



27 September 2019

By Email: [response@hkex.com.hk](mailto:response@hkex.com.hk)

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

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

Dear Sirs,

We submit this comment letter in our personal capacity as Head of the Department of Accountancy at the Hang Seng University of Hong Kong, and as Programme Director of the BBA (Hons) in Corporate Governance and Compliance, to express our concerns about the proposal in paragraph 71 (Question 11) to codify the exemption to requirements for the experience and qualification of the company secretary.

About the Hang Seng University of Hong Kong

The Hang Seng University of Hong Kong (“HSUHK”) is a self-financing, non-profit degree-granting institution in Hong Kong with five Schools (Business, Communication, Decision Sciences, Humanities and Social Science, and Translation) and approximately 5,000 full-time students. HSUHK currently offers 4-year bachelor’s (Honours) degree programmes, including Business Administration, Corporate Governance and Compliance, Finance and Banking, and Financial Analysis, among other programmes.

HSUHK’s foundation dates back to the establishment of the Hang Seng School of Commerce (“HSSC”) in 1980. HSSC was a pioneering and leading provider of post-secondary programmes in business and related areas. In 2010, the school was re-structured into the Hang Seng Management College (“HSMC”), a non-profit private university-level institution registered under the Post Secondary Colleges Ordinance (Cap. 320) to offer bachelor’s and above degree programmes in diversified disciplines. The college was granted university status on October 30, 2018 with approval from the Hong Kong SAR government.<sup>1</sup>

Comments in respect of issues raised in paragraphs 68-71 of the Consultation Document

As our primary concerns relate to proposed codification of the waiver of the requirements for the experience and qualification of the company secretary, our comments are limited to Question 11 of the consultation document, which asks the following:

Question 11: Do you agree with our proposal to codify the waiver described in paragraph 71 in respect of the experience and qualification of company secretary into the Rules?

<sup>1</sup> <https://www.info.gov.hk/gia/general/201810/30/P2018103000625.htm>



We have several serious concerns about the proposal to codify the waiver as described in paragraph 71 of the consultation document.

We first emphasise the importance of the role of the company secretary as stated in Listing Rule 3.28 and in the Appendix 14 of the Main Board Listing Rules (Code of Corporate Governance).

*F. Principle: “The company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board through the chairman and/or the chief executive on governance matters and should also facilitate induction and professional development of directors.”*

This statement emphasises the importance of the role of the company secretary in a Hong Kong listed company, as he or she is involved in advising the most senior board members and executives. It is therefore not a role for which responsibilities and oversight should be taken lightly.

Listing Rule 3.28 specifically notes 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.” While the scope of Rule 3.28 permits the Exchange to assess the meeting of the criteria in note 2 on the relevant experience of the individual (the length of employment at the issuer, familiarity with Listing Rules and other laws and regulations, ordinance, and the takeover code), note 1 is considerably more specific in its interpretation, requiring a company secretary to be “(a) a Member of the Hong Kong Institute of Chartered Secretaries; (b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance); or (c) a certified public accountant (as defined in the Professional Accountants Ordinance).”

First, each of the three qualifications permitted in note 1 requires an individual to attain a membership of the relevant society or institute through a comprehensive qualifying programme and/or examination related to the Hong Kong legal, governance, and regulatory environment, together with relevant experience. Membership also requires continuing professional development and the upholding of professional codes of conduct or ethics. Failure to meet these requirements on an ongoing basis may result in suspension or disciplinary proceedings, providing a strong incentive for upholding the society or institute’s requirements for training and professional conduct. The proposed codification of waiver of the qualification rule significantly weakens this incentive, as there would be little professional penalty (in Hong Kong) for either malfeasance or incompetence.

Second, the requirement for the company secretary to be governed by a Hong Kong-based regime of professional conduct holds him or her to a higher standard of corporate governance than an exempted individual. Investors are likely to take note and may have concerns. While the Exchange may intend only for a small number of issuers to claim an exemption (as is currently the case), the codification and opening of this possibility may well lead to more issuers with relatively few Hong Kong-based operations to claim this exemption. A more widespread practice of claiming exemption may weaken investors’ perception of Hong Kong’s corporate governance regime, particularly among international investors.



Third, as paragraph 71 (i) proposes to use “whether the issuer has principal business activities primarily outside Hong Kong” as one of the criteria to be taken into account when determining whether to grant a waiver, this may result in a two-tier governance structure between issuers with principal business activities in Hong Kong and those with principal business activities outside of Hong Kong. The consultation document presents few arguments as to why these two sets of issuers should effectively be subject to different sets of corporate governance code whilst listed on the same exchange and drawing from the same pool of investors.

Last, on a more general level, we note that the implementation and regular revision of corporate governance codes in the UK and related Anglo-based jurisdictions have their foundations in corporate failures, including notably the first code of best practice issued by the Cadbury Committee (1992). That is, corporate governance codes and listing rules are designed to set out an organised process of board decision-making, provide a framework of accountability for investors and stakeholders, to improve the efficiency of investments and to prevent cases of fraud. Undoing such codes may be considered by some to be a retrograde step in a governance regime.

The BBA (Hons) in Corporate Governance and Compliance was one of the first undergraduate programmes in Hong Kong to be established with a view to training individuals to work in this area. We view the formal and rigorous foundation of our students as an investment in strengthening governance more widely in Hong Kong. These future professionals in the secretarial and related functions are trained from early on in their career with a view to upholding high standards of corporate governance. We work closely with professional associations to maintain high standards and relevancy of teaching, and to instil a sense of professionalism among our students. As a result, our survey of graduates from the first graduating cohort in 2018 shows that they have successfully obtained employment in listed and unlisted companies, professional service providers, and related firms, and that their training is valued in the industry. The ability of issuers to appoint an unqualified person is very likely to discourage Hong Kong-based students from pursuing this line of education and this career path, reducing the future pool of specialist-trained individuals. We encourage the Exchange to continue to promote Hong Kong as a jurisdiction of high quality corporate governance, together with professional associations.

Thus, we reiterate our disagreement with and objection to the proposal in Question 11 and suggest that the Exchange uphold Listing Rule 3.28 with no codification of exemption.

Yours sincerely,

[Redacted signature]

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