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Missing Opportunities?

A Review of Gender Diversity on Hong Kong Boards

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The Hong Kong Institute of Chartered Secretaries
February 2021

Acknowledgement

The Hong Kong Institute of Chartered Secretaries (HKICS or the Institute) is an independent professional body representing Chartered Secretaries and Chartered Governance Professionals in Hong Kong and the Mainland.

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The Institute is most grateful to everyone who has contributed to this Review.

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Foreword

This Review of gender diversity on Hong Kong boards is entitled 'Missing Opportunities' for a simple reason. The inadequate representation of women on Hong Kong boards means that our companies are missing the opportunities for enhanced board effectiveness that greater diversity would bring, and our women are missing the opportunities to make the fullest contribution to excellence in corporate leadership which their abilities deserve.

It is a matter of fact, not opinion, that the level of representation of women on boards of Hong Kong listed companies falls well behind that of many other leading markets, including those with which Hong Kong might wish to be compared in Asia, such as Australia, Malaysia and Singapore. Nor is the presence of women in our boardrooms progressing at rates seen elsewhere, despite efforts made in recent years, notably by The Stock Exchange of Hong Kong Limited (the Exchange), to encourage greater gender diversity.

This should matter to Hong Kong's companies and to their stakeholders:

- gender diversity is widely recognised as enhancing board effectiveness
- we are failing to make use of the available talent to serve on our boards
- we are lagging conspicuously behind global governance standards and the gap is widening
- international and institutional investors are increasingly taking board diversity into account in decisions on IPO sponsorship and investment, and
- the massive under representation of women on our boards, relative to men, is a basic issue of equality of opportunity and treatment.

It also matters to our Institute. Over two-thirds of our Associates and Fellows are women. We support their career progression across the full span of corporate governance roles, all the way into the boardroom. It also matters to the Institute as a voice for excellence in governance and for the continued status of Hong Kong as one of the world's leading financial centres.

In one sense our members are already in the boardroom. Company secretaries are in a unique position, enjoying a close working relationship with the chairman and the CEO. We can raise the awareness of board diversity not only with them, but also across the board and management team. Within our own functions we can try to prepare and promote a pipeline of women, as well as encourage our colleagues to do likewise, with a view to progression to the role of director, executive or independent non-executive.

Although in this Review we focus on gender diversity, we encourage and support board diversity in a wider sense – other aspects of diversity can be important for some companies, especially by ensuring that the interests of key stakeholders are understood and recognised by the board when setting and implementing strategy. Diversity can also contribute to a greater breadth of experience, expertise, perspectives and outlook around the board table. Gender is the most obvious aspect of diversity. If we cannot achieve balance in this area, then broader-based diversity will be an even more challenging objective.

In recent years the Exchange has taken a series of initiatives to promote gender diversity. As this Review recounts, those initiatives have not led to change in board composition at the pace and on the scale which has been achieved in other jurisdictions. The question which now falls for consideration is whether and, if so how, the pace of change needs to be accelerated.

> "in this Review we propose that Hong Kong's Corporate Governance Code be amended to include a target of a minimum 30% female representation on boards"

The Institute believes that progress towards increased representation of women on boards will be most successful and sustainable when it rests on a broad-based stakeholder consensus which encourages shareholders to improve the gender diversity of the directors they appoint, rather than through the top-down imposition of quotas. Building a common view, around which stakeholders can coalesce, will require a debate. We know that, in the past, including through the Exchange's consultations around this issue, a firm consensus has not emerged. Indeed, there have been differences of opinion amongst the Institute's own members.

This Review is, therefore, part of the Institute's contribution to that debate. In that spirit we have sought to present the various components of discussion and decision on board gender diversity in a fair and balanced way. This is a challenging topic on which reasonable people can differ reasonably. We hope this Review plays its part in encouraging an informed debate.

However, there is little value in a debate without decision or a decision without action. For that reason, in this Review we propose that Hong Kong's Corporate Governance Code be amended to include a target of a minimum 30% female representation on boards. To allow boards to adjust to this target a six-year transition period will be set. The target will be 'voluntary', but only in the sense that it will be subject to a 'comply or explain' regime. Companies which do not comply will be required to disclose specific reasons for this and the particular steps they intend to take to achieve compliance.

I am particularly grateful to the eminent corporate governance professionals and practitioners who have contributed their expertise, experience and insights to this Review. There is a common theme across all their contributions, which the Institute shares and endorses. The current state of board diversity in Hong Kong is unacceptable and unsustainable. Action is needed, that action must be meaningful and effective, and the time for action is now.

Gillian Meller FCG(CS, CGP) FCS(CS, CGP)
President, The Hong Kong Institute of Chartered Secretaries

Moving from Talk to Action

A Call for Action

Boards that lack diversity are exposing themselves to significant risk. A key responsibility of the board is oversight of management which includes ensuring that the company identifies, addresses and monitors the risks to its business. Having a board composed of individuals with different backgrounds and bringing varying perspectives to board discussions is thus essential. Groupthink and tunnel vision are major barriers to a board carrying out its oversight role effectively. Yet that is precisely the risk that a company with a board lacking diversity is exposing itself to.

Hong Kong aspires to be a leading international financial centre, and continues to have a key role as an international hub for the Mainland and the region. But many companies here have an archaic concept of the role of boards. Female board presence is little more than at token levels, significantly below not just Australia but Singapore and Malaysia within the APAC region. It beggars belief that women in Hong Kong have less relevant experience and are less capable to function in boardrooms compared to their peers in the region.

The claim of a lack of talent among women in Hong Kong is belied by the number of senior women among the ranks of lawyers, accountants, bankers, advertisers and marketers, not to mention academics and leaders of think tanks. Practically every search firm in Central has a pile of resumes of female candidates for director level positions. Are the boards of Hong Kong companies, dominated as they appear to be by old-school chummy males, reaching out beyond their close circle of friends and making a real effort to bring diversity to their boards? Which search firms are they using?

> "Hong Kong has lagged significantly behind the progress of other markets in the region on female diversity on corporate boards"

The archaic concept of the board is as a group of friendly faces whose primary responsibility is to serve as ambassadors in reaching out to other groups to expand business opportunities. This notion feeds on itself to entrench male domination: if other boards are predominantly male, controlling shareholders are disposed to make their own board no different, with male members engaging and socialising in a manner they appear most comfortable with the men who dominate other relevant organisations. But expectations of the role of the board have evolved, with much greater emphasis now on its oversight function over management. This calls for diversity and breaking through the apparent barriers against having women on the board.

Hong Kong has lagged significantly behind the progress of other markets in the region on female diversity on corporate boards. For investors to have confidence that boards are playing the role expected of them, action is needed to raise female director representation at Hong Kong companies. The time to act is now.

Amar Gill
Managing Director and Head of Investment Stewardship, APAC
BlackRock

A Call for a Quota

It has been over 10 years since voluntary disclosure of a diversity policy by listed companies was first introduced in Hong Kong. Many efforts have been made since then to encourage the appointment of more women on boards, including an upgrade of the requirement to publish a diversity policy, which is now a Listing Rule. Hong Kong's proportion of women on boards still stood at just 13.7% as at July 2020.

We are beyond debating whether diversity in the boardroom is a good thing or not. It is. Extensive academic research demonstrates that diverse boards are positively associated with improved governance and financial performance. Diversity also reduces 'groupthink' and improves discussion and decision making. Given the ongoing geopolitical, technological, climate and societal challenges that almost every of the corporate faces these days, diversity of perspective and gender diversity will be critical to help improve board resilience and will also enhance investor confidence.

Ten years ago, I was against quotas. Since then, the progress we made on board gender diversity has been described as 'extremely poor', 'snail-paced', 'disappointing' and even 'embarrassing' given Hong Kong's standing as an international financial centre. Today, I now believe that gender quotas – with a sufficiently long lead-time to allow corporates to prepare for the change – must be the way forward for Hong Kong. Here is why.

- Mindsets take time to change but having a deadline would help. I don't believe that, in 2021, corporates do not understand the need for, or the benefits of, a diverse board. I also believe many corporates want to do the right thing but the lack of a deadline may have led to inertia or procrastination. It is too easy to explain ourselves away or provide some generic disclosure about measurable objectives – we see companies doing this year after year.

> "quotas are simply a means to redress a structural imbalance"

- Quotas are simply a means to redress a structural imbalance. Globally, gender quotas range from requiring at least one or two women on boards right up to jurisdictions that require boards to be 30% or even 50% female. On average, women account for 31% of board seats in countries with gender mandates or quotas. If we rely on encouraging only new listing candidates to have only one female director, it will take Hong Kong 2,400 years to achieve 30% women on boards for all of Hong Kong's 2,500 plus listed companies. Quotas would not need to stay in place forever – just until the existing imbalance is redressed. Like it or not, Hong Kong's diversity will be benchmarked against other international financial hubs and increasingly against our Asian peers.

- A clear vision and collective end goal are needed. For Hong Kong statistics to look good, we need every one of our listed companies to raise the number of women on their boards, not just a few. It is not 'other people's problem'. It is an issue that every corporate needs to tackle. No single corporate can move the needle alone but each corporate needs to know what the vision and end goal looks like in order to play its part.

- Six years is a reasonable timeframe. Norway, which was the first country to have introduced a 40% quota in 2003, gave corporates five years to comply. Other countries that have adopted similar measures gave their companies three to five years. I favour long-term planning, and six years would allow for internal pipeline planning, nurturing and promotion of females, hopefully right up to board level. Six years will also give ample time for corporates to get to know potential candidates for board appointments and conduct succession planning.

- Corporates embracing diversity to enhance board resilience will attract even more women to join boards. And Hong Kong has ample women who can be nurtured internally for board positions. Hong Kong has the highest percentage of female managers in Asia, at 39%, more than the Mainland at 35%. We are not short of female professionals and businesswomen who believe that they can make meaningful contributions to help boards. Six years is a long time for corporates to embrace this change (or accelerate the pace with more earlier appointments) and for females to prepare for these opportunities.

> "corporates embracing diversity to enhance board resilience will attract even more women to join boards"

- Quotas would discourage unnecessary further debate. There would be no 'ifs or buts' but just a question of 'when' and 'who'. So, quotas would offer simplicity.

- Quotas would allow flexibility on how companies implement the change. Corporates could choose to accelerate more women board appointments before the mandatory quota comes in. There would be no point waiting to see what other corporates may or may not do, or explain why voluntary targets are not met.

- Ambition is important. I favour a quota of 40%. We cannot assume other countries, including those in Asia, will not make progress over time. At 13.7%, we are starting from a low base. If we are determined to fix this and reap the benefits of more diverse boards, why strive just to catch up? We should strive to lead – at least in Asia.

That is why I now call for 40% of women on boards in six years. We can make Hong Kong better. We can make it happen together.

Teresa Ko BBS JP
Former Chairman of Listing Committee of The Hong Kong Stock Exchange
Partner and China Chairman of Freshfields Bruckhaus Deringer

It's Time to Act

The Women's Foundation has been a long-time advocate for more diverse corporate boards since we launched the 30% Club Hong Kong back in 2013.

But change is not happening fast enough. In fact, progress is glacial.

It should be a matter of deep disappointment to the Hong Kong community that the number of women on boards of Hang Seng Index companies is so low. Hong Kong now lags far behind both global financial centres and regional neighbours. More disturbing is the fact that approximately one third of all listed companies in Hong Kong are without a single woman on their boards.

This is simply not good enough.

Increasing the number of women on the boards of listed companies not only improves decision making and the bottom line; it is a fundamental aspect of good governance and delivers benefits for our whole society. Having more senior women as role models filters down through the whole economy and can help on wider debates such as pay equity, workplace policies and other critical barriers facing women.

Given the wide-sweeping changes wrought by COVID-19, it is critical that we have diverse boards that not only ask the right questions, but also raise different questions. This is fundamental to ensuring our boards and management start looking more like our communities (and the breadth of talent within them); to safeguarding Hong Kong's standing as a pre-eminent global financial centre; and to enabling our full range of female talent the opportunity to serve at the highest levels of leadership.

> "more disturbing is the fact that approximately one third of all listed companies in Hong Kong are without a single woman on their boards"

The time for clear action is now. We must aim for 50% women on our boards. To get there, it's time for targets – meaningful targets of 25% by 2025 and 30% within six years which, if not met, should be mandated through quotas. Regulation should further require diversity policies to apply across companies and mandate that companies set measurable objectives to achieve their goals, creating accountability through regular and transparent reporting to the market. This holistic approach will increase the number of women on boards, strengthen the pipeline of female directors, advance diversity across our companies and ultimately strengthen our city.

We can't do this alone. Companies, regulators, government, investors and stakeholders must all come together and commit to action. I commend HKICS on its important and timely report which will help us do just that. Because what we commit to gets actioned and when we work together, we can achieve the seemingly impossible.

It's time to act to bring meaningful change to Hong Kong.

Fiona Nott
Chief Executive Officer
The Women's Foundation

Executive Summary

The level of representation of women on boards (WOBs) of Hong Kong listed companies remains poor, both in isolation and compared to other leading jurisdictions. Only around 14% of the directors of Hang Seng Index companies are women – that is only one-in-seven directors. Hong Kong trails other jurisdictions which have a much higher percentage of women directors, such as the UK (33%), and, regionally, Australia (32%), Malaysia (25%) and Singapore (18%). One third of Hong Kong's listed companies have no women on their boards at all.

Progress in increasing the number of WOBs in Hong Kong has been equally poor. Since 2011, from a low base, female board representation has risen by around 4%. Over a comparable period the number of women directors in some other markets has trebled.

Improved board gender diversity matters. Not just because Hong Kong is falling behind international governance standards, but because diversity enhances board effectiveness and makes use of a much

"The HKICS should be commended for producing this impactful and timely report. We need real and urgent action to improve board diversity.

When we launched the Hong Kong Chapter of the 30% Club, less than 10% of directors on listed company boards were female. Even more shocking was the fact that Hong Kong offered some of the best numbers on gender diversity in Asia. Eight full years later, the numbers have increased by just four percent. But we are now behind Singapore, Malaysia and other countries. Laggards, when we should be leaders.

For Hong Kong to preserve its position as one of the world's leading financial markets, now more than ever we need to maintain a visible leadership in corporate governance. Diversity of qualities and experiences of board directors is vital to that, and diversity of gender is a compelling indicator of a board's and a market's open mindset. More diverse boards are better run and attract more investor interest.

Like HKICS, we support a target of 30% of HKEX board directors to be women in six years, with an interim of 25% by 2025. Where we would go even further is that if we don't hit these targets by then we want the market to mandate these numbers as quotas.

We did not start out arguing for quotas, but Hong Kong is simply not driving sufficient change on this issue.

What is totally clear is that there are plenty of high-quality women candidates willing and able to take up board seats. Companies need to look more broadly for candidates. Companies could also help by releasing their own high-calibre female executives to serve as INEDs on outside boards. If you need any more evidence of the strong supply of female professionals in Hong Kong today, consider the inspiring statistic in this paper that two thirds of HKICS members are women."

Tim Payne
Senior Partner, Brunswick Group; Chair, Steering Committee, 30% Club Hong Kong

larger pool of talented board candidates. It is a fundamental element of good governance. It is also a basic issue of equality of opportunity and treatment.

There is increasing, focused and vocal stakeholder engagement and pressure on this issue.

The Institute agrees with the Exchange that the preferable way to proceed is to encourage shareholders to appoint more diverse (and more effective) boards on the basis of a broad-based stakeholder consensus rather than the top-down imposition of quotas.

That consensus will require discussion and then decision. The Institute suggests that debate might start around:

- a 30% voluntary target
- a six-year transition period (which will deal with the perceived issue of the existence of a sufficient pool of qualified female director candidates), and
- a 'comply or explain' regime, both during and after the transition period. Companies that do not comply could be obliged to disclose the specific reasons for this and the steps they intend to take to achieve compliance.

"Investors are increasingly focused on quality governance as a mechanism to protect and enhance the value of their equity investments. A robust nomination process which assesses the required mix of skills and experience required by a board is the first step to achieving a competent board. The fact that the gender diversity on Hong Kong boards has failed to move over the last 10 years is an indication of a flawed process when it comes to identification of suitable candidates. There are many women in very senior leadership roles in Hong Kong and yet we continue to hear that there is a lack of suitable, qualified women when it comes to board positions. This is simply not true.

A quality board is value adding for all shareholders. For Hong Kong to maintain and enhance its role in the Asian capital markets, the director nomination process must improve. A key indicator of improvement will see the percentage of women on Hong Kong boards increase and I believe the overall quality of boards will also improve.

I support both the 30% Club and HKICS in recommending a target of 30% of HKEX board directors to be women in six years with an interim of 25% by 2025. My hope is that Hong Kong boards will change their director nomination process by assessing the required skills and experience and looking more broadly at possible candidates. A sound process will inevitably bring forward experienced women who can add value to the board."

Pru Bennett
Senior Advisor, Brunswick Group

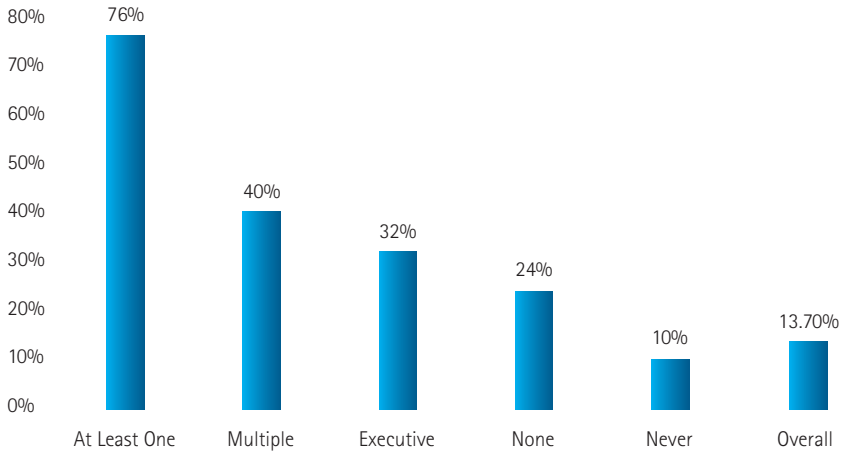
A Review of Gender Diversity on Hong Kong Boards

1. Women on Boards in Hong Kong – the Status Today

The level of representation of women on boards (WOBs) of Hong Kong listed companies is poor, whether judged in isolation or by reference to other leading jurisdictions against which Hong Kong might wish to be measured.

Before turning to the more detailed data regarding the current status of gender diversity in terms of WOBs of listed companies of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), it may be helpful just to give a simple snapshot of the current position in the following table. In each case, the numbers relate to companies in the Hang Seng Index (HSI), the market index comprising 50 leading companies listed on the Exchange and are valid as at July 2020.

WOBs of HSI 50 Larger Cap Listed Companies



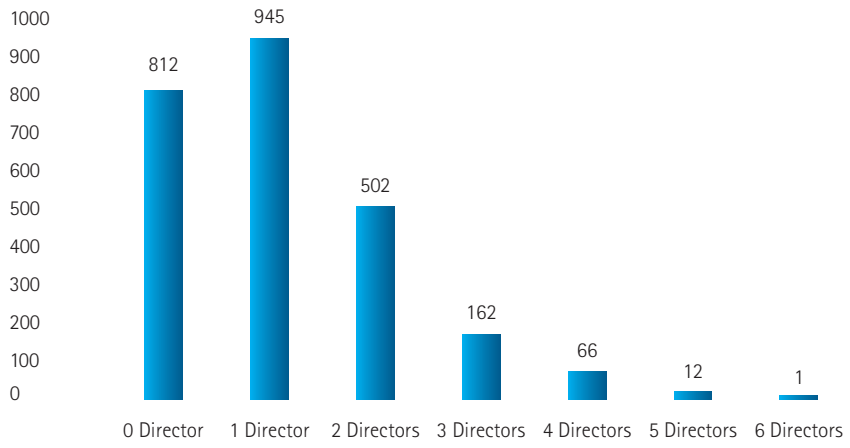
Source: Community Business, HK; table developed by HKICS

This analysis shows that 76% of the larger cap companies comprising the HSI 50 has one WOB. Of them, around half (40/76%) have more than one director, and some are executive directors (32% of 76%). The remaining 24% (or around one quarter) of HSI 50 companies do not have WOBs. In fact, around half of these (10% of 24%) have never had a WOB. It is the final overall figure of 13.7% WOBs which is telling. Simply put, only around one-in-seven directors are female directors. Throughout this Review you will see the overall figures ranging at around 13-14%. These variations stem from the precise date at which the statistics have been collected and the sample group used. However, the picture remains the same. We have a lamentable situation on gender diversity on Hong Kong boards, with around one-in-seven board members being female.

The July 2020 snapshot for the HSI 50 listed companies with a larger market capitalisation is in line with the wider set of all companies with a primary listing on the Exchange. These numbered 2,500 as at September 2020. The average representation of WOBs was only 14.3% (again around one-in-seven), albeit marginally higher than the HSI 50 companies.

The following table explains that around one-third of all companies with a primary Hong Kong listing had no WOBs; and overall, 70% in total had one or no WOB. This demonstrates that the situation with under-representation of WOBs is an across-the-board phenomenon throughout the whole population of Hong Kong listed companies.

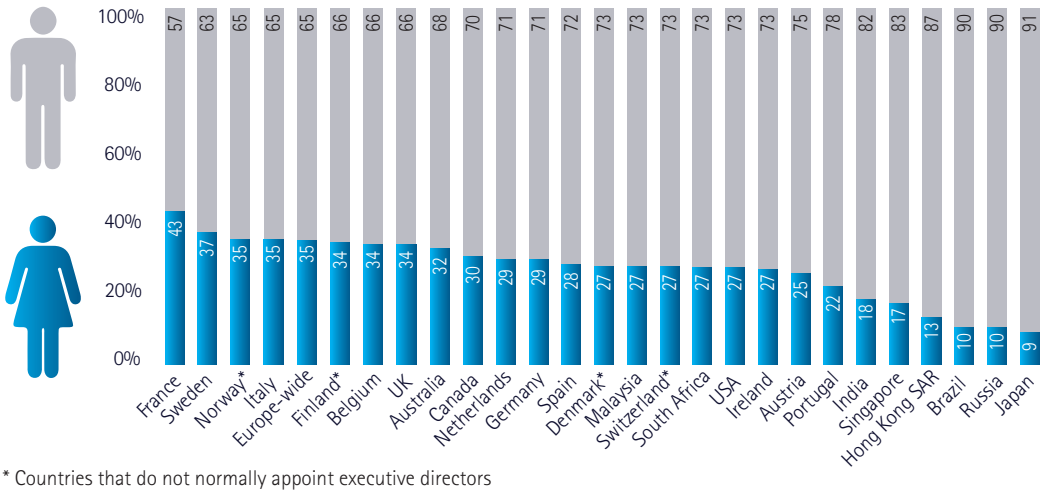
Overall WOBs of Hong Kong Listed Companies (by companies)



Source: Webb-site; table developed by HKICS

Women are also strikingly under-represented on the boards of Hong Kong listed companies by reference to other leading jurisdictions with which Hong Kong might wish to be compared. The following table of 25 major countries, plus Hong Kong, ranks Hong Kong 23rd on the average percentage of WOBs by reference to the 26 corresponding market indices. It demonstrates Hong Kong's lowly standing in this respect as at end 2019.

Average Percentage of Women on Boards

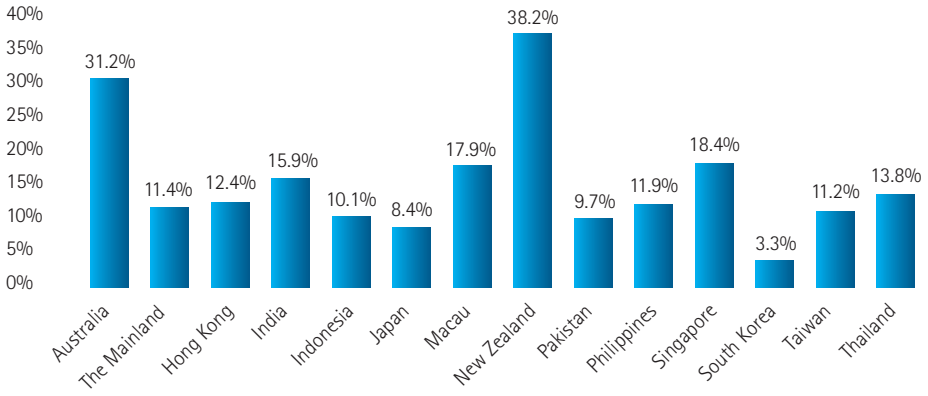


* Countries that do not normally appoint executive directors

Source: BoardEx Global Leadership Team Gender Diversity Report 2020

Hong Kong's performance in terms of WOBs is also unimpressive when compared with other countries in the Asia-Pacific region, including those where there might be considered to be particular cultural challenges to the position of women in business. This is apparent from the following table taken from the MSCI ACWI Index for 2019.

MSCI AWCI Index 2019



Source: MSCI Women on Boards Progress Report 2019; table developed by HKICS

Even within Hong Kong itself, the representation of WOBs of listed companies compares poorly with their presence on public sector and advisory boards. In 2019 this stood at 30% – 1,780 out of 5,954 total appointments.

"From our research of more than 10 years, the progress in gender diversity on Hang Seng Index boards has been disappointingly slow. There is a lack of board renewal and even when the few board vacancies do come up, companies tend to limit themselves to a talent pool that is small and repetitive. Board directors are generally selected from within the 'old boys' network' or informally put forward through social or familial ties with the existing board. However, there are many ways that companies can diversify their talent pipeline, such as developing high-potential female talent at the senior level and working with executive search firms that specialise in board appointments."

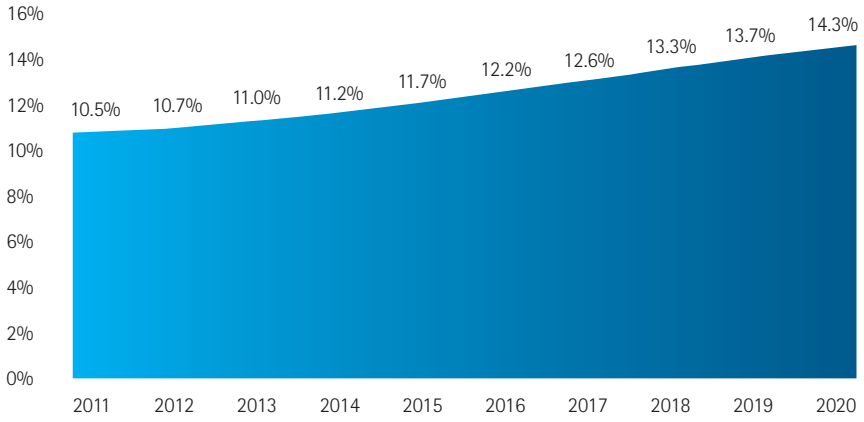
Janet Ledger
Chief Operating Officer, Community Business

2. Progress in Gender Diversity on Hong Kong Boards

Over the past decade, progress in increasing board gender diversity in Hong Kong has been glacial, whether judged in isolation or by reference to other leading jurisdictions.

The following table provides a 10-year summary of the progress of gender diversity on boards in Hong Kong for all listed companies (around 2,500) with a primary listing on the Exchange for the years 2011–2020 (as at 31 July 2020).

Hong Kong's WOBs Progress over 10 years



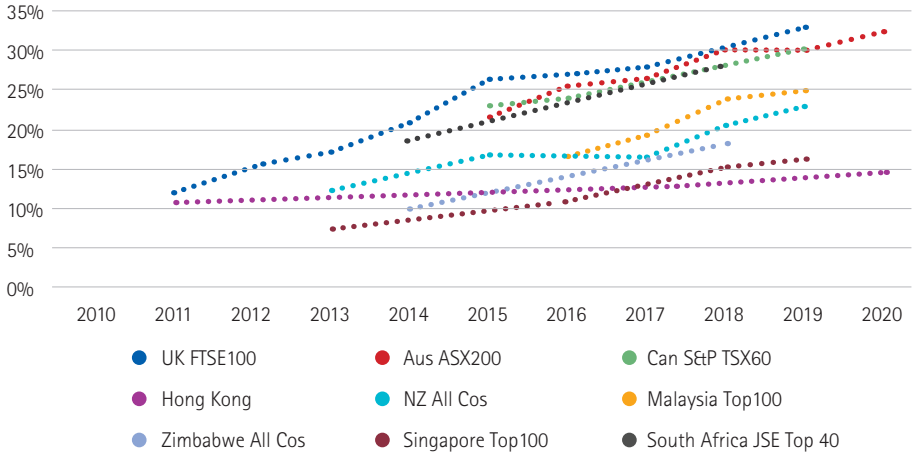
Source: Webb-site.com; table developed by HKICS

These figures demonstrate that over the last 10 years there has been slow progress towards gender diversity within Hong Kong and the Mainland among listed companies with primary listings on the Exchange.

Progress towards higher levels of female representation in Hong Kong is not just snail-paced when judged in isolation. It is also extremely poor when compared with the progress towards gender board diversity made over the past decade in other jurisdictions. Although in some countries, the rate of progress may have decelerated in recent years, this has typically occurred only when the percentage of WOBs has already reached a much higher level than in Hong Kong.

The following charts, drawn from data supplied by the HKICS' fellow divisions within the Chartered Governance Institute on the percentage of women directors across relevant listed company indices or groupings, illustrates the position.

Selected CGI Jurisdictions – WOBs Progress



Source: CGI

As with the international comparison on the actual level of female board representation, this comparison of progress in this area shows Hong Kong in a poor light. The Hong Kong stock market has been the largest fund-raising venue in the world in seven of the past 11 years. If we agree that diversity, including gender diversity, provides value to a company, in promoting board effectiveness and enhancing business performance, we have to ask ourselves if Hong Kong can afford to be so slow in moving the needle on this issue, especially given its standing as an international financial centre.

"Female directors enter the boardroom not only as independent non-executive directors, but also as executive directors, albeit currently female executive directors comprise a relatively small proportion of the overall female directors' universe. If we are to achieve a better gender balance on Hong Kong boards, the directors and senior management of listed companies must be much more proactive, committed and systematic in identifying, encouraging and developing female executive talent. Bringing more women into the C-suite is not just a matter of equality of opportunity, it's a matter of companies fully optimising all the talent at their disposal and enhancing their own business performance."

Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE)
Immediate Past International President, The Chartered Governance Institute
Past President, The Hong Kong Institute of Chartered Secretaries, and
Executive Director and Company Secretary, CK Hutchison Holdings Limited

3. Current Measures

The current measures in Hong Kong to encourage board gender diversity are expressed in broad terms and largely operate through general voluntary encouragement rather than specific mandatory requirement.

In Hong Kong, the Sex Discrimination Ordinance of 1995 makes it unlawful to discriminate, directly or indirectly, on the grounds of sex, including in relation to the area of employment. In theory that legislation would apply to any appointment of an employed director (usually in an executive capacity), where that appointment was made on a basis that discriminated between men and women. In practice, there has never been a case on such lines. There may be a number of reasons for this.

First, whilst the relative figures for board appointments of men and women might indicate the unfair treatment of women, it would be difficult to prove such discrimination in a specific, individual case. Secondly, employed directors, are rarely made on the basis of a transparent and structured process where discrimination between respective male and female candidates of similar quality would be visible and could be proved. Thirdly, companies are not responsible for the appointment of their own directors, which is a matter left to shareholders, and, as a result, it would be extremely problematic to take action against them.

Notwithstanding these obstacles, lack of gender diversity on boards could fall within the remit of the Equal Opportunities Commission (EOC), which is responsible for enforcing and implementing Hong Kong's anti-discrimination laws. Independent non-executive directors might not be considered to be in an employment relationship with their companies. It is possible that, whilst a nomination process ought to remove any indirect discrimination or bias in appointments to boards, the EOC might consider cases in respect of executive directors that amounted to discrimination on the grounds, and in respect of the activities, contemplated by the Sex Discrimination Ordinance.

As regards the appointment of women to boards, both the Companies Ordinance and the Listing Rules of the Exchange are effectively gender neutral. Neither imposes or, in the case of the Listing Rules, recommends or advises any level of female representation on boards. There are no quotas, hard or soft, in any official regulation or guideline in Hong Kong concerning WOBs.

In that vein, the Corporate Governance Code and Corporate Governance Report, which are set out in Appendix 14 to the Listing Rules, do not prescribe any number or proportion of women to serve on the boards of companies listed in Hong Kong. The closest that the Listing Rules come to this matter is the requirement for listed companies to disclose their diversity policy and to provide information on total workforce, training and employment categories by reference to gender.

The elevation to the status of a Listing Rule, and therefore a mandatory requirement, of the need for a diversity policy took place as recently as 2019. In the same year, the Exchange also issued guidance, which effectively 'called out' all male boards proposed by applicants for initial public offerings. Guidance letter HKEX-GL-86-16 provides for additional disclosure on board diversity policy, and that, if a company planning an IPO has a single-gender board, it should disclose and explain:

- how and when gender diversity of the board will be achieved after listing
- what measurable objectives have been set for implementing gender diversity, and
- what measures the company has adopted to develop a pipeline of potential successors to the board that could ensure its gender diversity.

With respect to the appointment of independent non-executive directors (INEDs), an amendment to the Corporate Governance Code, introduced in 2019, requires disclosure in the circular to shareholders accompanying a proposed resolution to appoint an INED of the process used for identifying the nominee, as well as how the proposed INED may contribute to the board in terms of perspectives, skills and experience, and also to board diversity.

Gender diversity is addressed in the Exchange's Guidance for Boards and Directors, issued in July 2018. Whilst, as its title suggests, this is non-binding, the Guidance does explain the Exchange's expectations as to how its Listing Rules are to be interpreted and applied in practice. The Guidance notes the importance and merits of board diversity in promoting board effectiveness and enabling better decision-making. It also recognises that board diversity is increasingly important as a factor for investors when making investment decisions and that this is an area which our market cannot afford to ignore.

The Exchange's Guidance particularly emphasises the importance of gender diversity and that Hong Kong lags behind other leading markets in this respect. In that context, the Exchange makes it clear that a listed company's diversity policy and the progress made to meeting the measurable objectives, which that policy must include, must be disclosed in the annual Corporate Governance Report.

One broad success has been in raising the awareness of the importance of board diversity, in particular gender diversity and a corresponding acceptance that this can make a positive contribution to effective boards and, thereby, better corporate governance. Few shareholders, chairmen, directors, senior managers or policy makers would now contend (and perhaps none publicly) that more WOBs was a bad thing.

The challenge has been in translating this awareness and acceptance into action. The question is whether, and if so how, Hong Kong wishes to move further than the various 'soft' measures which have been attempted over the past 10–20 years, namely:

- encouragement by the Hong Kong Government, but not accompanied by firm policy initiatives
- encouragement by the Exchange in the form of mandated disclosures of diversity policy, but not yet specifying outcomes
- encouragement of business leaders (meaning here the top decision makers) of the need to press forward with greater female presence on their boards
- encouragement by institutional investor groups, whose efforts are limited by their minority shareholdings in a context where Hong Kong listed companies are characterised by controlling shareholders, and

- lobbying, education and awareness initiatives by local stakeholder groups, including those with a strong focus on this topic.

It is helpful to place the current measures adopted in Hong Kong to promote board gender diversity in a wider context. The following table summarises the position across a number of major jurisdictions, as applied to companies included in major market indices in those jurisdictions.

	Quota	Voluntary target	Controlling shareholders commonplace
Australia		30%	
Canada			
France	40%		
Germany*	30%		
Hong Kong SAR		One board seat for new IPO candidates	Yes (family and state-owned)
India	One board seat		
Italy	33%		
Japan			
Malaysia		30%	
New Zealand			
Norway	40%		
Singapore			
UK		33%	
USA**			

Source: HKICS research

Note: The Chartered Governance Institute's 2021 Report 'Women on Corporate Boards – International Governance Stocktake' sets out in more detail the suite of diversity measures in a number of leading jurisdictions.

** In November 2020, the Federal Government mandated that all management boards with more than three members, must include at least one woman.*

*** This issue is often addressed at individual state level. In December 2020, Nasdaq announced that most Nasdaq companies must have, or explain why they do not have, at least two directors one of whom self-identifies as a female and one who self-identifies as a minority or LGBTQ+ person. Foreign companies and smaller companies will have flexibility to meet this requirement with two female directors.*

Broadly speaking, the current measures adopted in Hong Kong under the auspices of the Exchange to promote greater female representation on boards have followed a path seen in other jurisdictions where a requirement for public disclosure of diversity levels has been a common first step, sometimes or later accompanied by an obligation to explain a company's underlying diversity policies and objectives. The next step has tended to be a move to the introduction of specific targets or minimum thresholds for WOBs, either on a voluntary (combined with a 'comply or explain' option) or mandatory basis.

4. Engaging on Board Gender Diversity

The low representation of women on the boards of Hong Kong listed companies is an important issue – it matters. This is evidenced by the increasing, vocal and focused stakeholder engagement on this issue.

As discussed later in this Review (see 'The Way Forward'), the Exchange is well aware of Hong Kong companies' poor performance in the area of board gender diversity. It is also highly attuned to the importance of this issue. For example, when issuing its revised guidance on board diversity for IPO applicants in 2019, David Graham, the then Head of Listing emphasised that 'board diversity promotes effective decision-making and enhances corporate governance'. He also noted that 'the consideration of diversity is becoming an important factor when investors make their investment decisions'. In that spirit, the Exchange has steadily advanced the levels of mandatory disclosure in this area, as well as monitoring, and through consultation, testing market views on measures to increase board gender diversity. In the past, that engagement has not found a clear and strong consensus for more robust measures.

The Hong Kong government might weigh more forcefully on this issue in backing a consensus for action. At government level, there are probably two bodies which can have a role to play in promoting board diversity.

"As a women entrepreneur involved in the first joint venture in the Mainland, I have enjoyed sitting on company boards both in Hong Kong and the Mainland since 1980. I am surprised that in the Mainland I have received more respect and equal treatment in the business sector than in Hong Kong, even though Hong Kong claims to be more cosmopolitan and international in its business approach. With my 40 years engaging in joint ventures in the Mainland, as well as being involved in companies based in Hong Kong, I feel it is time for the Hong Kong business community to be more progressive in adhering to equal opportunity for both genders based on ability rather than on gender selection. It is important Hong Kong should improve and advance to consider practical gender diversity especially on company boards to ensure Hong Kong's progress as an international business hub."

Dr Annie SC Wu SBS JP
Honorary Chairman, Beijing Air Catering Limited

The first is the Equal Opportunities Commission (EOC), an independent statutory body set up in 1996. Its primary responsibility is to implement the anti-discrimination ordinances in place in Hong Kong, although it does advocate policy change and develop policy frameworks for public and private organisations. The EOC also has the specific power to 'work towards equality of opportunity between men and women generally'.

The second is the Women's Commission, established by the government in 2001. The Commission is tasked with taking a strategic overview over women's issues, including developing a long-term vision and strategy for the development and advancement of women. In this context, the Commission promotes 'unleashing women's potential in the business community'.

Neither of these governmental agencies has a particular mission regarding increasing gender diversity on boards. However, this objective does form part of government policy. In her annual policy address in 2018, Hong Kong Chief Executive, Carrie Lam, stated that 'we call on all listed companies to appoint more females on their board of directors'. This statement has not yet been followed by specific measures and so remains more in the way of an appeal than a directive.

In the absence of firm government action, the drive towards increased gender diversity on boards has been led by private, voluntary groups and NGOs who, through their voice and initiatives, are becoming an influential and informed presence in this area.

For example, the 30% Club and The Women's Foundation, working together, have been prominent advocates for more diverse boards. The 30% Club, launched in 2013 as the Hong Kong chapter of the group which originated in the UK, works to raise awareness amongst business leaders of the benefits of gender diversity, to inspire debate and discussion and to support initiatives to build the pipeline of women in executive and non-executive roles. The Women's Foundation believes that increasing the number of WOBs remains a priority and works with 'Women to Watch' to provide women with further skills, knowledge and connections necessary to facilitate the transition to the boardroom.

The 30% Club has previously set a voluntary aspirational target of achieving 20% female representation on the boards of Hong Kong listed companies by 2020 and zero all-male boards by the end of 2020. Groups in Hong Kong which promote gender diversity have tended to gather around this target.

Community Business is a not-for-profit organisation whose aim is to advance responsible and inclusive business practices in Asia. Its initiatives include a 'Diversity on Boards Campaign' to raise awareness of the importance of the need for greater diversity on Hong Kong boards and to drive positive progress.

Amongst professional bodies, The Hong Kong Institute of Chartered Secretaries has long been an advocate of the need for, and merits of, increased representation of women on the boards of Hong Kong companies. In 2012, the Institute, in its report Diversity on the Boards of Hong Kong Main Board Listed Companies, was among the first organisations to examine this issue in Hong Kong. Through its involvement in policy debate, and through training and seminars for its members, the Institute has been a consistent voice on this issue.

The voice of investors has perhaps not yet been as prominent as might be expected. In part this will reflect the particular characteristics of Hong Kong shareholders which are dominated by controlling families and state entities (principally those of the Mainland) and to a lesser extent, retail shareholders. For such investors, diversity on boards may be a less weighty consideration than the appointment of directors with whom they have an existing connection and in whose respect for the interests of the controlling shareholder they already have confidence. In contrast to controlling shareholders, institutional shareholders tend to have much smaller shareholdings, often fragmented across a range of institutions. Co-ordinating the voices and votes of these institutions is neither easy nor straightforward and, even when consolidated, they may still only constitute a small minority vote.

Notwithstanding these challenges, the importance of garnering investor support for gender diversity on boards has been recognised in Hong Kong. The Board Diversity Hong Kong Investors' Initiative, launched in 2018 with 11 investor signatories aims to proactively engage with Hong Kong listed companies on diversity matters in support of the targets set by the 30% Club for increased female board representation and an end to all-male boards by 2020. The original signatories to this initiative included such well-known international investors as BlackRock, Manulife and Hermes Investment.

"Companies that value different talents and perspectives are more likely to succeed. At New World Development, we believe in creating shared value with different stakeholders and promoting gender diversity helps us develop well-rounded strategies with amplified impact. In the past six months, female representation at our senior management levels has increased from 35% to almost 40%, with more female board directors appointed as a celebration of diversity. As a leading international financial hub, Hong Kong has made great progress in striving for gender equality which sets a good example for the world. Hong Kong should continue to seek excellence in corporate governance by achieving higher participation of women at the board level, and we call for the effort of every company to support this objective."

Dr Adrian Cheng JP
Chief Executive Officer, New World Development Company Limited; Founder & Chairman, K11 Concepts Limited; Owner of Rosewood Hong Kong; Executive Director, Chow Tai Fook Jewelry Group Limited; Vice-Chairman and Group CEO, CTF Education Group

5. Challenges and Opportunities

There are particular challenges to increasing the representation of women on the boards of Hong Kong companies, but there are real opportunities in terms of well-qualified and talented women candidates for appointment to those boards.

One challenge to increased board gender diversity in Hong Kong lies in the composition of the leading companies listed on the Exchange. The Hong Kong market has characteristics of its own which must be carefully taken into account when considering this issue. In particular, listed companies are overwhelmingly state- or family-controlled. Only a minority are actually incorporated in Hong Kong, meaning that they are largely subject to the company laws of other jurisdictions. Only a minority will have their principal place of business or centre of their economic affairs in Hong Kong.

There can also be a perception that somehow Asia is different from elsewhere in terms of readiness to advance the presence of women in the boardroom. For instance, in January 2020 Goldman Sachs announced that, from July 2020 onwards, it would not handle IPOs for companies that lack either a female or diverse director. However, the rule would apply only in the US and Europe, but not in Asia (nor, for that matter, Latin America and the Middle East). A Goldman's spokesman was quoted in the *Japan Times* as saying that the bank would consider implementing the plan in Asia and other regions after consulting its clients, as diversity awareness improves in those areas.

As at October 2020, 1,303 out of the total 2,524 companies listed on the Exchange (51.6%) were Mainland enterprises. These were comprised of H-share companies (288, 11.4%); red chips (176, 6.97%) and Mainland private enterprises (839, 33.2%). These companies together contributed 81.2% of total market capitalisation and 86.1% of turnover value. The Mainland has not issued any specific regulations on board diversity, including gender diversity. Moreover, Mainland companies have a lower female board representation than Hong Kong counterparts. The Women in the Boardroom 2019 Report published by the Deloitte China Center for Corporate Governance used a sample of 220 companies: China Securities 100 Index, ChiNext 50 and the Hang Seng Index. The Report calculated the percentages of female directors in Hong Kong and the Mainland as being 13.3% and 9.6% respectively.

Whilst any changes in the regulatory regime should not be misaligned with developments in the Mainland, a trend towards an increased role of women in business leadership would seem to be in tune with overall political direction. For example, speaking to UN delegates in Beijing on 1 October 2020 on the occasion of the High-Level Meeting on the Twenty-Fifth Anniversary of the Fourth World Conference on Women, President Xi Jinping spoke of the post-Covid world and the promotion of 'new opportunities for women to participate in decision-making and be more involved in national, economic, cultural and social governance'. President Xi also emphasised 'the need to ensure that women advance at the forefront of our times'.

As regards family-controlled companies, the general tendency has been for their 'founding fathers' to be just that – fathers. However, the passage of the generations and a more 'liberal' attitude to the role of women in family businesses could well work its way through to increased levels of female representation on boards. For example, in 2020 New World Development made a couple of board appointments which doubled its proportion of female directors to 25%. New World's Chairman, Henry Cheng (himself the son of its founder Cheng Yu-tung) said that 'the presence of more women in the boardroom will broaden the range of perspectives available to the company, enhance

the effectiveness of decision making and invigorate the quality of management'. New World's CEO, Adrian Cheng (Henry's son) added that 'the promotion of gender equality and the appointment of women in leadership roles are important trends for all leading enterprises worldwide'.

A discussion about the future representation of WOBs must take note of the present and future levels of qualified women candidates. In Hong Kong there are grounds for a positive view of the pipeline of qualified and experienced female businesswomen and professionals.

In 2020 female students represented around 53% of all students enrolled in higher education programmes in Hong Kong. At higher academic levels, female representation is even higher at 63% of all enrolments at taught postgraduate level – itself an increase from 48% over the previous 20 years. Nor should it be thought that female students are concentrated in the more 'traditional' subjects of humanities and social sciences – 58% of students enrolled in business and management studies in the 2019-2020 academic year were women.

A similar story emerges from a review of the accounting and legal professions, both of which are potential sources for board directorships, particularly independent non-executive roles. Just over 50% of the members of the accountants' professional body, the Hong Kong Institute of Certified Public Accountants (HKICPA), are women. In the financial services sector about 52% of all entry level positions are held by women. In the legal field there is a similar picture, with around 60% of all trainee solicitors in Hong Kong being female.

These figures indicate that, potentially, the pipeline of future women directors is well-stocked.

"Hong Kong's education system provides equal opportunity for young men and women to learn and to excel. Over the years, more and more women have joined the ranks of lawyers, engineers, architects, fund managers and industrial designers which used to be dominated by men. They have proved beyond doubt that, given the opportunity, women are equally competent. There are ample examples, in both business and politics around the world, where women have reached the top and are leading with great success. Hong Kong prides itself on being a progressive society, but we lag behind in female representation at the senior executive level and the boardroom in listed companies. Being a small economy, Hong Kong needs to make the fullest use of available talents. There is a large pool of well qualified women with yet untapped potential to enrich the management of listed companies. I know from personal experience the benefit of diversity in any organisation and fully support greater female representation at the highest level of management and in the boardroom."

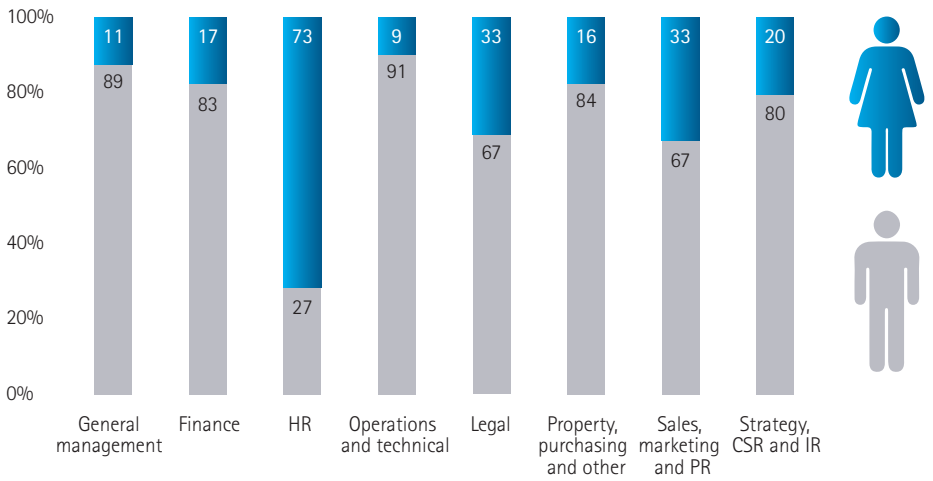
The Honourable Mrs Fanny Law Fan Chiu-fun GBM GBS JP
Non-official member of the Executive Council of The Government of the Hong Kong Special Administrative Region

The challenge is transforming that scale of pipeline 'entries' into a corresponding 'exit' level in terms of moving through to board seats. In part, this is a wider societal issue – in common with other jurisdictions, women are not attaining the same proportion of higher-level positions as men.
In overall terms, a higher proportion of male employed persons work as managers, administrators, professionals and associate professionals in Hong Kong. This, possibly with an element of discrimination (although direct discrimination would be illegal), is reflected in the overall gender pay gap between men and women in Hong Kong. For example, women employed as managers, administrators and professionals earn an average of HK$4,700 (US$603) less per month than their male equivalents (HK$40,300 (US$5,166) vs HK$45,000 (US$5,769)). Hong Kong's overall gender pay gap is 20% which is wider than 10 years ago and higher than Singapore, Australia and the UK.

In the financial services sector whilst, as mentioned earlier, over half of entry level positions are held by women, this figure drops substantially at higher levels. According to PwC and The Women's Foundation, only 33% of senior management positions are occupied by females and this falls to 21% at board level. Data indicates that, rather than raising a family, lack of career progression and other career opportunities is the primary reason why women leave a financial services organisation. It is revealing that whilst over half of HKICPA members are women, only 29% of practising members are women. Whilst this will include women who took an accountancy professional qualification but then pursued other careers, the same could be said for their male counterparts. There is at least an indication here of women who have started their professional careers but not necessarily continued further. A similar picture can be detected in the legal profession where the 60% of female trainee solicitors is matched by only 27% women at partner level.

Women in leadership teams in the private sector will be a primary source for future board appointments. The BoardEx *Global Leadership Team Gender Diversity Report* of 2020 included the following gender analysis of the leadership teams of Hang Seng Index companies.

Leadership Teams of Hang Seng Index Companies



Source: BoardEx Global Leadership Team Gender Diversity Report 2020

In terms of the quality of the pipeline to more WOBs, this analysis indicates the reduced presence of women in general management and operational and technical roles. In those functions, the percentage of females (11% and 9%) is actually lower than the current level of women on the boards of those companies (13%). On the other hand, especially by reference to the level of female board representation, women are strongly represented in human resources (73%) and reasonably well represented in legal (33%), sales, marketing and public relations (33%) and in strategy, corporate social responsibility and investor relations (20%) positions.

The challenge here is to increase the numbers of women who move into management, financial, operational and technical roles. The opportunity for Hong Kong companies is to source more women directors from a wider range of functional areas, all of which are capable of contributing relevant and valuable expertise within the boardroom. But this needs to be accompanied by a change of mindset by boards. Only one Hang Seng Index company, that is one out of 50, has a female CEO. That cannot be an outcome which rests on an objective assessment of individual merit.

Looking beyond the private sector, and still with an eye on the pipeline of future female board appointees, Hong Kong has a wide variety and significant number of public sector advisory and statutory bodies. These have given, and will continue to give, the Hong Kong government the opportunity to play its part in bringing forward women to positions of prominence and visibility.

This can then lead to these individuals becoming more widely known and recognised for their capability to serve on private sector boards. The percentage of women on such public bodies is still low, relative to men, at only 30%, but it has risen substantially from only 19% in 2001. It is also much higher than the level of representation on listed company boards. In the public board sector, the Hong Kong government has made a conscious effort to reach the '30% mark' for female appointments. It may be that, within various government bureaux, the discussion now is to try to move that figure upwards. In this regard, the government's performance might be taken as an example of how a clear voluntary target can be set and achieved.

The final word on this subject must be that, whilst it is only right to have regard to the importance of an adequate pipeline of women board candidates in Hong Kong, in the end of this is an issue of perception, not substance. It cannot fairly be argued that Hong Kong has fewer talented women than elsewhere, including in jurisdictions as close as Singapore and Malaysia.

6. The Options

The options to be considered in response to the present level of female board representation on Hong Kong boards range from, at one end of the spectrum, to taking no action and maintaining the status quo to, at the other end of the spectrum, setting ambitious mandatory quotas.

In this section of our Review, we summarise the various options which fall for consideration in light of the present level of board gender diversity in Hong Kong. In keeping with the overall approach we have adopted, our aim is to present those options as fairly as possible and to set out our observations on their consequences and implications, both positive and negative, even though the merits of a particular approach may be more or less apparent than those of others.

The Status Quo

Maintaining the status quo has a number of quite respectable and recognisable merits. If it did not, the present position would not have arisen and it would not have been maintained. These grounds are probably inter-related.

- First, it represents the broad consensus measured by the Exchange over the past decade when, using its well-established processes of consultation, it has reviewed the regulation of board diversity, including both the content and the force of that regulation.

- Secondly, it recognises and respects one of the principal and most important rights of shareholders – the right to appoint, in the exercise of their own judgement and discretion, and without undue interference, the directors whom they believe will be best suited to represent their own interests. Shareholders are stakeholders, but unlike other stakeholders – they own the company. The right to appoint directors is one of the most important rights they possess. It should not be lightly infringed.

- Thirdly, restrictions on board composition could interfere with the dynamics and effectiveness of boards who may presently be serving their shareholders well, if the rights of existing directors to continue to serve, and to stand for re-election, are undermined by gender requirements.

"The report comprehensively summarises what has happened thus far on gender diversity on boards in Hong Kong and elsewhere, and suggests a sound way forward for us locally. In spite of all the good work of different interested parties, progress has been slow here. Hong Kong has been a proud leader in so many facets, and now the opportunity presents itself for the boards of Hong Kong companies to make significant strides on gender diversity, starting with making up lost ground. This report provides a sound path for people to follow. Why should Hong Kong be different? It really is indefensible."

Neil Waters
Consultant, Egon Zehnder

- Fourthly, the current regime in Hong Kong operates by way of open disclosure. If shareholders are dissatisfied with the level of board diversity as presented to them, they are sufficiently informed and free to exercise their rights as shareholders to bring about change. They are also at liberty to exercise their investment decisions by reference to levels of board diversity they prefer and in which they have greater confidence.

Against those points, the current level of WOBs, and the regulatory regime within which that is maintained, might be considered as possessing the adverse characteristics listed below.

- It is unjust and unjustifiable as a matter of fairness, equality and discrimination as between men and women. The present regulatory framework and entrenched corporate culture has not delivered the rate of progress towards board gender diversity that was expected.

- Unless, which few or none are contending, women are inferior to men in their capacity and capability to serve as effective directors, shareholders are, either wilfully or carelessly, missing out on the opportunity to appoint boards which are composed of the individuals best able to serve their interests and those of the company as a whole.

- Similarly, talented and capable women are missing the opportunity, to fully develop their business careers and to make the contribution to the business community and society as a whole which they would wish to achieve.

- There is a growing body of analysis which suggests that boards with improved levels of women directors are more effective, and that this effectiveness can actually be measured in enhanced business performance.

- A corporate environment where women are conspicuously under-represented on boards suggests that Hong Kong's controlling shareholders are simply not casting the net wide enough to capture all the talent available to create effective boards. It also suggests that controlling shareholders are too 'comfortable' with the composition of their boards and are not seeking a diversity of background and thought which would enhance board performance and better serve the interests of all shareholders, including minority and institutional shareholders. This concern is particularly valid given that Hong Kong has not yet moved towards a regime which gives 'independent' shareholders a greater say in the appointment of independent non-executive directors.

- Hong Kong positions itself as a leader in corporate governance. In the domain of board gender diversity, Hong Kong is presently a laggard rather than a leader. If sponsors are gradually moving to requiring IPO candidates to have gender diverse boards then, as a global fund-raising leader, it would be better for Hong Kong to embrace, rather than resist, this trend.

Voluntary Targets

The principal characteristic of voluntary targets is found in the name – they are just that. Companies can choose whether or not to comply and shareholders can choose whether or not to vote their shares towards the achievement of those targets. To that extent, shareholders remain free to vote for the directors they wish and, with a comply-or-explain obligation, companies can seek to explain why a particular voluntary target is not right for them (or not yet right).

Voluntary, specific targets have proved themselves in other major jurisdictions, such as the UK and Australia as having a major impact in increasing the numbers of WOBs. In fact, in those countries the body of stakeholder opinion, including investors, listed companies, governance professionals, market participants and regulators has coalesced around these targets to such a degree that, as with the UK's Hampton-Alexander Review, their moral weight approaches legal force. A number of common threads appear in this phenomenon.

- The targets have been introduced at time when the level of female board representation was widely regarded as indefensibly low.

- They appear to have been introduced as a step forward from regulatory regimes which had mandatory disclosure but voluntary open outcomes, short of setting mandatory outcomes.

- The targets have been carefully set and adjusted in line with a broad stakeholder consensus. That said, the clear support of governments and of market regulatory bodies has been of great importance in conferring meaningful weight on voluntary targets. In Hong Kong that support would be even more important since institutional and minority shareholders do not have the weight of votes (and thereby power and influence) that they have in other markets (such as the UK and Australia) with much fewer controlling shareholders.

- Over time the initial targets have been both deepened and broadened. Deepened in the sense of being made more demanding. Broadened in the sense of being applied to a wider range of listed companies, starting out from those in the index of the market's leading shares.

- A gradual introduction of voluntary targets gives companies, and their boards, time to adjust, adapt and to plan. In those cases where compliance has not been possible, such as for particular industry, country or company challenges or realities, companies can explain why this is not so. It is then for shareholders and other stakeholders to decide for themselves whether those reasons are convincing and legitimate.

Mandatory Quotas

These might be succinctly described as like voluntary targets 'only more so'. As such, it might be thought that, if more WOBs is a 'good thing' then it should be compulsory, applied to all companies and not left to choice or chance. Certainly, there is evidence that mandates do have an impact – BoardEx's *Global Gender Diversity Report* of June 2020 looked at the different outcomes within the sample group between companies in jurisdictions with mandated and non-mandated female board representation. That analysis concluded that the average percentage of WOBs in a mandated context was 29.6%, compared with 24.4% in non-mandated markets.

That said, the *Hampton-Alexander Review* of November 2019 concluded that many countries had had their quota regimes or voluntary targets in place for five-plus years and all had moved forward.

Although mandatory quotas have undeniable robustness, they do carry some disadvantages which need to be recognised and taken into account.

- In line with previous remarks, they lessen the right of shareholders to vote for the directors they wish to serve their interests.

- Mandatory requirements can reduce flexibility and carry a 'one size fits all' approach to board composition.

- Majority male boards (which most are – not one company in the Hang Seng Index has a majority of women directors) can resent the perceived imposition on them of women colleagues who they consider (even if wrongly – after all, no one would contend that every male director had been appointed solely on merit), as being appointed more on gender grounds than for ability. This has negative implications for board dynamics and board effectiveness.

- There is anecdotal evidence, albeit this is an imperfect source, that existing women directors can feel that their own achievement in reaching board level is diminished by the introduction of quotas. In similar vein, women appointed to the board under a quota regime may have ongoing doubts as to whether they were the preferred candidate or appointed only as 'tokenism' to meet a quota requirement. In either case, this can once again be damaging for board dynamics and effectiveness.

Given that mandatory quotas do not have a 'get out' in the form of the possibility of offering an explanation for non-compliance, extra care needs to be taken in their introduction. This includes the level of female representation specified, the notice given of its introduction and the length of any transitional or 'grace' period.

In considering the options available in respect of female representation on boards, one issue which needs to be aired is the relationship between the promotion of gender diversity and that of other forms of diversity, such as age, ethnicity, disability, education, sexual orientation and religious or other beliefs. In the case of proceeding with either voluntary targets or mandatory quotas, the issue is whether and, if so how, the introduction of such targets or quotas should be accompanied by initiatives regarding other forms of diversity.

A starting point for most observers would be that any form of discrimination is objectionable and that diversity in its various manifestations should, as a matter of principle, be encouraged. Moreover, in the particular context of a board, diversity of background within the board can promote diversity of thought, the avoidance of 'groupthink', and, ultimately a more dynamic and effective board.

In that context, the specific question is whether measures to enhance the presence of WOBs should be tackled separately from the broader subject of diversity. One approach has been to link these; for example, in the UK the 30% Club is now advocating for one person of colour on all FTSE 350 boards, with half those seats going to women.

However, and without contesting the broad need for fairness and equality in society, there are a number of reasons why any push for greater board gender diversity should not (or not now) be conflated with initiatives on other aspects of diversity.

- Women are not a minority. In fact, in Hong Kong, women are a significant majority, including in every age group between 30 and 70 from which directors would commonly be sourced.

- Gender diversity is easily measured, objectively calculable and straightforward in terms of disclosure, compliance and enforcement. Gender diversity is also globally comparable and applicable – every country has men and women; there are multiple other forms of diversity and these can vary widely from country to country.

- Against that background, to 'bundle' the promotion of gender diversity with other forms of 'difference' is unhelpful to either the cause of enhancing women in corporate leadership or that of other 'groups'.

- Within each gender there is diversity. Opening up boards to more women, as opposed to only or predominantly men, itself leads to greater diversity in other respects.

- Opening up boards to greater female representation has itself been a protracted challenge. Tackling this would be a valuable first step in the process of opening up boards to wider participation.

These are not easy issues and the relationship between gender and other forms of diversity, and indeed the whole subject of diversity, can be controversial – both as regards the subject itself and the language employed (as perhaps is evident in the preceding paragraphs). For the purpose of this Review, it is perhaps sufficient to note that the debate on greater gender diversity in the boardroom must at least acknowledge, and decide upon, any relationship between that issue and the broader issue of diversity in its other forms.

"With corporate governance, sustainability and sense of purpose as the foundation, BCT is committed to serving and creating value for all stakeholders. I truly believe the presence of women on boards needs to be reinforced not only for the sake of creating more equality per se, but also helping a company live up to its corporate responsibilities and in turn ensure the society it serves is inclusive and sustainable.

A more gender-diverse board might also improve a company's image and legitimacy, with positive effects on its performance and sustained value creation. Given Hong Kong is lagging behind on board gender diversity among international financial hubs, we need to be aligned with global governance standards. While we are not an advocate of mandatory quotas, I agree with the HKICS suggestion in this report that a voluntary 30% target can be set with a transition period to achieve such a target, backed up by a 'comply or explain' disclosure obligation. Different stakeholders have a role to play in building a greater pool of well-qualified candidates and enhancing board gender diversity and board effectiveness in Hong Kong."

Lau Ka Shi BBS FCG(CS, CGP) FCS(CS, CGP)
Managing Director & CEO, BCT Group (BCT Financial Ltd & Bank Consortium Trust Co Ltd)

7. The Way Forward

Movement towards increasing the level of representation of women on the boards of Hong Kong companies must rest on a broad-based stakeholder consensus. Any changes to the existing regulatory regime must be measured not just against international standards, but against the particular Hong Kong context in which they are to be implemented; and both the short-term and longer-term implications and consequences need to be carefully weighed.

Changes of whatever nature to Hong Kong's regulatory regime, including either voluntary targets or mandatory quotas, must rest on a broad-based stakeholder consensus which drives and encourages shareholder attitudes to the appointment of gender diverse boards. A greater role for women in the boardroom is not something that can be successfully introduced and implemented through a purely top-down process of direction and compulsion – all relevant stakeholders must contribute to any success in this domain.

The position was succinctly expressed in the Institute's monthly journal (*CSj* of August 2020) by Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services of The Exchange's Listing Division, when she pointed out that the discussion about whether quotas for gender diversity should be imposed to improve gender equality in Hong Kong should not solely be led by the securities regulators – this discussion should involve a much broader group of stakeholders. Ms Ng noted that 'gender equality is a wider social issue and not just a company corporate governance or risk management issue. If you look at other jurisdictions, quotas have been imposed by legislation rather than as a listing requirement by the Stock Exchange'.

In establishing or devolving that consensus, the first threshold decision for Hong Kong is whether any changes should be made to the current regime surrounding the representation of WOBs. In the words of Gillian Meller FCG(CS,CGP) FCS(CS, CGP) the Institute's President, in the same article in *CSj*, 'the question now is – do we need to force change because it's not happening naturally?'

The sense of this Review is that in circumstances where:

- it is largely accepted that gender diversity on boards can contribute to board effectiveness and, through that, to corporate performance
- women are significantly under-represented on the boards of Hong Kong listed companies
- progress to more WOBs in Hong Kong is slow and scarcely accelerating
- in both these latter two respects Hong Kong lags behind other major financial centres with which Hong Kong would wish to be compared, and
- international and institutional investor sentiment is evolving towards the active support of board gender diversity,

the status quo does not seem sustainable and should not be sustained.

Once that threshold question has been answered, the next question is whether change should take the form of voluntary targets or mandatory quotas. This was neatly posed in the following terms in the Hampton-Alexander Review of 2019 when comparing UK progress internationally: 'the rate of progress of quota countries over time, shows that legislation, fines and penalties are effective. The spread of voluntary countries shows that progress can be made through a voluntary approach alone. There remains a question to be answered with the passage of time, as to the trade-off between a swifter pace of change, over arguably slower, but more sustainable change which seeks to educate and embed learnings in the business.'

In light of the discussion earlier in this Review about the respective merits of voluntary targets and mandatory quotas, experience elsewhere and the importance of building a stakeholder consensus around incoming changes, it is a reasonable judgement that progress in board gender diversity in Hong Kong would be best served by the introduction of voluntary targets.

This in turn invites the question as to the nature of such targets. To enjoy the necessary stakeholder support these must be measured not just against international standards, but against the particular Hong Kong context. The targets need to be clear, practical, realistic and achievable. This includes the levels at which they are set, the time allowed to meet them and the related obligations of disclosure of both compliance and non-compliance.

Amongst the considerations which should be taken into account when setting those targets and transitional period would be those listed below.

- The current low level of female board representation. This works both ways, being both a possible reason to press ahead fairly rapidly and a mark of the scale of the change needed to bring women up to significant levels of boardroom presence.

- The pipeline of well-qualified, well-prepared female board candidates. If the demand for women directors is substantially misaligned with supply (and shareholders are reluctant to look to a wider candidate group) this can lead to the so-called 'golden skirts' phenomenon. This takes the form of a relatively small number of women occupying a disproportionately high number of board seats, (although this, like the corresponding 'golden shirts' phenomenon for male directors, can readily be managed through controls on overboarding).

- The need to avoid undue disruption to the effectiveness of existing boards, especially the terms of current directors, and a precipitate turnover of board members.

Weighing and balancing all these considerations would be a matter for debate and the establishment of the broad consensus needed to make these targets effective. The following might be a reasonable starting point for that debate and perhaps a framework around which views might coalesce.

- A voluntary target of 30% women on the boards of all listed companies. That is broadly in line with levels set elsewhere.

- A transition period of six years to achieve that target. This takes into account that under the Hong Kong Corporate Governance Code (A.4.2) directors are subject to retirement by rotation

every three years and that serving more than nine years could be relevant to the determination of a non-executive director's independence (A.4.3).

- Both during and after the transition period these targets operate on a comply-or-explain basis provided that, in the case of non-compliance, the explanation must be specific as to the steps actually taken to comply, the particular reasons for non-compliance and the date by which compliance will be achieved and how.

- To provide a long-term sense of direction, allow companies a considerable period for preparation, to avoid a permanent 'stop' at 30% WOBs and to encourage the continued expansion of the pipeline of qualified women, a longer-term aspirational goal could be set. One example which is canvassed in Australia is the '40:40:20' goal – 40% men, 40% women and 20% either.

Whatever voluntary regime emerges from further debate on this issue will require the contribution of all stakeholders in order to achieve meaningful success, both in meeting those targets and in building a greater pool and a sustained pipeline of well-qualified WOB candidates. This support could include the following.

- From government – a clearer and more formal policy directive than that expressed in the Policy Address of 2018. By way of illustration, the increase in WOBs in the UK, whilst on a voluntary basis, has benefited from consistent and express government backing to the Davies and Alexander-Hampton reviews.

- From regulators – backing a voluntary regime by mandatory comply-or-explain Code Provisions. This might include consideration of extending the enhanced disclosures on diversity (including measurable objectives and pipeline succession planning) from IPO applicants to existing listed companies, as well as disclosure of gender diversity statistics at board, management and other employment levels.

- From controlling shareholders, whether families or state entities – an awareness of the disadvantages of all-male or overwhelmingly male boards and a conscious effort both to look at a wider pool of women board candidates and to create a pipeline of board-ready female appointees.

- From directors – an increased readiness, in public and in private, to encourage women and bring women through the pipeline to board appointments. In this task, women directors can have a particular part to play as role models whilst male directors, being currently the large majority, must help create an environment which is welcoming and supportive to more women in the boardroom.

- From chairmen – setting 'the tone at the top' in promoting corporate principles and values which include equal opportunity for men and women (and overseeing communication and visible action from the senior leadership team).

- From the nomination committees – taking full account of the need to achieve and maintain board gender diversity in board succession planning. In the absence of a lead or senior

independent director in Hong Kong's corporate regime, the chairman of the nomination committee is particularly important in this regard.

- From CEOs (and 'C-Suite' managers) – encouraging the development and progression of women into leadership and management positions.
- From HR managers – awareness that the equal development of men and women is a key output of their function, monitoring the 'gender pay gap' and developing training and development programmes which equip all capable candidates for senior management and board roles.
- From international and institutional investors – increased unity of voice and action (especially in the exercise of voting rights) around greater gender diversity on boards.
- From executive search consultants – readiness to look beyond any 'usual shortlist' of qualified women candidates when tasked with board searches.
- From stakeholder groups – continuing their work in lobbying for, and applying public pressure towards, the promotion of WOBs, increasing the awareness of the business benefits this brings and supporting the training and development of women board candidates.

The Hong Kong Institute of Chartered Secretaries will also play an active role in the debate about the role of women on Hong Kong boards, building a consensus about the right way to proceed and making changes.

In the end, the way forward will be paved by a shared consensus, common goals and collective action.

"Currently at Link we have four female directors in a 12-member board. This was possible not only because the board is fiercely committed to greater gender diversity but also because of two other key governance policies – a maximum nine-year tenure for INEDs enabling forward planning and a commitment to use professional consultants to assist us in our board searches with diversity a required feature of the candidate shortlist. For our business to be sustainable we need to meet the needs of a wide group of stakeholders and not pursue a profit maximisation policy as in previous generations. We need the broader, nuanced debate round the board table dealing with topics such as talent/culture/community which is richer among a gender diverse group. I strongly support the 30% target, transition period and the comply-or-explain proposal proposed by the HKICS to accelerate board diversity in our Hong Kong listed market."

Nicholas Allen
Chairman & Independent Non-Executive Director, Link Asset Management Limited

Appendix A – HKICS and Gender Diversity

In the promotion of gender diversity on boards The Hong Kong Institute of Chartered Secretaries is an important, involved and informed stakeholder group.

As at 31 December 2019, the Institute had 4,295 female members (Associates and Fellows), compared to only 2,091 male members (Associates and Fellows). In other words, women represented 67% of those total members. That representation has slowly but steadily increased over the past three years.

At present, two out of five Honorary Officers of the Institute are women, as are five out of 10 Council Members, four out of six Committee Chairmen, and the CEO herself.

In summary, the Institute has a strong representation of women at all levels. This means that:

- as an institute we have a strong awareness of the importance of WOBs and of their role in good governance generally
- we can contribute to the development of a pipeline of female governance professionals who can eventually move up to board level, and
- we set a good example of gender diversity and, as such, this adds to our credibility and authority to intervene on this subject.

The Institute supports diversity, including gender diversity, both on grounds of general fairness and equality of opportunity and also on the basis that a board should have a complement of diverse skill sets to contribute to strategy implementation based on the diversity of perspectives and avoidance of group-thinking.

As corporate governance professionals, especially company secretaries, our members are often in a unique position, having a close working relationship with both the CEO and the Chairman. We can raise the board diversity issue with them, and also with colleagues on the board and the management team. We can also try to promote a pipeline of women within the company.

The repositioning of The Institute of Chartered Secretaries and Administrators as 'The Chartered Governance Institute' is an affirmation of our wider involvement in good governance – which is clearly served by greater numbers of WOBs. We are governance professionals and, as set out above, women are strongly represented in our Institute, both as members and amongst our leadership. We serve both the interests of good governance and the careers of our members by being a forceful advocate for gender diversity on boards. We will pursue this advocacy through all available channels including seminars, debates and training, lobbying of government and regulators (including through our ongoing contribution to regulatory development) and by interaction with other like-minded stakeholder groups.

As an Institute we can be an important voice in the promotion of board gender diversity. In particular, we can speak with authority on the practical merits and implications for good governance of policies and measures which might enhance diversity.

Appendix B – Sources

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HKICS

Diversity in Practice

The Hong Kong Institute of Chartered Secretaries
香港特許秘書公會
(Incorporated in Hong Kong with limited liability by guarantee)

The Hong Kong Institute of Chartered Secretaries (HKICS or the Institute) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of Chartered Secretaries and Chartered Governance Professionals in Hong Kong and throughout the mainland of China (the Mainland).

HKICS was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI), formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of CGI in 1990 before gaining local status in 1994 and has also been CGI's China Division since 2005.

HKICS is a founder member of Corporate Secretaries International Association (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice to corporate secretaries and governance professionals.

HKICS has more than 6,000 members and 3,200 students.

For more information, please visit www.hkics.org.hk.

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