

27 September 2019

By Email: response@hkex.com.hk
Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
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Dear Sirs,

Response to HKEx Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments (“the Consultation”)

Terms and expressions used in this Submission shall have the meanings under the Consultation unless being specified otherwise.

Importance of Company Secretary in the Role of Governance

We note that the Exchange recognizes the importance of corporate governance and one of its principal regulatory objective is to promote the development of a high level of corporate governance among issuers listed in Hong Kong, which aligns to other major markets and international financial centers.

The Exchange also recognizes that company secretary plays an important role in corporate governance and expects them to devote sufficient time in an issuer’s affairs. Attributable to heightened expectations for better corporate governance and greater transparency in corporate affairs, the volume and complexity of work of company secretaries has been increasing over the years. Given its importance, there is no doubt that only a competent candidate should be fit in the role of company secretary.

Lowering the Threshold for Being a Company Secretary as Opposing to Heightened Expectations for Better Corporate Governance

Listing Rule 3.28 was designed to require a competent candidate to be a company secretary, i.e. requiring a person with the requisite knowledge and relevant experience to discharge the functions of secretary of a listed issuer. Logically, professionals being a chartered secretary, a solicitor or barrister and a certified public accountant in Hong Kong who have been specifically trained, examined and equipped with sufficient relevant experience should be considered having the acceptable academic or professional qualifications. They are knowledgeable to local regulations and standards, regulated by their professional bodies, required to comply code of conducts, upheld high ethical standards and to fulfill sufficient CPDs. However, in the background of increasing number of Mainland companies listed in Hong Kong whose company secretaries do not possess the acceptable academic or professional, the Exchange opens another door to accept them as company secretaries of Hong Kong listed issuers being having “relevant experience”.

Under the other limb of Listing Rule 3.28, the Exchange could accept an individual as company secretary if, in the opinion of the Exchange, possesses “relevant experience” after considering the four factors listed in note 2, like length of employment with the issuer or relevant training taken. In fact, there is no bright-line for each of the four criteria considered

and lacks clear elaborations and/or explanations, the Exchange may at all times make a subjective decision to accept anyone to become a company secretary.

Notwithstanding the above, we are aware that the Exchange will give out waivers for Listing Rule 3.28 on the basis that such candidate will be assisted by a qualified individual for a period of three years normally. Then, the candidate normally will be accepted by the Exchange to act as a standalone company secretary. It is questionable whether the Exchange has objective evidence to prove its general assumption that a person will acquire the requisite knowledge and experience under Rule 3.28 by the “hand-holding” arrangement.

The Exchange now proposes to codify the waivers for Listing Rule 3.28, we are worried that after the codification, granting of such waiver which should originally be considered only in exceptional cases on a case-by-case basis after considering the specific set of facts and circumstances would then become a mechanical administration procedure. This raises serious concerns of whether company secretaries being appointed in Hong Kong listed companies under this background really have the requisite knowledge and relevant experience to carry out their roles. Therefore, we **STRONGLY OBJECT to the proposed codification** which may further lower the threshold for being company secretaries in Hong Kong listed companies. Further to that, we ask the Exchange to perform a holistic review of its current practice in this regard.

Whether Criteria for “Relevant Experience” under Note 2 of the Listing Rule 3.28 Being Too Subjective?

One may not understand how the Exchange operates its power under Note 2 of the Listing Rule 3.28, we may consider the individual being accepted such criteria which was illustrated in the Exchange’s Listing Decision HKEx-LD-72-1 as a typical example. Firstly, there are no clues that the individual possessed any overseas professional qualification. Secondly, we are unsure what was his role played in the seven years working closely with the retiring secretary or what was his involvement in the IPO process. We could only assume the experience to be relevant as it was only being represented by the issuer but uncertified. There is no justification by the Exchange that how the individual might be familiarized with the Listing Rules and other local law and regulations or it might have simply implied that he did have such knowledge after taking the 70 hours’ training in the past three years. However, we questioned whether an average of 23 hours of training received per year was sufficient as it was barely higher than the necessary post-qualification CPDs of 15 hours annually required for a qualified professional. Does only the necessary post-qualification CPDs for a qualified professional sufficient to equip an individual who can assumingly do not understand the Listing Rules and other local laws and regulations at the first place with the requisite knowledge? Does such individual could really be considered as equivalent to a qualified professional? We could never figure out such answer as the individual has not in fact been objectively tested. Therefore, we urge the Exchange to exercise its power under note 2 of Listing Rule 3.28 cautiously and only in very exceptional cases.

Listing Decision on Listing Rule 3.28 Waivers Should Be Revoked and Waivers Should Only Be Granted under Very Exceptional Cases

Whilst we do not follow why a broad application of the waivers are appropriate in the first place, not to mention the purported codification of the waiver. Under the current Listing Decision HKEx-LD47-2013, there are no specific academic or experience requirements on the candidate who is proposed to be appointed as one of the joint company secretaries so long as the other joint company secretary possesses the relevant qualifications under Listing Rule 3.28. In extreme cases, a listed issuer can even have a junior staff “hand-held” with a qualified secretary and the junior staff can easily become a qualified company secretary without getting through any academic tests and/or entering into any professional bodies. At the end of the waiver period, the Exchange would still accept them discharging the functions of qualified company secretaries. The corporate governance level in such company is in fact alarming. If this situation becomes common, it will definitely

undermine professionalism in the industry, adversely affect the general corporate governance level and damage the reputation of Hong Kong as an international financial market.

Furthermore, it is unclear on the waiver conditions such as how the Exchange determines whether a company has principal business activities primarily outside Hong Kong, for example by its revenue source or an establishment of a physical office. Besides, without an objective assessment basis, how directors, who are generally not industry experts, can ever judge whether a person is suitable to act as a company secretary. We have heard cases which waivers are granted to issuers with operations and office in Hong Kong, like we have recalled a case in 2016 which waiver was granted to the proposed secretary of a Chinese bank with establishment and operations in Hong Kong.

We are of the view that Listing Decision HKEx-LD47-2013 is a bad precedent and should be revoked and the Exchange should only grant waivers in very exceptional cases based on specific circumstances from the perspective of shareholder protection and corporate governance.

It's Never Too Late To Mend (亡羊補牢, 未為晚也)

Whilst we understand the Exchange is eager to attract more PRC companies to list in Hong Kong, we urge the Exchange to strike a balance between business and compliance. Given the increasing number of qualified professionals being nurtured over the years, one could no longer claim that finding a suitable candidate a mission impossible. Without a competent responsible officer in a company, it is hard to imagine that its corporate governance will be good. It's the time for the Exchange to do things right.

The Master Said, “He Who Is Not in Any Particular Office Has Nothing to Do with Plans for the Administration of Its Duties.” The Philosopher Zeng Said, “The Superior Man, in all thoughts, Does Not Go out of His Place.”
(子曰：“不在其位，不謀其政。” 曾子曰：“君子思不出其位。”)

We doubt, through accepting company secretary under note 2 of Listing Rule 3.28 or by granting waivers, whether the Exchange is trying to carry out a kind of “assurance” function similar to a professional body and judging whether a person is qualified as a professional or not. Professional bodies such as HKICPA and HKICS have their own set of code of professional ethics or conducts that members are obliged to follow. If they failed to fulfill the standard of professional ethics or meet the CPD requirements, they will be subject to disciplinary procedures of their own professional bodies. We are of the view that there should be segregation of duties between the Exchange and professional bodies. While the Exchange should be occupied for administering the Listing Rules against the increasing number of listed companies and dealing with the ever-changing compliance environment, it might have limited resources to carry out the certification process, include holding qualification examinations or constantly monitoring the fulfillment of annual CPDs requirement. We suggest the Exchange to hand off such certification process to professional bodies which are set up for such purpose.

As an example, the SFC currently outsourced the licensing examinations to the Hong Kong Securities and Investment Institute. The Exchange, being a front-line regulator of listed companies, might also exploring ways or partnering with professional bodies for establishing qualification examinations for the individuals who have hand-held with a qualified secretary for a certain period to ascertain whether he or she has really possessed the relevant knowledge before the Exchange granting an unqualified acceptance to them as standalone company secretary of Hong Kong listed companies. We stress that it is crucial for them to be part of a professional body, being subject to professional discipline requirements and continuous professional development to take on the role as qualified company secretaries to maintain the professionalism in the industry.

Specific Needs of Dually-listed Issuers

Whilst we recognize the specific needs of PRC issuers and dually-listed companies (e.g. A+H issuers) that they have to comply with the requirements of its home jurisdiction such as having a locally qualified board secretary, it is more appropriate to have a joint appointment of company secretaries such that the qualified company secretary under the Hong Kong Listing Rules to primarily responsible for complying with the relevant laws and regulations in Hong Kong while the other non-qualified secretary be responsible for the domestic laws and regulations of the issuer's home jurisdiction. However, the non-qualified secretary should not because of the "hand-holding" arrangement, be automatically being accepted by the Exchange to be a qualified company secretary no matter how long they have been jointly working for.

Apart from the above, we are in support to the rest of the proposals in the Consultation.