



Hong Kong

July 2018

## HKEX ISSUES CORPORATE GOVERNANCE CODE CONSULTATION CONCLUSIONS AND GUIDANCE FOR BOARDS AND DIRECTORS

### Introduction

On 27 July 2018, the Stock Exchange of Hong Kong Limited (the **Stock Exchange**) published its **Consultation Conclusions on the Review of the Corporate Governance Code and Related Listing Rules** (the **Consultation Conclusions**), pursuant to which various amendments to the Listing Rules will take place on 1 January 2019 so as to enhance the corporate governance standards of listed issuers in Hong Kong. This follows the Stock Exchange's November 2017 **Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules** (the **Consultation Paper**) to which there were 91 respondents. For further information on the Consultation Paper, please see [Charltons' November newsletter](#).

In conjunction with the Listing Rules' amendments, the Hong Kong Stock Exchange has published a "**Guidance for Boards and Directors**" (the **Guidance**), which provides practical advice to the board and directors to facilitate their performance of their roles and responsibilities, including a recommendation to listing applicants to appoint independent non-executive directors (**INEDs**) at least two months before listing. The Guidance is not part of the Listing Rules and does not amend the Listing Rules' requirements.

The amendments set out in the Consultation Conclusions include:

- a new disclosure requirement as to why an INED would be able to devote sufficient time to the board where he/she will be holding his/her

seventh (or more) listed company directorship (amended Code Provision (**CP**) A.5.5 of Appendix 14 to the Listing Rules);

- CP A.5.6 requiring issuers to have a policy concerning diversity of board members and to disclose the policy or a summary of the policy in their corporate governance reports will be upgraded to a Listing Rule (new Listing Rule 13.92);
- amended disclosure requirements in respect of the election of an INED, including new requirements to disclose the process used for identifying the nominee; the perspectives, skills and experience that the nominee can bring to the board; and how the nominee would contribute to diversity of the board (amended CP A.5.5);
- extended cooling off periods:
  - for a director, partner or principal or employee of a former professional adviser, from one to an additional second year before being considered independent (Listing Rule 3.13(3));
  - for a former partner of an issuer's existing audit firm, from one year to two years before becoming a member of the issuer's audit committee (amended CP C.3.2);

- for persons with material interests in the issuer's principal business activities, from no cooling off period to a one year period before becoming an INED (amended Listing Rule 3.13(4));
- a new disclosure requirement as to reasons why proposed directors are considered independent even where they hold cross-directorships or have significant links with other directors through involvements in other companies or bodies (new Recommended Best Practice (RBP) A.3.3 of Appendix 14);
- when determining the independence of a director under Listing Rule 3.13, the same factors also apply to the director's immediate family members (new Note 2 to Listing Rule 3.13);
- a new requirement to disclose issuer's nomination policy in its corporate governance report (amended Mandatory Disclosure Requirement (MDR) L. (d)(ii) of Appendix 14);
- amended requirement for INEDs to meet with the chairman at least annually (rather than all NEDs as currently required) (amended CP A.2.7);
- a new requirement for issuers to have a policy on payment of dividends to be disclosed in annual reports (new CP E.1.5); and
- the Stock Exchange will not allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers (the Consultation Paper sought market views as to whether it should be allowed).

Appendix 14 Corporate Governance Code and Corporate Governance Report (the **Corporate Governance Code**) contains two levels of recommendations: the code provisions and recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. However, the code provisions are subject to "comply or explain" requirements. Issuers must disclose whether the code provisions have been complied with, and give considered reasons for any deviations from them, in their interim reports (and summary interim reports, if any), and in their corporate governance reports required to be included in their annual reports (and summary financial reports, if any). On the other hand, recommended best practices are subject to voluntary disclosure and are for guidance only. Issuers

are encouraged, but not required, to state whether they have complied with the recommended best practices and provide considered reasons for any deviation.

The amendments to the Listing Rules (including the Corporate Governance Code) come into effect on 1 January 2019. Listing Rule (and Corporate Governance Code) references in this newsletter are to the Main Board Listing Rules, and corresponding amendments will also be made to the GEM Listing Rules (and Corporate Governance Code).

### Amendments

#### Independent Non-executive Directors

##### Overboarding and INED's time commitment

CP A.5.5 will be amended to require the board to state in the circular to shareholders accompanying the notice of the resolution to elect an INED, and where the proposed INED will be holding his/her seventh (or more) listed company directorship, why the INED would be able to devote sufficient time to the board.

This will apply to the INED's election to a new board and any re-elections to other boards. The Hong Kong Stock Exchange in the Consultation Conclusions disagreed with comments by some respondents that the same individual being an INED across companies within one listed issuer's group should only represent one directorship.

Factors affecting a proposed INED's time commitment to an issuer are set out in the Guidance:

- directorship of a listed issuer undergoing a period of particularly increased activity, for example during an acquisition or a takeover;
- chairing the board and/or board committees of a listed issuer;
- members of board committees;
- a chief executive officer (CEO) or full time executive director of another listed issuer; and
- an INED on multiple boards and a number of significant commitments at government or non-profit making boards.

According to the Consultation Conclusions, when assessing an INED's time commitments, other significant commitments should be taken into account. Here, the Stock Exchange made reference to CP A.6.6 pursuant to which each director should disclose to the issuer at appointment, and in a timely manner for any change, the number and nature of offices held in public companies or organisations and other significant commitments.

### Board Diversity

#### *Diversity Policy*

CP A.5.6 requiring issuers to have a policy concerning diversity of board members and to disclose the policy or a summary of the policy in the issuers' corporate governance report will be upgraded to a Listing Rule (new Listing Rule 13.92). The Note to the Listing Rule (based on the Note to the CP) provides that board diversity will differ according to the circumstances of each issuer. Diversity may be attained through a number of factors, including (without limitation) gender, age, cultural and educational background, or professional experience. Issuers should take into account their own business model and specific needs, and disclose the rationale for the factors relied on for this purpose.

Further, consequential amendments to MDR L.(d)(ii) will be made.

The Hong Kong Stock Exchange stated in its Consultation Conclusions that the consultation did not seek views on whether gender or other characteristics should be specifically emphasised. Further, in Australia, reporting of listed issuer's diversity policy is only subject to "comply or explain", and in the UK, only certain large listed companies must include a description of their diversity policies in their corporate governance code. Pursuant to the 2018 UK Corporate Governance Code, issuers will be required on a "comply or explain" basis to disclose in their annual report gender balance of those in the senior management and their direct reports. However, the UK in its Financial Reporting Council's December 2017 Proposed Revisions to the UK Corporate Governance Code emphasises the importance of diversity in its broadest sense.

According to the Diversity Policy section of the Guidance, diversity policies should be formulated according to issuers' own circumstances, and the following guidance should be considered:

- stating the advantages of diversity (including gender diversity), as well as the importance of being able to attract, retain and motivate employees from the broadest possible pool of available talent;
- stating the issuer's commitment to diversity at all levels, including gender, age, cultural and educational background or professional experience;
- an annual assessment of an issuer's diversity profile including gender balance of the senior management and their direct reports, as well as its progress in reaching its diversity objectives;
- making sure that recruitment and selection practices at all levels are structured in a way that ensures that a wide range of candidates are considered; and
- a statement as to whether the issuer has identified and implemented programs that will facilitate the development of a more diverse group of skilled and experienced employees and that, in due course, their skills will prepare them for senior management and board directorship positions.

The Guidance further recommends a board skills matrix, which is a table that shows board members' skills, experience and perspectives. A board skills matrix facilitates the board's assessment of the current mix of attributes and competencies on the board, its understanding of how directors' attributes and competencies contribute to the issuer's strategic direction and succession planning and diversity, as well as its identification of any gaps that may exist.

Disclosure of a board skills matrix is good practice and investors appreciate the transparency of the board's selection and appointment of directors. Although a universal set of criteria for all issuers is not appropriate, criteria would normally include industry or professional knowledge and experience, gender, technical skills and management experience.

#### *Election of INED*

CP A.5.5 will be amended so that the board must state in the circular to shareholders accompanying the notice of the resolution to elect an INED:

1. the process used for identifying the nominee;

2. the perspectives, skills and experience that the nominee can bring to the board; and
3. how the nominee would contribute to diversity of the board.

In addition, consequential amendments to MDR L.(d)(ii) will be made.

### Factors affecting INED's independence

#### *Cooling off periods for former professional advisers*

Listing Rule 3.13(3) will be amended to extend the cooling-off period for a director, partner or principal or employee of a former professional adviser to an additional second year before they could be considered independent. Currently Listing Rule 3.13(3) provides that independence is likely to be questioned where a director, partner or principal or employee of a professional adviser has provided services within one year immediately prior to the proposed appointment. This Listing Rule will also be subject to minor amendments in response to a comment that a strict reading of the current drafting only captures current but not former directors, partners or principals or employees.

It was proposed in the Consultation Paper to revise Listing Rule 3.13(3) so that there is a three year cooling-off period for professional advisers before being considered independent. Only a slight majority supported the proposal, and there was a broad range of views supporting between one and five year cooling-off periods. In response to the opposition to the proposal on the basis that it is overly restrictive, the Stock Exchange stated that the pool of professional candidates is reduced by a very small number of persons who may have had professional affiliations with the issuer, and that issuers should look for a wider range of experienced professionals and persuade them of the advantages of becoming members of their boards. After considering international best practice and balancing the various views, the Stock Exchange determined that it is most appropriate to extend the cooling-off period to two years.

#### *Cooling off periods for former audit partners*

CP C.3.2 will be amended so that the cooling off period for a former partner of an issuer's existing audit firm before he/she can be a member of the issuer's audit committee will be extended from one year to two years.

It was proposed in the Consultation Paper to extend the cooling off period to three years. However, the cooling off period for former audit partners should be aligned to that of professional advisers (i.e. two years).

#### *Cooling off periods in respect of material interests in business activities*

Listing Rule 3.13(4) will be amended so that the cooling off period for persons with material interests in the issuer's principal business activities will be extended from no cooling off period to a one year period before he/she can be an INED.

The Hong Kong Stock Exchange noted that even where a person does not have any actual interests, there is still a perception issue.

#### *Cross-directorships or significant links with other directors*

RBP A.3.3 will be introduced pursuant to which the board should disclose reasons if it considers a proposed director as independent even where the individual holds cross-directorships or has significant links with other directors through involvement in other companies or bodies. According to the Note to RBP A.3.3, cross directorship exists when two (or more) directors sit on each other's boards.

The Stock Exchange considers it appropriate to introduce this disclosure as an RBP, rather than a CP or Rule. It may, however, in the future consider enhancing this recommendation where appropriate and following market consultation.

#### *Family ties*

Note 2 will be introduced under Listing Rule 3.13 so that when determining the independence of a director under the rule, the same factors should also apply to the director's immediate family members. The same definition for "immediate family member" as under Rule 14A.12(1)(a) will be adopted, that is "his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years".

#### **Nomination Policy**

MDR L. (d)(ii) of Appendix 14 will be amended so that an issuer must disclose its policy for the nomination of directors adopted during the year in the issuer's corporate governance report.

The Hong Kong Stock Exchange noted that amendments to the Listing Rules and the Code pursuant to the consultation will mean that the board and/or nomination committee will be subject to greater demand and the nomination committee's work will be subject to increased scrutiny. Where the nomination committee performs its role and function properly, this will result in enhanced board effectiveness and diversity.

The Guidance includes recommendations on the scope of the nomination committee's work and nomination policy. Issuers should consider the following guidance when devising their nomination policies:

- stating the objectives of the nomination policy, which should include making sure that the board has a balance of skills, experience and diversity of perspectives which are appropriate to the requirements of the issuer's business;
- emphasising that it is the entire board who has the ultimate responsibility for selecting and appointing directors;
- setting out the procedure for the selection, appointment and reappointment of directors comprising the selection criteria, including (without limitation) considering a candidate's potential contributions to the board in terms of qualifications, skills, experience, independence and gender diversity;
- board succession planning considerations with periodical reviews of such plan;
- how disclosure of the nomination policy and the progress towards achieving the objectives set out in the policy will be made, for example in the corporate governance report; and
- a formal process for the review and monitoring of the nomination policy so as to ensure that it continues to be relevant to the needs of the issuer and reflects current regulatory requirements and good governance practice.

### **Directors' attendance at meetings**

#### *Directors' attendance at general meetings*

CP A.6.7 concerning INEDs and other non-executive directors will be amended with the last sentence being replaced to read: "Generally they should also attend general meetings to gain and develop a balanced understanding of the view of shareholders."

It was proposed in the Consultation Paper to remove the last sentence of CP A.6.7 ("They should also attend general meetings and develop a balanced understanding of the views of shareholders.") in order to remove inconsistencies in the market's interpretation of the provision. In response to comments during the consultation that this may discourage directors from attending general meetings, the sentence was revised (as stated above).

#### *Chairman's annual meetings with INEDs*

CP A.2.7 will be amended to require that INEDs (rather than the current provision requiring NEDs including INEDs) to meet with the chairman at least annually without the presence of the other directors.

### **Dividend Policy**

CP E.1.5 will be introduced to require issuers to have a policy on payment of dividends which should be disclosed in their annual reports.

### **Electronic dissemination of corporate communications – implied consent**

In the Consultation Paper, the Hong Kong Stock Exchange sought market views on whether the Listing Rules should be amended to permit shareholders' consent to be implied for electronic dissemination of corporate communications by issuers. Although a significant majority of respondents supported amending the Listing Rules accordingly, the Stock Exchange will not adopt such regime until Hong Kong's company law is amended to allow implied consent for corporate communications.



### Draft Guidance for Boards and Directors

A vital role of the Hong Kong Stock Exchange is the promotion of good corporate governance by issuers. An effective board is at the centre of good governance. In addition, the long-term success of an issuer depends on the quality of the board.

#### Directors' Duties and Board effectiveness

The responsibilities of an issuer's board include:

- leading, directing and supervising the issuer's affairs to facilitate the issuer's long term success;
- establishing strategic objectives with appropriate focus on value creation and risk management;
- ensuring transparency, that is appropriate and adequate reporting in annual reports (including financial statements, corporate governance, and environmental, social and governance), disclosures of the board's practice (e.g. terms of references of its committees) and policies (e.g. shareholders communication, remuneration, nomination, dividend and diversity policies);
- being accountable – directors are accountable for their actions/inactions, and where appropriate, take shareholders/stakeholders' views into account in their decisions; and
- ensuring adequacy of resources, staff qualifications and experience, particularly for issuer's accounting, internal audit and financial reporting function.

#### All Directors

All directors, regardless of their status as executive directors, non-executive directors or INEDs, are subject to the same legal duty under the law (section 465 of the Companies Ordinance (Cap. 622)) and the Listing Rules: they must act honestly and in good faith in the interests of the issuer as a whole and avoid actual and potential conflicts of interest and duty. However, executive directors, non-executive directors and INEDs have different roles and functions.

Potential directors should spend time understanding the issuer prior to accepting an appointment so that they can start making valuable contributions to the board as soon as they take on a directorship. For example, visiting operations, speaking to

members of the workforce at all levels, examining some of the major projects, and understanding the issuer's strategies and competitive nature.

Each new director should undertake induction training. All directors have the responsibility to keep up-to-date with legal, regulatory and industry-specific developments. Issuers, at their expense, should provide training programmes tailored to meet the needs of each individual director.

Directors should understand that there is no expectation for them to be an expert in all areas. However, they should have a comprehensive understanding of the issues discussed at board meetings. They may request further information and/or documentation from senior management in relation to matters to be discussed at board meetings. They may seek assistance from the company secretary or external professional advisers (lawyers, accountants or financial advisers) at the issuer's expense. However, they should perform sufficient due diligence and not rely only on professional advisers or other experts.

Both the directors and senior management have the responsibility to ensure that the board is receiving an adequate amount of information for directors to properly understand a transaction or relevant issues. Senior management should supply directors with a summary of the documents to assist their expeditious identification of any potential issues. Information that senior management may provide directors may include board papers, background information, disclosure documents, budgets for specific projects, forecasts and monthly financial updates.

Directors subject to disciplinary proceedings for failure to discharge their duties and responsibilities may not use as a defence that they did not receive sufficient information from the issuer or that they did not understand the transactions.

#### Executive Directors

Executive directors manage the issuer's day-to-day business operations. They should make sure that senior management is accountable to the board, and ultimately to the shareholders. They should listen to, and work closely with, non-executive directors and INEDs.

### Non-executive directors and INEDs

Non-executive directors are not members of senior management nor are they independent of the issuer. INEDs are considered independent under the Listing Rules. Non-executive directors and INEDs should keep up-to-date with the issuer's business affairs as well as contribute to the board's strategic objective setting. They should examine the issuer's performance in attaining corporate goals and objectives, as well as monitor performance reporting.

There have been cases where INEDs have been appointed to new listing applicants late in the listing process. Such INEDs may not have had sufficient time to acquire a proper understanding of the issuer's affairs, as well as their responsibilities as directors of a listed issuer before listing. The Stock Exchange recommends new listing applicants to appoint INEDs at least two months before listing.

Non-executive directors and INEDs should:

- bring an independent mind to consider strategy, policy performance, accountability, resources, key appointments and standards of conduct;
- take charge where there are potential conflicts of interests;
- be members of the audit, remuneration, nomination and other governance committees (if requested); and
- contribute effectively at board meetings.

Although INEDs may not work in the industry or be experts in the business, they may have other skills and experience (e.g. legal, accounting, real estate or IT) which facilitate the enhancement of the board's balance of skills, experience and diversity of perspectives.

### INED's Time Commitment

INEDs should make adequate time available to discharge their responsibility and should not accept an invitation to be an INED unless they can dedicate sufficient time and effort. For more information on INED's time commitment, please see "Overboarding and INED's time commitment" above.

### **Board Committees' Role and Functions**

The board may delegate its responsibility for performing corporate governance duties to board committees – the nomination, audit and remuneration committees. The audit and remuneration committees must be chaired by an INED, whilst the nomination committee should be chaired by either the chairman of the board or an INED. A majority of the members must or should be INEDs. The committees are increasingly expected to advise the board and perform the board's corporate governance responsibilities.

The chair of the board and each of the board committees should attend general meetings to address shareholders' queries, and where it fails to do so, the issuer should provide genuine and good reasons for such non-attendance.

### Nomination Committee

The nomination committee's principal role is board recruitment. It examines the optimal composition of the board, taking into consideration the issuer's strategies and objectives, for example, many issuers wish to develop innovative technology, but none of the board members may have the relevant expertise. The committee also examines the skills that are available as a board, and whether they are appropriate for the business' current situation, any challenges it may be facing and any opportunities it may wish to take advantage of.

There should be a policy in place on the process of identifying potential directors. The selection process should be transparent, fair and in line with the issuer's diversity policy, with a wide range of candidates to select from who are not part of the Board's circle of contacts. Issuers are encouraged to develop a list of desirable skills, perspectives and experience at the start of the director selection process.

The nomination committee should meet to consider the board's performance, and not only when there are specific board appointments to consider. It may benchmark the issuer's board against the boards of fellow Hong Kong listed issuers. There is a need to regularly refresh the board in order to prevent board entrenchment and attract new thinking, as well as to consider succession planning so as to ensure the issuer's long term success.

For information on the nomination policy, please see "Nomination Policy" above.

### Audit Committee

The audit committee is responsible for maintaining an appropriate relationship with the issuer's external auditors, as well as monitoring the integrity of the issuer's financial statements, annual and interim reports and accounts, risk management and internal control. The committee is also responsible for ensuring that the internal audit function has appropriate standing within the issuer, and has adequate resources, that is the function is staffed by persons with appropriate qualification, experience, integrity and independence of mind. It should also review and monitor the effectiveness of the function.

Management should fully cooperate with the audit committee who should be provided with sufficient information and reasonable resources to perform its role and function consistent with its terms of reference. The committee is required to take a proactive approach in understanding the issuer's affairs and investigate where there are red flags. Management should liaise with the audit committee and have a comprehensive discussion on a biannual basis with the audit committee and auditors during which they should explain the judgments of key assumptions underlying critical accounting estimates.

Issuers are required under the Corporate Governance Code to explain in the corporate governance report any disagreement the board has with the audit committee's views on the selection, appointment, resignation or dismissal of the external auditors.

The audit committee should review on an annual basis external auditor's independence. The audit committee should take into account the following when an external auditor provides non-audit services:

- the nature of the non-audit service;
- whether there are safeguards in place which ensure that there are no threats to the audit's objectivity and independence;
- the aggregate fees paid to the external auditors as well as a breakdown of the fees paid for audit and non-audit services for the financial year.

In addition, the audit committee should monitor management's progress on implementing any new key financial reporting standards, and keep abreast of any tax legislative and regulatory developments in respect of financial reporting.

### Remuneration Committee

The remuneration committee's principal role is to assist and advise the board on the board's and senior management's remuneration. The committee should have devised a strategy and policy on director remuneration, and formulated formal and transparent procedures to implement such policy. The objective is the motivation, retention and attraction of the best talents for the issuer, so as to maximise shareholder value.

All aspects of remuneration should be considered by the remuneration committee, including:

- salaries paid by comparable issuers, time commitment and responsibilities, and employment conditions of the group;
- the terms of appointment and termination for directors and senior management in order to ensure that the terms are fair; and
- compensation arrangements in respect of dismissal or removal of directors for misconduct so as to ensure that the arrangements are reasonable and appropriate.

Where the remuneration committee disagrees with any remuneration or compensation arrangements and the board passes a resolution approving such remuneration or arrangements, the board should disclose in its next corporate governance report the reasons for its resolution.

### **Board Diversity and Policy**

#### Board Diversity

The performance of a board is enhanced where it is comprised of directors who have a combination of competencies and diversity of perspectives which correspond with the issuer's strategy and objectives.

The board, with assistance from the nomination committee, should consider the skills, experience and diversity of perspectives that a nominee is expected to bring to the board as well as its potential contributions.

#### Gender Diversity

Gender diversity is especially important to many stakeholders. However, it is noted that diversity is wider than only gender.



Gender and other aspects of diversity facilitate the board's understanding of their customers' and stakeholders' needs and is positively correlated with the issuer's financial performance, a more effective board and improved risk management. Hong Kong is behind other leading markets in terms of ratio of women on boards, with approximately one third of issuers without a single woman on their boards.

During the nomination process, there should be increased transparency on the considerations for diversity (including gender). Issuers will be subject to a new mandatory requirement to disclose their policy for the nomination of directors adopted during the year in their corporate governance report.

#### Diversity Policy and Board Skills Matrix

For information on diversity policy and board skills matrix, please see "Board Diversity" above.

#### **Risk Management and Internal Control**

An effective risk management and internal control system is important not only as it ensures regulatory compliance but is also linked to greater financial performance.

#### Board and Management's Role

The board has the responsibility of risk identification and control. During the board's discussion on the issuer's long term strategic objectives, the board should also deal with internal control issues, including the issuer's risk appetite, risk and return trade-offs, risk management and internal control systems. The board, which sets the tone of the issuer, is instrumental in determining and developing the issuer's risk culture.

Management has the responsibility of carrying out and implementing (including designing and monitoring) the board's risk management policy and procedures, and confirming their effectiveness to the board.

#### Risk Management Policy and Procedures

Formally documented risk management policy and procedures should be in place and endorsed by senior management and the board. Further, an audit plan which reviews the internal control systems and deals with identified risks, should be in place. There should be testing of the effectiveness of systems,

including performing walkthroughs for notifiable and connected transactions. Based on issuers' findings, any weaknesses should be fixed.

#### Risk Identification

In the Guidance, the Hong Kong Stock Exchange sets out suggestions in order to assist issuers to better understand the possible steps to identify risks:

- analysis of the source of potential internal and external risks that can occur in the issuer's business, e.g. cyber security or labour risks;
- prioritisation of the potential risks through internal management discussions;
- creation of a risk register which is a record of all the risks the issuer faces and is populated with risks that may prevent the issuer from attaining its strategic objectives, and is subject to regular review and update (at least annually); and
- plot the risks into a matrix in the form of a "heat map" in which there should be a list of the issuer's top 10-20 risks based on which the board can consider and review the internal control systems so as to mitigate such risks.

#### Appropriate Approach to Risks

Issuers should ensure that there is an adequate balance between excessively focusing on the elimination of risks and paying sufficient attention to risks (such as treating risk management as a mere compliance issue).

Issuers should make adequate disclosure in their corporate governance reports on the board's annual review of the issuer's risk management and internal control.

#### **Company Secretary**

#### Selecting the Company Secretary

The issuer should consider whether a candidate for company secretary is of the right calibre and of sufficient seniority for the issuer in light of its size and complexity of operations.

### Role and Function

Company secretaries are key advisers on corporate governance and other regulatory compliance issues, and must keep abreast of regulatory and legal developments applicable to the issuer. In discharging their duties, they should:

- assist the issuer with the creation and maintenance of a sound and effective corporate governance framework, especially risk management and internal control systems to ensure regulatory compliance;
- be aware of legal and regulatory developments that may affect the issuers' business and operation;
- be pro-active and consider issues that may develop and provide advice to the board;
- make sure that the board undertakes continuous training on regulatory developments applicable to their business developments and needs; and
- provide compliance advice to the board and senior management during a decision-making process.

Company secretaries are a vital channel of communication between:

- the board and senior management – the company secretary keeps the CEO and the board (including INEDs) informed of information provided by senior management and communicates the decisions of the board to senior management;
- the issuer and its shareholders – through email or in the annual general meeting; and
- the issuer and regulators (such as the Stock Exchange) – company secretaries should work with the board and senior management when the issuer receives enquiries from a regulator, and assist in replying in a timely fashion.

### External Service Provider

Where an outsourced professional or external service provider is acting as company secretary, the board should ensure that such person has sufficient resources to closely follow the issuer's daily affairs so that it can perform its duties properly.

An issuer that appoints an external service provider as company secretary should take appropriate steps to mitigate potential issues related to the following factors:

- the external service provider may lack day-to-day knowledge of the issuer's affairs;
- any time gaps in communication, especially where the matter is time sensitive (e.g. enquiries from the Stock Exchange to the issuer on potentially price sensitive market rumours); and
- certain external service providers may be engaged as company secretary for many listed issuers – issuers should consider whether providers would be able to allocate sufficient time to the issuer's affairs.

When appointing an external service provider, issuers should assign a senior executive as a contact person to work closely with the provider.

For further guidance, the Hong Kong Stock Exchange refers to the Hong Kong Institute of Chartered Secretary's March 2018 [Company Secretary Appointment Guidelines for HKICS Members – Good Practice as to the Number of Appointments as 'Named' Company Secretaries of Hong Kong Listed Issuers](#).

### **Corporate Governance of WVR Issuers**

WVR-structured issuers are subject to additional regulatory requirements and safeguards specified in Chapter 8A of the Listing Rules. Please refer to [Charltons April 2018 newsletter](#) for information on the Consultation Conclusions on a Listing Regime for Companies from Emerging and Innovative Sectors.

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