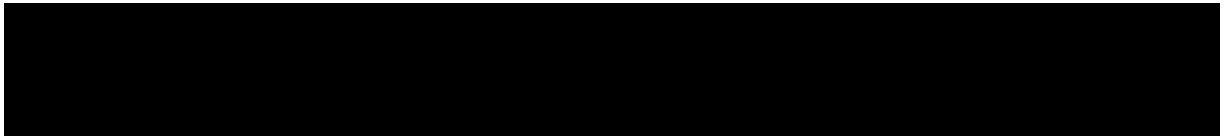


Consultation Paper 2019/01

Public Consultation on Segregation of Chief Executive Officer and Chairman Role, Performed by One Individual in Listed Entities

21st July 2019



1.0 FOREWORD

This paper discusses the concept of segregation of the Chief Executive Officer (CEO) and Chairman roles performed by one individual in listed entities. The best practice on Corporate Governance discourages concentration of power in one individual. An established norm is that there should be a clear division of responsibilities at the level of Board of Directors (BOD) of the Company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. As best practice, the Chairman is expected to be an independent non executive director and shall not perform the role of the CEO.

The Securities and Exchange Commission of Sri Lanka (SEC) is pleased to invite the public and all stakeholders to submit written comments to this consultation paper (Refer Section 3.0 for further details), to reach the SEC on or before 19th August 2019, under the title "Public Consultation on Segregation of CEO and Chairman Role Performed by One Individual in Listed Entities". Comments received may be publicly available and will not be treated as confidential unless a special request is made in that respect.

2.0 SEGREGATION OF CEO AND CHAIRMAN ROLES

2.1 Current Practice Adopted by Listed Entities in Sri Lanka

Currently, as per the Listing Rules of Colombo Stock Exchange (CSE), there is no specific rule relating to the separation of the CEO and Chairman positions. Due to absence of such rule, the SEC notes that certain Public Listed Companies have the role of Chairman and CEO/ Managing Director (MD) performed by the same individual.

As per the CSE, following are details of CEO and Chairman Segregation as at date.

Analysis of Listed Entities	Total	%	No of S&P Entities	%	No of Non S&P Entities	%
Already adopted (Separate CEO & Chairman roles)	244	83%	18	90%	226	83%
Not yet adopted (Common CEO/Chairman/Executive Chairman)	49	17%	2	10%	47	17%
	293	100%	20	100%	273	100%

	Total No of Entities	Voluntarily Segregated	%	Voluntarily Not Segregated	%
Main Board	187	154	82%	33	18%
Diri Savi	98	84	86%	14	14%
Debt Only*	6	5	83%	1	17%
Funds**	2	1	50%	1	50%
	293	244	83%	49	17%

*Abans PLC, Bank of Ceylon, First Capital Treasuries PLC, Janashakthi PLC, Pradeshiya Sanwardana Bank, Siyapatha Finance PLC

**Namal Acuity Value Fund, Candor Opportunities Fund

Based on above analysis, it is clear a vast majority of listed entities (83% from Total Listed Entities) have already segregated the roles of Chairman / CEO and have an independent or a non-executive director as Chairman.

2.2 Rational for Introducing Segregation of CEO and Chairman Roles

The SEC together with the Institute of Chartered Accountants of Sri Lanka (CA Sri Lanka) developed the Voluntary Code of Best Practice on Corporate Governance over a decade ago and such code requires segregation of roles of Chairman and CEO. The SEC notes CA Sri Lanka has issued a revised code in December 2017. Additionally, the Central Bank of Sri Lanka (CBSL) has already implemented the requirement for selected entities regulated by the respective regulator.

Corporate Governance Principles of the Organization for Economic Cooperation and Development (OECD-2015) also promotes the separation of the role of CEO and Chairman which will lead to improve discharging of responsibilities of the board under principle VI – Responsibilities of the Board Item E.

Due to the national strategic initiative to improve Sri Lanka's competitiveness in international ranking on the Ease of Doing Business as approved by Ministry of Development Strategies & International Trade Sri Lanka (MODSIT), it is timely to adopt a policy to separate the CEO and Chairman roles as identified in item six (06) of the road map produced by the MODSIT.

2.3 Cross Jurisdictional Comparison

Many other jurisdictions have already embraced these principles and has addressed the conflict either by mandatory segregation, comply if not explain approach or on a voluntary compliance basis. Jurisdictions such as Pakistan, Indonesia, Norway and Netherlands require mandatory segregation whereas jurisdictions such as Australia, Singapore and Malaysia require either to comply or explain as to why compliance is not met. Sri Lanka recommended voluntary compliance for a decade in order to create awareness and to provide adequate time to embrace the concept.

No	Country	Description	Source
Mandatory Compliance			
1	Pakistan	The Chairman and the Chief Executive Officer of a listed company, by whatever name called, shall not be the same person.	Questionnaire on Rankings & Ease of Doing Business Score and Chapter II, Section 9 of Listed Companies (Code of Corporate Governance) Regulations, 2017
2	Norway	The Public Companies Act stipulates that the chief executive cannot be a member of the board of directors. This Code of Practice recommends that neither the chief executive nor any other executive personnel should be a member of the board.	Questionnaire on Rankings & Ease of Doing Business Score and Section 8 (Board of directors: composition and independence) of The Norwegian Code of Practice for Corporate Governance
3	Netherlands	The chairman of the supervisory board should not be a former member of the management board of the company and should	Questionnaire on Rankings & Ease of Doing Business Score and Section (2.1.9 Independence of the chairman

No	Country	Description	Source
		be independent within the meaning of best practice provision 2.1.8.	of the supervisory board) of the Dutch Corporate Governance Code
Comply or Explain			
4	Malaysia	The positions of Chairman and CEO are held by different individuals.	Principle A: Practice 1.3 of Malaysian Code on Corporate Governance
5	Australia	The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.	Principle 2: Recommendation 2.5 of ASX Corporate Governance Council
6	Singapore	The Chairman and the Chief Executive Officer ("CEO") are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making.	Section 3.1 of Code Of Corporate Governance of Singapore

Note: Jurisdictions such as United States of America does not have a mandatory requirement for segregation of CEO and Chairman.

3.0 HOW TO SUBMIT COMMENTS

In order to enhance Corporate Governance of entities listed in the CSE and to introduce new requirements in the future, the SEC is pleased to invite the public and all stakeholders to submit *written comments*.

Please indicate your current level of engagement with capital market (e.g.: retail investor, public investor, non-public investor, local institutional investor, foreign institutional investor, listed company, stockbroker, stock dealer, Unit trust, IPO Manager, Research report provider etc).

Please submit your written comments to reach the SEC **on or before 19th August 2019**, under the title **"Public Consultation on Segregation of Chief Executive Officer and Chairman Role Performed by One Individual in Listed Entities"**.

Written comments may be sent by any one of the following methods:

E-mail : DG@sec.gov.lk , vajira@sec.gov.lk
Copy to: harshana@sec.gov.lk, chairman@sec.gov.lk and CEOChairman@sec.gov.lk

By Registered Post : The Director General
The Securities and Exchange Commission of Sri Lanka
Level 28 & 29, East Tower, World Trade Centre, Echelon Square,
Colombo 01

Your comments should be submitted in an envelope marked **"Public Consultation on Segregation of Chief Executive Officer and Chairman Role Performed by One Individual in Listed Entities"** on the top left-hand corner of the envelope.

By Fax : (011) 2439149

If you wish to provide comments in the capacity of representative of an organization, you should specify the name of the organization whose views you represent. Participants submitting comments should include their personal/ company particulars including their name, correspondence address, contact number and email address, on the cover page of their submissions.