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Organisation and Duties of the Board of Directors and
the Company Secretary in Hong Kong

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1. Introduction

The owners of a Hong Kong company are its shareholders; however, the shareholders of the company normally do not participate in the actual day to day business. The normal day to day business and most of the relevant decisions about the business of a company are done by the company. These Directors can but do not necessarily need to be employees of the company, since the appointment of a Director can be done without granting him employment status. Another important officer of a company is the “Company Secretary”. This company secretary is different from a normal secretary (otherwise it would not be an officer of the company). The position of the Company Secretary is required by Hong Kong Law (the Hong Kong Companies Ordinance).

The following newsletter shall give a brief overview over the Board of Directors (“BoD”), the decision making within the BoD, and the duties and appointment of the Company Secretary.

2. Decision Making of the Board of Directors

a. Decision Making

The Directors may meet to dispatch business and regulate the meetings as they think fit, Schedule 1 Table A, Article 100 Hong Kong Companies Ordinance. Decisions are normally made by single majority, meaning the majority of the attending Directors must agree to the decision, S.1 Table A, Article 100. In case of a draw, the Chairman does have a casting vote, S.2 Table A, Article 100.

At common law, Directors can only exercise their powers collectively by passing resolutions at a properly convened meeting of the BoD; they have no power to act individually as agents of the company. If a Director violates this rule, he might be in breach of his duties to the company, and the act is internally (within the company) invalid unless and until ratified by the majority of the members of the company in a general meeting. However, the act is still valid towards third parties, Article 5B (3) Hong Kong Companies Ordinance,

except the third party did know that of the breach of duty.

However, a company’s articles can empower the BoD to delegate its powers to individual directors or to committees of Directors (Table A, Article 104), and to a Managing Director (Table A, Article 111), so that a meeting is not required for each and every decision taken by the BoD.

Table A, Article 108 provides that a resolution in writing, signed by all Directors is as valid and effectual as if it had been passed at a duly convened meeting of the BoD, so that the directors do not need to meet for any decision.

b. Resolution and Minutes

A Decision of the BoD can be delivered to third parties (e.g. the Companies Registry) by Resolution or by the Minutes of the Meeting. A Resolution must be signed by all Directors, in disregard they did meet personally or the decision has been made in writing. Minutes of the Meeting do not require signature of all Directors, it is sufficient that only the Chairman is signing the minutes, Article 119 (2) Companies Ordinance.

For any meeting of the BoD, minutes of this meeting must be written down and kept in the company book, Article 119 (1), 119A Companies Ordinance. The minutes must be signed by the Chairman of the meeting and serve as evidence of the proceedings, Article 119 (2) Companies Ordinance. According to Article 119 (3) Companies Ordinance, where such minutes have been made, until the contrary is proved, the meeting shall be deemed to have been duly held, and all proceedings shall be deemed to be valid.

3. Change of the Board of Directors

a. Resignation

A Director can resign from the BoD anytime Article 157D (1) Companies Ordinance. Section 90 Table provides that the office of a Director is vacated if he resigns in accordance

with Section 157D (3) (a) Companies Ordinance. The company or the director himself must then give notice to the Companies Registry, Article 158 (a) Companies Ordinance using form D2A. It is worth mentioning however that the resignation may be in breach of the Director's contract of service with the company and he might be held liable in damages to the company.

b. Removal

Section 157(b) (1), Section 98 Table A provides that a company may by ordinary shareholder resolution remove a Director from office; however, this might be in violation of the service contract with the company and might cause civil liability to the company. The company must also use D2A to inform the Companies Registry.

c. Appointment

Contrary to the removal of a Director, a Director can be appointed to this position by Director's Decision, Table A, Article 97. The Director must then be confirmed at the next Annual General Meeting of the company by the shareholders. Otherwise his term will end with the next AGM.

4. Appointment and Resignation of a Company Secretary

a. Company Secretary

According to Section 154 (1) Companies Ordinance, every Hong Kong company must have a company secretary, which is an officer of the company. The company secretary can be a director of the same company, as long as the company has more than one director. If the company secretary is an individual, he/she must ordinarily reside in Hong Kong, if the company secretary is a company, its registered office must be in Hong Kong, Section 154 (2).

The company secretary is the chief administration officer of the company with extensive duties and liabilities..

b. Powers and Duties

The general duties include the correspondence with shareholders and regulatory bodies as well as ensuring that the company is in compliance with the regulations regarding the organisation of the meetings of directors and shareholders and therefore the company secretary needs to be present at all meetings of the company and the directors, and shall make proper minutes of the meeting. The company secretary will usually countersign every document to which the seal of the company is affixed, and his department will deal with share transfers, keep the books of the company and will deliver documents and make necessary returns to the Hong Kong Companies Registry.

Being an officer of the company, the company secretary owes fiduciary duties and a duty of care and skill to the company. The company secretary is also bound to perform the duties which the law imposes on all officers of a company.

b. Appointment and Resignation

The company secretary is appointed by the directors. According to Article 112 of Table A of the Hong Kong Company Ordinance, a Company Secretary can be appointed for such term, at such remuneration and upon such conditions as they may think fit.

Since the company is an officer of the company, he may resign subject to the same restrictions and conditions as a director, Section 157D Companies Ordinance and may also be revoked from office by a normal director's resolution.

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