Reminder to Company Secretaries of
Private Companies incorporated in Hong Kong
From The Hong Kong Institute of Chartered Secretaries

"The Hong Kong Institute of Chartered Secretaries (HKICS) is a professional body which represents the Chartered Secretary profession in Hong Kong. It has over 5,500 members and 3,100 students today, and promotes the study and practice of company, corporate and board secretarialship, as well as good corporate governance. Our members are sought after by employers for their qualifications and all-round training, including the qualification to serve as company secretaries for listed issuers. Our qualification is internationally recognised and transferrable, subject to requirements. Please visit our website at www.hkics.org.hk for membership information and further resources published by us."

Consistent with the objectives of The Hong Kong Institute of Chartered Secretaries, this communication is a reminder of some of the salient responsibilities and attributes of a Company Secretary of a private company incorporated in Hong Kong:

1. **Residency Qualification** If you wish to serve as a Company Secretary of a private company in Hong Kong, you must be a Hong Kong resident aged 18 or above, or a Hong Kong incorporated company, or an overseas incorporated company registered in Hong Kong as a non-Hong Kong company.

2. **Status and Eligibility** The Company Secretary is an officer of the company. The law states that one may not serve as the Company Secretary of a company if one is also the sole director. This cannot be circumvented by using another company of which one is also the sole director to act as the Company Secretary. In short a sole director and the Company Secretary cannot be one and the same.

3. **Roles and Responsibilities** As an officer of a company, you have roles and responsibilities. Even if you use a company to be Company Secretary, ultimately, you and others in your company could be held responsible for your actions, omissions and decisions. If you act contrary to or omit to act in accordance with your roles and responsibilities, you could be subject to daily default fines and other consequences.

4. **Advisory and Compliance** You are an advisor to the directors. As such, you need to remind your directors frequently of their duty to comply with the requirements under applicable laws and regulations. These include, among others, the Companies Ordinance, Business Registration Ordinance and the Inland Revenue Ordinance.
5. Administration and Record Updating You are an administrator and need to keep proper statutory books and records. You must continuously update them accurately. These books and records include minute books, statutory registers, common seals and books of accounts. You may need to retain them for seven years or more.

6. Record Keeping and Inspection You need to keep the company records at the registered office or another place in Hong Kong, of which you should advise the public via appropriate filings at the Companies Registry. During office hours, anyone can come to you and ask to inspect and take copies of the registers of members, directors and secretary, by paying a reasonable fee.

7. Corporate Filings You need to make periodic filings. These include annual returns, information of and about directors and officers, any increase of authorised or paid-up capital and reporting of the passing of ordinary and special resolutions. There are deadlines for the submission of such filings of which you should be aware.

8. Audit and Tax Filings You need to remind your directors to prepare the financial statements of the company, have them audited and approved annually at the annual general meeting of the company. These statements then have to be filed with the tax return of the company with the Inland Revenue Department for all business, whether within or outside Hong Kong.

9. Reporting and Caution You should know that there are increasing obligations, including reporting obligations, relating to anti-money laundering and counter-terrorist financing. Do not inadvertently become caught up in such matter through being a Company Secretary of a company, or lending your address to a company.

10. Due Diligence Whether you are a corporate service provider or a private person, you should only take on the roles and responsibilities of a Company Secretary after careful and due diligence. You need to know the business activities of the company and its shareholders and directors and be continually updated on such information. Do not simply lend your address as the registered office of a company or incorporate a company for a client without having conducted due diligence on the client’s background.

11. Continuation Plan Where the sole director is also the sole shareholder of a company, you should advise the sole director/shareholder to adopt a continuation plan through the appointment of a reserve director, whose particulars must be filed with the Companies Registry.

12. Good Corporate Governance For good corporate governance, as Company Secretary, you should familiarise yourself with in-house rules and management issues, where appropriate. You should also note that after incorporation, a company would continue in existence and there are continual obligations until the company is properly wound-up.

This reminder is not intended to be exhaustive and does not constitute legal advice. You should seek appropriate advice from professionals as you require.

July 2012
The Hong Kong Institute of Chartered Secretaries