



CHARTERED
SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會

(Incorporated in Hong Kong with limited liability by guarantee)

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8 October 2020

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Dear Sirs

**Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions
(Consultation Paper)**

Terms and expressions used in this Submission shall have the meanings set out under the Consultation Paper unless the context requires otherwise.

About HKICS

The Hong Kong Institute of Chartered Secretaries (the Institute) is an independent professional institute representing Chartered Secretaries and Chartered Governance Professionals as governance professionals in Hong Kong and the mainland of China (the Mainland) with over 6,000 members and 3,200 students. The Institute originates from The Chartered Governance Institute, formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with nine (9) divisions and over 30,000 members and 10,000 students internationally. The Institute is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising fourteen (14) national member organisations to promote good governance globally.

Secondary Disciplinary Liability Problematic

The proposals under the Consultation Paper relating to the imposition of secondary disciplinary liability on the company secretary are problematic for the reasons set out below.

From the Consultation Paper, secondary disciplinary liability is to be imposed where the company secretary has caused by action or omission or knowingly participated in a contravention of the Listing Rules.

As you are aware, under Section F of the Corporate Governance Code, the company secretary is specifically stated to play a supporting role: *"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."* Further reference is made to paragraph 6.2 of the "Guidance for Boards and Directors" published by the Exchange in July 2018 (the "Guidance"), in which it is stated that company secretaries can generally discharge their duties by providing advice to the Board on corporate governance and compliance matters and facilitating continuous training to the Board in accordance with the rules and regulations.

This supporting and advisory role means that any failure by the board could potentially lead to secondary disciplinary liability on the part of the company secretary where the applicable test is

simply participation in the contravention. Taking the example under paragraph 93(c) of the Consultation Paper, the board secretary (who is presumably the named company secretary) is suggested to have secondary disciplinary liability given their role in the announcement production and authorisation process and presumably as the announcement was issued in their name. It seems to us that this could give rise to a risk of unwarranted findings of secondary disciplinary liability where a company secretary participated in a contravention of the Listing Rules simply by being involved in the announcement production and authorisation process, but may not have been privy to all of the details of the underlying transaction.

We submit that, instead, the correct test for the imposition of secondary disciplinary liability should be whether the company secretary, in discharging his or her roles and responsibilities, has failed to meet the professional standards applicable to him or her. That is a professional disciplinary issue which should be left to our Institute to determine for our members, and other professional institutes to determine for other professionals. We have always maintained that we strongly object to unqualified and non-professional persons being in the position of company secretary of a listed issuer. The role of the Exchange should be to refer appropriate cases to the appropriate professional institute to determine whether the company secretary has failed the applicable professional standards contributing to a breach of the Listing Rules concerned.

We further need to add that, for the purposes of the Listing Rules under which the appointment of an external company secretary is permitted, the external company secretary is a service provider and in no different a position from other external parties providing services, including lawyers and accountants. In fact, under paragraph 6.5 of the Guidance for Boards and Directors, the Exchange recognises that an external service provider may not have day-to-day knowledge of the issuer's affairs and that there could well be gaps in communication - particularly in relation to time/price sensitive issues. However, the Consultation Paper does not seem to distinguish between internally employed and externally appointed company secretaries.

Finally, we would submit that, for all persons who are potentially subject to secondary disciplinary liability under the proposals contained within the Consultation Paper, there should be a chance for the issues concerned to be redressed and/or the sanctions to be spent over time, given the potential reputational and livelihood damage to those sanctioned.

Should you have any questions, please feel free to contact [REDACTED]
[REDACTED] or [REDACTED]
[REDACTED] at [REDACTED].

Yours sincerely
For and on behalf of
The Hong Kong Institute of Chartered Secretaries

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