

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.

(1) Just Good Business

Diversity (whether gender, age, background, religious or ethnicity) is good for business for a number of reasons:

- (a) studies show that diversity promotes better decision making, leading often to more successful enterprises, and to competitive advantage (see McKinsey's paper "Women Matter: An Asian Perspective" Exhibit 5 and "Why Diversity Matters" by Catalyst). We would point out that "token" board members (whether women or any other category) are generally not felt to be effective. In order to have the benefits of diversity, a board must have a significant component of its make-up which represents something other than the historic overwhelming majority.
- (b) diverse boards better reflect the customer and workforce; again leading to decision making which should better take account of the diversity of stakeholders in the enterprise. Diversity fosters engagement – leading to a more committed and supportive workforce and culture.
- (c) In the so-called "war for talent", enterprises which recruit and retain the best, regardless of gender background etc. will have an advantage. Recruitment and retention of a diverse graduate population will be facilitated by having a senior leadership which is equally diverse. This issue is particularly acute in many professions/sectors where over 50% of graduates are women.
- (d) if diversity throughout an organization structure is a stated goal of the organization, it is important to show that the leadership at the top of an organization is fully behind such goal by promoting diversity on the board. Greater diversity at the higher echelons of a business will create a greater number of role models, in turn fostering greater diversity – a virtuous circle.
- (e) diversity is a pillar of good governance and sustainability and is an aspect which investors are increasingly taking into account when making investment decisions.

Linklaters, the firm in which each of us is a Partner, has articulated its support for diversity at all levels of our business imperative:

"Our thinking is simple. We will only be the leading global law firm by coming up with the best ideas and solutions for our clients. The imagination and resourcefulness needed to create these ideas and solutions will only be ensured by drawing from the broadest possible pool of knowledge, skills, perspectives and talent." (see Linklaters Global Diversity Statement)

We believe the same benefits will flow to any listed company with an appropriately diverse board membership.

(2) International Standards

As one of the world's leading financial centres, Hong Kong should have standards in line with the standards set by other equivalent centres. There has been a growing trend, as pointed out clearly in the consultation paper, for exchanges across the world to set guidelines on board diversity. Hong Kong should not fall behind on this issue. In fact, because of the diverse population in Hong Kong as in many Asian cities, diversity (beyond gender only) in an area where Hong Kong could lead the way and should take the opportunity to do so.

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.

1. Board diversity enhances corporate governance as per reasons in response to Q.1 above.
2. Including board diversity in the Corporate Governance Code is in line with international best practice and has made a positive difference in other jurisdictions such as Australia.
3. We believe that if the “comply or explain” approach does not show tangible results within [3] years it may be necessary to proceed to targets and/or quotas.

Targets and quotas are not our preferred option. They lead to accusations that people are appointed solely on the grounds that they are diverse rather than on the grounds of competence. Whilst in the majority of cases this would not appear to be borne out by the facts, even one or two such appointments undermine the vast majority of others in the eyes of some observers. Furthermore in some cases this has led to a larger (and possibly too large) board as new “diverse” members have been added.

However, in spite of misgivings, we believe that if tangible results are not achieved through a “comply and explain” approach legislation and/or regulation to require greater board diversity may be needed.

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*)?

Yes

No

Please give reasons for your views.

1. Board diversity must be considered in all board appointments and therefore it makes sense that the board or the nomination committee must have a policy on board diversity.
2. The policy should be disclosed so that the board is held accountable for this but also because as stated in Q.1 above having a board policy itself sends a strong signal to all stakeholders, especially employees, about the board’s commitment to a meritocracy and diversity.
3. We believe that it is also important for the board to justify (whether in a report to shareholders or at general meetings) that nominations have taken into account the diversity policy.

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.

Content of the note

A clear definition of diversity must be provided. We recommend that the note be expanded to include a definition about what diversity itself means and additional diversity factors be included in the spirit of being inclusive.

Proposed definition to include edits which are underlined:

“Board diversity will differ according to the circumstances of each Issuer. Board diversity is about board members bringing diverse perspectives to the board. Diversity of board members can be achieved through appointment of board members from different backgrounds and can be achieved through consideration of a number of factors including but not limited to gender, age, culture, race and ethnicity, nationality, disability, sexual orientation, gender identity, religion, educational background or professional experience. Each issuer should take into account its own business model, sustainability of its business and specific needs and disclose the factors it uses and the rationale for using such factors in selecting board members.”

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.

<p>(1) As stated in the answer to Q2 we believe a “comply or explain” approach is the best one for now.</p> <p>(2) As stated in our response to Q3 we believe that the board (or nominations committee) should justify that board nominations have been made in a manner conducive to fostering diversity and taking into account the enterprise's diversity policy.</p> <p>(3) We recommend that companies should report on the following:</p> <p>Composition of the board by:</p> <ul style="list-style-type: none">a) percentage of women at Board Level and Senior Management / Executive Committee;b) ethnicity and nationality breakdown of all board directors;c) age profile of board directors.
--

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.

The consultation paper focuses on diversity at board level, which we believe the Hong Kong business and regulatory communities should address as a matter of urgency.

This leads to two challenges:

- (a) are there a sufficient number of persons from outside the current board director population with the experience to be directors (executive and non-executive)?

We would argue that there are many people with the right skills but that there will be a need for training and coaching to assist with their "board-readiness".

- (b) how can this initiative translate into a more diverse senior management population, as both board and senior management should reflect the diversity of the population?

Companies should be encouraged to put in place programmes to encourage diversity at all levels.

In view of the above at least 6 months lead time for policies to be formulated seems about right, recognising that implementation will take considerably longer.

- End -