

HKEx LISTING DECISION

HKEx-LD47-2013 (Published in January 2013) (Updated in April 2015)

Parties	Company A – a Main Board issuer Mr. X and Mr. Y – Company A’s joint company secretaries
Issue	Whether Mr. X qualified to act as Company A’s secretary after the waiver period
Listing Rules	Main Board Rule 3.28 Listing Decision HKEx-LD35-1 (July 2003)
Decision	Mr. X qualified to act as Company A’s secretary under Rule 3.28

FACTS

Background

1. About three years ago, Company A proposed to appoint Mr. X and Mr. Y as its joint secretaries. Mr. Y fulfilled the then Rule 8.17(2) but Mr. X did not.
2. At that time, the Exchange granted a 3-year waiver to Company A for the appointment of Mr. X as its secretary on the condition that Mr. X would be assisted by Mr. Y during the waiver period. The Exchange also informed Company A that it would revisit the situation at the end of the waiver period and would expect Mr. X to have acquired relevant experience to discharge the functions of a company secretary by that time.

The issue

3. Before the end of the waiver period, Company A provided information to the Exchange to demonstrate that Mr. X was capable of discharging the function of its secretary under Rule 3.28:
 - a. Mr. X had been one of the joint secretaries of Company A for about three years. He was familiar with Company A’s business and operations.
 - b. Mr. X had been working closely with Mr. Y in handling Company A’s secretarial and administrative matters. Mr. X had participated in various corporate actions of Company A including fundraising exercises and connected transactions, and assisted the directors in handling compliance issues.

- c. He had regularly attended training courses relating to a company secretary's duties during the waiver period.

APPLICABLE LISTING RULES

4. Rule 3.28 states that:

“The issuer must appoint as its company secretary an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of company secretary.

Notes: 1 The Exchange considers the following academic or professional qualifications to be acceptable:

- (a) a Member of The Hong Kong Institute of Chartered Secretaries;*
 - (b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance);and*
 - (c) a certified public accountant (as defined in the Professional Accountants Ordinance).*
- 2 In assessing “relevant experience”, the Exchange will consider the individual’s:*
- (a) length of employment with the issuer and other issuers and the roles he played;*
 - (b) familiarity with the Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, Companies Ordinance, Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Takeovers Code;*
 - (c) relevant training taken and/or to be taken in addition to the minimum requirement under rule 3.29; and*
 - (d) professional qualifications in other jurisdictions.”*

5. Rule 8.17 states that:

“The issuer must appoint a company secretary who satisfies rule 3.28.”

6. The existing Rules 3.28 and 8.17 have been effective since 1 January 2012. Before the Rule amendments, Rule 8.17 stated that:

“The secretary of the issuer must be a person who is ordinarily resident in Hong Kong and who has the requisite knowledge and experience to discharge the functions of secretary of the issuer and who:-

- (1) in the case of an issuer which was already listed on 1st December 1989 held the office of secretary of the issuer on that date;
- (2) is an Ordinary Member of The Hong Kong Institute of Chartered Secretaries, a solicitor or barrister as defined in the Legal Practitioners Ordinance or a professional accountant; or
- (3) is an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging those functions.”

ANALYSIS

7. When the Exchange granted the waiver, its expectation was that Mr. X would have acquired the “relevant experience” required under the then Rule 8.17 (now Rule 3.28) during the waiver period, and no extension of the waiver would be necessary.
8. Based on Company A’s submission at the end of the waiver period, the Exchange accepted that Mr. X was capable of discharging the functions of Company A’s secretary. It had taken into account Mr. X’s work experience at Company A, his role in handling the company’s secretarial and Rule compliance matters and the relevant training taken by him in the past. It also noted that Company A had not committed any material breach of the Rules during the waiver period.

CONCLUSION

9. Mr. X qualified to act as Company A’s secretary under Rule 3.28 after the waiver period.