Linklaters

Nomination and diversity on Hong Kong boards: Best practice and in practice

September 2014


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Contents

Summary

One year on from the introduction of "comply or explain" requirements as to board diversity in the Hong Kong Corporate Governance Code, we have undertaken research to look at regulation and practice in Hong Kong in relation to nomination committees and the director nomination process, and how Hong Kong compares globally in this respect.

Our key findings are:

> Of all the listed companies we looked at, around 93% have established a nomination committee and around 63% have implemented a board diversity policy. Interestingly, whilst a lower proportion of the listed companies that make up the Hang Seng Index have established a nomination committee (around 86% as compared to 94% of other listed companies), significantly more of those companies have implemented some form of board diversity policy (around 90% as compared to 61% of other listed companies).[1]

> The board diversity policy is enshrined in less than half of the terms of reference of the nomination committees of all the listed companies we looked at.

> Very few of the listed companies we looked at have measurable objectives against which to assess the diversity of their board's composition or formal evaluation processes for their nomination committees.

> The key means of identifying potential directors in Hong Kong continues to be suggestions from the nomination committee (or board) members based on their own contacts and knowledge of the market. The use of search firms to identify candidates remains limited for these purposes.

> Extensive training is given to boards on technical corporate governance matters, but there is little specific training on issues such as unconscious bias and the impact of diversity.

> Regulation and practice in Hong Kong compare favourably with those elsewhere in the world, in particular in requiring diversity by reference to a broad range of factors.[2]

Overall, regulating Hong Kong listed companies' board diversity requirements seems to have succeeded in aligning Hong Kong with international best practice. Many listed companies in Hong Kong have already taken steps to implement these requirements, but there is still more that could be done.

[1] Our findings are based on our review of the annual reports and other public disclosures of: (i) all the Hong Kong listed companies that make up the Hang Seng Index; and (ii) over 500 other companies listed on the Main Board of the SEHK.

[2] We have compared regulation and practice in Hong Kong to those in certain other jurisdictions in Asia (namely, Mainland China, Japan and Thailand) as well as in Brazil, the UAE, the UK and the US.

93%
of listed companies have established a nomination committee

63%
of listed companies have implemented a board diversity policy

Our recommendations

There are various key measures that we recommend listed companies take to improve their nomination processes and board diversity.

1

Establish a nomination committee to identify, and make recommendations to the board on, potential new directors and members of senior management, and put in place written terms of reference for that committee including a diversity policy (for both directors and senior management) tailored to the company's particular activities.

2

Publish both the diversity policy and the company's level of compliance with that policy on the company's website.

3

Set measurable objectives against which to assess the diversity of the composition of the board and senior management, and implement a formal evaluation process for the nomination committee.

4

Increase the use of external search firms and consultants to identify potential new directors and senior management, help formulate a checklist against which to benchmark potential candidates and to review the nomination committee's performance.

5

Provide specific training to nomination committee members (and indeed the full board) on issues such as unconscious bias and the impact of diversity.

Background

On 1 September 2013, the Hong Kong Stock Exchange implemented amendments to the Hong Kong Corporate Governance Code to introduce a "comply or explain" requirement for every Hong Kong listed company to implement a board diversity policy, and to disclose in its annual corporate governance report both details of the policy and the company's progress on achieving the objectives outlined in that policy.

The consultation
In September 2012, the Hong Kong Stock Exchange (SEHK) launched a consultation process in relation to proposed amendments to the Hong Kong Corporate Governance Code (appended to the Hong Kong Listing Rules) to include measures to promote board diversity.

The SEHK's principal objective of these amendments was to enhance corporate governance and the effectiveness of the board. The consultation paper referred to research indicating that diversity in the boardroom:

- promotes effective decision-making through reducing the board's vulnerability to the "groupthink" that can result from its members being homogenous and encouraging creativity and innovation;
- promotes better governance and monitoring, in particular noting that companies with a higher representation of women tend to hold more meetings and have better attendance records, and that female directors are more likely to strengthen the board and demand higher audit effort from their auditors to protect the board from risks;
- utilises the talent pool better through expanding the group of potential directors by actively including different sectors of society;
- gives companies greater access to resources and connections;
- signals to employees that the company is committed to equal opportunity which, in turn, may promote commitment from the workforce and improve productivity; and
- enhances the company's public image.

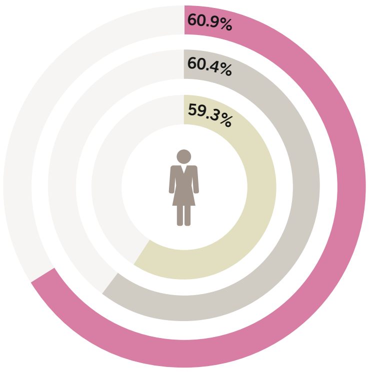
The response
The proposals received strong support from the market, with respondents echoing the SEHK's views on the need for diversity and also noting other benefits of implementing a board diversity requirement, including:

- aligning Hong Kong with international best standards as is appropriate for one of the world's leading financial centres;
- increasing the attractiveness of companies to investors who factor corporate governance into their evaluation of investments; and
- being good for business, citing research linking diversity to better financial performance, enhanced creativity, greater innovation, increased employee and customer satisfaction and loyalty.

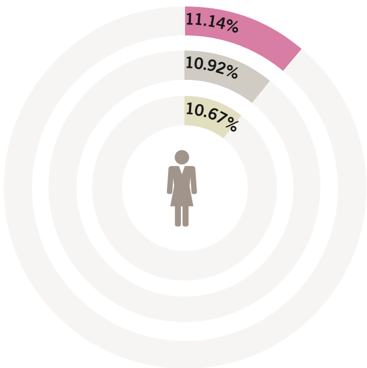
There was some opposition to the proposals, primarily on the grounds that they were not practical in Hong Kong given the large number of family-controlled companies and state-owned enterprises and that there was a shortage of qualified, "board-ready" directors.

However, given the overall support, the Corporate Governance Code was amended on 1 September 2013 to introduce a code provision, requiring each Hong Kong listed company to have a board diversity policy, and to disclose that policy or a summary of it in its corporate governance report together with any measurable objectives for implementing the policy and progress on achieving those objectives (together referred to in this report as the ***Diversity Requirements***). As a code provision, companies are expected to comply with the Diversity Requirements or otherwise explain any non-compliance (with considered reasons) in their annual and interim reports.

% of companies with at least 1 female director



Share of director 'seats' held by women



1 September 2014
1 September 2013
1 September 2012

[Source: webb-site.com]

Not just about gender

Gender diversity has been the recent focus of many commentators, given the relative ease of evaluating the diversity of a particular board using this measure. In this respect, there has been a small, but arguably not meaningful, improvement in the number of women on Hong Kong listed company boards since the launch of the consultation process in September 2012 as shown by these statistics from webb-site.com.

However, the Diversity Requirements go beyond gender, noting that board diversity will differ according to the circumstances of each company, and that relevant factors include gender, age, cultural and educational background, and professional experience. This report looks at the approach taken by Hong Kong listed companies towards diversity more generally and how it compares with international best practice.

Linklaters' research

Our research coincides with the one-year anniversary of implementation of the Diversity Requirements.

Our research considers:

> regulation of the director nomination process in Hong Kong;

> current director nomination practices in Hong Kong and the extent to which the introduction of the Diversity Requirements has impacted those practices; and

> how the regulation and practice in Hong Kong compare to those in certain other jurisdictions in Asia (namely, Mainland China, Japan and Thailand) as well as in Brazil, the United Arab Emirates (***UAE***), the United Kingdom (***UK***) and the United States of America (***US***).

As part of this research, we have reviewed the annual reports and other public disclosures of: (i) all the Hong Kong listed companies that make up the Hang Seng Index; and (ii) over 500 other companies listed on the Main Board of the SEHK, chosen at random, to understand the approach being taken towards nomination of directors and the extent to which diversity plays a part in that. We have also spoken to a number of listed companies, including those referred to in the "Acknowledgements and key contacts" section at the end of this report, to gain a better overall picture of their nomination practices.

Message from the 30% Club Hong Kong

The 30% Club is an outreach arm of The Women's Foundation and, in keeping with the Foundation's approach to community programmes and advocacy efforts, we believe that efforts are more effective when they are grounded in objective and reliable research and data and an analysis and understanding of fundamental root causes.

Accordingly, we are delighted to be partnering with Linklaters on the release of this report on nomination committee best practices with a particular focus on the extent to which nomination committees are responsible for and are impacting board diversity, given their responsibility to periodically review the composition of the board and ensure they are tapping the best available talent to address any gaps in skills and experience.

I am sure that Hong Kong companies will find this report relevant and useful. In addition, given that Hong Kong's stock market continues to be the primary capital-raising centre for Mainland Chinese companies as well as the global relevance of the issues addressed in the report, I am certain that its influence and reach will extend well beyond Hong Kong's borders.

Su-Mei Thompson
Founder, 30% Club Hong Kong
CEO, The Women's Foundation
Member, Equal Opportunities Commission of Hong Kong

Regulation in Hong Kong

The Corporate Governance Code
The Corporate Governance Code sets out principles of good corporate governance for companies listed on the SEHK, and sets out two levels of recommendations, namely "code provisions" and "recommended best practices". Companies are expected to comply with the code provisions. They may choose not to comply, but if so must explain any deviation (with considered reasons) in their annual and interim reports. The recommended best practices are for guidance only, but companies are encouraged to state in their annual and interim reports whether they have complied with the recommended best practices and give considered reasons for any deviations.

This sort of "comply or explain" requirement reflects the SEHK's acknowledgment that there is no "one size fits all" approach to corporate governance and that deviations from code provisions are acceptable where a company considers that there are more suitable ways to comply with the relevant principles of the Corporate Governance Code.

Failure to either comply or explain constitutes a breach of the Listing Rules, and could result in any of the disciplinary measures available to the SEHK being imposed on the listed company or any of its subsidiaries, or certain other persons such as any director or senior manager of, or professional adviser to, either the listed company or any of its subsidiaries. These disciplinary measures include private reprimands, public criticism, public censure, reporting of the offender's conduct to any relevant regulatory authority and "cold shoulder" orders.

Requirements for and of nomination committees
There is no mandatory requirement for companies listed in Hong Kong to establish a nomination committee under either the Listing Rules or Hong Kong company law. However, the Corporate Governance Code includes a code provision requiring listed companies to establish a nomination committee which is chaired by either the chairman of the board or an independent non-executive director (***INED***) and comprises a majority of INEDs. The nomination committee's duties should be set out in publicly disclosed written terms of reference and include:

> reviewing the structure, size and composition (including the skills, knowledge and experience) of the board at least annually and making recommendations on any proposed changes to the board to complement the listed company's corporate strategy;

> identifying individuals suitably qualified to become board members, and selecting or making recommendations to the board on the selection of individuals nominated for directorships; and

> making recommendations to the board on the appointment or reappointment of directors and succession planning for directors, in particular for the chairman and chief executive.

Requirements as to diversity
One key principle of the Corporate Governance Code is that the board "*should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business*". In this regard, there is a code provision requiring the nomination committee (or board) to have a board diversity policy, and to disclose that policy or a summary of it in its corporate governance report together with any measurable objectives for implementing the policy and progress on achieving those objectives.

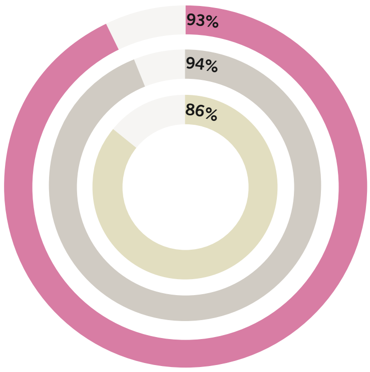
The Corporate Governance Code notes that:

"Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose."

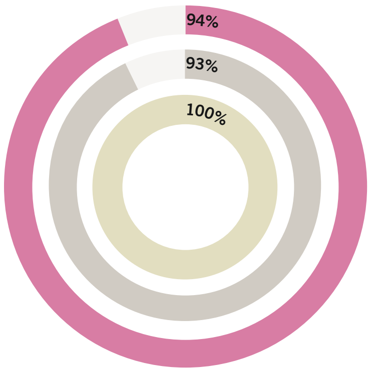
Practice in Hong Kong

We have reviewed the annual reports and other public disclosures of (i) all the Hong Kong listed companies that make up the Hang Seng Index; and (ii) over 500 other companies listed on the Main Board of the SEHK and found the following.

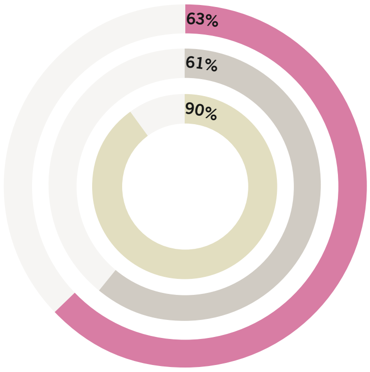
% of companies that have established a nomination committee



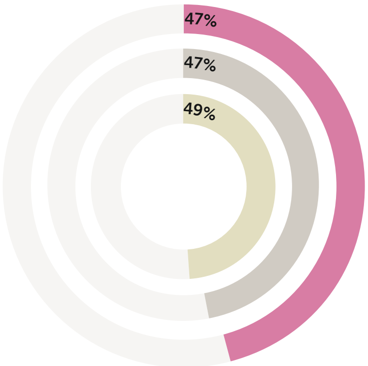
% of companies that have put in place written terms of reference (shown as a % of companies with a nomination committee)



% of companies that have implemented a diversity policy



% of companies that refer explicitly to the diversity policy in their terms of reference (shown as a % of companies with terms of reference)



Overall

Listed companies (other than Hang Seng Index companies)

Hang Seng Index companies

Establishment of nomination committees
The requirement for Hong Kong listed companies to establish a nomination committee was only "upgraded" from a recommended best practice to a code provision in April 2012. However, our research shows that a large majority of listed companies now have nomination committees (around 93% of all those we looked at), most of which have written terms of reference.

It is interesting to note that a lower proportion of the listed companies that make up the Hang Seng Index have a nomination committee (around 86%) as compared to other listed companies (around 94%). However all those Hang Seng Index companies with a nomination committee have put in place written terms of reference (compared to around 93% of other listed companies).

Composition and chairmanship of nomination committees
The Corporate Governance Code requires the nomination committee to comprise a majority of INEDs. In practice, we found that listed companies with a nomination committee generally comply with this requirement, although there are limited examples both of non-compliance (typically where there are equal numbers of INEDs and non-INEDs on the committee) and where the nomination committee comprises only INEDs. The nomination committee is invariably established, and its members chosen, by the board. In relation to choosing the nomination committee members though, a suggestion put forward by one of the listed companies that we spoke to was that it is ideal for one or more of the nomination committee members to have experience serving on boards in other jurisdictions for benchmarking purposes and to help introduce international best practice.

The Corporate Governance Code requires the nomination committee to be chaired by either the chairman of the board or an INED. Practice is very evenly split among the companies we looked at. From our discussions with various listed companies, there also seem to be very divergent views as to whether it is preferable for the nomination committee to be chaired by the chairman of the board or for this role to be taken by an INED (in the latter case, with the chairman of the board either being a member of the nomination committee or not).

Arguments for common chairmanship focus to a great extent on the typical family-controlled structure of Hong Kong listed companies and the belief that the chairman of the board (who is generally also a member of the founding family) knows the business better than anyone else and is therefore best placed to, and indeed investors have a positive preference that the chairman should, determine the direction of that business through the people nominated to run it. Others however disagree, noting that this knowledge of and history with the business can sometimes blind the chairman to new opportunities and, in relation to succession planning, can result in new directors being "in the same mould" as the chairman which in turn leads to a lack of diversity.

Overall, it seems that the nomination committee is most effective in cases either where it is chaired by a chairman of the board who encourages open debate and is willing to listen to the views of others, or where it is chaired by an INED with input from the chairman of the board or other executives who have a strong grasp as to the business needs.

"Investors trust that the chairman knows what is best for the company and it therefore follows that they would want the chairman to play a key role in deciding the direction and composition of the board. The trick is to find the right level of checks and balances."

Selection of directors and succession planning

From the public disclosures we looked at, as well as our discussions with a number of listed companies, it is apparent that the process of selecting directors varies among listed companies in Hong Kong, but typically involves one or more of the following:

> The nomination committee (or board) members suggest potential candidates based on their own contacts and knowledge of the market: This currently remains the key means of identifying potential directors. So long as the process is approached in an open-minded and fair fashion, this can be very effective particularly in light of the size of the Hong Kong market and the often in-depth market knowledge and expansive network of contacts of the directors of Hong Kong listed companies. However, this approach runs the risk of potential candidates being overlooked, either because they are based overseas or "move in different circles" from existing board or nomination committee members, and therefore can result in a less effective or diverse board.

> Search firms are used to identify potential candidates: The use of search firms is relatively new in Hong Kong and remains limited for these purposes. There are some concerns that involving a search firm or other third parties can result in news of the board changes leaking (particularly if there is open advertising) and a consequential impact on market perception as to the board's (and therefore potentially the company's) stability. However, if used correctly, involving a search firm could both help nomination committees identify candidates whom they may not otherwise know about or have access to based on the committee members' own contacts and knowledge, and help expand the pool of experienced, board-ready candidates.

> Potential candidates are benchmarked against a checklist of the skills, experience and expertise desired of board members in light of the company's activities and objectives: This checklist is typically formulated by the nomination committee (or by the board upon the recommendation of the nomination committee), although in some cases the nomination committee engages an external consultant to assist in its review of the mix of skills, experience and diversity of the board and to benchmark its practices against best international practices.

Interestingly, it is not unusual for Hong Kong listed companies not to have formal succession plans in place, although various companies do seek to refresh, or at least review, the composition of the board on a regular basis. In some cases, listed companies enforce strict limits on the maximum duration of service for all directors, for example by permitting a director to hold office for no more than two or three consecutive three-year terms. This brings in "fresh blood" (who may reopen or challenge historical decisions or approaches taken by the board to help bring about positive change) and encourages new ideas. However, from our discussions with a number of listed companies, it seems that views are split on this with some feeling that, if a director is doing a good job, there should be no reason to limit his/her time in office unless the shareholders demand change (e.g., through not re-electing that director).

"We see real value in using a search firm as it allows us to consider all candidates from the market in addition to our existing contacts. This also helps the Board to demonstrate that all fiduciary duties have been met."

HSBC

"Use of a search firm to find new directors may be less attractive to a family-controlled company, because the directors are usually people that the family knows and trusts."

Approach to diversity

It sems clear that many listed companies are supportive of putting diversity on the agenda, acknowledging that this can benefit business and help the company maintain a competitive advantage. Other key benefits noted include that:

> diversity on the board, as well as within the company's workforce and at a senior management level, supports and reflects the company's customer base and therefore helps the company better understand its customer's preferences;

> recruiting younger board members helps the company remain current and assists in succession planning; and

> having women on a board has powerful benefits in terms of helping to diffuse potentially difficult situations at a board level and building consensus.

It is encouraging to see that around 63% of all the listed companies that we looked at have implemented some form of diversity policy. This is particularly evident among the Hang Seng Index companies, of which around 90% take diversity into account in their nomination process. Among the various diversity polices implemented, whilst many appear to be quite standard and capture only those items mentioned in the Corporate Governance Code, a minority set out quite extensive and specific diversity initiatives and targets.

One view that came up time after time, however, was that, whilst it is important to have clear criteria for identifying potential directors and for those criteria to encompass diversity in its various forms (e.g., gender, age, background, experience), directors should ultimately be selected based on their merit and the likely contributions that they will bring to the board. Some also pointed to the fact that boards tend to be more effective if there is a good relationship between the directors, and that appointing diverse directors for the sake of diversity could end up being a "box-ticking" exercise and actually prove disruptive to the board's function.

"We see diversity as an essential element in maintaining a competitive advantage and attaining our strategic objectives and sustainable development."

Sa Sa International Holdings Limited

"While we always take into account diversity of perspective and experience, appointments are ultimately made on the basis of merit."

MTR Corporation Limited

"Having the "feminine touch" on the board can be a very good thing. A female director can cajole the rest of the board and help people come to agreement, even in difficult situations. The EQ factor is a real strength."

To the extent that listed companies have adopted a diversity policy, in practice this has been most successfully implemented in terms of gender diversity. Other factors that are easy to evaluate are age and geography.

> In relation to age, less progress has been made, with many listed companies feeling that younger people don't have the experience necessary to make them effective board members or simply that younger people with full-time jobs cannot commit the time required to fulfil their role as a director. Suggestions put forward to address these issues include for companies to: (i) allow their top executives to hold one or more external directorships provided they have the time and there is no conflict; and (ii) arrange for their senior executives to attend and present at board meetings to give them direct experience of how a board operates.

“As long as you have some experienced directors on the board, you can afford to bring in talented young individuals who have extensive experience of leading businesses or in the non-governmental organisation sector but no previous board experience. This gives them exposure and develops them to be the experienced directors of the future.”

The Link Real Estate Investment Trust

> In relation to geography, some listed companies have appointed directors residing overseas, but many feel that such distance prevents those directors from taking a sufficiently active role in the company's affairs.

It is disappointing to find that, of those companies which have a nomination committee with written terms of reference, the diversity policy is enshrined in less than half of those terms of reference (both for Hang Seng Index and other listed companies), as this arguably results in the nomination committee having a lower level of accountability in this respect.

In addition, to date, very few companies have drawn up measurable objectives against which to assess the diversity of their board's composition. However, we have seen some examples of companies setting specific diversity metrics and targets to be achieved, including as to: (i) the proportion of women in the work place, appointed as non-executive directors and/or in senior management; (ii) parental leave return rates; and (iii) employee turnover. In other cases, the nomination committee is required to submit quarterly reports to the board detailing the number of short-listed candidates possessing diversity-related qualities, which the board reviews to determine whether the benefits of diversity have been taken into account.

Notwithstanding the general absence of measurable objectives, however, many of the companies we spoke to have directors from a diverse background, not only in terms of gender but also in terms of nationality, education and professional background.

“We systematically go through a formal selection process to choose the appropriate consultancy firm with board evaluation experience to conduct the evaluation of the performance of our board and its committees, including the nomination committee.”

Hong Kong Exchanges and Clearing Limited

Monitoring performance of nomination committees
Practices vary greatly among listed companies regarding monitoring the performance of their nomination committees. For the majority of listed companies, there remains no formal assessment process, with some feeling that any such evaluation could be quite controversial. Other listed companies conduct an internal assessment on a regular basis (e.g., annually) by way of questionnaires and interviews, and in some cases this assessment is led or supported by external consultants.

Training for nomination committees
It is encouraging to see that directors of the majority of listed companies are provided with regular training on corporate governance and other Listing Rule related matters. However, this training seems to be limited to more technical regulatory issues and does not typically extend to other matters which may be relevant to their role as nomination committee members. In particular, it will be interesting to see if training on matters relating to diversity, including unconscious bias and the impact of diversity, becomes more commonplace as companies seek to comply with the Diversity Requirements.

Why not comply?
Following a spot check monitoring exercise earlier this year, the SEHK sent a letter to all listed companies on 2 July 2014, in which it noted that a number of companies had neither disclosed their diversity policy nor given considered reasons for non-disclosure. The SEHK refrained from making enquiries of (or presumably bringing enforcement action against) companies on this occasion, but urged companies to take a closer look at the corporate governance reports and rectify any possible omissions in the future.

Among those listed companies that we looked at that have explained their non-compliance with the nomination committee requirements (including the Diversity Requirements), key explanations put forward include that:

> they follow a traditional family control model, commonly found in Asia, whereby nominations are made in accordance with the instructions of their majority shareholder;

> the full board is responsible for reviewing the structure, size and composition of the board and the appointment of directors from time to time, and sufficient measures have been taken to avoid a conflict of interests arising from the board carrying out such functions;

> participation by the executive directors in reviewing the needs of the board, including judging the calibre and suitability of candidates, and assessing the independence of the independent non-executive directors is indispensable in the nomination process; and

> a nomination committee is unnecessary given the size of the company's business and stage of its development.

As noted by one person we spoke to as part of our research, "promoting diversity on boards will unfortunately likely remain the domain of enthusiasts until it can be definitively proven that diversity improves the bottom line". Until that time, we can expect to see more explanations of this sort being put forward by listed companies to explain their decision not to comply, but would hope that over time more and more listed companies will seek to comply with the requirements.

Just a board issue?
The nomination committee requirements (including the Diversity Requirements) deal only with the nomination of directors of listed companies. However, some of the listed companies we spoke to feel that this actually does not go far enough. Instead, they believe that companies should push for diversity across senior management more broadly, either through implementing targets or simply taking steps to ensure that diversity is taken into account in all appointments. This has the dual benefit of ensuring that the company has the diversity of perspectives that many feel is "good for business" and also creating a good environment in which women and people from different backgrounds feel that they can advance their careers, thereby helping retain talent.

"We have set a target for 25% of all our top senior managers to be female by 2015. We feel that targets are helpful and can be self-fulfilling – once you hit a target, it naturally tends to refresh itself over time."

HSBC

Hong Kong's position globally

We summarise in the appendix to this report the regulation and practice in relation to director nomination, and the extent to which diversity is taken into account in the nomination process, in certain other jurisdictions in Asia (namely, Mainland China, Japan and Thailand) as well as in Brazil, the UAE, the UK and the US.

Save for Brazil (where there are no requirements), there are many similarities in relation to the director nomination process between Hong Kong and the jurisdictions we looked at, in particular in terms of the role and composition of the nomination committee and the process of selecting directors. However, two points that differentiate Hong Kong from the other jurisdictions are:

- Chairmanship of the nomination committee: The position in Hong Kong, i.e., that the nomination committee may be chaired either by the chairman of the board or by an INED, is aligned with that in the UK. However, all other jurisdictions require an independent chairman and, in some cases, actually exclude the chairman of the board from being a member of the nomination committee. We have outlined in the "Practice in Hong Kong" section above the arguments we have come across in Hong Kong for and against allowing common chairmanship of the board and nomination committee, and it is interesting to see that that is one area where Hong Kong could potentially be perceived to fall behind.
- Scope of the diversity requirements: The position in Hong Kong, i.e., that the nomination committee should take into account diversity in a broad variety of forms, goes beyond that in most of the other jurisdictions, where any requirement for diversity seems to focus exclusively on gender. The one exception is Thailand where the definition of diversity encompasses a broader range of factors, not dissimilar to those in Hong Kong.

What next?

Although the amendments to the Corporate Governance Code and the efforts made by certain listed companies to comply with the Diversity Requirements represent a big step towards greater diversity and more transparent nomination processes, there is still considerable room for progress.

We set out in the section entitled "Our Recommendations" above the key measures that we recommend listed companies take to improve their nomination processes and board diversity.

It is encouraging to see that the SEHK is monitoring, and has indicated to listed companies that it will continue to monitor, compliance with the Corporate Governance Code. Having already given notice to all listed companies of the consequences of non-compliance, we would hope to see the SEHK rigorously reviewing the nomination practices of listed companies going forward and bringing enforcement action where appropriate. In addition, we suggest that the regulators (principally the SEHK) could scrutinise more closely the nomination practices of, and encourage greater diversity on, the boards of new applicants for listing.

Appendix: Regulation and practice in selected overseas jurisdictions

	Is a nomination committee required?	Key roles of the nomination committee
Hong Kong	Yes under a "comply or explain" requirement.	Key roles include: > reviewing the structure, size and composition of, and making recommendations on any proposed changes to, the board; > identifying and selecting, or making recommendations to the board on, directors; and > making recommendations to the board on the (re)appointment of directors and succession planning. Companies are required to formulate and publish terms of reference.
Mainland China	No, except for: > listed commercial banks and certain listed securities companies; and > all companies listed on the Small and Medium-Sized Enterprise Board of the Shenzhen Stock Exchange. Other companies are encouraged to have such a committee.	Key roles include: > studying standards and procedures for the election of directors; > seeking and reviewing qualified candidates for directorship and management; and > making recommendations to the board. Where a nomination committee is required, the board must formulate its rules of procedure. In other cases, some companies voluntarily adopt similar rules. There are no requirements for these rules to be published.
Japan	Yes for a "company with committees". However, companies can elect whether or not to be such a company and less than 2% of a companies currently listed on the Tokyo Stock Exchange (TSE) have made this election.	The key role includes to submit to a shareholders' meeting an agenda about suggested candidates for directors to be appointed or dismissed. There are no requirements for terms of reference, but in practice companies adopt such terms to set out details such as the committee's purpose, structure and decision-making process. There are no requirements for terms of reference to be published.
Thailand	Yes for: > listed companies, under "soft" guidelines prescribed by the Stock Exchange of Thailand, Thai Institute of Directors Association and National Corporate Governance Committee (CG Guidelines); and > commercial banks, under Bank of Thailand regulations.	Key roles include: > reviewing the balance of knowledge, experience and skills on the board to identify the qualifications desired in potential new directors; and > making recommendations as to reappointment of existing directors and appointment of new directors. Listed companies are recommended to formulate and publish a "nomination committee charter" (similar to terms of reference).

Composition of the nomination committee	Process of appointing directors	Are there requirements as to diversity?
To comprise a majority of INEDS (although in practice this requirement is often not complied with). To be chaired by the chairman of the board or an INED.	Directors are nominated by the board (upon the recommendation of the nomination committee, if any), or upon the requisition of shareholders. Their appointment must be approved by shareholders.	Yes. The nomination committee (or board) must have a board diversity policy, and the company must disclose that policy or a summary of it in its corporate governance report together with any measurable objectives for implementing the policy and progress on achieving those objectives.
To comprise directors only, the majority of whom must be independent. To be chaired by an independent director.	Directors are nominated by the board (upon the recommendation of the nomination committee, if any) or shareholders with a specified shareholding percentage. Their appointment must be approved by shareholders. In addition, an assembly of employee representatives can directly appoint "employee representative directors".	No. Initiatives adopted in 2001 stipulated that state-owned enterprises should increase the representation of women on their boards and promote gender equality, and amendments to those initiatives in 2011 extended these goals to all enterprises. However, these initiatives do not have the force of law and there is therefore no mechanism to enforce the goals stipulated in them.
To comprise 3 or more directors, the majority of whom must be outside directors (i.e., people who are not / have not been an executive director, executive officer or employee of the company or its subsidiaries). There are no specific requirements regarding the chairman.	Directors are nominated by the nomination committee (if any) or, if none, the board. Their appointment must be approved by shareholders.	No. However, the TSE: > requires listed companies to try to appoint at least 1 outside director or auditor (in June 2014, a 'comply or explain' statutory provision was approved regarding appointment of an outside director, which will likely be effective by late 2015); and > encourages listed companies to disclose women's participation on boards / committees.
To comprise at least 3 directors, the majority of whom must be independent. All committee members should be non-executive directors to avoid conflicts of interest, and any executive directors on the committee should be in the minority. To be chaired by an independent director. The nomination committee should not include the chairman of the board or any director whose term of office is about to end.	New directors are nominated by the board (upon the recommendation of the nomination committee, if any), and their appointment must be approved by shareholders. Existing directors may be reappointed with the approval of the board. Some listed companies give minority shareholders the right to nominate directors for consideration / approval by shareholders.	Practically, yes. The CG Guidelines provide that the nomination committee may consider the diversity and balance of the board, e.g., the board may consist of representatives of a variety of stakeholders, with a variety of personal and professional experience and backgrounds, age, gender etc.

	Is a nomination committee required?	Key roles of the nomination committee
Brazil	No.	If a nomination committee is established, its key roles typically include succession, compensation and development of members of the organisation (including directors). There are no requirements as to the operation of such committees or for such committees to have any form of terms of reference. There are no requirements for terms of reference to be published.
UAE	Yes, for all companies with securities listed on an exchange within the UAE (i.e. the Dubai Financial Market (DFM) or Abu Dhabi Exchange (ADX)) except: > wholly UAE government-owned institutions; > certain financial institutions; and > foreign companies listed on the DFM or ADX.	Key roles include: > implementing and reviewing annually the remuneration policy for the board of directors and other personnel; > determining the necessary qualifications for personnel of the company; and > regulating the director nomination procedures in compliance with applicable laws and regulations.
UK	Yes for: > companies with a premium listing on the London Stock Exchange, under a “comply or explain” requirement; and > certain credit institutions and investment firms. Other firms are generally expected to establish and maintain “systems and controls” which are appropriate to the business and include having robust corporate governance arrangements.	Key roles include: > leading the process for board appointments and making recommendations to the board; > evaluating the experience, skills, independence and knowledge on the board and preparing a description of the role and capabilities for each new appointment; and > reviewing and evaluating, on an ongoing basis, the board and its composition. Relevant companies are required to formulate and publish terms of reference.
US	Yes for US companies listed on the New York Stock Exchange (NYSE). No for US companies listed on NASDAQ, although in practice these companies typically have a nomination committee. Non-US companies that satisfy certain criteria may comply with their home country rules instead of the NYSE/NASDAQ rules.	For NYSE-listed companies, key roles include: > identifying potential candidates in line with board-approved criteria; > selecting, or recommending that the board select, nominees for the next annual shareholders’ meeting; > developing corporate governance guidelines; and > overseeing board evaluation. NYSE-listed companies are required to formulate and publish a written charter (akin to terms of reference).

[3] In November 2012, the European Commission proposed a Directive which would introduce an objective of 40% female representation among non-executive directors of European Union (EU) listed companies. This Directive has been debated since then and the latest development is that the EU Council issued a progress report in the second quarter of 2014 concluding that, although there is agreement in principle on the need to improve gender balance on boards, there is disagreement about whether this should be done by national or EU-wide legislation.

	Composition of the nomination committee	Process of appointing directors	Are there requirements as to diversity?
	It is considered good practice for nomination committee members to be independent directors (to avoid conflicts of interest). However, this is not widespread and committees often include directors, members of the management team and consultants.	Directors are nominated by the shareholders (mostly by its controlling shareholder) or election by minority shareholders. Their appointment must be approved by shareholders. As most listed companies in Brazil have concentrated controlling interests (with shareholders entering into arrangements to maintain control and combine votes), potential directors tend to be defined in a previous shareholders' meeting.	No. There is no regulation or public policy regarding diversity nor is it common-place for companies to have diversity policies.
	To comprise at least 3 non-executive directors, at least 2 of whom must be independent. To be chaired by an independent director. The chairman of the board cannot be a member of the nomination committee.	Any shareholder who meets nomination conditions specified in the Commercial Companies Law or the company's articles of association may stand for election, and companies must allow such nominations to remain open for at least 1 month after giving public notice of same. Directors must be approved at an ordinary general assembly of shareholders by secret ballot.	No. The only requirement on background (or similar) is that the board must comprise a majority of UAE nationals.
	To comprise a majority of independent non-executive directors (although in practice this requirement is often not complied with). To be chaired by the chairman of the board (except when the committee is dealing with the replacement of the chairman) or an INED.	Directors are nominated by the board (upon the recommendation of the nomination committee, if any), or upon the requisition of shareholders. Their appointment must be approved by shareholders. An external search consultancy or open advertising should be used in appointing a chairman or non-executive director (if not, an explanation should be given in the company's annual report).	Yes.[3] The search for candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender. A listed company's annual report should describe the board's diversity policy (including as to gender), any measurable objectives it has set for implementing the policy and progress on achieving the objectives.
	For both NYSE- and NASDAQ-listed companies, to comprise only independent directors (subject to certain exceptions, including for listed companies with a controlling shareholder or where the right to nominate a director legally or contractually belongs to a third party). There are no specific requirements regarding the chairman.	Directors of NYSE-listed companies are nominated by the nomination committee or the board (upon the recommendation of the nomination committee). NASDAQ-listed companies must have a written charter or board resolution setting out a process for the nomination of directors. Whether or not there is a nomination committee, nominations must be made by independent directors – in the absence of a nomination committee, nominations must be approved by a majority of the independent directors. The directors' appointment must be approved by shareholders.	Yes. Securities and Exchange Commission rules require a listed company to disclose whether, and if so how, the nomination committee (or board) considers diversity in identifying nominees for director. If the nomination committee (or board) has a policy with regard to the consideration of diversity in identifying director nominees, it must describe lhow this policy is implemented, as well as how the nomination committee (or board) assesses the effectiveness of its policy.

Acknowledgements and key contacts

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