

The Hong Kong Institute of Chartered Secretaries

Company Secretary Appointment Guidelines for HKICS Members – Good Practice as to the Number of Appointments as ‘Named’ Company Secretaries of Hong Kong Listed Issuers

March 2018

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

(Incorporated in Hong Kong with limited liability by guarantee)

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies as well as the development of the profession of Chartered Secretary in Hong Kong and throughout Mainland China.

HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of ICSA in 1990 before gaining local status in 1994 and has also been ICSA's China/Hong Kong Division since 2005.

HKICS is a founder member of Corporate Secretaries International Association (CSIA) which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong in which it operates as a company limited by guarantee. CSIA aims to give a global voice for corporate secretaries and governance professionals.

HKICS has over 5,800 members and 3,200 students.

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Introduction

1. Under the Corporate Governance Code set out in Appendix 14 to the Main Board Listing Rules (Listing Rules)¹ it is stated that 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 on governance matters and should also facilitate induction and professional development of directors.
2. A listed issuer may appoint an HKICS Member² (Member) as its 'named' company secretary, and these guidelines (Guidelines) are intended to establish recommended best practice for Members, in considering the number of appointments that Members should take on as governance professional in discharging the governance functions as named company secretary for listed issuers.
3. The position is that while at law or in regulation, there is no restriction in terms of the number of appointments that a Member could take up as named company secretary, whether as an internal employee of listed issuers and/or as external service provider to listed issuers, from a professional point of view, HKICS has an interest in ensuring that appropriate processes are followed by its Members where they take up a significant number of appointments as named company secretaries.
4. These processes are also intended to address the risk that the Member may or might not be able to discharge, at least in the perception of the public, the expected regulatory duties and responsibilities where the Member takes up a significant number of appointments. The appointment as named company secretary being personal to the Member, the Member is expected to provide personal attention to each and every listed issuer of which the Member is appointed as named company secretary.
5. The situation is especially acute for the named company secretary supplied by an external service provider who does not have the same degree of access to senior management on a day-to-day basis as an internal employee, yet is expected by regulators to serve as the regulatory interface between regulators and listed issuer. The Corporate Governance Code only provides that where an issuer engages an external service provider as its company secretary, it should disclose the identity

¹ Listing Rules, Corporate Governance Code (CG Code) (Appendix 14), Section F.

² Rule 3.28, Listing Rules.

of the person with sufficient seniority (e.g. chief legal counsel or chief financial officer) at the issuer whom the external provider can contact³.

6. Accordingly, while it is for each and every Member to assess whether the Member would be in a position to personally provide sufficient time and pay adequate attention to the corporate secretarial affairs of the listed companies concerned to discharge the requisite personal roles, duties and responsibilities required under applicable rules and regulations relating to the corporate secretarial affairs of the listed issuers concerned as named company secretary, as a good governance measure, there should be a recommended limit as to the number of appointments as named company secretary that a Member should consider taking on, over which the Member should review and confirm the ability of the Member's ability to discharge the requisite personal roles, duties and responsibilities to the relevant listed issuers.

Guidelines

7. Following detailed consideration of the issue as to the ability of a Member who takes on a significant number of appointments, HKICS Council has resolved that, as a matter of good practice, a Member should not take on more than six appointments as named company secretary of listed issuers (with appointments within a group of listed issuers being regarded as one appointment only in accordance with paragraph 11) without complying with paragraph 8 below.
8. (1) For a Member who has been appointed to more than six listed issuers as named company secretary, the Member should, prior to the effectiveness of these Guidelines, disclose in writing to all listed issuers the exact number of named company secretary appointments held, and explain how such Member would be in a position to personally provide sufficient time and pay adequate attention to the corporate secretarial affairs of the listed companies concerned to discharge the requisite personal roles, duties and responsibilities required under applicable rules and regulations relating to the corporate secretarial affairs as named company secretary following an appropriate internal review made in good faith and on defensible criteria (Relevant Matters).

(2) In respect of a Member's proposed new appointment as named company secretary of a listed issuer which would add to or bring the Member to over six appointments, the Member should,

³ Listing Rules, Corporate Governance Code (CG Code) (Appendix 14), Section F.1.1.

prior to taking up the appointment with the new listed issuer, disclose in writing to the new listed issuer the Relevant Matters, and after the new appointment, to all other listed issuers (over which the company secretary has already taken up appointment) the Relevant Matters within 7 days of the appointment as named company secretary to the new listed issuer.

9. HKICS reminds all Members of the need to comply with the HKICS Code of Professional Conduct and the duties set out in The Essential Company Secretary, and should not allow an inordinate number of appointments as named company secretary to detract from compliance thereof which would find grounds for discipline.
10. These Guidelines are intended to apply to Members appointed as named company secretaries of listed companies irrespective of whether these company secretaries are listed on the Growth Enterprise Market Board (GEM) and/or the Main Board, and accordingly any reference to the Listing Rules and provisions under these Guidelines shall be deemed to include the substantially equivalent GEM Listing Rules and the related provisions thereto with the intent and effect that all appointments as named company secretaries to listed companies on the Main Board and GEM Board and *vice versa* and *inter se* are to be considered together for ascertaining the number of named company secretary appointments under these Guidelines.
11. For the purposes of these Guidelines, the appointment/proposed appointment of a named company secretary over any or all of the listed companies within a group of companies shall be regarded as one appointment only, subject in case of the external company secretary arrangements being in place to achieve equivalence in terms of support as with an internally employed company secretary. In the event that a Graduate and/or a Student of HKICS takes up an appointment as named company secretary for any reasons whatsoever, these Guidelines would be equally applicable to the Graduate and/or Student⁴, and all references to a Member should be to a Graduate and/or Student, as the case may be.
12. These Guidelines are effective six (6) months from the date hereof.

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⁴ For the avoidance of doubt, a Graduate and/or Student of HKICS is not qualified to be named company secretary of a listed issuer, and the provision is applicable to the Graduate and/or Student having other qualifications under Listing Rules 3.28 or the equivalent GEM Listing Rules to be named company secretary.

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