



Hong Kong General Chamber of Commerce
香港總商會 1861

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26 September 2019

Helping Business since 1861

Mr Charles Li Xiaojia
Chief Executive Officer
Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square,
8 Connaught Place, Central,
Hong Kong

Dear Mr. Li,

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

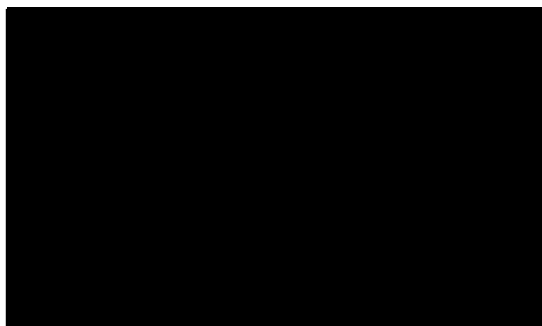
The Hong Kong General Chamber of Commerce welcomes the opportunity to express our views on the subject consultation.

Our comments relate mainly to the proposed relaxation of the requirements for appointment as a company secretary as currently given under Listing Rule 3.28 (“Rule 3.28”). We are concerned about the consequences that such a change would bring given that the role of a company secretary has transitioned from a historically supportive role to one that holds key legal advisory responsibilities and is crucial to maintaining the high standards of governance within a corporation that are required by the SFC and Monetary Authority.

Changes to this aspect of the Listing Rules could also have adverse effects to the integrity and international standing of Hong Kong as a place to list.

We hope you will find our comments useful to your deliberations.

Yours sincerely,



HKEX's Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments August 2019 (Consultation Paper)

Response from Hong Kong General Chamber of Commerce (HKGCC)

HKGCC would like to express its views on one of the proposals in the Consultation Paper, namely the proposal to introduce an express power on the part of HKEX to waive the requirements of Main Board Listing Rule 3.28 (Rule 3.28) for appointment as a company secretary (such waiver being for a limited period and subject to certain criteria being satisfied).¹ HKGCC does not support this proposal for the following reasons:

1. Rule 3.28 requires that a company must appoint as company secretary a person who is **capable of discharging the functions of the position**. The concept of an *unqualified* person, i.e. a person who, by definition, is **not capable of discharging the functions of the position**, being appointed to the crucial statutory role of company secretary, albeit under supervision of a "Qualified Person" for a certain period of time, as determined by HKEX, is therefore, in our view, inappropriate and inconsistent with the basic requirement of Rule 3.28. Moreover, no clear reason for this proposal has been provided in the Consultation Paper.
2. Rule 3.28 provides that the capability of a potential company secretary is to be assessed in terms of either academic or professional qualifications or relevant experience. The notes to Rule 3.28 give a list of factors which HKEX will consider in this respect and allows for sufficient flexibility. We see no need for additional flexibility to be introduced, and no reason for any such need is given in the Consultation Paper.
3. The company secretary performs a crucial statutory role in maintaining high standards of corporate governance and regulatory compliance, matters which have been given increasing priority by policymakers and regulators worldwide. To relax further a rule which has already worked well, and provides sufficient flexibility, would be a retrograde step in terms of Hong Kong's international reputation for high standards of corporate governance, and adherence to the rule of law.

¹ CP paras 66-71. The fact that we have not commented on other proposals in the CP should not be taken as either approval or disapproval of those proposals.

4. Even if the proposed express power of waiver were introduced (which we strongly believe it should not, for the reasons set out above) we foresee numerous major problems and uncertainties in its implementation. To list just a few:
 - (a) The factors according to which the precise length of the waiver period would be assessed are rather arbitrary and subjective, and would run the risk of raising unnecessary disputes;
 - (b) There is an assumption that the maximum period of three years would be sufficient for the company secretary to acquire the relevant qualifications and experience required under Rule 3.28. However, no justification or explanation has been given to support such an assumption. Company secretaries require a high level of experience and expertise, and three years might not be sufficient to acquire the level of experience and expertise in many cases. Further would there be any assessment at the end of the three-year period as to whether the person was capable of discharging the functions of the position, and if so, who would conduct it?
 - (c) What would the “assistance” of the “Qualified Person” (during what would effectively appear to be a training period) consist of, and would there be any monitoring as to whether that assistance was being carried out properly?

In conclusion, for all the above reasons, we recommend that the proposed amendment to Rule 3.28 be withdrawn.

HKGCC Secretariat

26 September 2019