



13th September 2019

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Executive Committee of the Hong Kong Exchanges and Clearing Limited
("HKEX"),

**Re: Consultation Paper on Codification of General Waivers and Principles
Relating to IPOs and Listed Issuers and Minor Rule Amendments**

Vistra is a global corporate service provider and has substantial operations in Hong Kong. We provide Named Company Secretary services for public companies listed on the Stock Exchange of Hong Kong Limited (the "Exchange").

We are submitting our comments and suggestions specifically to Proposal 71 that seeks to codify the waiver described in paragraph 71 in respect of the experience and qualification of company secretary to the Rules ("Proposal 71").

We strongly disagree with codifying the Proposal 71 waiver. We recommend that the waiver described in Proposal 71 be kept as a discretionary waiver to be exercised by the Listing Committee only in exceptional circumstances. In fact, we would even support the complete elimination of the practice of granting any waiver at all to any deviation from Rule 3.28. If any waiver is applied, it should be conditional on the company secretary / joint company secretary completing the International Qualifying Scheme of the Hong Kong Institute of Chartered Secretaries ("HKICS") during the waiver's period. This is the only way to ensure that Hong Kong maintains a high standard of corporate governance for the gatekeeper role of a company secretary for a listed company on the Exchange.

We understand that the Proposal 71 waiver has become an accepted practice for the HKEX Listing Committee. We contend that this seriously deviates from the existing Hong Kong and accepted international governance and professional standards, erodes investors' confidence in the Exchange and discourages local employment opportunities as well as diluting the reputation of various Hong Kong professional bodies. We should stop this practice now.

Professional Standards and Gatekeepers:

The Main Board Rule 3.28 is very specific as to what qualifications and experience are required to perform the role of the company secretary for a listed company in Hong Kong. This role is crucial for proper governance and regulatory supervision of listed companies in Hong Kong. If we create codified waivers, this means that we are actually diluting the professional standards for a company secretary. Waivers were initially implemented as an exception to the rule because of the influx of China IPOs and cross-border financing. Now the HKEX is proposing to make this discretionary exception a permanent waiver by approving Proposal 71. We strongly disagree. Proposal 71 should not be permanent part of the Corporate Governance Code. It will lower professional standards for the listed company secretary in Hong Kong.

Professional standards such as a HKICS, HK legal or CPA qualification and length of experience are required because the HKEX must set standards as a regulatory body to protect the investors and maintain confidence of the public in the markets. This is how all global regulatory bodies operate as their fundamental reason for existence. We cannot change this market perception in Hong Kong.

The essence of Proposal 71 waiver is to allow non-qualified and inexperienced company secretaries to wait out the three years and with certain documentation of professional trainings and performing of daily duties, be allowed to be a company secretary of the listed company without passing any professional exams. The waiver is granted without any conditions to satisfy qualifications, training and skill sets that a qualified HKICS, HK legal or CPA member is required to fulfill. Essentially, an unqualified person with no international corporate governance experience “delegating” the skill set to an “employee” can comply with the functions of the company secretary under the Listing Rules. There will not be any real accountability for corporate governance. The “employee” may or may not continue the role after three years. We do not see how independent governance oversight can be achieved with this loophole in place as currently being proposed by the Proposal 71 waiver. An unqualified person can just passively wait out the three years and be considered qualified to be a company secretary under Rule 3.28. We do not see how this promotes professionalism and higher standard of ethics in Hong Kong for listed companies.

We further argue that the Hong Kong company secretary for a listed company should be resident in Hong Kong. This is the same requirement for Hong Kong private companies in Section 474(4)(a) of the Company Ordinance (Cap. 622). Specifically, a company secretary for a private company must be a natural person ordinarily resident in Hong Kong and if a body corporate, a Hong Kong company that has its registered office in Hong Kong. This should be the same qualification requirement for the individual acting as a company secretary of a listed company in Hong Kong. Rule 3.28 should and can be amended to include this specific requirement and we recommend this be done as part of the consultation process. The legislative purpose of this clause was to ensure that there is accountability and legal recourse in case things go wrong on the corporate governance or there is malfeasance on the part of the listed company. We would think that the SFC would agree with us on this point also.

Investor Confidence and Protection:

The Proposal 71 waiver considerations will only create a loophole for non-qualified and Board friendly persons to be appointed as the company secretary of the listed company. This will deliver a message to international investors and other regulatory bodies that Hong Kong cuts corners on corporate governance and that it does not cogitate professional qualifications nor relevant corporate governance experience as prerequisites in choosing a gatekeeper role for a listed company. We would open the doors for corporate malfeasance and destroy the recent efforts of the SFC to create a higher perception of investor protection and enforcement against bad actors.

We have concerns on how “assisted by a Qualified Person” will be defined. In theory, a non-experienced, non-professionally qualified person or Board friendly person may be overseeing the corporate governance of a listed company with potential risk and liability for the company, the markets and the public.

The Exchange should be an international brand for investors representing integrity, values, ethics and the message that the rule of law matters because it applies to everybody equally without exceptions. Codifying the Proposal 71 waiver will send the exact opposite message.

Decline of local HKICS members and professional development:

Furthermore, the Proposal 71 waiver will mean that non-qualified appointed company secretaries will have no incentive to sit for or attend to any Hong Kong professional qualification tests, continuing education, and rigorous training to be a company secretary. The HKICS certificate will mean nothing and there will be less demand for the products and services of HKICS. Local jobs will be lost and professional development for company secretaries will decline. This will be the first step we take down the path of market corruption and lower professional standards. Proposal 71 will be an open invitation to a big “loop hole” and turn everything we know about corporate governance standards upside down.

We strongly disagree with Proposal 71 waiver and recommend it not be approved.

Recommendations:

In conclusion, we have the following recommendations for the HKEX:

1. Say no to the approval of Proposal 71.
2. If we are to keep the discretionary waiver of Proposal 71, it should only be used in atypical and limited circumstances and agreed by all members of the Listing Committee.
3. If we are to keep the discretionary waiver of Proposal 71, it should be conditional on the company secretary satisfying the qualification requirements of training and passing the exams of International Qualifying Scheme of HKICS after three years.

4. Make Hong Kong residency a requirement for listed company secretaries be consistent with the requirement for Hong Kong private companies that the company secretary be resident in Hong Kong to provide accountability.
5. The companies to be listed are required to explain with documentary proof why they cannot engage a qualified person residing in Hong Kong as the Company Secretary when they submit the application for the discretionary waiver.

We trust that the HKEX will seriously take into consideration our concerns and recommendations for the Hong Kong markets, investor confidence, and decline of professionalism as a result of codifying the Proposal 71 waiver.

Yours truly,

VISTRA CORPORATE SERVICES (HK) LIMITED



Managing Director, Joe Cheung