

# Chapter 3

## GENERAL

### **AUTHORISED REPRESENTATIVES, DIRECTORS, BOARD COMMITTEES AND COMPANY SECRETARY**

3.01 [Repealed 1 January 2005]

3.02 [Repealed 1 January 2005]

3.03 [Repealed 1 January 2005]

3.04 [Repealed 1 January 2005]

#### **Authorised Representatives**

3.05 Every listed issuer shall appoint two authorised representatives who shall act at all times as the listed issuer's principal channel of communication with the Exchange. The two authorised representatives must be either two directors or a director and the listed issuer's secretary unless the Exchange, in exceptional circumstances, agrees otherwise.

3.06 The responsibilities of an authorised representative are:—

- (1) at all times (particularly before commencement of trading in the morning) to be the principal channel of communication between the Exchange and the issuer and to supply the Exchange with details in writing of how to contact him including home, office, mobile and other telephone numbers, email address and correspondence address (if the authorised representative is not based at the registered office), facsimile numbers if available, and any other contact details prescribed by the Exchange from time to time;
- (2) to ensure that whenever he is outside Hong Kong suitable alternates are appointed, available and known to the Exchange and to supply the Exchange with details in writing of how such alternates may be contacted including their home and office telephone numbers and, where available, facsimile numbers;
- (3) the authorised representative should only terminate his role as authorised representative after first notifying the Exchange of such proposed termination and the reasons therefor; and

- (4) except in exceptional circumstances, the listed issuer should not terminate the role of an authorised representative until it has appointed a replacement. Where the authorised representative's role is terminated by the listed issuer, both the listed issuer and the former authorised representative should immediately notify the Exchange of such termination in each case stating the reason why such appointment was terminated and the listed issuer and the new authorised representative should immediately notify the Exchange of the new authorised representative's appointment.
- 3.07 If the Exchange is not satisfied that the authorised representative is fulfilling his responsibilities adequately, it may require the listed issuer to terminate his appointment and appoint a replacement as soon as possible. The listed issuer and the new authorised representative should immediately notify the Exchange of the new authorised representative's appointment.

### **Directors**

- 3.08 The board of directors of an issuer is collectively responsible for its management and operations. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director:—
- (a) act honestly and in good faith in the interests of the company as a whole;
  - (b) act for proper purpose;
  - (c) be answerable to the issuer for the application or misapplication of its assets;
  - (d) avoid actual and potential conflicts of interest and duty;
  - (e) disclose fully and fairly his interests in contracts with the issuer; and
  - (f) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer.

Directors must satisfy the required levels of skill, care and diligence. Delegating their functions is permissible but does not absolve them from their responsibilities or from applying the required levels of skill, care and diligence. Directors do not satisfy these required levels if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.

Directors are reminded that if they fail to discharge their duties and responsibilities, they may be disciplined by the Exchange and may attract civil and/or criminal liabilities under Hong Kong law or the laws of other jurisdictions.

*Note: These duties are summarised in “A Guide on Directors’ Duties” issued by the Companies Registry. In addition, directors are generally expected by the Exchange to be guided by the Guidelines for Directors and the Guide for Independent Non-executive Directors published by the Hong Kong Institute of Directors (www.hkiod.com). In determining whether a director has met the expected standard of care, skill and diligence, courts will generally consider a number of factors. These include the functions that are to be performed by the director concerned, whether he is a full-time executive director or a part-time non-executive director and his professional skills and knowledge.*

3.09 Every director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer. The Exchange may request further information regarding the background, experience, other business interests or character of any director or proposed director of a listed issuer.

3.10 Subject to the transitional provisions in rule 3.19,

- (1) every board of directors of a listed issuer must include at least three independent non-executive directors; and
- (2) at least one of the independent non-executive directors must have appropriate professional qualifications or accounting or related financial management expertise.

*Note: With regard to “appropriate accounting or related financial management expertise”, the Exchange would expect the person to have, through experience as a public accountant or auditor or as a chief financial officer, controller or principal accounting officer of a public company or through performance of similar functions, experience with internal controls and in preparing or auditing comparable financial statements or experience reviewing or analysing audited financial statements of public companies. It is the responsibility of the board to determine on a case-by-case basis whether the candidate is suitable for the position. In making its decision, the board must evaluate the totality of the individual’s education and experience.*

3.10A An issuer must appoint independent non-executive directors representing at least one-third of the board.

*Note: The issuer must comply with this rule by 31 December 2012.*

- 3.11 An issuer shall immediately inform the Exchange and publish an announcement containing the relevant details and reasons if at any time the number of its independent non-executive directors falls below:
- (1) the minimum number required under rule 3.10(1) or at any time it has failed to meet the requirement set out in rule 3.10(2) regarding qualification of the independent non-executive directors; or
  - (2) one-third of the board as required under rule 3.10A.

The issuer shall appoint a sufficient number of independent non-executive directors to meet the minimum number required under rule 3.10(1) or 3.10A or appoint an independent non-executive director to meet the requirement set out in rule 3.10(2) within three months after failing to meet the requirement(s).

- 3.12 In addition to fulfilling the requirements and continuing obligations of rules 3.08, 3.09 and 3.13, every independent non-executive director must satisfy the Exchange that he has the character, integrity, independence and experience to fulfil his role effectively. The Exchange may stipulate a minimum number of independent non-executive directors which is higher than three if, in the opinion of the Exchange, the size of the board or other circumstances of the listed issuer justify it.
- 3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—
- (1) holds more than 1% of the number of issued shares of the listed issuer;

- Notes:*
1. *A listed issuer wishing to appoint an independent non-executive director holding an interest of more than 1% must satisfy the Exchange, prior to such appointment, that the candidate is independent. A candidate holding an interest of 5% or more will normally not be considered independent.*
  2. *When calculating the 1% limit set out in rule 3.13(1), the listed issuer must take into account the total number of shares held legally or beneficially by the director, together with the total number of shares which may be issued to the director or his nominee upon the exercise of any outstanding share options, convertible securities and other rights (whether contractual or otherwise) to call for the issue of shares.*

- (2) has received an interest in any securities of the listed issuer as a gift, or by means of other financial assistance, from a core connected person or the listed issuer itself. However, subject to Note 1 to rule 3.13(1), the director will still be considered independent if he receives shares or interests in securities from the listed issuer or its subsidiaries (but not from core connected persons) as part of his director's fee or pursuant to share option schemes established in accordance with Chapter 17;
- (3) is a director, partner or principal of a professional adviser which currently provides or has within one year immediately prior to the date of his proposed appointment provided services, or is an employee of such professional adviser who is or has been involved in providing such services during the same period, to:
  - (a) the listed issuer, its holding company or any of their respective subsidiaries or core connected persons; or
  - (b) any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within one year immediately prior to the date of the proposed appointment, or any of their close associates;
- (4) has a material interest in any principal business activity of or is involved in any material business dealings with the listed issuer, its holding company or their respective subsidiaries or with any core connected persons of the listed issuer;
- (5) is on the board specifically to protect the interests of an entity whose interests are not the same as those of the shareholders as a whole;
- (6) is or was connected with a director, the chief executive or a substantial shareholder of the listed issuer within two years immediately prior to the date of his proposed appointment;

*Note: Without prejudice to the generality of the foregoing, any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a director, the chief executive or a substantial shareholder of the listed issuer is, for the purpose of rule 3.13(6), considered to be connected with that director, chief executive or substantial shareholder. A father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a director, the chief executive or a substantial shareholder of the listed issuer may in some circumstances also be considered to be so connected. In such cases, the listed issuer will need to provide the Exchange with all relevant information to enable the Exchange to make a determination.*

- (7) is, or has at any time during the two years immediately prior to the date of his proposed appointment been, an executive or director (other than an independent non-executive director) of the listed issuer, of its holding company or of any of their respective subsidiaries or of any core connected persons of the listed issuer; and

*Note: An "executive" includes any person who has any management function in the company and any person who acts as a company secretary of the company.*

- (8) is financially dependent on the listed issuer, its holding company or any of their respective subsidiaries or core connected persons of the listed issuer.

An independent non-executive director shall submit to the Exchange a written confirmation which must state:

- (a) his independence as regards each of the factors referred to in rule 3.13(1) to (8);
- (b) his past or present financial or other interest in the business of the issuer or its subsidiaries or any connection with any core connected person (as such term is defined in the Exchange Listing Rules) of the issuer, if any; and
- (c) that there are no other factors that may affect his independence at the same time as the submission of his declaration and undertaking in Form B or H of Appendix 5.

Each independent non-executive director shall inform the Exchange as soon as practicable if there is any subsequent change of circumstances which may affect his independence and must provide an annual confirmation of his independence to the listed issuer. The listed issuer must confirm in each of its annual reports whether it has received such confirmation and whether it still considers the independent non-executive director to be independent.

*Note: The factors set out in rule 3.13 are included for guidance only and are not intended to be exhaustive. The Exchange may take account of other factors relevant to a particular case in assessing independence.*

- 3.14 Where a proposed independent non-executive director fails to meet any of the independence guidelines set out in rule 3.13, the listed issuer must demonstrate to the satisfaction of the Exchange, prior to the proposed appointment, that the person is independent. The listed issuer must also disclose the reasons why such person is considered to be independent in the announcement of his appointment as well as in the next annual report published after his appointment. In cases of doubt, the listed issuer must consult the Exchange at an early stage.
- 3.15 Independent non-executive directors who were appointed by listed issuers on or before 31 March, 2004 shall submit to the Exchange a written confirmation in respect of the factors set out in rule 3.13 concerning their independence no later than 30 September, 2004.

- 3.16 A listed issuer must ensure that its directors accept full responsibility, collectively and individually, for the listed issuer's compliance with the Exchange Listing Rules.
- 3.17 Every director shall comply with the Model Code set out in Appendix 10 or the listed issuer's own code on no less exacting terms. The Model Code sets out the required standard which the Exchange requires all listed issuers and their directors to meet and any breach of such required standard will be regarded as a breach of the Exchange Listing Rules. A listed issuer may adopt its own code on terms no less exacting than those set out in the Model Code. Any breach of its own code will not be regarded as a breach of the Exchange Listing Rules provided that the required standard under the Model Code is met.
- 3.18 [Repealed 1 January 2005]
- 3.19 In respect of all listed issuers whose securities were admitted to listing on or before 31 March, 2004, the following transitional provisions apply:—
- (1) the listed issuer must have at least one independent non-executive director who has appropriate professional qualifications or accounting or related financial management expertise by 30 September, 2004; and
  - (2) the listed issuer must have at least three independent non-executive directors by 30 September, 2004.
- 3.20 Every director of a listed issuer shall provide to the Exchange, immediately upon his resignation as a director of the listed issuer, his up-to-date contact information, including his address for correspondence from and service of notices and other documents by the Exchange and telephone number.
- 3.20A By no later than 31 March 2009, a director who was appointed by a listed issuer before 1 January 2009 and who continues to hold office shall execute and submit to the Exchange a new Undertaking in the form set out in Part 2 of Form B or H of Appendix 5 (as the case may be) save for the omission of the declaration set out in paragraph (i) thereof.

### **Audit Committee**

- 3.21 Every listed issuer must establish an audit committee comprising non-executive directors only. The audit committee must comprise a minimum of three members, at least one of whom is an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise as required under rule 3.10(2). The majority of the audit committee members must be independent non-executive directors of the listed issuer. The audit committee must be chaired by an independent non-executive director.

- Notes: 1. *The transitional provisions set out in rule 3.19 shall apply.*
2. *For further guidance on establishing an audit committee, listed issuers may refer to "A Guide for Effective Audit Committees" published by the Hong Kong Institute of Certified Public Accountants (formerly known as the Hong Kong Society of Accountants) in February 2002. Listed issuers may adopt the terms of reference set out in that guide, or they may adopt any other comparable terms of reference for the establishment of an audit committee.*
3. *Please see also the note to rule 3.10(2).*
- 3.22 The board of directors of the listed issuer must approve and provide written terms of reference for the audit committee which clearly establish the committee's authority and duties.
- 3.23 A listed issuer shall immediately inform the Exchange and publish an announcement in accordance with rule 2.07C containing the relevant details and reasons if the listed issuer fails to set up an audit committee or at any time has failed to meet any of the other requirements set out in rule 3.21 regarding the audit committee. Listed issuers shall set up an audit committee and/or appoint appropriate members to the audit committee to meet the requirement(s) within three months after failing to meet such requirement(s).
- 3.24 [Repealed 1 January 2009]

### **Remuneration Committee**

- 3.25 An issuer must establish a remuneration committee chaired by an independent non-executive director and comprising a majority of independent non-executive directors.
- 3.26 The board of directors must approve and provide written terms of reference for the remuneration committee which clearly establish its authority and duties.
- 3.27 If the issuer fails to set up a remuneration committee or at any time has failed to meet any of the other requirements in rules 3.25 and 3.26, it must immediately publish an announcement containing the relevant details and reasons. Issuers must set up a remuneration committee with written terms of reference and/or appoint appropriate members to it to meet the requirement(s) within three months after failing to meet them.



## Company Secretary

3.28 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.

*Notes: 1 The Exchange considers the following academic or professional qualifications to be acceptable:*

- (a) a Member of The Hong Kong Institute of Chartered Secretaries;*
- (b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance);and*
- (c) a certified public accountant (as defined in the Professional Accountants Ordinance).*

*2 In assessing "relevant experience," the Exchange will consider the individual's:*

- (a) length of employment with the issuer and other issuers and the roles he played;*
- (b) familiarity with the Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, Companies Ordinance, Companies (Winding Up and Miscellaneous Provisions) Ordinance, and the Takeovers Code;*
- (c) relevant training taken and/or to be taken in addition to the minimum requirement under rule 3.29; and*
- (d) professional qualifications in other jurisdictions.*

3.29 In each financial year an issuer's company secretary must take no less than 15 hours of relevant professional training.

*Note: A person who was a company secretary of an issuer:*

- (1) on or after 1 January 2005 must comply with rule 3.29 for the financial year commencing on or after 1 January 2012;*
- (2) between 1 January 2000 to 31 December 2004 must comply with rule 3.29 for the financial year commencing on or after 1 January 2013;*

- (3) *between 1 January 1995 to 31 December 1999 must comply with rule 3.29 for the financial year commencing on or after 1 January 2015; and*
- (4) *on or before 31 December 1994 must comply with rule 3.29 for the financial year commencing on or after 1 January 2017.*