Hong Kong Exchanges and Clearing Limited (HKEx)'s Consultation Paper on Review of Corporate Governance Code and Related Listing Rules (June 2024)

Submission from the Equal Opportunities Commission

Introduction

The Equal Opportunities Commission ("EOC") is supportive of the Hong Kong Exchanges and Clearing Limited ("HKEx") in its dedication to phase out single gender board by 31 December 2024 according to the Main Board Listing Rules Provision 13.92 that came into effect in 2022.

2. The EOC supports the proposals as mentioned by HKEx in the *2024 Consultation Paper on Review of Corporate Governance Code and Related Listing Rules* ("HKEx's Consultation Paper") to promote gender equality and gender awareness. Meanwhile, seeing that Hong Kong's stock market diversity may be lagging behind major competitors in terms of the framework to manage "Diversity, Equality and Inclusion" ("DEI"), the EOC suggests riding on the momentum from diversity efforts gained in corporate governance since HKEx's regulatory update in 2022 and appeals to the HKEx for further progress in binding issuers to: (i) conduct regular board performance reviews, (ii) set out metrics for board and workforce diversity policies and measure their impacts against objectives; (iii) assign dedicated persons to oversee diversity policies; (iv) ensure procedural fairness in selection of board composition (especially Nomination Committee) and senior management; (v) disclose gender ratio in senior management and the workforce; and (vi) educate continuously their senior management on anti-discrimination, equal opportunities and diversity.

I. EOC supports upgrade of RBP to CP to require issuers to conduct regular board performance reviews at least every two years and make disclosure (Question 4 of HKEx's Consultation Paper)

3. The EOC fully supports the proposal of requiring issuers to conduct regular board performance reviews at least every two years and make disclosures as set out in Corporate Governance Code ("CG Code") B.1.4. The EOC agrees that upgrading the current Recommended Best Practice ("RBP") to a Code Provision ("CP") under the CG Code would provide greater motivation for issuers to comply. When key stakeholders see that the board is proactively reviewing its performance, they have greater confidence

in the company's ability to act in stakeholders' best interests.

4. Regulatory bodies in some other common law jurisdictions also set rules to regulate the frequency for listed companies to conduct board performance review and the personnel responsible for carrying out the review practice. In the UK, the *UK Corporate Governance Code 2024* published by the Financial Reporting Council stipulates that a formal and rigorous annual review of the board performance should be conducted, while FTSE 350 companies should also commission an externally facilitated board performance review at least every three years.[1] For Singapore, Singapore Exchange ("SGX") requires its issuers, under the supervision of their Nominating Committee, to undertake a formal annual assessment of the board and disclose in their annual report how the assessments have been conducted,[2] and advises the issuers to consider using external facilitators in the performance assessment to achieve a greater level of objectivity.[3] In Australia, ASX Corporate Governance Council puts up a recommendation to the entities listed under Australian Securities Exchange ("ASX") to have and disclose a process for periodically evaluating the board performance, preferably annually,[4] and the ASX Listing Rules explicitly require the ASX entities to benchmark their practice against the Council's recommendations, or disclose the reasons in case they do not conform.[5] In India, companies listed in Bombay Stock Exchange are bound by law to assign independent directors to hold at least one meeting in each financial year, without the presence of non-independent directors and members of the management, to review the performance of the board of directors as a whole.[6]

5. Evidence provided by the Harvard Law School shows that regular board performance reviews contribute to better relationships with external stakeholders, better compliance to regulatory requirements, and more positive organisational cultures.[7]

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[1] UK Corporate Governance Code 2024, Provision 21. Retrieved from https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_ofM100g.pdf.

[2] SGX Mainboard Rules. Code of Corporate Governance 2018. Board Matters. Retrieved from https://rulebook.sgx.com/rulebook/board-matters-1.

[3] SGX Mainboard Rules. Code of Corporate Governance 2018. Practice Guidance 5: Board Performance. Retrieved from https://rulebook.sgx.com/rulebook/practice-guidance-5-board-performance.

[4] Corporate Governance Principles and Recommendations (4th Edition), Recommendation 1.6. Retrieved from https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf.

[5] ASX Listing Rules Chapter 4 - Periodic Disclosure, Rules 4.10.3. Retrieved from https://www.asx.com.au/content/dam/asx/rules-guidance-notes-waivers/asx-listing-rules/rules/Chapter04.pdf.

[6] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on July 10, 2024], Provisions 25(3) and 25(4)(a). Retrieved from https://www.sebi.gov.in/legal/regulations/jul-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-july-10-2024-_84817.html.

[7] Kiel, G., & Beck, J. (2018, May 18). Board performance evaluations that add value. The *Harvard Law School Forum on Corporate Governance*. Retrieved from https://corpgov.law.harvard.edu/2018/05/18/board-performance-evaluations-that-add-value/.

When reviewing board performance, appointment and reappointment of board members, and their approach to succession planning, issuers may take into account the diversity of personal characteristics and board skills matrix, so as to ensure that the appointment of board members is based on merits, support the development of diverse executive pipeline and align with practices in peer jurisdictions. Tokenism to merely fulfil gender requirement in the Listing Rules can be kept in check by sound succession plans.

6. In addition, when delineating the areas to be covered in board performance reviews, the EOC suggests the HKEx to refer to some peer jurisdictions' regulations. For instance, issuers under SGX are required to take diversity into account when evaluating board's composition in the performance review,[8] while UK companies should evaluate board's performance, composition, diversity and how effectively members work together to achieve objective.[9] Suggestions made by major accounting firms or industry actors include some possible parameters worthy of recommendation to issuers, in particular, degree of board and committee diversity, presence of diversity policies, tenure limits, and composition of nominating/corporate governance committee. Other parameters such as action plans and timelines to improve diversity, e.g., avoidance of gender-biased "groupthink" to improve decision-making process, and whistleblowing mechanisms to combat sexual harassment can also contribute to DEI along the lines of integrity, ethics, and corporate responsibilities.

II. EOC supports upgrade of CP to MDR regarding annual review of issuers' board diversity policy implementations (Question 12 of HKEx's Consultation Paper)

7. The EOC supports the proposal to upgrade the existing CP to a Mandatory Disclosure Requirement ("MDR") regarding the annual review of issuers' board diversity policy implementations. Seeing that all issuers in Hong Kong have conducted annual reviews of their board diversity policies, the EOC thinks upgrading the relevant CP to MDR will send a strong signal of HKEx's commitment to DEI and bind issuers to uphold their existing good practices.

8. In Asia-Pacific region, ASX entities should disclose the measurable objectives set for each reporting period to achieve gender diversity, such as specific numerical targets for proportion of women on entities' board, senior executive roles and workforce, and for female representation in key operational roles within a specific timeframe, as well as

[8] **See:** *Footnote 3* above.
[9] **See:** *Footnote 1* above, Principle L under Section 3.

specific targets for achieving Gender Equality Indicators in the Workplace Gender Equality Act;[10] whereas it is also compulsory for companies listed under SGX to disclose in their companies' annual report the board diversity policy and progress made, including plans and timelines, towards implementing the board diversity policy.[11]

9. According to PricewaterhouseCoopers, the Singaporean model of reviewing companies' diversity policies annually has ensured that diversity practices remain relevant to market developments, and forced companies to set out strategies to achieve diversity targets and to clearly explain their milestones.[12] Mckinsey & Company also illustrated with industry examples how progress on DEI cultivation can be tracked with the use of dashboards, quarterly reviews, and timely reassessment of inclusion and diversity goals, while regular reviews on existing policies reap benefits for corporate governance from more articulated board activities to enhanced development of talent pipelines.[13]

III. EOC supports introduction of a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management) (Question 11 of HKEx's Consultation Paper), and EOC contributes on how to design a comprehensive diversity policy

10. The EOC supports the proposal to introduce a Listing Rule requiring issuers to have and disclose a diversity policy for their workforce (including senior management). Meanwhile in other jurisdictions, ASX entities[14] and SGX issuers[15] are being requested to have and disclose a diversity policy. In the UK, the Financial Conduct Authority also sets out a rule in its Disclosure Guidance and Transparency Rules that UK issuers should disclose in their corporate governance statements the diversity policy applied to the senior levels of the company, the objectives of the policy and the policy implementation in the reporting period, and an explanation if a diversity policy is absent.[16]

11. The EOC considers that a comprehensive diversity policy for issuers'

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[10] **See:** *Footnote 4* above, Recommendation 1.5.
[11] **See:** *Footnote 2* above, Provision 2.4.
[12] Pricewaterhouse Coopers. (2021). *Board diversity disclosures in Singapore: from intent to outcomes.* Retrieved from https://www.pwc.com/sg/en/diversity/assets/board-diversity-disclosures-in-singapore.pdf.
[13] McKinsey & Company. (2020). *Diversity wins: how inclusion matters.* Retrieved from https://www.mckinsey.com/~/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf.
[14] **See:** *Footnote 4* above, Recommendation 1.5(a).
[15] SGX Mainboard Rules, Rule 710A. Retrieved from https://rulebook.sgx.com/rulebook/710a-0.
[16] Disclosure Guidance and Transparency Rules sourcebook, DTR7.2.8A(R). Retrieved from https://www.handbook.fca.org.uk/handbook/DTR.pdf.

workplace should include an anti-discrimination and equal opportunity policy, an anti-sexual harassment policy, and assignment of dedicated high-ranked staff member(s) (such as a Chief Diversity Officer / Chief of People and Culture) to oversee the diversity policy.

Establishing an Anti-discrimination and Equal Opportunity Policy

12. As far as compliance in Hong Kong is considered, a comprehensive diversity policy should capture the prohibited grounds and unlawful behaviours under the four Anti-discrimination Ordinances, namely *Sex Discrimination Ordinance (Cap. 480)*("SDO"); *Disability Discrimination Ordinance (Cap. 487)*; *Family Status Discrimination Ordinance (Cap. 527)*; *and Race Discrimination Ordinance (Cap. 602)*. Issuers should also include the complaint-handling procedures which facilitate employees and customers to lodge complaints and protect witnesses against victimisation.[17] The policy may reiterate that a staff's gender, marital status, pregnancy, breastfeeding status, disability, family status, or race will not lead to less favourable treatment and adverse impact in one's career ladder. A comprehensive diversity policy ensures anti-discrimination practices in organisational culture, offers protection to victims who experience discriminatory and harassing behaviours in the workplace, promotes effective implementation of a transparent diversity policy across senior management and the workforce, and mitigates reputational risks if unlawful acts occur but dealt with promptly and properly. At the same time, setting out and regularly reviewing a carefully designed policy may be a defence for vicarious liability when unlawful acts occur in the course of business operations.

13. On the front of promoting good practices, issuers are encouraged to develop equal opportunity policies to promote diversity and inclusivity in the workplace. Good practices such as introducing family-friendly measures to address the caring responsibilities of all genders, and highlighting measures to support employees with certain health conditions could be highlighted in issuers' annual reports. It is also common for employers in Hong Kong to send a strong message to candidates in their job advertisements that they are equal opportunity employers. Issuers may also consider setting up voluntary targets to achieve racial diversity in the board room as practised by some FTSE100 and FTSE250 companies.[18]

[17] Bobek, V., Maček, A., Bradler, S., & Horvat, T. (2018). How to reduce discrimination in the workplace: the case of Austria and Taiwan. *Naše gospodarstvo/Our economy, 64*(3), 12-22.

[18] The Parker Review Committee. (2023). *Improving the ethnic diversity of UK business: an update report from the Parker Review*. Retrieved from https://parkerreview.co.uk/wp-content/uploads/2023/03/The-Parker-Review-March-2023.pdf.

14. To assess diversity and inclusion within organisations, the HKEx may also consider facilitating issuers' report of industry-based good practices via dashboards or multiple metrics, which provide a benchmark for issuers to compare their performance against their competitors within the same industry. Such step also helps bring meaningful and industry-focused changes. For example, disclosure of female representation in STEM industries can boost gender diversity. Apart from this, FTSE Russell, a subsidiary of London Stock Exchange, adopts 24 separate metrics across four key pillars in its Diversity and Inclusion Indices to measure the DEI efforts over 15,000 companies globally, and calculates the scores once a quarter. These metrics mainly surround the gender ratio, diversity process and objectives, numbers of controversies, family-friendly measures, as well as employee's career and trainings.[19] HKEx can refer to this example when considering formulating dashboards for its issuers to report and disclose.

Anti-sexual harassment policy

15. A clear and explicit anti-sexual harassment policy will deter potential respondents, especially those in senior management positions, from sexually harassing junior staff, interns, trainees, or summer helpers, in the workplace. In particular, the SDO prohibits any sexual harassment acts, no matter they are done verbally or in writing. Not only having an anti-sexual harassment policy could be one of the reasonable and practicable steps considered as the defence of vicarious liability under the SDO, but also sets a clear tone that no sexual favours or sexual harassment should be tolerated in exchange for promotion opportunities.

16. A recent Equileap's assessment report suggests that in 2023 only as few as 35% of companies in Hong Kong have published anti-sexual harassment policies, whereas more than half of the companies in Japan (68%), Australia (65%), and Singapore (56%) have published such policies.[20] EOC's *Territory-wide Representative Survey on Sexual Harassment in Hong Kong 2021* found that nearly 1 in 8 employees have faced sexual harassments in the workplace in Hong Kong.[21] Against this backdrop, the EOC suggests

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[19] FTSE Russell. (2024). *Diversity and inclusion scores from LSEG – methodology.* Retrieved from https://www.lseg.com/content/dam/ftse-russell/en_us/documents/methodology/diversity-inclusion-rating-methodology.pdf.

[20] Equileap. (2024). *Gender equality report & ranking (2024 edition).* Retrieved from https://equileap.com/wp-content/uploads/2024/02/Equileap_2024_Gender_Equality_Report_Developed_Markets.pdf.

[21] Equal Opportunities Commission. (2021). *A territory-wide representative survey on sexual harassment in Hong Kong 2021*, p. 61. Retrieved from https://www.eoc.org.hk/compass/wp-content/uploads/2022/05/Territory-wide-Representative-Survey-on-SH-in-HK-2021-EN.pdf.

that the HKEX should require its issuers to promulgate and implement clearly-defined anti-sexual harassment policy, and take stock of issuers with such policy.

Assignment of Chief Diversity Officer to oversee diversity policy and matters

17. HKEx should establish accountability by requiring issuers to assign dedicated persons to be in charge of DEI. The dedicated persons often come as a Chief Diversity Officer ("CDO") or equivalent in other peer markets, but an external consultancy can also be considered. A relevant staff and reporting line should also be established within companies to handle diversity issues in all aspects of the business operations, ranging from companies' responsible upstream supply chain practices, diverse hiring practices, development of training programs, compliance to regulations, inclusive representation of disadvantaged groups (in terms of disability, gender and race across corporate publicity), sales and marketing, sustainability, as well as information technology, to strategizing for multi outlets for company's products and services for consumers / clients of all genders, ages, races and abilities. Evidences have shown that monitored development of diversity leads to more innovation, improvements in problem-solving tactics, and better employee retention.[22] HKEx must take note that a CDO is fundamentally different from a Human Resources Director when promoting the need for establishing dedicated diversity job roles. The absorption of diversity policy into human resources management is undesirable, as diversity officers perform functions well beyond internal talent issues.

18. In fact, 59% of the Fortune 500 companies have a CDO.[23] Meanwhile, companies having a CDO amount to 31% for ASX100, 18% for BSE200, 16% for SGX.[24] The Australian Institute of Company Directors had suggested that diversity managers should oversee diversity policies and report to the board on measurable objectives as early as in 2010.[25] If Hong Kong is to stay relevant to international market developments, it must at least acknowledge DEI as a business function, an overarching imperative across regions and aspire to lead regional, if not global, market developments by requiring

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[22] Skvortsova, A. (2022, August 16). What makes a successful chief diversity officer? *HR Magazine*. Retrieved from: https://www.hrmagazine.co.uk/content/comment/what-makes-a-successful-chief-diversity-officer/.

[23] Umoh, R. (2024, January 11). From tenure to turnover, here's how chief diversity officers compare to every single C-suite role. *Fortune*. Retrieved from https://fortune.com/2024/01/10/diversity-officers-ceo-csuite-tenure-turnover-fortune500/.

[24] Lim, S., & Flock, J. (2023, April 21). A global look at the chief diversity officer landscape. *Russell Reynolds Associates*. Retrieved from https://www.russellreynolds.com/en/insights/reports-surveys/a-global-look-at-the-chief-diversity-officer-landscape.

[25] Australian Institute of Company Directors. (2010). *New corporate governance recommendations on diversity: tips for getting started*. Retrieved from https://www.asx.com.au/documents/asx-compliance/new_cg_recommendations_diversity_aicd_tips_started.pdf.

issuers to set a timeline for establishing a diversity reporting line, especially when the competition is keen.

IV. HKEx's proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee (Question 10 of HKEx's Consultation Paper)

19. The EOC supports the proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee. Gender diversity should be reflected in the nomination committee so as to pre-empt potential gender biases in the upstream, ensure procedural fairness and equal opportunities for both genders in the upstream of executive search and succession planning. ASX Corporate Governance Council requests the ASX entities to ensure an appropriate diversity of membership in the nomination committee so as to avoid entrenching "groupthink" or other cognitive biases.[26] Apart from this, a study conducted by KPMG, which examined the composition of every nomination committee for all the FTSE100 companies, shows that for companies where no women are present in their nomination committees, the average percentage of women in their executive teams was only 19% – lower than the FTSE100 average of nearly 29%.[27] Gender diversity within the nomination committees is therefore crucial in shaping gender equality in senior leadership. Having balanced representation of gender diversity on the nomination committee helps address unconscious biases and blind spots, leading to a more inclusive and meritocratic process.

20. In terms of profitability and productivity, McKinsey & Company's 2023 study of 1,265 companies across 23 countries found that companies in the top quartile for board-gender diversity were 27% more likely to outperform financially than those in the bottom quartile.[28] Another study by MSCI interrogated talent management practices and female board representation across 617 MSCI All Country World Index companies, and discovered that firms with more women on boards showed higher employee productivity growth.[29] Having a gender diverse nomination committees can amplify these strategic advantages and publicly demonstrate a company's commitments to DEI to fit growing

[26] **See:** *Footnote 4* above, Recommendation 2.1.
[27] KPMG. (2020). *Nomination Committees: membership diversity.* Retrieved from https://ridgewaypartners.com/wp-content/uploads/2020/04/KPMG-Ridgeway-Partners-nomination-committee-study.pdf.
[28] McKinsey& Company. (2023). *Diversity matters even more*, p15. Retrieved from https://nsga.org/wp-content/uploads/2024/02/McKinsey-Diversity-Report-December-2023.pdf.
[29] Eastman, M. T. (2018, March 6). *Women on boards: one piece of a bigger puzzle.* MSCI. Retrieved from https://www.msci.com/www/blog-posts/women-on-boards-one-piece-of-a/0872932779.

expectations of investors, customers, and employees.

21. On a side note, McKinsey & Company's 2023 study also showed that companies in the top quartile for ethnically diverse boards are 13 percent more likely to outperform than those in the bottom quartile, and therefore HKEx may consider promoting ethnic diversity as a good practice that can bring actual benefits to businesses.

V. HKEx's proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG report (Question 13 of HKEx's Consultation Paper)

22. The EOC supports the proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG report. According to Equileap's 2023 report, 53% of listed companies in Hong Kong do not disclose any data on women in senior management.[30] Equileap's 2024 report reveals that Hong Kong has relatively low proportion of female representation at all four levels of listed companies (board, executives, senior management and workforce) when compared to other common law jurisdictions like the UK, Australia and Singapore, with 17% of women in board, 18% in executives, 26% in senior management and 40% in workforce.[31] In order to achieve a more balanced gender ratio in listed companies, it will be a good step for HKEx to request its issuers to disclose more details of gender ratio at different working levels (in addition to the board of directors) to increase issuers' accountability and transparency to the public. Mandatory disclosure also provides issuers with incentives to improve the gender ratio and tackle the issue of succession planning across all levels in a timely manner.

23. Indeed, we already noted that some HKEx issuers have taken good initiatives to develop their own metrics to measure and disclose their DEI efforts and targets, for example, number and percentages of employees in both genders across all working levels within the same company, percentages of staff in managerial level in both genders, percentages of female staff by job function, progress made to achieve diversity-related KPIs (including number of DEI trainings and workshops, workplace inclusiveness), gender-related KPIs in the coming financial year, etc. One issuer even disclosed its new employee hires by gender, employee turnover rate by gender, percentage of employees

[30] Equileap. (2023). *Gender equality global report & ranking (2023 edition)*. Retrieved from https://equileap.com/wp-content/uploads/2023/03/Equileap_Global_Report_2023.pdf.

[31] **See:** *Footnote 20* above.

trained by gender, average training hours by gender and gender pay gap in its ESG report. Disclosures are presented in the forms of paragraph texts, tables or bar charts in the issuers' annual reports or sustainability reports.

24. Securities and Exchange Commission, which regulates listed companies in the US, is also recently considering a proposal to enhance disclosures related to human capital data, including workforce demographic data and diversity at senior levels information, to allow investors to understand company's efforts to access and develop new sources of talents.[32] The target date for issuance of such proposal is October 2024.[33]

VI. HKEx's proposals to specify the specific topics that must be covered under the continuous professional development requirement for directors (Question 2(d) of HKEx's Consultation Paper) and to make consequential changes to Principle C.1 and CP C.1.1 of the CG Code (Question 3 of HKEx's Consultation Paper)

25. The EOC supports the proposal to include specific topics that must be covered under the continuous professional development requirement for directors. A study by McKinsey & Company shows that companies in the US and Canada consider "putting DEI as a top business priority" as one of the most critical mindsets and abilities for the management.[34] Academic research also suggests that regular anti-bias training is crucial to avoid biases from entering hiring and review processes.[35] HKEx's competitor SGX states clearly in its *Practice Note under Mainboard Rules* that first-time directors must attend mandatory training on issues related to diversity.[36] The EOC suggests HKEx to revise Paragraph 3.09G in the Main Board Listing Rules to include topics related to equal opportunities, diversity, anti-discrimination (including adherence to the four anti-discrimination ordinances in Hong Kong), and anti-sexual harassment, in the directors' training topics explicitly.

26. The EOC agrees with the proposed changes to Principle C.1 and CP C.1.1 of the CG Code as they emphasise the reasons for directors to mandatorily participate in

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[32] Cooley LLP. (2024, July 10). *SEC's spring 2024 agenda delays most actions until 2025*. Retrieved from https://www.lexology.com/library/detail.aspx?g=28620c4a-d336-4aef-89c7-1ab23150f978.

[33] U.S. Securities and Exchange Commission. (2023). *Recommendation of the SEC Investor Advisory Committee's Investor-as-Owner Subcommittee regarding human capital management disclosure*. Retrieved from https://www.sec.gov/files/spotlight/iac/20230921-recommendation-regarding-hcm.pdf.

[34] Field, E., Krivkovich, A., Kügele, S. Robinson, N., & Yee, L. (2023, October 5). *Women in the workplace 2023*. McKinsey & Company. Retrieved from https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace.

[35] Correll, S. J. (2017). "SWS 2016 feminist lecture: reducing gender biases in modern workplaces: a small wins approach to organizational change." *Gender & Society, 31*(6), 725-750.

[36] SGX Mainboard Rules. Practice note 2.3 training for directors with no prior experience. Retrieved from https://rulebook.sgx.com/rulebook/practice-note-23-training-directors-no-prior-experience.

continuous professional development – to develop and refresh their knowledge and skills for a proper understanding of the issuer's business, operations and governance policies and full awareness of their responsibilities under statute and common law, the Exchange Listing Rules, legal and other regulatory requirements. The EOC suggests HKEx to further mention the understanding of anti-discrimination practices and diversity policies in Principle C.1 to remind directors of their responsibilities to guarantee a pluralistic and inclusive workplace for employees.

Equal Opportunities Commission

August 2024

Submitted via Qualtrics

The Equal Opportunities Commission

Company/Organisation view

Others (please specify)

Question 1

Do you agree with our proposal to introduce a new Code Provision (CP) under the Corporate Governance Code (CG Code) requiring issuers without an independent board chair to designate one independent non-executive director (INED) as a Lead INED to enhance engagement with investors and shareholders?

Please provide reasons for your views.

Question 2(a)

Regarding continuous professional development for directors, do you agree with our proposal to make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

Please provide reasons for your views.

Question 2(b)

Regarding continuous professional development for directors, do you agree with our proposal to require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?

Please provide reasons for your views.

Question 2(c)

Regarding continuous professional development for directors, do you agree with our proposal to define “First-time Directors” to mean directors who (i) are appointed as a director of an issuer listed on the

Exchange for the first time; or (ii) have not served as a director of an issuer listed on the Exchange for a period of three years or more prior to their appointment?

Please provide reasons for your views.

Question 2(d)

Regarding continuous professional development for directors, do you agree with our proposal to specify the specific topics that must be covered under the continuous professional development requirement?

Yes

Please provide reasons for your views.

The EOC supports the proposal to include specific topics that must be covered under the continuous professional development requirement for directors.

A study by McKinsey & Company shows that companies in the US and Canada consider "putting DEI as a top business priority" as one of the most critical mindsets and abilities for the management. Academic research also suggests that regular anti-bias training is crucial to avoid biases from entering hiring and review processes.

HKEx's competitor SGX states clearly in its Practice Note under Mainboard Rules that first-time directors must attend mandatory training on issues related to diversity.

The EOC suggests HKEx to revise Paragraph 3.09G in the Main Board Listing Rules to include topics related to equal opportunities, diversity, anti-discrimination (including adherence to the four anti-discrimination ordinances in Hong Kong), and anti-sexual harassment, in the directors' training topics explicitly.

Question 3

Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code?

Yes

Please provide reasons for your views.

The EOC agrees with the proposed changes to Principle C.1 and CP C.1.1 of the CG Code as they emphasise the reasons for directors to mandatorily participate in continuous professional development – to develop and refresh their knowledge and skills for a proper understanding of the issuer's business, operations and governance policies and full awareness of their responsibilities under statute and common law, the Exchange Listing Rules, legal and other regulatory requirements.

The EOC suggests HKEx to further mention the understanding of anti-discrimination practices and diversity policies in Principle C.1 to remind directors of their responsibilities to guarantee a pluralistic and inclusive workplace for employees.

<u>Question 4</u>

Do you agree with our proposal to upgrade the current Recommended Best Practice (RBP) in the CG Code to a CP requiring issuers to conduct regular board performance reviews at least every two years and make disclosure as set out in CP B.1.4?

Yes

Please provide reasons for your views.

The EOC fully supports the proposal of requiring issuers to conduct regular board performance reviews at least every two years and make disclosures as set out in Corporate Governance Code ("CG Code") B.1.4. The EOC agrees that upgrading the current Recommended Best Practice ("RBP") to a Code Provision ("CP") under the CG Code would provide greater motivation for issuers to comply. When key stakeholders see that the board is proactively reviewing its performance, they have greater confidence in the company's ability to act in stakeholders' best interests.

Regulatory bodies in some other common law jurisdictions also set rules to regulate the frequency for listed companies to conduct board performance review and the personnel responsible for carrying out the review practice. In the UK, the UK Corporate Governance Code 2024 published by the Financial Reporting Council stipulates that a formal and rigorous annual review of the board performance should be conducted, while FTSE 350 companies should also commission an externally facilitated board performance review at least every three years. For Singapore, Singapore Exchange ("SGX") requires its issuers, under the supervision of their Nominating Committee, to undertake a formal annual assessment of the board and disclose in their annual report how the assessments have been conducted, and advises the issuers to consider using external facilitators in the performance assessment to achieve a greater level of objectivity. In Australia, ASX Corporate Governance Council puts up a recommendation to the entities listed under Australian Securities Exchange ("ASX") to have and disclose a process for periodically evaluating the board performance, preferably annually, and the ASX Listing Rules explicitly require the ASX entities to benchmark their practice against the Council's recommendations, or disclose the reasons in case they do not conform. In India, companies listed in Bombay Stock Exchange are bound by law to assign independent directors to hold at least one meeting in each financial year, without the presence of non-independent directors and members of the management, to review the performance of the board of directors as a whole.

Evidence provided by the Harvard Law School shows that regular board performance reviews contribute to better relationships with external stakeholders, better compliance to regulatory requirements, and more positive organisational cultures. When reviewing board performance, appointment and reappointment of board members, and their approach to succession planning, issuers may take into account the diversity of personal characteristics and board skills matrix, so as to ensure that the appointment of board members is based on merits, support the development of diverse executive pipeline and align with practices in peer jurisdictions. Tokenism to merely fulfil gender requirement in the Listing Rules can be kept in check by sound succession plans.

In addition, when delineating the areas to be covered in board performance reviews, the EOC suggests the HKEx to refer to some peer jurisdictions' regulations. For instance, issuers under SGX are required to take diversity into account when evaluating board's composition in the performance review, while UK companies should evaluate board's performance, composition, diversity and how effectively members work together to achieve objective. Suggestions made by major accounting firms or industry actors include some possible parameters worthy of recommendation to issuers, in particular, degree of board and committee diversity, presence of diversity policies, tenure limits, and composition of nominating/corporate governance committee. Other parameters such as action plans and timelines to improve diversity, e.g., avoidance of gender-biased "groupthink" to improve decision-making process, and whistleblowing mechanisms to combat sexual harassment can also contribute to DEI along the lines of integrity, ethics, and corporate responsibilities.

<u>Question 5</u>

Do you agree with our proposal to introduce a new CP requiring issuers to maintain a board skills matrix and make disclosure set out in CP B.1.5?

Please give reasons for your views.

<u>Question 6(a)</u>

In relation to our proposal to introduce a "hard cap" of six listed issuer directorships that INEDs may hold, do you agree with the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

Please provide reasons for your views.

<u>Question 6(b)</u>

In relation to our proposal to introduce a "hard cap" of six listed issuer directorships that INEDs may hold, do you agree with the proposed three-year transition period to implement the hard cap?

Please provide reasons for your views.

<u>Question 7</u>

Do you agree with the proposal to introduce a new Mandatory Disclosure Requirement (MDR) in the CG Code to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board?

Please provide reasons for your views.

<u>Question 8(a)</u>

In relation to our proposal to introduce a "hard cap" of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed hard cap to strengthen board independence?

Please give reasons for your views.

<u>Question 8(b)</u>

In relation to our proposal to introduce a "hard cap" of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree that a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?

Please provide reasons for your views.

<u>Question 8(c)</u>

In relation to our proposal to introduce a "hard cap" of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed three-year transition period in respect of the implementation of the hard cap?

Please provide reasons for your views.

<u>Question 9</u>

Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report?

Please provide reasons for your views.

<u>Question 10</u>

Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee?

Yes

Please provide reasons for your views.

The EOC supports the proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee. Gender diversity should be reflected in the nomination committee so as to pre-empt potential gender biases in the upstream, ensure procedural fairness and equal opportunities for both genders in the upstream of executive search and succession planning. ASX Corporate Governance Council requests the ASX entities to ensure an appropriate diversity of membership in the nomination committee so as to avoid entrenching “groupthink” or other cognitive biases. Apart from this, a study conducted by KPMG, which examined the composition of every nomination committee for all the FTSE100 companies, shows that for companies where no women are present in their nomination committees, the average percentage of women in their executive teams was only 19% – lower than the FTSE100 average of nearly 29%. Gender diversity within the nomination committees is therefore crucial in shaping gender equality in senior leadership. Having balanced representation of gender diversity on the nomination committee helps address unconscious biases and blind spots, leading to a more inclusive and meritocratic process.

In terms of profitability and productivity, McKinsey & Company’s 2023 study of 1,265 companies across 23 countries found that companies in the top quartile for board-gender diversity were 27% more likely to outperform financially than those in the bottom quartile. Another study by MSCI interrogated talent management practices and female board representation across 617 MSCI All Country World Index companies, and discovered that firms with more women on boards showed higher employee productivity growth. Having a gender diverse nomination committees can amplify these strategic advantages and publicly demonstrate a company’s commitments to DEI to fit growing expectations of investors, customers, and employees.

On a side note, McKinsey & Company’s 2023 study also showed that companies in the top quartile for ethnically diverse boards are 13 percent more likely to outperform than those in the bottom quartile, and therefore HKEx may consider promoting ethnic diversity as a good practice that can bring actual benefits to businesses.

<u>Question 11</u>

Do you agree with our proposal to introduce a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management)?

Yes

Please provide reasons for your views.

The EOC supports the proposal to introduce a Listing Rule requiring issuers to have and disclose a diversity policy for their workforce (including senior management). Meanwhile in other jurisdictions, ASX entities and SGX issuers are being requested to have and disclose a diversity policy. In the UK, the Financial Conduct Authority also sets out a rule in its Disclosure Guidance and Transparency Rules that UK issuers should disclose in their corporate governance statements the diversity policy applied to the senior levels of the company, the objectives of the policy and the policy implementation in the reporting period, and an explanation if a diversity policy is absent.

The EOC considers that a comprehensive diversity policy for issuers' workplace should include an anti-discrimination and equal opportunity policy, an anti-sexual harassment policy, and assignment of dedicated high-ranked staff member(s) (such as a Chief Diversity Officer / Chief of People and Culture) to oversee the diversity policy.

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Establishing an Anti-discrimination and Equal Opportunity Policy

As far as compliance in Hong Kong is considered, a comprehensive diversity policy should capture the prohibited grounds and unlawful behaviours under the four Anti-discrimination Ordinances, namely Sex Discrimination Ordinance (Cap. 480)("SDO"); Disability Discrimination Ordinance (Cap. 487); Family Status Discrimination Ordinance (Cap. 527); and Race Discrimination Ordinance (Cap. 602). Issuers should also include the complaint-handling procedures which facilitate employees and customers to lodge complaints and protect witnesses against victimisation. The policy may reiterate that a staff's gender, marital status, pregnancy, breastfeeding status, disability, family status, or race will not lead to less favourable treatment and adverse impact in one's career ladder. A comprehensive diversity policy ensures anti-discrimination practices in organisational culture, offers protection to victims who experience discriminatory and harassing behaviours in the workplace, promotes effective implementation of a transparent diversity policy across senior management and the workforce, and mitigates reputational risks if unlawful acts occur but dealt with promptly and properly. At the same time, setting out and regularly reviewing a carefully designed policy may be a defence for vicarious liability when unlawful acts occur in the course of business operations.

On the front of promoting good practices, issuers are encouraged to develop equal opportunity policies to promote diversity and inclusivity in the workplace. Good practices such as introducing family-friendly measures to address the caring responsibilities of all genders, and highlighting measures to support employees with certain health conditions could be highlighted in issuers' annual reports. It is also common for employers in Hong Kong to send a strong message to candidates in their job advertisements that they are equal opportunity employers. Issuers may also consider setting up voluntary targets to achieve racial diversity in the board room as practised by some FTSE100 and FTSE250 companies.

To assess diversity and inclusion within organisations, the HKEx may also consider facilitating issuers' report of industry-based good practices via dashboards or multiple metrics, which provide a benchmark for issuers to compare their performance against their competitors within the same industry. Such step also helps bring meaningful and industry-focused changes. For example, disclosure of female representation in STEM industries can boost gender diversity. Apart from this, FTSE Russell, a subsidiary of London Stock Exchange, adopts 24 separate metrics across four key pillars in its Diversity and Inclusion Indices to measure the DEI efforts over 15,000 companies globally, and calculates the scores once a quarter. These metrics mainly surround the gender ratio, diversity process and objectives, numbers of controversies, family-friendly measures, as well as employee's career and trainings. HKEx can refer to this example when considering formulating dashboards for its issuers to report and disclose.

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Anti-sexual harassment policy

A clear and explicit anti-sexual harassment policy will deter potential respondents, especially those in senior management positions, from sexually harassing junior staff, interns, trainees, or summer helpers, in the workplace.

In particular, the SDO prohibits any sexual harassment acts, no matter they are done verbally or in writing. Not only having an anti-sexual harassment policy could be one of the reasonable and practicable steps considered as the defence of vicarious liability under the SDO, but also sets a clear tone that no sexual favours or sexual harassment should be tolerated in exchange for promotion opportunities.

A recent Equileap's assessment report suggests that in 2023 only as few as 35% of companies in Hong Kong have published anti-sexual harassment policies, whereas more than half of the companies in Japan (68%), Australia (65%), and Singapore (56%) have published such policies. EOC's Territory-wide Representative Survey on Sexual Harassment in Hong Kong 2021 found that nearly 1 in 8 employees have faced sexual harassments in the workplace in Hong Kong. Against this backdrop, the EOC suggests that the HKEX should require its issuers to promulgate and implement clearly-defined anti-sexual harassment policy, and take stock of issuers with such policy.

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Assignment of Chief Diversity Officer to oversee diversity policy and matters

HKEx should establish accountability by requiring issuers to assign dedicated persons to be in charge of DEI. The dedicated persons often come as a Chief Diversity Officer ("CDO") or equivalent in other peer markets, but an external consultancy can also be considered. A relevant staff and reporting line should also be established within companies to handle diversity issues in all aspects of the business operations, ranging from companies' responsible upstream supply chain practices, diverse hiring practices, development of training programs, compliance to regulations, inclusive representation of disadvantaged groups (in terms of disability, gender and race across corporate publicity), sales and marketing, sustainability, as well as information technology, to strategizing for multi outlets for company's products and services for consumers / clients of all genders, ages, races and abilities. Evidences have shown that monitored development of diversity leads to more innovation, improvements in problem-solving tactics, and better employee retention. HKEx must take note that a CDO is fundamentally different from a Human Resources Director when promoting the need for establishing dedicated diversity job roles. The absorption of diversity policy into human resources management is undesirable, as diversity officers perform functions well beyond internal talent issues.

In fact, 59% of the Fortune 500 companies have a CDO. Meanwhile, companies having a CDO amount to 31% for ASX100, 18% for BSE200, 16% for SGX. The Australian Institute of Company Directors had suggested that diversity managers should oversee diversity policies and report to the board on measurable objectives as early as in 2010. If Hong Kong is to stay relevant to international market developments, it must at least acknowledge DEI as a business function, an overarching imperative across regions and aspire to lead regional, if not global, market developments by requiring issuers to set a timeline for establishing a diversity reporting line, especially when the competition is keen.

Question 12

Do you agree with our proposal to upgrade from a CP to a MDR the requirement on the annual review of the implementation of an issuer's board diversity policy?

Yes

Please provide reasons for your views.

The EOC supports the proposal to upgrade the existing CP to a Mandatory Disclosure Requirement ("MDR") regarding the annual review of issuers' board diversity policy implementations. Seeing that all issuers in Hong Kong have conducted annual reviews of their board diversity policies, the EOC thinks upgrading the relevant CP to MDR will send a strong signal of HKEx's commitment to DEI and bind issuers to uphold their existing good practices.

In Asia-Pacific region, ASX entities should disclose the measurable objectives set for each reporting period to achieve gender diversity, such as specific numerical targets for proportion of women on entities' board, senior executive roles and workforce, and for female representation in key operational roles within a specific timeframe, as well as specific targets for achieving Gender Equality Indicators in the Workplace Gender Equality Act; whereas it is also compulsory for companies listed under SGX to disclose in their companies' annual report the board diversity policy and progress made, including plans and timelines, towards implementing the board diversity policy.

According to PricewaterhouseCoopers, the Singaporean model of reviewing companies' diversity policies annually has ensured that diversity practices remain relevant to market developments, and forced companies to set out strategies to achieve diversity targets and to clearly explain their milestones. Mckinsey & Company also illustrated with industry examples how progress on DEI cultivation can be tracked with the use of dashboards, quarterly reviews, and timely reassessment of inclusion and diversity goals, while regular reviews on existing policies reap benefits for corporate governance from more articulated board activities to enhanced development of talent pipelines.

Question 13

Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report?

Yes

Please provide reasons for your views.

The EOC supports the proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG report. According to Equileap's 2023 report, 53% of listed companies in Hong Kong do not disclose any data on women in senior management. Equileap's 2024 report reveals that Hong Kong has relatively low proportion of female representation at all four levels of listed companies (board, executives, senior management and workforce) when compared to other common law jurisdictions like the UK, Australia and Singapore, with 17% of women in board, 18% in executives, 26% in senior management and 40% in workforce. In order to achieve a more balanced gender ratio in listed companies, it will be a good step for HKEx to request its issuers to disclose more details of gender ratio at different working levels (in addition to the board of directors) to increase issuers' accountability and transparency to the public. Mandatory disclosure also provides issuers with incentives to improve the gender ratio and tackle the issue of succession planning across all levels in a timely manner.

Indeed, we already noted that some HKEx issuers have taken good initiatives to develop their own metrics to measure and disclose their DEI efforts and targets, for example, number and percentages of employees in both genders across all working levels within the same company, percentages of staff in managerial level in both genders, percentages of female staff by job function, progress made to achieve diversity-related KPIs (including number of DEI trainings and workshops, workplace inclusiveness), gender-related KPIs in the coming financial year, etc. One issuer even disclosed its new employee hires by gender, employee turnover rate by gender, percentage of employees trained by gender, average training hours by gender and gender pay gap in its ESG report. Disclosures are presented in the forms of paragraph texts, tables or bar charts in the issuers' annual reports or sustainability reports.

Securities and Exchange Commission, which regulates listed companies in the US, is also recently considering a proposal to enhance disclosures related to human capital data, including workforce demographic data and diversity at senior levels information, to allow investors to understand company's efforts to access and develop new sources of talents. The target date for issuance of such proposal is October 2024.

Question 14

Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft Main Board Listing Rule 13.92(2) in Appendix I?

Please provide reasons for your views.

Question 15(a)

Do you agree with our proposal to emphasise in Principle D.2 the board's responsibility for the issuer's risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems?

Please provide reasons for your views.

Question 15(b)

Do you agree with our proposal to upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer's risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H?

Please provide reasons for your views.

<u>Question 16</u>

Do you agree with our proposal to refine the existing CPs in section D.2 of the CG Code setting out the scope of the (at least) annual reviews of the risk management and internal control systems?

Please provide reasons for your views.

<u>Question 17</u>

Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period?

Please provide reasons for your views.

<u>Question 18</u>

Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements?

Please provide reasons for your views.

<u>Question 19</u>

Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules?

Please provide reasons for your views.

<u>Question 20</u>

Do you agree with our proposal to clarify our expectation of the provision of monthly updates in CP D.1.2 and the note thereto?

Please provide reasons for your views.

<u>Question 21</u>

Do you agree with our proposal to align requirements for the nomination committee, the audit committee and the remuneration committee on establishing written terms of reference for the committee and the arrangements during temporary deviations from requirements as set out in draft Main Board Listing Rules 3.23, 3.27, 3.27B, 3.27C and 8A.28A in Appendix I?

Please provide reasons for your views.

<u>Question 22</u>

Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements as set out in paragraphs 182 to 183 of the Consultation Paper?

Please provide reasons for your views.