

ASIAN CORPORATE GOVERNANCE ASSOCIATION (ACGA)

ACGA Response to HKEx “Consultation Paper on Board Diversity”

November 9, 2012

This submission contains ACGA’s response to the “Consultation Paper on Board Diversity”, published by Hong Kong Exchanges and Clearing Limited (HKEx) in September 2012. We would be pleased to discuss any of these issues further with the Exchange.

We generally support the principles behind the proposed amendments that the Exchange has set out in the Consultation, including:

- Promoting board diversity;
- Introducing new measures in the Corporate Governance Code;
- Encouraging nomination committees or the board to develop a policy on diversity of board members and disclosing the policy, or a summary of it, in the corporate governance report; and
- Introducing a note under the new proposal clarifying what the Exchange means by diversity.

However, we are less convinced that forcing a company with a diversity policy to disclose “any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives” will be effective at this stage. We believe that such a requirement would likely lead to boilerplate language and a box-ticking approach to this issue.

Proposals and Consultation Questions

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

ACGA: Yes. As the consultation paper notes, exchanges and regulators around the world, including the US, UK, Australia and more recently, Malaysia and Singapore, have been revising their rules and guidelines to incorporate board diversity. Hong Kong, as a major global exchange, needs to join the discussion and take into account an issue that has become increasingly relevant not only for stakeholders but companies around the world. Regulators, companies, non-profit organisations, and professional associations, including the International Corporate Governance Network and the Australian Institute of Company Directors, have either published research on this issue and/or are working with their members and the community at large on it.

While most of the research on board diversity to date has been on gender diversity, which we support since the under-representation of women on boards makes little business sense, we would like to stress that we are not merely advocating gender diversity. Rather we would encourage companies to view diversity in broad terms, including experience, skills, industry/sector background, age and ethnicity as well as gender. The Tyson Report on the Recruitment and Development of Non-Executive Directors (June 2003) stated that, “Experts on corporate governance agree that the best boards are composed of an appropriate mix of individuals with different skills, experiences and knowledge...groups that are more diverse in skill or knowledge-based dimensions have the potential to consider a greater range of perspectives and to generate more high-quality solutions to problems than less diverse groups.” (Milliken and Martins 1996)

Diversity should not be pursued for superficial or public relations reasons, however. It will be most effective when linked to a company's longer term business strategies and decision-making needs. We believe that a company with, for example, a complex, international business and, at the same time, a one-dimensional, insider board is putting itself at considerable risk.

Q.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?

ACGA: Yes. We believe the measures should be on a comply-or-explain basis rather than being made mandatory. Forcing companies to diversify their boards through rules or by introducing a quota system will almost certainly ensure that they comply in form rather than spirit. Indeed, it would not be surprising to see some family companies simply appointing inexperienced female members to their boards, or appointing trophy directors, community leaders and others without thinking sufficiently about the range of skills needed.

We are aware that the danger of boilerplate disclosure and box-ticking may well occur even with a comply-or-explain provision, since many issuers will find it easier to comply than to explain. Yet companies still have the option of explaining and should be encouraged to give meaningful thought to their decisions.

Q.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)?

ACGA: Yes. We believe this proposal would help an issuer's nomination committee or board focus on the value of diversity for their company and provide them with a direction and strategy to help choose candidates. A policy would also establish a baseline for each company on diversity, the changes it needed to make and the priorities that should be given to those changes. It is, therefore, important that the Exchange encourages companies to formulate such a policy. Providing case studies of how companies in Hong Kong have done this successfully would be a useful tool for issuers.

In the event that a company already has such a policy, stakeholders should be informed so as to understand the company's thinking on this issue and its strategy.

Q.4: Do you agree with our proposal to introduce a note under CP A.5.6 to clarify what we mean by diversity and do you agree with the content of the note?

ACGA: Yes. As we have already mentioned, we believe that diversity should not be narrowly defined or a quota system introduced, since this would be counterproductive. The note the Exchange proposes, and the content of the note, is one that we endorse since it would help clarify the scope of diversity for companies.

Q.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?

ACGA: We doubt that introducing a mandatory disclosure provision in the Code would prove to be of great benefit. CP A.5.6 already states that the company "should disclose the policy or a summary of the policy in the corporate governance report". While we understand the reason the Exchange has provided for this proposal, we believe it would likely encourage companies to

set artificial and/or low-bar targets that make little difference to their boards. Or they could claim to already have sufficiently diverse boards and set targets that reinforce the status quo.

Companies should be allowed to decide for themselves how to formulate policies on diversity and the manner in which they inform their stakeholders. Investors are best served with meaningful information and will be better able to differentiate companies with genuine policies on diversity from those without if companies are given some degree of choice as to how to present this information.

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

- (i) 1 January 2013**
- (ii) 1 April 2013**
- (iii) 1 June 2013**
- (iv) 1 September 2013**
- (v) Other (please specify)**

ACGA: We do not have any preference on the implementation date.

Next steps

While we applaud the Exchange's initiative in raising the diversity issue, we also believe it needs to play an active part in promoting the value of its proposals to issuers. It could, for example, collaborate with educational institutions and professional associations such as the Institute of Directors, the Institute of Chartered Secretaries and the Women's Foundation to hold workshops and seminars for companies and directors.

End.