a falling birth rate.

Need for Further Measures to Promote Gender Diversity

IWF-HK note that the Consultation Paper’s proposed amendments to the Corporate Governance Code closely follow the amendments made to the UK Corporate Governance Code (“**UK Code**”) in line with a recommendation in the Davies Report on how gender diversity on company boards can be increased.

It is however important to recognise that the amendment of the UK Code to encourage board diversity, and specifically gender diversity, was just one of ten recommendations made by the Davies Report. The others included:

1. All Chairmen of FTSE 350 companies should set out the percentage of women they aim to have on their boards in 2013 and 2015. FTSE 100 companies should aim for a minimum of 25% female representation by 2015 (although the report expected many to achieve a higher figure). Chairmen should announce their aspirational goals within 6 months of the UK Report (by September 2011).
2. Quoted companies should be required to disclose each year the proportion of women on boards, women in senior executive positions and female employees in the whole organisation.
3. Companies should be encouraged to periodically advertise non-executive board positions to encourage greater diversity in applications.
4. The steering committee which authored the UK Report will meet every six months to consider progress against its ten recommendations and will report annually with an assessment of whether sufficient process is being made.

Hence while IWF-HK welcome the Consultation Paper’s proposals as a step in the right direction, they are very much of the view that a number of other measures must be implemented if there is going to be any tangible effect on board diversity, and gender diversity in particular.

Insufficiency of Voluntary Initiatives

It is particularly noticeable that voluntary or so-called business-lead initiatives to increase the proportion of women on company boards are generally ineffective. In 2011, Vice President Reding, European Union (“EU”) Commissioner for Justice, Fundamental Rights and Citizenship challenged EU business leaders to increase women’s representation on company boards through self-regulation. The goal is 30% women on boards of major European companies in 2015 and 40% by 2020. All EU publicly listed companies were asked to sign the “Women on the Board Pledge for Europe” and to develop their own methods of getting more women into top jobs. The European Parliament supported the EU Commission’s approach in a resolution adopted in July 2011. Four EU member states, France, the Netherlands, Italy and Belgium, adopted binding measures to improve female representation on company boards while other member states encouraged self-regulatory measures.

A report published by the EU Commission in April 2012, however, showed that one year after the call to action, only limited progress had been made towards increasing women’s board representation. In January 2012, women held only 13.7% of board seats on EU member states’ largest publicly listed companies (based on current membership of a blue-chip index), an improvement of only 1.9 percentage points since 2010. A starker example of the ineffectiveness of voluntary or business-lead regulation is Norway. In 2003, Norway set a target of 40% women on boards to be reached by 2005. By the deadline, only 15% of target company board seats were held by women (compared to less than 10% when the target was set). In 2005, Norway introduced statutory requirements which threatened non-complying companies with dissolution. As a result, all relevant companies met the 40% target by the 2008 deadline.

The Code Provisions in relation to board diversity proposed by the Consultation Paper, which listed companies would be able to choose not to comply with provided that they give considered reasons for their non-compliance in Corporate Governance Reports, are in the nature of voluntary or business-led diversity initiatives. As the experiences of Norway and the EU Commission referred to above suggest, IWF-HK consider that there is a real danger that the Consultation Paper’s proposals would have little, if any, effect on gender diversity on the boards of the Exchange’s listed companies. As discussed further in the response to Question 4, the situation would be exacerbated by the fact that the definition of “diversity” as proposed to be set out in a note to CP A.5.6 is drafted so broadly that it is perfectly possible that a company will be able to show compliance with the Code Provision even if it has no female board representatives, since it will be able to show diversity in terms of “age, cultural and educational background, or professional experience”. IWF-HK do not dispute the relevance of other forms of diversity, but in reality, giving due consideration to all aspects of diversity will dilute gender diversity, which has been well researched and, as mentioned above, proven to be beneficial to business and to enhance board performance.

Since legislation has proved to be the most effective means of increasing female board representation, IWF-HK strongly advocate the introduction of mandatory quotas for female board representation. Following the lead in other jurisdictions, IWF-HK recommend the imposition of quotas initially for the largest Hong Kong-listed companies, namely Hang Seng Index and Hang Seng Mainland 100 Index companies. If legislative

quotas for women are not introduced initially, Hong Kong should at least set aspirational targets for the percentage of female board representation on boards of Hang Seng Index companies and a deadline, of say three years from the date of target setting, by which they are required to be achieved. If by the deadline the target has not been reached by a substantial majority of relevant companies, the Hong Kong Government should then be ready to impose mandatory female board representation requirements which, if not attained by a specified date, could result in appropriate sanctions for the company, such as dissolution following Norway's example or delisting in the case of Hong Kong-listed foreign companies. In the future, consideration should also be given to extending mandatory quotas to other listed companies and non-listed public companies above a certain size.

Hong Kong Companies Lag Behind in Achieving Gender Diversity

The latest report published by Standard Chartered Bank and Community Business² concludes that female representation on Hong Kong company boards remains disappointingly low. According to the report, at the beginning of 2012, only 9% of directorships of Hong Kong's leading companies, as listed on the Hang Seng Index (**HSI Companies**), were held by women. This figure represents an increase in female board representation of only 0.1% since the previous survey in 2009. Disturbingly, the number of HSI companies with no female directors at all had increased to 20 (41.7%) from 14 (33.3%) in 2009. Assuming that female representation continues at the same pace as over the previous three years, the report concludes that it would take 80 years to achieve 30% female representation on HSI Company boards and 156 years to achieve parity.³

In another report, *Women on Boards: A Statistical Review by Country, Region, Sector and Market Index* (March 2010)⁴, GovernanceMetrics published statistics for female representation on the boards of 4,217 countries around the world. For the 79 Hong Kong companies surveyed, the average percentage of female directors was 8.29%, well below that on the boards of Philippine companies, which was 19.05%. Unsurprisingly, the three countries with the highest percentage of female directors were Norway (34.25%), Finland (23.41%) and Sweden (23.89%). Clearly there are a number of overlapping reasons for greater female board representation in the Nordic countries. Norway's leading position for example needs to be considered both in the context of its gender quota law, requiring the boards of listed companies and state owned enterprises to comprise at least 40% female directors, and the broader social context. State support for childcare, a progressive welfare state and generous maternity and paternity leave also foster greater female representation at board and senior management level in Norway.

More interesting perhaps from the Hong Kong perspective is the Philippines, which is among the countries with the highest percentage of female board directors. In the GovernanceMetrics survey, the Philippines ranked fourth in terms of female board representation, well ahead of Denmark (14.40%), the United States (12.21%), Germany (10.46%) and the UK (8.46%). In the World Economic Forum's 2011 Global Gender

² Standard Chartered Bank *Women on Boards: Hang Seng Index 2012* published in March 2012 (available at http://www.communitybusiness.org/images/cb/publications/2012/WOB_Eng_2012.pdf)

³ Ibid at page 2

⁴ Available at http://www.boardgender.org/wp-content/uploads/2010/12/GMI-Women_On_Boards_2011.pdf

Gap Index, the Philippines also ranked eighth out of 135 countries. Historically a matriarchal society, the Philippines has implemented legislation to protect and promote women's position in society. The Magna Carta of Women,⁵ which came into effect in September 2009, sets quotas for women at national and local government level and requires the State to encourage female leadership in the private sector in the form of incentives.

That Hong Kong should lag behind in promoting female representation at senior level in the corporate sector is a concern, particularly given its many distinct advantages over other jurisdictions. These include the strong representation of women in tertiary education: Mastercard's 2011 survey⁶ found that women are in fact better represented in tertiary institutions than men. The same survey found that workforce participation rates for women in Hong Kong are strong, with 76.6 women for every 100 men in the workforce. A further key advantage underlying the high workforce participation rate is the availability of affordable childcare provided by Hong Kong's foreign domestic workers. These advantages have not yet translated into high levels of female representation at board or senior management level in Hong Kong's corporate sector.

It is hoped therefore that the Government, the Exchange, companies and executive search firms can capitalise on Hong Kong's many advantages and do more to provide the environment and opportunities for women to break the glass ceiling and attain leadership positions in Hong Kong businesses. As highlighted by the co-author of the Standard Chartered report, Hong Kong does not lack qualified, talented and ambitious women. The problem appears to lie in the fact that current board appointment processes fail to recognise women's potential contribution.

Hong Kong can no doubt learn much from international experience. One "problem" identified in the Standard Chartered Report is that directors' tenure is often enduring. Other countries, including the UK, have introduced measures to increase the "flow" of new directors rather than just focusing on the number of current female directors. In 2010, the UK Government set an aspirational target that by 2015, 50% of new public appointments to public boards would be filled by women.⁷ A number of countries have implemented measures to progress female board representation. For example, the 30% Club in the U.K. comprises a group of Chairmen who have committed to reach a target of 30% female board representation.⁸ IWF-HK very much welcome the initiative of the Women's Foundation launched in partnership with the U.K. 30% Club announced on 30 October 2012 which will celebrate any incremental progress in the percentage of female

⁵ Republic Act No. 9710 (available at:

[http://ncmb.ph/Files/RA%209710%20MAGNA%20CARTA%20FOR%20WOMEN%20With%20IMPLEMENTING%20RULES%20\(IRR\).pdf](http://ncmb.ph/Files/RA%209710%20MAGNA%20CARTA%20FOR%20WOMEN%20With%20IMPLEMENTING%20RULES%20(IRR).pdf))

⁶ MasterCard Worldwide's publication "Women's Socio-economic Advancement in Hong Kong Steadily Increasing According to Latest MasterCard Index" available at http://www.mastercard.com/hk/personal/en/wce/pdf/HK_MasterCard_Index_of_Womens_Advancement_E_final.pdf

⁷ The Equality Strategy – Building a Fairer Britain 2010 at p.19 (available at: <http://www.homeoffice.gov.uk/publications/equalities/equality-strategy-publications/equality-strategy/equality-strategy-large-print?view=Binary>)

⁸ See: <http://www.30percentclub.org.uk/>

directors on Hong Kong company boards towards an aspirational goal of 30%.⁹ In Singapore, the 100 BoardAgender Champions Campaign¹⁰ acknowledges a group of 100 leaders who publicly support the advancement of women to senior leadership roles and the boardroom.

Greater transparency in the nomination and appointment of company directors would also do much to facilitate greater numbers of female board appointments. A particular measure recommended by the Davies Report was that executive search firms should draw up a Voluntary Code of Conduct addressing gender diversity and best practice which covers the relevant search criteria and processes for FTSE 350 board level appointments. IWF-HK would recommend that Hong Kong executive search firms should likewise be encouraged to produce such a code governing gender diversity and best practice applicable initially to Hang Seng Index company board appointments. This could later be extended to cover other types of company.

Limited Effect of Imposition of Requirements on Hong Kong Listed Companies

It is also important to appreciate that any measures intended to be effected through imposing requirements in the Exchange's listing rules will be relatively limited in their effect on Hong Kong public companies generally. Quite apart from anything else, the vast majority of companies listed on the Exchange are incorporated outside Hong Kong, usually in Bermuda, the Cayman Islands, the People's Republic of China and increasingly, in other overseas jurisdictions.

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.

IWF-HK consider that the measures proposed by the Consultation Paper are too limited in scope. They are of the view that there should be a mandatory requirement for listed companies to meet quotas for the number of women on their boards, and that this should be implemented within a time frame.

As indicated in the response to Question 1 above, in order for there to be an improvement in gender diversity on company boards, further requirements will need to be introduced, notably quotas for the number of female directors on listed company boards to be implemented within a time frame. Initially, the quotas could be mandated only for Hang

⁹ "The Women's Foundation Convenes Chairmen's Breakfast on Board Diversity and Announces New Initiative to Encourage Women's Participation on Boards" at http://www.thewomensfoundationhk.org/download/Chairmen%27s%20breakfast%20media%20release_English_Final.pdf

¹⁰ See: <http://www.boardagender.org/100-boardagender-champions/>

Seng Companies and they could later be extended to cover all listed companies and unlisted public companies of a certain size. Quotas provide a target for action. By way of example, the Women's Commission has had considerable success in getting more women appointed to advisory boards and committees by implementing quotas to be achieved within a specified timeframe.

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.

IWF-HK consider that it should be a mandatory requirement for the boards or nomination committees of listed companies to have a policy concerning diversity and that they should be required to disclose this.

The difficulty in making this a mandatory requirement in the case of nomination committees is that the requirement to have such a committee is a Code Provision only, and is thus subject to the “comply or explain” approach rather than being obligatory. IWF-HK would therefore suggest that the requirement to have a diversity policy should be imposed at the Listing Rule level so that the board is required to have a diversity policy or to ensure that its Nomination Committee (if any) has such a policy in place. As regards disclosure of the diversity policy, this should be included as one of the Mandatory Disclosure Requirements in the Corporate Governance Report.

It is also recommended that the diversity policy should extend to membership of companies' executive committees and not only the board of directors. IWF-HK would also like to see a mandatory requirement for listed companies to disclose in their corporate governance reports the percentage of women directors, of women in senior executive positions and female employees in the whole company.

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)

Yes

No

(ii)

Yes

No

Please give reasons for your views.

IWF HK welcome the inclusion of a note under CP A.5.6. to explain what is meant by the term diversity, with emphasis on gender diversity, which should be the main yardstick for assessing board diversity.

It is considered important that the Code's requirements on diversity are clear since this will facilitate listed companies' compliance. IWF-HK therefore welcome the inclusion of a note under CP A.5.6 to explain what is meant by the term diversity. They disagree however with the content of the proposed note. As mentioned in response to Question 1, IWF-HK are concerned that the note's broad definition of diversity (including diversity of age, cultural background and professional experience etc. in addition to gender) will mean that in practice, companies will be able to side-step or ignore completely the issue of gender diversity, since they will be able to fulfil the Code's requirements by showing diversity as to matters other than gender.

Research indicating the commercial benefits of board diversity is however almost exclusively restricted to the benefits of gender diversity on company boards. For that reason, it is imperative that the Exchange uses gender diversity as the main yardstick for assessing board diversity initially and that the other factors should be subsidiary factors only.

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.

IWF-HK support the introduction of a mandatory disclosure provision in the Code as suggested but only if it is mandatory (rather than optional as under the proposals) for listed companies to have a policy on board diversity.

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.

- End -