



Hong Kong

October 2020

HKEX PUBLISHES CONSULTATION CONCLUSIONS ON CODIFICATION OF GENERAL WAIVERS RELATING TO IPOs AND LISTED ISSUERS AND MINOR RULE AMENDMENTS

On 28 August 2020, the Stock Exchange of Hong Kong (**HKEx**) published the Consultation Conclusions on Codification of General Waivers and Principles Relating to IPOs and Listed Issuers and Minor Rule Amendments¹ (the “**Consultation Conclusions**”) with the Listing Rule amendments taking effect on 1 October 2020.

The HKEx adopted all proposals outlined in the August 2019 Consultation Paper except the proposal to codify the factors the HKEx take into consideration when granting a waiver to Main Board Rule 3.28 (experience and qualification of a company secretary). The HKEx have instead issued a Guidance Letter (HKEx-GL108-20)² clarifying the policy rationale of Rule 3.28 and the factors considered in granting a waiver.

For a summary of the original consultation paper proposals, please see Charltons’ August 2019 newsletter.³

1. Codification of General Waivers

1.1. Shareholder Approval Requirement for Bonus or Capitalisation Issues by PRC Incorporated Issuers

The HKEx adopted the proposal to codify the General Waiver to exempt bonus or capitalisation issues by a PRC

1 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2019-Codification-of-General-Waivers/Conclusions-\(Aug-2020\)/cp201908cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2019-Codification-of-General-Waivers/Conclusions-(Aug-2020)/cp201908cc.pdf?la=en)

2 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Consolidated-PDFs/Guidance-Letters-for-Listed-Issuers/gl_issuers.pdf

3 <https://www.charltonslaw.com/hkex-listing-rules-hkex-consultation-on-codifying-waivers-and-principles-for-hkex-ipos-and-listed-issuers/>

incorporated issuer from shareholders’ approvals in general meetings and separate class meetings. The exemption will only apply if issuers make bonus or capitalisation issues to existing shareholders on a pro rata basis.

The exemption creates a level playing field for PRC and non-PRC issuers, with a similar exemption available for non-PRC issuers under HKEx Listing Rule 13.36.

95% of institutional respondents and 13% of individual respondents supported the proposal, compared to 73% of respondents overall who opposed it. Those who opposed voiced concerns that there should not be favourable treatment of issuers incorporated in a particular country, the Rule (previously LR13.36(1)) protects minority shareholders and that granting waivers on a case-by-case basis assists in upholding the corporate governance standards of issuers.

1.2. Calculation of Consideration Ratio for PRC Incorporated Issuers Dual Listed on the HKEx and a PRC Exchange

The HKEx adopted the proposal to codify the General Waiver in relation to the modification of the calculation of the consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange, by referencing the A or B shares of the issuer and not the issuer’s H shares listed on the HKEx.

The proposal was adopted on the basis that the consideration ratio aims to measure the materiality of a transaction by reference to the market value of the issuer at that time, however where there is a substantial difference between their

A and H share prices, the materiality of the transaction may be over or understated. The HKEx also considered the growing importance of the A share markets to international investors.

95% of institutional respondents and 12% of individual respondents supported the proposal, while 74% of respondents overall opposed it. While respondents in support stated that the proposal better reflects the market value of PRC issuers, those in opposition raised concerns regarding the stability of the RMB. The HKEx however considered this irrelevant as PRC incorporated issuers with the RMB as their reporting currency calculate other size test ratios with RMB figures.

1.3. Inclusion of Stock Code in Documents

The HKEx adopted the proposal to codify the General Waiver to allow the listed issuer's stock code to be displayed prominently in the corporate or shareholder information sector of financial reports, providing some flexibility to listed companies. The HKEx also clarified that the objective of Main Board Rule 13.51A (inclusion of stock code in documents) can still be met where the stock code is prominently displayed in the corporate or shareholder information section.

93% of institutional respondents and 19% of individual respondents supported the proposal, while 68% of respondents overall opposed it, stating that stock codes should be displayed on the cover pages and that the proposal may reduce clarity. The HKEx however stated that the levels of shareholder protection would not be comprised by the proposal.

2. General Principles for Codification

2.1. Disclosure of Financial Information of Subsidiaries or Businesses Acquired or to be Acquired after Trading Record Period

The HKEx originally proposed to codify the conditions for granting waivers from the requirements under Main Board Rules 4.04(2) and 4.04(4) (the "**Waiver Conditions**") requiring the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period.

The conditions are as follows:

- a) the acquisition must not be material;

- b) where the acquisition will be financed by the proceeds raised from IPO, the new applicant has obtained a certificate of exemption from the SFC for the relevant requirements under paras 32 and 33 of the Third Schedule of the Companies Ordinance; and

- c) with respect to:

- i) new HKEx listing applicants whose principal activities involve the acquisition of equity securities, the new listing applicant: (1) is not able to exercise any control and does not have any significant influence over the underlying company or business; and (2) has disclosed in its listing document the reasons for the acquisition and a confirmation that the counterparties and their respective ultimate beneficial owners are independent of the new applicant and its connected persons; or
- ii) the acquisition of a business or a subsidiary: (1) the historical financial information of the business or subsidiary is unavailable, and it would be unduly burdensome for the new applicant to obtain or prepare such financial information (the "**Unavailability and Undue Burden Condition**"); (2) and the new applicant has disclosed in its listing document information required for the announcement for a discloseable transaction under Main Board Listing Rules 14.58 and 14.60 on each acquisition (the "**Disclosure Condition**") (together, the "**R4.04(2)&(4) Conditions**").

98% of institutional respondents and 19% of individual respondents supported the proposal, whereas 69% of respondents overall opposed it. Those opposed cited concerns that codifying the waiver conditions would negatively impact corporate governance standards and limit the HKEx's power in administering the Rules and that the waiver should only be granted on a case-by-case basis. Sufficiency of disclosure was also raised as a concern however HKEx clarified that if a new applicant is granted a 4.04(2) & 4.04(4) waiver, they should provide alternative disclosure of the acquisition in the listing document.

Some respondents suggested that the Unavailability and Undue Burden Condition and Disclosure Condition should be removed on the basis that the materiality test (2.1(a) above) is

sufficient. The HKEx however found that relying solely on the materiality test may limit the HKEx's power in administering the Rules, so opted to retain the conditions.

In response to calls for clarification from respondents of the meaning of certain terms in the waiver conditions, the HKEx amended the proposal to include guidance previously included in Guidance Letter HKEx-GL32-12 (which has now been withdrawn) in addition to the terms respondents flagged for clarification.

The HKEx also amended the proposal to state that the new applicant must submit a waiver application demonstrating its need for a waiver.

2.2. Disclosure of Financial Information by Overseas Banking Companies

The HKEx adopted the proposal to codify the following conditions in granting waivers from the requirements under Main Board Rule 4.10 regarding the disclosure of financial information of overseas banking companies under the Guideline on the Application of the Banking (Disclosure) Rules:

- a) they are banking companies organised outside Hong Kong and primarily regulated by a regulator with functions similar to the HKMA and the HKEx is satisfied that the foreign regulator provides adequate supervision to the applicants; and
- b) alternative disclosure has been made in the listing document with regards to: (1) capital adequacy; (2) loan quality; (3) loan provisioning; and (4) guarantees, contingencies and other commitments and this is sufficient for potential investors to make a fully informed investment decision.

The applicant must submit a waiver application demonstrating the need for a Rule 4.10 waiver.

The codification comes in the face of increasing numbers of Mainland banks seeking to list on the HKEx since 2005 and the granting of Rule 4.10 waivers on the basis that it was unreasonable to require overseas banking companies to fully comply with the Banking Disclosure Guidelines while also complying with such requirements in their place of organisation.

98% of institutional respondents and 16% of individual respondents supported the proposal, while 70% of respondents overall opposed it. Of those in opposition, reasons for this

stance included that all overseas applicants should comply with all Rules if listing in Hong Kong and that investors would not be able to make meaningful comparisons between Hong Kong and overseas banking companies listed on the HKEx. Others did not agree with the wording of the conditions, instead suggesting that the HKMA (not the HKEx) should be satisfied of the adequate supervision by a foreign regulator and that the HKMA should similarly be satisfied that the overseas regulator has functions similar to the HKMA.

In adopting the proposal, the HKEx clarified that even if a Rule 4.10 waiver is granted, applicants must still meet the "best practice" standards of Rule 4.10 and the general disclosure requirements under Main Board Rule 2.13(2). Additionally, the HKEx stated that a Rule 4.10 waiver will be narrowly tailored based on the circumstances of the particular case and that additional disclosure on key disclosure areas may be required.

2.3. Change of Financial Year Period

The HKEx adopted the proposal to codify the following conditions in granting waivers from the requirements under Main Board Rule 8.21(1) regarding the change of financial year period:

- a) the new applicant is an investment holding company and the change is to allow the new applicant's financial year to be coterminous with that of all or a majority of its major operating subsidiaries;
- b) the proposed change in the financial year end date is not designed to circumvent the requirements under Main Board Rule 8.05; and
- c) the proposed change will not materially affect the presentation of financial information or result in any omission of material information that should otherwise be disclosed in the listing document or would be relevant to the assessment of the new applicant's suitability.

A new applicant must submit a waiver application demonstrating its need for a waiver.

98% of institutional respondents and 22% of individual respondents supported the proposal, while 65% of respondents overall opposed it. Those in opposition raised concerns that the assessment of the impact of the change would require subjective judgement by the HKEx, which they suggested should be avoided and that the proposal may lead to the

manipulation of financial information to mislead investors. The HKEx however stated that it would be unreasonable for the HKEx to avoid subjective judgement and did not consider that corporate governance standards would be adversely affected since waivers would be considered on a case-by-case basis.

Further to requests for clarification from respondents, the HKEx clarified that the waiver from the relevant requirements under Main Board Rule 8.05 include management continuity, ownership continuity, control requirements and the financial tests.

2.4. Publication of Preliminary Results Announcements and Distribution of Annual Reports and Interim Reports

The HKEx adopted the proposal to codify:

- a) the conditions in granting the General Waivers from the publication and distribution requirements of annual results and reports under Main Board Rules 13.46 and 13.49(1);
- b) similar exceptions to Main Board Rules 13.48(1) and GEM Rules 18.66 and 18.79 with respect to the distribution and publication of quarterly reports and preliminary results for the first three and nine months period of each financial year;
- c) align the conditions for the Interim Results Exemption with the Annual Results and Reports Waivers Conditions; and
- d) repeal PN10 and consolidate the guidance with the relevant Main Board Rules.

98% of institutional respondents and 22% of individual respondents supported the proposal, while 65% of respondents overall opposed it.

Opposing respondents cited concerns regarding the sufficiency of disclosure, the fact that issuers with a professional company secretary would have taken publication and distribution requirements of reports and results under the Rules into account when planning its listing timetable and the potentially negative impact on corporate governance standards. The HKEx quelled these concerns by emphasising that the codification will not reduce the amount of disclosure or affect corporate governance standards as a waiver will only be granted if the new applicant discloses the same level of financial information as required under the relevant Rules in

the listing document, however to ensure better communication, a newly listed issuer will be required to inform the market that the relevant information has been included in their listing document at the time when it is ordinarily required to publish or distribute the relevant reports and results under the Rules.

2.5. Acquisition of Aircrafts by Airline Operators

The HKEx adopted the proposal to codify the waiver from disclosure of actual consideration of aircrafts to be acquired by listed airline operators.

95% of institutional respondents and 25% of individual respondents supported the proposal, while 62% of respondents overall opposed it, mainly on the basis of reducing the transparency of material transactions. The HKEx however emphasised that the codification aims to address the practical difficulties of complying with the disclosure requirement in the case of such acquisitions and that the alternative disclosure would provide investors with relevant information to assess the impact of acquisitions on the issuer's financial position on an aggregated basis.

It was proposed by a supporting respondent that the waiver should be extended to other price-related information subject to confidentiality restrictions. However, the HKEx stated that they do not have any plans to propose such an extension.

Another respondent suggested that the waiver should be extended to also cover acquisitions or leasing of aircraft by aircraft leasing companies, however the HKEx clarified that exemptions to this effect are provided for under Chapter 14 already.

2.6. Share Option Scheme Limit for a Listed Issuer's Subsidiary to be Spun-off for Separate Listing

The HKEx adopted the proposal to, in the case of a spin-off a listed issuer's subsidiary (the "SpinCo"), allow the issuer to determine the SpinCo's share option scheme limit with reference to SpinCo's shares in issue as at the date of SpinCo's listing.

98% of institutional respondents and 33% of individual respondents supported the proposal, with 56% of respondents overall opposing it. There were no substantive reasons given in opposition, other than the codification being unnecessary.

2.7. Determination of Exercise Price of Options under a Share Option Scheme Adopted by Issuers Dual Listed on HKEx and a PRC Exchange

The HKEx adopted the proposal to codify the waiver of the exercise price requirement for HKEx-PRC dual listed companies.

98% of institutional respondents and 21% of individual respondents supported the proposal, while 65% of respondent's overall opposed it. Some in opposition stated that there is no guarantee that A shares will continue to be traded at a higher price compared to H shares and in the opposite scenario, Hong Kong investors may suffer losses because new A shares may be issued at a lower price. The HKEx however stated that using the A share market price to set the exercise price of A share options is in accordance with PRC laws and regulations and will better reflect the market value of the A shares. The HKEx also stated that H shareholders are protected as A share option schemes are subject to approval by H and A shareholders at class meetings.

Opposing respondents also asserted that there should not be any special treatment of companies listed in the PRC and that the proposal should apply equally to all companies with dual listings on overseas exchanges. The HKEx however stated that companies dual listed on overseas exchanges only have one class of listed securities and their share option schemes should comply with the exercise price requirement.

2.8. Working Capital Statement in Listing Documents and Transaction Circulars of Main Board Issuers that are Banking Companies or Insurance Companies

The HKEx adopted the proposal to exempt listed issuers that are banking companies or insurance companies from including a working capital statement in their listing documents and transaction circulars, subject to appropriate alternative disclosures.

90% of institutional respondents and 17% of individual respondents supported the proposal, while 70% of respondents overall opposed it. Those opposed suggested retaining the requirement in the interests of transparency, with others suggesting that the exemption should be extended to cover other financial services companies. The HKEx however stated that the exemption is bespoke to banks and insurance companies and so the scope will not be extended to other institutions/fields generally.

A respondent suggested an amendment to the wording of the proposed Main Board Rule 14.66(10), suggesting that "the Exchange is satisfied" be removed from the wording of proposed Rule, which the Exchange adopted, with similar wording also being removed in the Rules as part of housekeeping amendments.

3. Minor Rule Amendments

3.1. Documentary Requirements for Refiling a Listing Application

The HKEx adopted the proposal to codify the guidance in Guidance Letter HKEX-GL7-09 (documents required for re-filing a listing application (1) more than six months after the date of the original listing application; or (2) where a sponsor has changed) in Main Board Rules 9.10A(1) and 9.10B and withdrew HKEX-GL7-09.

98% of institutional respondents and 36% of individual respondents supported the proposal, while 53% of respondents overall opposed it.

The HKEx decided to adopt the proposal in view of the practical difficulties incoming sponsors may experience in obtaining cooperation from an ongoing sponsor when performing the relevant clearing procedure. The HKEx however stated that they did not consider it necessary to impose a new Rule requirement with respect to cooperation of the parties based on the Rules already requiring both parties to provide necessary information to the HKEx in this regard (Rule 3A.18 and 3A.02A(2)).

3.2. Initial Listing Fee by Introduction

The HKEx adopted the proposal to codify the guidance in Listing Decision HKEX-LD15-2 (calculation of initial listing fee where applicant is to be listed by way of introduction with Hong Kong as its only place of listing) in paragraph 1(4) of Appendix 8 of the Main Board Rules.

97% of institutional respondents and 38% of individual respondents supported the proposal, while 52% of respondents overall opposed it. Those in support stated that the codification would provide clearer guidance and has in practice been adopted for a number of years. None of those opposed gave reasons for their opposition.

3.3. Restriction on Grant of Share Options

The HKEx adopted the proposal to amend Main Board Rule 17.05 to state that an issuer may not grant any options after inside information has come to its knowledge until (and including) the trading day after it has announced the information, a slight modification of the original proposal which only stated “until the trading day after”.

93% of institutional respondents and 41% of individual respondents supported the proposal, while 50% of respondents overall opposed it. Of those opposed, the view was taken that issuers should be allowed to grant share options during black-out periods and that share price appreciation is part of the reward to employees receiving share options. Others asserted the amendment was unnecessary as if the share price did not fully reflect the effect of the inside information during the trading day after the relevant announcement, the grant of share options after the trading day may still be unfair.

3.4. Pre-vetting of Documents and Announcements in IPO Cases and Post-Vetting Announcements Relating to Price Stabilisation Actions

The HKEx adopted the proposal to codify guidance in HKEX-GL16-09 in Main Board Rules 2.07C(1)(a), 12.05 and 12.09, subject to the addition of the wording “in accordance with” to the notes to Rules 12.05 and 12.09, as per a respondent’s suggestion. Guidance Letter HKEX-GL16-09 has been withdrawn.

98% of institutional respondents and 41% of individual respondents supported the proposal, while 50% of respondents overall opposed it, with no opposing views given.

3.5. Typhoon and Rainstorm Warning Arrangements

The HKEx adopted the proposal to codify the guidance in Guidance Letter HKEX-GL31-12 (Typhoon and Rainstorm Warning Arrangements) as a new practice note to the Rules, with the codification amended to reflect the amendments made to HKEX-GL31-12 in August 2019 regarding “extreme conditions” caused by a super typhoon (as suggested by a respondent). The HKEx will also update Practice Note 8 in this respect and have withdrawn HKEX-GL31-12.

98% of institutional respondents and 40% of individual respondents supported the proposal, while 50% of respondents overall opposed it, with no opposing views given.

3.6. Confirmations Required on the Accountants’ Report, Pro Forma Financial Information and Profit Forecast in Application Proofs and Subsequent Draft Listing Documents

The HKEx adopted the proposal to codify the guidance in Guidance Letter HKEX-GL58-13 (Confirmations required on the Accountants’ Report, Pro Forma Financial Information and Profit Forecast in Application Proofs and Subsequent Draft Listing Document) in Main Board Rule 9.11.

98% of institutional respondents and 41% of individual respondents supported the proposal, while 49% of respondents overall opposed it. There were no reasons given in opposition, however it was suggested that the HKEx codify Guidance Letter HKEX-GL6-09A (Guidance on the Financial Information for the Trading Record Expected in the First Draft Listing Document for Listing Applications) in relation to administrative practices accepting an accountants’ report covering a period shorter than the trading record period in the Application Proof. The HKEx however clarified that HKEX-GL6-09A had been withdrawn, with the relevant guidance consolidated into HKEX-GL56-13 and further that the HKEx have no intention to codify their administrative practices referred to in the Guidance Letter to maintain flexibility as these practices are subject to change.

3.7. Confirmations Required on Expert Opinions in Application Proofs and Subsequent Draft Listing Documents

The HKEx adopted the proposal to codify the guidance in Guidance Letter HKEX-GL60-13 (Confirmations required on Expert Opinions in Application Proofs and subsequent draft listing documents) in Main Board Rule 9.11 to complete the documentary requirements at the time of the listing application.

98% of institutional respondents and 40% of individual respondents supported the proposal, while 50% of respondents overall opposed it. While no reasons were given by those in opposition, a request for clarification was made with respect to the requirement on an expert’s opinion with regards to work performed on stub period. The HKEx however stated that they do not consider it necessary to provide clarification in the Rule as there is no difference with regards to work performed on the stub period and another period within the trading record period.

4. Housekeeping Rule Amendments

The HKEx also proposed a number of housekeeping rule amendments in the consultation paper, all of which have been

adopted, subject to the repeal of outdated transitional arrangements on independent non-executive directors and on share option schemes and references therein.

These amendments include:

- amendment of the Chinese version of the Rules to ensure consistency with the English version;
- repealing outdated transitional arrangements;
- aligning the Main Board and GEM Rules with respect to the requirement on adequate market in the securities for which listing is sought; and
- consequential changes to the GEM Rules following changes to documentary requirements relating to listed issuers which took effect in March 2019.

5. Publication of New Guidance Letter HKEX-GL108-20

5.1. Consultation Paper Proposal, Response and Consultation Conclusions

The HKEx proposed in the Consultation Paper to codify the factors considered by the HKEx in granting a waiver from the requirements under Main Board Rule 3.28 (“R3.28 Waiver”) regarding the experience and qualification of a company secretary.

91% of respondents overall opposed the proposal, with institutional support at only 50% and support from individual respondents at only 1%. Those opposed cited concerns of a negative effect on corporate governance standards in Hong Kong through the lowering of the qualification requirement and material adverse impacts on the career development of qualified company secretaries. The HKEx did not agree, citing the good compliance records of the 518 companies granted R3.28 Waivers from 2015 to 2019.

Respondents also raised concerns that companies with operations predominantly outside Hong Kong may lack familiarity with Hong Kong requirements and therefore emphasised the need to appoint a qualified company secretary in Hong Kong. Others sought clarification on how the HKEx would assess whether the requirements under R3.28 are met at the end of the waiver period and expressed preference for the waivers only being granted in exceptional cases.

Owing to market concern, the HKEx therefore decided not to adopt the proposed codification and instead issued a Guidance Letter (HKEX-GL108-20) (experience and qualification requirements of a company secretary)⁴ to clarify the policy rationale of Main Board Rule 3.28 and provide guidance on the factors the HKEx considers when deciding to grant a waiver and when assessing whether the proposed company secretary has gained the relevant experience at the end of the waiver period.

5.2. HKEx-GL108-20

(a) Policy Rationale of Rule 3.28 and 3.28 Waivers

Main Board Rule 3.28 requires a company secretary of a listed company to have certain academic or professional qualifications or relevant experience such that they are capable of discharging the functions of a company secretary and Main Board Rule 8.17 requires a listed company to appoint a company secretary satisfying this criteria.

As listed companies often appoint individuals with day-to-day knowledge of the company’s affairs, the HKEx recognised that companies with their principal business activities outside of Hong Kong may have difficulty finding a company secretary meeting the criteria of Rule 3.28 and having day-to-day knowledge of the company’s affairs. As such, the HKEx may grant a waiver to Rule 3.28 allowing a company to appoint a proposed company secretary who does not meet the Rule 3.28 requirements for a certain period, at the end of which the proposed company secretary will, upon assessment by the HKEx, be deemed qualified under Rule 3.28.

(b) Factors the HKEx will take into account in Granting a Rule 3.28 Waiver

As set out in Guidance Letter HKEX-GL108-20, the HKEx will consider the following factors when determining whether to grant a Rule 3.28 waiver:

- whether the company’s principal business activities are primarily outside Hong Kong;
- whether the company can demonstrate the need to appoint a person not meeting the requirements of Rule 3.28 as a company secretary; and

⁴ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Consolidated-PDFs/Guidance-Letters-for-Listed-Issuers/gl_issuers.pdf

- why the directors consider the individual suitable to act as the company secretary.

(c) Waiver Conditions

If a R3.28 waiver is granted, it will be granted for a fixed period (the “**Waiver Period**”) and will be subject to the following conditions:

- the proposed company secretary must be assisted by a person qualified under R3.28 and is appointed as a joint company secretary for the duration of the Waiver Period; and
- the waiver can be revoked if there are material breaches of the Listing Rules by the listed company.

(d) Length of Waiver Period

The length of the Waiver Period will depend on the following factors:

- the proposed company secretary’s experience in handling company secretarial matters and their relevant academic / professional qualifications and experience;
- measures and systems in place to facilitate the proposed company secretary in discharging his/her duties as a company secretary; and
- the listed company’s compliance and/or material deficiencies/weaknesses in internal controls.

In any event, the Waiver Period will not exceed three years as the HKEx consider this the period necessary for the relevant qualification or experience (as required under R3.28) to be acquired.

(e) Disclosure of R3.28 Waiver

The HKEx state that new applicants and issuers should disclose the following in the listing document and the announcement:

- reasons for the R3.28 waiver;
- details and conditions of the R3.28 waiver; and
- the qualification and experience of the proposed company secretary and qualified person.

(f) End of the Waiver Period and Deemed Qualification

In order for the proposed company secretary to be deemed qualified under R3.28, the company must demonstrate that the proposed company secretary has gained the relevant experience and is capable of discharging the functions of a company secretary under R3.28 and this must be confirmed by the HKEx. The HKEx clarified that they expect the listed company should be able to demonstrate this having regard to the fact the proposed company secretary has had the assistance of the qualified person during the waiver period.

This will be assessed by reference to:

- the compliance history of the listed company during the waiver period; and
- the relevant training undertaken by the proposed company secretary during the waiver period.

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