

HKEx LISTING DECISION

Cite as HKEx-LD72-2 (**Published** September 2009) (**Updated in May 2015**)

Summary	
Parties	Company A - a Main Board listed company with principal business operations in the People's Republic of China Mr. X – an appointee of Company A's secretary
Subject	Whether Mr X qualified to act as Company A's secretary
Listing Rules	Main Board Listing Rule 8.17(3) 3.28
Decision	Mr X qualified to act as Company A's secretary under Rule 8.17(3) 3.28

SUMMARY OF FACTS

1. Company A proposed to appoint Mr X to replace its retiring secretary.
2. Mr. X did not ~~fulfil Rule 8.17(1) or (2)~~ possess the acceptable professional qualifications under Note 1 to Rule 3.28. That said, Company A considered that he ~~was capable of had the relevant experience to~~ dischargeing the functions of its secretary under Note 2 to Rule ~~8.17(3)~~3.28 because:
 - a. He had been a director of a subsidiary of Company A (the **Subsidiary**), also listed on the Main Board, for more than 8 years. He was also appointed as the chairman of the Subsidiary 2 years ago and before that, he had held various other senior positions at the Subsidiary (including managing director and chief executive officer). He had been actively involved in the corporate governance of the Subsidiary and ensuring its compliance with the Listing Rules.
 - b. He was familiar with Company A's operations and business. He had been a member of Company A's senior management for about two years, and had over 20 years of experience in the same kind of business carried on by Company A.

ISSUE

3. Whether Mr X qualified to act as Company A's secretary under Rule ~~8.17(3)~~ 3.28.

APPLICABLE LISTING RULES OR PRINCIPLES

4. Rule ~~8.173.28~~ provides-states 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.~~

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.

ANALYSIS

5. The Exchange accepted that Mr. X was capable of discharging the functions of Company A's secretary. In particular, the Exchange took into account Mr X's directorship in the listed Subsidiary and his role in the company's compliance with the Listing Rules and corporate governance for a considerable period of time. Although he did not have day-to-day working experience as a company secretary, Company A could provide appropriate resources to assist him, if necessary.

DECISION

6. Mr X qualified to act as Company A's secretary under Rule ~~8.17(3)~~ 3.28.