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March 2012

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The journal of The Hong Kong
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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 in Hong Kong and throughout China, as well as the development of the profession of the Chartered Secretary.

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 became a branch of ICSA in 1990 before gaining local status in 1994, and today has more than 5,000 members and approximately 2,500 students.

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Membership statistics update

As of 27 February 2012, the Institute's membership statistics were as follows:

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Associates: 4,650
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March 2012

CSj the journal of The Hong Kong Institute of Chartered Secretaries, is published 12 times a year by Ninehills Media and is sent to members and students of The Hong Kong Institute of Chartered Secretaries and to certain senior executives in the public and private sectors.

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Circulation: 8,650

Annual subscription: HK\$2600 (US\$340)

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ISSN 1023-4128

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公会最近主办的[中国企业规管最新发展研讨会]一月在深圳举行。与会者强调香港和国内的监管机构，除了监督之外，皆愈来愈重视教育和指导的角色。

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Editor's note

Readers may notice some changes to the design and editorial style in this month's *CSj*. The remit of the journal's new publisher, Ninehills Media, has been to bring in a livelier editorial style and more visual variety and drama to the journal's design. We hope you are pleased with these changes, do let us know if you have any feedback on these or any other aspects of *CSj*. In the meantime, happy reading!

*Comments may be posted on the Institute's new weblog (www.governancemaze.org), or sent to the *CSj* editor, by email: kieran@ninehillsmedia.com; by phone: + (852) 2982 0559; or by post: The Editor, *CSj*, PO Box 9963, General Post Office, Hong Kong.*



Laying the foundations for a truly international organisation

'All good things come to those who wait', so the proverb goes. Abraham Lincoln mischievously added '...but only the things left by those who hustle!' Well, we were patient and we hustled, so to speak, and finally it would seem our patience has been rewarded. By 'our' and 'we', I of course mean the members in the divisions of ICSA who campaigned for reasonable and proportional representation on the ruling body, the international Council, of ICSA.

During a meeting of international Council on 2 February 2012 in London, the charter and bye-law changes that members recommended were accepted. It was, I believe, a watershed moment for our Institute and profession. By approving the requested changes, along with additional amendments of the ICSA bye-laws, ICSA recognised that it is an international organisation.

ICSA issued an announcement to members on 4 February 2012 that outlined three key areas that are necessary for the wishes of members to be fulfilled. They are:

1. To put to the UK Privy Council for its consideration the new bye-law providing for proportional representation on international Council.
2. To protect the standard of the professional qualification by incorporating it into a new bye-law. This, together with other bye-law changes previously agreed by international Council, will be put to members for approval as soon as they have been reviewed by the Privy Council.

3. To ensure the UK, Republic of Ireland and Associated Territories (UKRIAT) assets and liabilities remain under the control of the UK Committee.

I think you will agree that these are reasonable and achievable goals. While ICSA will always be domiciled in the UK and its roots and traditions derived from this foundation should be valued, the reality is that with approximately 65 percent of its membership residing outside the UK, it cannot continue to be regarded as a purely UK entity. So now that the will of its members has been recognised, we should grasp the opportunity that has presented itself and ensure that ICSA becomes an international professional body of influence and regard. So from this perspective the real work has yet to begin, but you can be sure that your Institute will play its part.

Apart from the breakthrough with the ICSA, there was another major development last month of which members should be aware. Under the guidance of the Ministry for Civil Affairs and the China Securities Regulatory Commission (CSRC), the China Association for Public Companies (CAPCO) was officially established on 15 February 2012. The impact of the establishment of CAPCO on your Institute's goal of professionalising the board secretary position, and having the Chartered Secretarial qualification recognised as suitable to fulfil the role of a board secretary on the mainland, is uncertain. A good portion of our Council's strategy planning session held on 11 February 2012 was taken up discussing the various options that CAPCO presents our Institute and profession. We will continue to monitor the situation vis-à-vis CAPCO

and keep members informed of our plans. We also discussed how to encourage Associate members to become Fellows. Do expect some new initiatives on this front soon.

I would be remiss if I failed to mention the lead articles in this edition of *CSj* as they are extremely pertinent to those of us who serve as company secretaries of listed issuers. The first is rather dramatically, but appropriately, titled 'Beast in the boardroom!' Most senior company secretaries will be familiar with the characters described in the article but some may be surprised to discover that such beasts are not all bad and happy that the article provides some discreet tips on how to resolve boardroom conflicts. The second deals with the revisions to the Stock Exchange's Corporate Governance Code, especially in terms of how they relate to the role of the company secretary – a must read for all company secretaries.

Finally, we will shortly be issuing an online questionnaire to all company secretaries of Hong Kong listed issuers. This survey will help your Institute, regulators and the general public better understand the roles, responsibilities and challenges of company secretaries, so I urge all company secretaries of listed issuers in Hong Kong to complete the survey. Ultimately it will be to your benefit, as well as that of our profession and Institute.

A handwritten signature in black ink, appearing to read 'Edith Shih'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Edith Shih FCIS FCS(PE)

奠定基础 成为真正的国际组织

英文有一句谚语：「耐心等待，自然待得好事来。」美国总统林肯调皮地加上一句：「但所得到的，只会是别人努力争取后，剩下来不要的。」我们既有耐性，又努力争取，最终守得云开见月明了。「我们」当然是指特许秘书及行政人员公会（ICSA）各分部的成员，我们一直争取在ICSA的管治机构国际理事会中享有合理的发言权，使各分部的发言权按比例反映其会员数目。

国际理事会于2012年2月2日在伦敦举行会议，接受了会员修订特许状和章程的建议。我相信这是公会和特许秘书专业发展史上的分水岭。藉着通过会员提出的修订，以及对ICSA章程的其他修改，ICSA认清了自己是国际组织。

2012年2月4日，ICSA向会员发出公布，指出若要达成会员的心愿，即须进行三项主要工作，分别是：

1. 向英国枢密院提出新章程，规定国际理事会中各分部的发言权按比例反映其会员数目，供枢密院考虑。
2. 把专业资格标准写进新章程内，以保障有关标准。这些新修订，以及国际理事会先前已同意的章程修订项目，经枢密院过目后，将提交会员通过。
3. 确保大英联合王国、爱尔兰共和国及相关领土的资产和负债仍由英国委员

会控制。

这些目标相当合理，也是可以达到的，相信各位会员也会同意。ICSA的本籍在英国，这个根源和相关传统固然值得重视；但事实上，约有65%的ICSA会员在英国以外的地区居住，ICSA不可再继续视为纯粹的英国组织。会员的意愿现在既已获得承认，我们便应把握时机，确保ICSA成为具有影响力、备受尊重的国际专业组织。从这个角度看，真正的工作还没有开始；不过公会一定积极参与这个过程。

除了ICSA方面的突破性进展外，各位会员应留意上月还有另一项重要发展。在民政部和中国证券监督管理委员会的指导下，中国上市公司协会于2012年2月15日正式成立。公会一向以推动董事会秘书职位的专业化发展为目标，争取各界承认特许秘书资格为内地担当董事会秘书职务的适当条件；中国上市公司协会的成立，对本会实现这目标的工作有何影响，现阶段仍属未知之数。公会理事会于2012年2月11日举行集思会，其间用了不少时间讨论公会和特许秘书专业与中国上市公司协会合作的各种可能方案。我们会继续留意中国上市公司协会的发展情况，向会员报告我们的计划。集思会上，我们也讨论了如何鼓励会士晋身为资深会士，相信不久以后便可在这方面推行一些工作。

我得在此特别介绍本刊今期的专题文章，

文章的内容与担任上市公司公司秘书的会员有切身关系。当中一篇题为「董事会议室的猛兽」，似是十分夸张，其实相当贴切。大部分资深的公司秘书，都会很熟悉文章里描述的人物，但可能令大家惊讶的是，这些猛兽不一定是坏份子；而文章也提出有用的提示，帮助我们解决董事会里的纷争。另一篇专题文章介绍港交所对企业管治守则的修订，阐述各项修订与公司秘书角色的关系：这篇文章，所有公司秘书都应细阅。

最后，我们将于短期内向所有香港上市公司的公司秘书发出网上问卷。这项调查有助公会、监管机构和公众人士更深入了解公司秘书的角色、责任和所面对的挑战，因此我促请香港所有上市公司的公司秘书参与调查。这项工作，最终可令你得益，也令特许秘书专业和公会得益。



施熙德



Beast in the boardroom



Discreet tips for company secretaries on resolving boardroom conflicts

Directors like to think of themselves as entirely rational agents of the company's interests and not at all subject to the emotional and cognitive biases that blight ordinary mortals. The reality, of course, is very different. Directors may be capable of extraordinary feats of teamwork and collaboration, but they are also capable of behaviour that leads, sometimes catastrophically, in less salubrious directions. This month, *CSj* gives some discreet tips on how company secretaries can assist the chairman in dealing with personal conflicts in the boardroom.

Margaret Thatcher, the UK's infamously autocratic prime minister of the 1980s, goes into a restaurant with her cabinet ministers. The waiter comes to take their orders. 'I'll have the Beefsteak, rare,' says the premier. 'And the vegetables?' the waiter asks. 'They'll have the same,' Thatcher replies. This deliciously irreverent sketch from a 1980s UK comedy series has a relevance beyond the world of UK politics. The 'Thatcher's cabinet' scenario – where a dominant CEO/ chairman is paired with a submissive board – is a relatively common scenario in boardrooms around the world and will no doubt be familiar to some readers of this journal.

Is there anything necessarily wrong with this scenario? A CEO with a strong personality is often, after all, the driving force which makes for a very successful business. While this is true, there are also very obvious risks involved in a situation where the board is not effectively monitoring management nor providing strategic direction. The 'rubber-stamp' board which fails to challenge a dominant, not to say domineering, CEO/ chairman is in fact just one of a whole range of 'personality issues' that can jeopardise board effectiveness. The reverse scenario of a weak CEO/ chairman and a combative board can be equally damaging. Then there is the problem of the personality clashes at board meetings and the problem of rival alliances forming among board members.

To address these issues, believes Gregg Li, author, board architect and professor, boards first need to get beyond the taboo surrounding directors' personalities and the dynamics of their interactions. While it is acceptable to discuss directors in terms of their expertise, experience and ability, issues relating to personality and

personal motivation are all too often out of bounds. Where personality issues threaten board cohesiveness and the effectiveness of its decision making, this reluctance to address the root causes of the conflict can be suicidal.

This article will look at why personalities matter on boards and will attempt give some discreet tips to company secretaries on resolving boardroom conflicts. While the primary responsibility for ensuring effective relationships on the board rests with the chairman, the company secretary can play a key role in assisting the chair in this important task.

Every board needs a beast?

There is nothing wrong with strong personalities. Indeed, a recent article by Lucy Kellaway in the *Financial Times* – 'Everyone benefits from a beast in the boardroom' – argues that having at least one 'beast' on your board can be a useful way of preventing directors from getting too cosy. A beast comes in particularly handy where the board has slipped into that semi-conscious, liminal sphere of 'groupthink'. 'They dash in on the attack,

battering-ram style, leaving it up to the chairman to restrain them before serious damage is done. Their attack leaves the way open for the nicer, more constructive board members to come in after them, attacking more powerfully than they otherwise would have,' Kellaway writes.

Sounds useful? Keeping boardroom discussions alive is clearly crucial for boards of directors. 'There are boards that are alive and boards that are dead,' Gregg Li says. 'You want to have some degree of tension but not too much.' He cites one case he came across where 'the conversation was so mild and genteel that the board appeared to be in a trance-like state. It was simply rubber-stamping whatever was brought by management to the attention of the board and creating a controversy was disdained. There was a constant drone of silence in the room – groupthink was setting in.'

The trouble with the boardroom beast method of keeping discussions lively is that you may end up with discussions becoming a little too lively – directors pounding on the table, items of stationery

Highlights

- the primary responsibility for ensuring effective relationships on the board rests with the chairman
- the company secretary's role in maintaining meeting protocol can play a key part in ensuring a healthy decision-making environment
- directors' personalities can be just as important to board effectiveness as their competence
- boards need to break the taboo that prevents the discussion of 'personality issues'

“
there is nothing wrong
with having a beast in
the boardroom, but
the beast should be
under control
”

Gregg Li, author, board architect
and professor



being thrown. 'There is nothing wrong with having a beast in the boardroom,' Li says, 'but the beast should be under control! The question is, of course, how that can be done and, more pertinently for readers of this journal, what can the company secretary do to help? Should they remain silent and leave it to the chairman to bring the meeting to order? Company secretaries are responsible for ensuring a healthy decision-making environment for the board – this is the ultimate objective of many of their board support functions, such as providing timely and accurate board papers, minute and time-keeping, etc. However, assisting the chairman to ensure the right personal dynamics within the board might seem a rather daunting task to add to those duties.

Respondents to this article, however,

agree that the company secretary can and should play a role in ensuring that personality issues do not jeopardise board effectiveness. Susie Cheung, General Counsel and Company Secretary of the Hong Kong Mortgage Corporation, points out that the company secretary needs to keep the focus of the meeting on the real issues at hand. 'Often big arguments can stem from little misunderstandings,' she says. 'When directors get side-tracked, you need to bring things back to the main issue. I wouldn't say we play the role of the arbitrator of boardroom disputes, but we are definitely a facilitator of board procedures, responsible for making the whole process more efficient. That is in fact one of the very basic functions of the company secretary.'

She adds that the company secretary's role in preparing for board meetings is

also critical here, since he or she can warn the chairman of potential problems before they escalate out of control. Gregg Li agrees and cites another fairly common scenario – where rival alliances have formed on the board – as an example of this. If action is not taken, subsequent debates may find members taking sides not based on the merits of the arguments but on the basis of their loyalties. 'This is the beginning of a divided board,' says Li. If an alliance becomes a permanent thing and one director is an echo of another, the board needs to consider whether that director is adding anything to board discussions.

Into the lion's mouth

So, daunting though it may be, the company secretary does need to get involved. The company secretary is responsible for maintaining the correct

protocol needed for directors to effectively meet and carry out their monitoring and strategic leadership roles. Where that is threatened by personal conflicts, the company secretary needs to work with the chairman to bring the whole endeavour back on track. 'The job of the company secretary is to remind everyone of the function of the meeting and to abide by the rules of the game,' says Gregg Li. He recommends that simple ground rules

are agreed by the whole board when it first meets and that the company secretary be tasked with reminding everyone of them in future meetings. If things get out of hand during a meeting before such ground rules have been set, he recommends the company secretary calls a time-out for the ground rules to be established. 'Calling time-out is a powerful tool that the company secretary must master and not be afraid to use,' he says.

In many of the problem scenarios explored by this article, board procedural rules take on an added importance. In the scenario of the dominant CEO/ chairman, for example, the company secretary's procedural role provides an important check on the power of that individual. Where a director wishes his objections to be recorded in the minutes, for example, the CEO/ chairman cannot override the legal duty of the company secretary to record that dissent. Timekeeping is

Behavioural governance

Since the 2008 global financial crisis there has been an increasing focus on the issue of directors' personalities and the balance of relationships on boards. One of the positive spin-offs of the crisis has been a new willingness to look at boardroom issues with the insights that psychology can bring. This has led to the birth of 'behavioural governance'.

A central premise of behavioural governance – that directors' personalities are just as crucial to board function as more familiar criteria such as their competence and expertise – has become widely accepted globally. In June 2009, for example, the ICSA published a report on *Boardroom Behaviours* that looked at the way boardroom behaviour is shaped by a number of key factors, including:

- the character and personality of the directors and the dynamics of their interactions
- the balance in the relationship

between the key players, especially the chairman and the CEO, the CEO and the board as a whole, and between executive and non-executive directors

- the environment within which board meetings take place, and
- the culture of the boardroom and, more widely, of the company.

“one of the positive spin-offs of the crisis has been a new willingness to look at boardroom issues with the insights that psychology can bring”

The report makes a number of suggestions on how to maintain a healthy decision-making environment on the board, for example via:

- independent thinking
- the questioning of assumptions and established orthodoxy
- challenge which is constructive, confident, principled and proportionate
- rigorous debate
- a supportive decision-making environment, and
- a common vision.

The ICSA report also points out that regular board evaluation helps to ensure that any personality problems are identified before they jeopardise board effectiveness. 'High standards of rigorous and, occasionally, independent evaluation are needed to increase boards' effectiveness,' the report states.

The ICSA report Boardroom Behaviours is available on the ICSA website: www.icsa.org.uk.

another potential flashpoint. If you have a group of directors eager to move board discussions on before objections are raised against their favoured proposals, the company secretary may need to step in to ensure that the issue is fully debated. Or equally, the reverse scenario, where you have delay tactics in a debate, the company secretary may need to call time on the discussion.

The much neglected EQ factor

Board meetings are never going to be an easy process to manage. There are many individuals involved, and, as we have seen, there may be competing agendas involved. Gregg Li believes that the difference between a competent and a really exceptional company secretary often comes down to his or her ability to perceive and respond to the dynamics of the personal interactions going on in the boardroom. 'We can assume that the company secretary will have integrity, will not violate any codes and will be technically competent. Probably 99% of company secretaries will have these qualities, but what makes a really good company secretary is having the sensitivity for the personal dynamics on the board,' he says. He adds that this sensitivity needs to be backed up with the courage to speak up when a point of view is needed from the company secretary. 'A professional secretary must not be afraid to offer a position on procedural or meeting matters. Over time this will bring respect. This duty also puts pressure on the company secretary to remain at the top of his or her game,' Li says.


Susie Cheung agrees. 'This is one aspect of the job of the company secretary where you have no help from the rulebook,' she says. She adds that the humble art of 'tact' is invaluable in these situations.

'Choosing the right time to bring something up, using the right tone, and using the right words to get your message across are all critical. There are times, for example, when you first need to listen before trying to get your point across.' She agrees, however, that company secretaries need to have the courage to speak out when the time is right. The technical knowledge and skills they need to advise directors on regulatory compliance and corporate governance will be wasted if they stay silent for fear of upsetting their colleagues on the board.

'I think your personal convictions and your professionalism are both very important,' Ms Cheung says. 'There is no getting away from the need for a good knowledge of the listing rules, etc, but quite often people are afraid to speak out in case they upset somebody. You need to have the courage of your convictions to advise directors. I believe that if you have the long-term interests of the corporation at heart, then you will be less concerned about upsetting this or that director.'

She cites the example of a company secretary advising the board of a bottled water company debating whether to save money by buying cheap, but highly polluting, transport vehicles. 'You would need to point out how this may be

regarded by the public, particularly since the company is in the business of selling clean water,' she says. The trucks may be cheap but companies need to report on their environmental impacts and getting a reputation as a polluter is unlikely to be in the long-term interests of the company.

The responsibility for the final decision, of course, does not rest with the company secretary. Susie Cheung stresses that the company secretary should not therefore be only concerned with 'winning' the argument. 'At the end of the day, we live in a democratic society and boards abide by the majority decision. If six out of 10 directors vote in one direction, as long as you have communicated effectively the risks involved, you have done your job and you won't have bad dreams,' she says. 

Gregg Li has written extensively on board governance issues for CSj, including his highly popular boardroom 'first aid' course for chairpersons and company secretaries published across six editions (February–July) in 2010. Lucy Kellaway's 'Financial Times' article 'Everyone benefits from a beast in the boardroom' was published on 9 October 2011 and is available online.

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you need to have the courage of
your convictions to advise directors
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Susie Cheung, General Counsel and Company Secretary of the
Hong Kong Mortgage Corporation



Governance needs you

The Stock Exchange's latest revisions to the Corporate Governance Code and associated listing rules seek to ensure that company secretaries play an effective role in ensuring good corporate governance standards among Hong Kong's listed companies. This second part of our review of the Exchange's code and rule revisions, focuses on the changes affecting corporate governance, directors and board committees, and assesses their likely impact on the work of company secretaries in Hong Kong.

Company secretaries in Hong Kong have welcomed the Stock Exchange's latest changes to Hong Kong's Corporate Governance Code and associated listing rules. The changes directly target the effectiveness of the company secretarial role in supporting good governance practices among Hong Kong's listed companies. The changes confirm:

- a clear definition of the company secretary's role in board support
- that the selection, appointment, or dismissal of the company secretary should be the subject of a board decision and that the board's decision to appoint or dismiss the company secretary should be made at a physical board meeting rather than by written resolution
- that the company secretary should report to the chairman and/ or chief executive, and
- minimum standards on company secretaries' qualifications, experience and training.

These code and rule changes were covered in the first part of this article (see 'Governance needs you', *CSj*, January 2012, pages 10–15). This month we take a look at some of the other changes brought in by the Exchange, in particular those relating to corporate governance, directors and board committees, and examine their likely impact on the work of company secretaries in Hong Kong.

Do it yourself corporate governance

The original review of Hong Kong's Corporate Governance Code and associated listing rules was completed by the Exchange in December 2010. The Exchange's proposed code and rule revisions were subject to a public consultation which ended on 18 March

2011. The conclusions to the consultation, published in October 2011 (and available on the Exchange's website: www.hkex.com.hk), emphasise the need for listed companies to forge their own approaches to corporate governance issues. The conclusions point out that the Exchange's latest changes are mostly additional or revised code provisions (CPs) of the Corporate Governance Code.

The Exchange points out that CPs are not listing rules. Listing rule requirements are mandatory for all listed companies and breaches may lead to sanctions. CPs, by contrast, give listed companies the flexibility to either adopt the provision, or if they do not adopt it, to explain the reasons for their decision in the Corporate Governance Report. This is known as the 'comply or explain' principle. If the issuer does not comply with a CP, it is not a breach of the listing rules and there is no sanction.

The Exchange indicated in its consultation conclusions that some respondents to the consultation did not seem to fully understand the 'comply or explain' principle. Some appeared to think of CPs

and recommended best practices (RBPs) as mandatory requirements. 'We do not expect issuers to treat CPs and RBPs as listing rules,' the conclusions state. 'The main rationale for adopting CPs and RBPs instead of listing rules is that it is not possible to define good corporate governance in all circumstances. The best approach for one issuer may not be suitable for another. We believe every issuer should carefully consider the corporate governance practice that best suits it and explain this choice in its Corporate Governance Report.'

The principles-based approach certainly provides flexibility for listed companies in Hong Kong, but it also means that listed companies cannot simply rely on the rulebook to tell them how to achieve good governance. They need to consider which approach is most suited to their own circumstances and this is likely to increase their reliance on effective corporate governance advice at the board level.

Directors are responsible for good governance

While company secretaries have a critical role in facilitating good governance via

Highlights

- listed companies need to forge their own approaches to corporate governance issues
- the ultimate responsibility for good governance rests with the board
- listed companies must disclose in their Corporate Governance Reports how directors have complied with the new provision in the Corporate Governance Code on director training
- at least one-third of a listed company's board should be independent non-executive directors

their board support role, the ultimate responsibility for good governance rests with the board. 'Prime responsibility for good corporate governance of a company rests with directors,' said Mark Dickens, HKEx's Head of Listing, at the launch of the Exchange's latest amendments to the Corporate Governance Code and associated listing rules. Many of the changes are aimed at ensuring that directors are fully aware of their duties under the law and the listing rules, take an active interest in the issuer's affairs and obtain a general understanding of its business.

Emphasising directors' duties

The Exchange has expanded listing rule 3.08 to emphasise directors' duties. The rule now requires directors to take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to their attention. A substantial majority of respondents supported these proposals. Some respondents had concerns about the delegation of directors' duties. The Exchange agreed with these concerns and revised the listing rule to clarify that directors may delegate their functions

but that doing so does not absolve them from the required levels of skill, care and diligence. The new rule also cautions that directors failing to discharge their duties and responsibilities may be disciplined by the Exchange and may attract civil and/ or criminal liabilities.

Ensuring directors spend sufficient time on the listed company's affairs

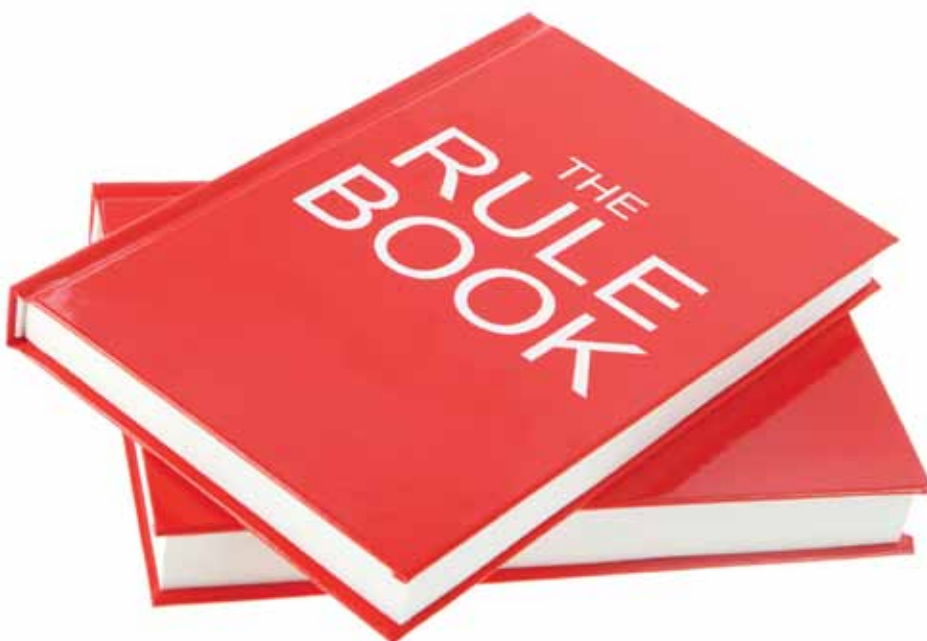
The Exchange has introduced a new principle in the Corporate Governance Code stating that the board should regularly review directors' performance of their responsibilities to the issuer and whether they are spending sufficient time performing them. It has also added a CP to the Code stating that directors should inform the issuer of any change to their significant commitments in a timely manner.

These changes fall short of the Exchange's original proposals – it originally wanted CPs stating that:

- directors should limit their other professional commitments and should acknowledge to the issuer that they will have sufficient time to meet their obligations to the issuer
- non-executive directors (NEDs) should confirm annually to the nomination committee they have spent sufficient time on the issuer's business, and
- the wording of letters of appointment for NEDs should set out the time commitment expected of them.

In addition the nomination committee's duties were to be expanded to regularly review the time required from directors in the performance of their responsibilities,

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listed companies cannot simply rely on the rulebook to tell them how to achieve good governance
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whether they are spending sufficient time performing them and to review NEDs' annual confirmations that they have spent sufficient time on the issuer's business. A majority of respondents, mostly listed companies, did not support these proposals. Respondents who opposed these proposals said they were over-prescriptive. Many believed it would be difficult to judge how much time directors needed to perform their responsibilities. It would also be difficult to review whether they were spending sufficient time performing them. Accordingly, the Exchange has scaled back the measures aimed at ensuring directors spend sufficient time on listed company affairs.

Highlighting the importance of directors' training

The Exchange has revised and upgraded the existing RBP on directors' training to a CP. It has also introduced a note to the CP stating that directors should provide records of their training to issuers. Listed companies must disclose in their Corporate Governance Reports how directors have complied with this CP on training. The Exchange's original proposal that a director should complete eight hours of training every financial year did not receive majority support of respondents to the consultation. While a majority of respondents were in favour of directors attending training, many argued that the optimal length of training would vary by director, type of company and the company's operations in any given year. The Exchange therefore opted not to specify the amount of training a director should complete.

Ensuring independent perspectives on the board

The Exchange has introduced a listing rule that at least one-third of an issuer's board

should be independent non-executive directors (INEDs). Listed companies must comply with the rule by 31 December 2012. The Exchange also introduced a listing rule to allow an issuer a three-month period to appoint a sufficient number of INEDs to comply with the one-third rule in the event that changes to board personnel result in non-compliance.

Despite the speculation in the media that this proposal would be deeply unpopular with listed companies due to the additional compliance burden it would represent, a substantial majority of respondents supported this proposal. At the time the proposal was made, approximately 20% of listed companies did not have INEDs constituting one-third of their boards. However, approximately 80% of these issuers only need to appoint one additional INED to comply with the requirement. Issuers could also, of course, reduce the number of executive directors on their board to meet the requirement. The Exchange believes the new listing rule will not impose an undue burden on issuers and is consistent with requirements in other major jurisdictions, including mainland China.

Respondents to the consultation did express concerns about INEDs' independence, however, and the Exchange has brought in some changes aimed at safeguarding INEDs' independence. For example, it has upgraded to a CP the existing RBP recommending shareholders vote on a separate resolution to retain an INED who has served on the board for more than nine years. Also, an issuer should include the reasons why the board considers the INED to be independent in the circular nominating him/ her for election. About half of respondents to the consultation supported this

When will the new requirements take effect?

The Exchange's new listing rule amendments became effective on 1 January 2012. Two exceptions to this are the rule requiring one-third representation of independent non-executive directors (INEDs) on the board, which will become effective on 31 December 2012, and the rule requiring 15 hours' professional training for company secretaries. The Exchange has adopted the same schedule for phasing in this requirement as the HKICS has adopted for its mandatory CPD programme, that is, a staggered implementation based on the date of the company secretary's appointment (for details, see the 'news and consultations' section of the Exchange's website www.hkex.com.hk, or the ECPD section of the HKICS website www.hkics.org.hk).

Amendments to the Corporate Governance Code will become effective on 1 April 2012. This means that, in their first interim/ half year or annual reports covering a period after 1 April 2012, listed companies must state whether they have, for that period, complied with the code provisions in the revised code as well as those of the former code.

proposal. However, while nearly all market practitioners and a majority of professional bodies supported the proposal, over half (58%) of listed companies opposed the proposal, arguing that the issue was best left as an RBP and that long service did not necessarily imply lack of independence. The Exchange nevertheless decided to adopt this proposal.

The Exchange has, however, dropped another consultation proposal aimed at improving the effectiveness of INEDs on boards – namely to limit the number of INED positions an individual may hold. This proposal was widely opposed by respondents to the consultation.

Enhancing the effectiveness of board committees

The Exchange has introduced new code and listing rule changes designed to enhance effectiveness of board committees, in particular the remuneration, nomination and audit committees. It also proposed, but had to scale back, measures aimed at encouraging listed companies to set up a corporate governance committee.

Remuneration committee

The Exchange has introduced new listing rules to enhance the remuneration committee's role, these include requiring:

- issuers to establish a remuneration committee with a majority of INED members
- an INED as chairman of the remuneration committee
- written terms of reference for the remuneration committee, and
- an issuer that fails to comply with these listing rules to immediately announce its reasons for not doing

so and any other relevant details. The issuer will have a three-month period to rectify its non-compliance.

It has also amended relevant CPs of the Code to require, among other things, that listed companies:

- state that the professional advice made available to the remuneration committee should be independent
- accommodate a model where the remuneration committee performs an advisory role to the board, with the board retaining the final authority to approve executive directors' and senior management's remuneration, and
- make the remuneration committee's terms of reference available on both the issuer's and the HKEx websites.

Only one proposal relating to the remuneration committee was dropped, namely the proposal to upgrade to a CP the RBP on disclosure of board disagreements with the remuneration committee. This remains an RBP.

Nomination committee

The Exchange has also upgraded existing RBPs to CPs (with some amendments) to enhance the nomination committee's role. These CPs state that an issuer should:

- establish a nomination committee with a majority of INEDs, chaired by an INED or the board chairman
- establish a nomination committee with written terms of reference that performs the duties described
- include, as one of the nomination committee's duties, a review of the structure, size and composition of the board at least annually to complement the issuer's corporate strategy

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listing rules
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- make the nomination committee's terms of reference available on both the issuer's and the HKEx websites
- ensure the nomination committee has sufficient resources, and
- enable the nomination committee to seek independent professional advice at the issuer's expense.

Audit committee

The Exchange has added a new RBP to the Code recommending that the audit committee should establish a whistleblowing policy and system. It has also upgraded CPs stating that an audit committee's terms of reference should include arrangements for employees to raise concerns about financial reporting improprieties, and that an audit committee should meet the external auditor at least twice a year.

Corporate governance committee

The Exchange did not receive majority support for its proposals designed to encourage the setting up of corporate governance committees. Respondents opposed to the proposals stated that corporate governance is the responsibility



of the whole board and it should not be delegated to a committee. Accordingly, the Exchange has scaled back its proposed measures, adding a CP that the board should be responsible for performing the corporate governance duties set out in the terms of reference (it has also added a new CP setting out the terms of reference for the board's corporate governance functions). The Code also states that the board *may* delegate these responsibilities to a committee or committees.

Board evaluation


The Exchange proposed adding an RBP that listed companies should conduct a regular evaluation of its own, and individual directors', performance. A majority of market practitioners and professional bodies were in favour of this proposal but a significant majority of issuers opposed it. Opponents believed that board evaluation would become a mere box-ticking exercise. Many respondents said they would support the proposal if the Exchange recommended board evaluation without evaluation of individual directors. Noting

these concerns, the Exchange has limited the RBP to recommending evaluation of the board and not individual directors.

Other proposals

The Exchange has:

- amended the listing rules to remove the 5% exemption from voting by a director on a board resolution in which he has an interest
- upgraded all the RBPs in A.2 of the Code (which covers the roles and responsibilities of the chairman) to CPs with minor amendments
- clarified that issuers should avoid 'bundling' resolutions at meetings and, where they are bundled, explain the reasons and material implications in the notice of meeting
- amended the listing rules to allow a chairman at a general meeting to exempt certain prescribed procedural and administrative matters from a vote by poll
- introduced a new listing rule to require shareholders' approval at a general meeting of any proposal to

- appoint or remove an auditor before the term of his/ her office
- introduced a CP stating that the issuer's management should ensure the external auditors attend the AGM to answer questions about the conduct of the audit; the preparation and content of the auditors' report; accounting policies; and auditor independence.
- introduced a CP stating that issuers should establish a shareholder communication policy, and
- upgraded to a CP the current RBP stating that the chairman should at least annually hold meetings with the NEDs, including INEDs, without executive directors being present. 

The consultation conclusions, published in October 2011, are available on the Exchange's website: www.hkex.com.hk. See 'Governance needs you', CSj, January 2012, pages 10–15, for the first part of this article covering the revisions to the Code and associated listing rules relating to company secretaries.

Mentor or tormentor?

The role of regulators in Hong Kong and the PRC

The Institute's latest China Corporate and Regulatory Update (CCRU) seminar, held in Shenzhen in January this year, demonstrated that regulators in the mainland and Hong Kong are increasingly keen to take up an educational and guidance role in addition to their traditional roles in supervision and enforcement. CSj reviews this year's CCRU, highlighting the key points raised by the speakers from the China Securities Regulatory Commission and the Hong Kong, Shanghai and Shenzhen stock exchanges.

Good policework alone will not achieve a high-quality market for investors – that was one of the key messages to emerge from the Institute's annual China Corporate and Regulatory Update (CCRU) seminar, which was held in Shenzhen in January this year. The speakers from the China Securities Regulatory Commission and the Hong Kong, Shanghai and Shenzhen stock exchanges, focused on their latest initiatives to give practical guidance on regulatory compliance in the increasingly interdependent markets of mainland China and Hong Kong. They also highlighted their latest supervisory and enforcement initiatives, however, demonstrating that effective regulation requires the use of both carrot and stick approaches.

CSj takes you on an armchair tour of

the event, highlighting the main points raised during the seminar.

HKEx – developments and practical issues in the regulation of listed companies in Hong Kong

Hong Kong Exchanges and Clearing Ltd (HKEx) focused its CCRU presentation on three areas:

1. the recent changes to Hong Kong's Corporate Governance Code and related listing rules
2. corporate governance and internal control issues, and
3. practical issues relating to the disclosure of financial information in companies' financial reports.

1. Amendments to the Code and related listing rules

HKEx emphasised in its CCRU presentation

that its recent Code and listing rule changes will help create a level playing field for all listed companies, irrespective of whether they are domiciled in the mainland or Hong Kong. Changes which will have a very direct impact on the board secretaries of H-share listed companies, for example, include:

- the removal of the requirement for a company secretary to be ordinarily resident in Hong Kong
- the repeal of listing rule 19A.16 to make the requirements for board secretaries of mainland listed companies the same as for other listed companies, and
- the new listing rule 3.29 requiring company secretaries of listed companies to undertake 15 hours' professional training in a financial year.



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effective regulation
requires the use of both
carrot and stick approaches
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2. Corporate governance and internal controls

In the mainland, the 'hands on' approach of regulators is nowhere more apparent than in the very detailed guidance that has been given on establishing effective internal controls. This has also been a focus in Hong Kong, however, and HKEx reminded the audience that listed companies are required to have an appropriate organisational and management structure, and effective internal controls to protect the companies' assets.

An effective system of internal controls needs to guard against very varied risks, for example risks relating to compliance, price-sensitive information disclosure, staff/ management ethics, etc. Since these risks are subject to constant change, Hong Kong's Corporate Governance Code includes principle C.2 which recommends that directors should at least annually conduct a review of the effectiveness of the system of internal control of their company and its subsidiaries and report to shareholders that they have done so in their Corporate Governance Report.

3. Financial disclosure in Hong Kong

HKEx recently reviewed the financial

reports of Hong Kong listed companies – including annual, quarterly and interim reports – to:

- assess disclosure compliance with the listing rules, the Companies Ordinance and accounting standards (HKFRS, IFRS, CASBE, etc)
- identify any disclosure problems, and
- identify possible improvements in transparency.

The review was risk-based and carried out on a random sample basis. HKEx emphasised that a particularly important area of financial disclosure in Hong Kong is that of connected transactions. HKEx reminded attendees that the listing rules, in particular listing rule 14A.38 of the main board rules, set out clear requirements for listed companies engaged in connected transactions. The rules are intended to ensure that the interests of shareholders as a whole are taken into account when listed companies are involved in connected transactions. The rules also provide certain safeguards against listed issuers' directors, chief executives or substantial shareholders (or their associates) taking advantage of their positions.

HKEx also reminded attendees that auditor's confirmation is required in the

annual report to confirm matters related to continuing connected transactions. All connected transactions also need the approval of the board and should be in compliance with the issuer's pricing policies.

CSRC – a regulatory update on M&A activity in the PRC

The China Securities Regulatory Commission (CSRC) focused its presentation on merger and acquisition (M&A) activity in the mainland which has been subject to explosive growth in recent years. Turnover in both the global and China M&A market has increased rapidly since 2002. There has in fact been a 50% rise in M&A turnover over the past three years. The cumulative turnover was RMB1,293.3 billion between 2006 and 2011. The average value of acquisitions of listed companies amounted to

RMB4.297 billion, compared to RMB417 million per case in 2006, which represents an increase of 10.3 times. The CSRC therefore believes that the M&A market in China has tremendous growth potential.

The CSRC sees its role as being not only to supervise M&A activity in mainland China, but also to assist in its development. It pointed out that, since August 2009, the Commission has made a number of regulatory improvements, such as improving the mandatory disclosure of information regarding M&A activity, as well as improvements designed to support the industry. The Commission listed 10 goals of the CSRC in regulating M&A activity in mainland China, namely to:

1. strengthen the capital market to support M&As

2. support innovative M&As for listed companies
3. assist restructured companies to be listed as a whole – this is to resolve the issues of competition within the industry and problems of related-party transactions
4. regulate backdoor listing activities
5. improve relevant rules and policies for the development of a market-oriented pricing mechanism
6. promote the establishment of an integrated system to prevent and control insider dealing and to ensure a level playing field for M&A activity
7. improve the system for the resumption of trading and disclosure of information and monitoring of unusual stock price fluctuations
8. define the function and responsibilities of intermediaries in M&As and improve their efficiency and quality
9. regulate and improve the review and approval process of M&As, and
10. optimise the external environment for the M&A of listed companies.

SSE – developments in the governance of listed companies in Shanghai

The Shanghai Stock Exchange (SSE) launched its presentation with a quick profile update of the Shanghai securities market.

Rise in net profits. Total income for listed companies in Shanghai for the first half of 2011 was RMB8,255.2 billion, a 26.4% rise over the same period last year. The SSE50 Index achieved a total revenue of RMB5,023.2 billion and the net profit attributable to shareholders was RMB624.1 billion, which accounted for 60.9% and 73.1% of all the listed company's total revenue and net



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profit attributable to shareholders. The performance of most sectors grew during the first half of 2011. The finance, insurance, and extractive industries had the highest growth; their net profits accounted for 58.8% and 15.7% of the net profit of all listed companies.

Growth in net assets. Net assets for all listed companies in Shanghai for the end of the second half of 2011 was approximately RMB9,978.6 billion, a 22.8% rise over last year; and a rise of 11.9% per share over last year.

Decline in net cash flow from operations. Net cash flow for all listed companies in Shanghai during the first half of 2011 was RMB1,009.3 billion, 38.9% down over last year; cash flow per share declined 44.3% compared to the same period a year ago. Net cash flow from operations of more than half of the listed companies declined over the same period a year ago. Companies which saw the steepest decline were in the sectors of banking, securities, oil and petrochemical, manufacturing and other industries.

Profit contributions are more concentrated. The net profit attributable to shareholders of the top 10 companies in Shanghai during the first half of 2011 was RMB523.6 billion, which accounted for 61.3% of all Shanghai listed companies.

The SSE also revealed that it has stepped up its supervision of the following sectors:

- external guarantee and trust financing of listed companies
- entrusted loans
- the dividend policies of listed

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- Graduates may also be eligible for professional examination exemption from ACCA and CPA (Australia)

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“
 the [HKEx] recent Code and listing rule changes will help create a level playing field for all listed companies, irrespective of whether they are domiciled in the mainland or Hong Kong
 ”

companies (though it stressed that there is no mandatory requirement for companies to issue dividends), and

- related-party transactions (the SSE referred attendees to its guidance on the implementation of related-party transactions).

SZSE – operational guidelines for listed companies in Shenzhen

The Shenzhen Stock Exchange (SZSE) took the opportunity of its CCRU presentation to highlight its recent operational guidelines for listed companies. The guidelines are designed to give practical help to companies listed on the SZSE on a range of corporate governance and compliance issues. In addition, the SZSE has issued FAQs on common operational problems and the legal liabilities of listed companies.

1. Operational guidelines for listed companies

The aims of the guidelines are to:

- promote sound corporate governance structure, and improve internal control and risk prevention
- protect the legitimate rights and interests of minority shareholders
- provide guidance and strengthen the code of conduct for directors, supervisors and senior management
- strengthen supervision of the insiders' transactions to curb insider dealing
- strengthen the code of conduct for controlling shareholders, and
- protect the rights of investors and encourage the implementation of social responsibility.

2. FAQs on common operational problems and legal liabilities

The SZSE pointed out in its CCRU presentation that compliance with the relevant requirements relating to external financial assistance is a particularly

important area for companies listed on the SZSE. The SZSE's new FAQs therefore emphasise the need for listed companies to ensure effective supervision of this area and prevent the improper seizure of company funds. The FAQs outline the requirements for providing details on the management of the company's fund-raising policies; improving the supervision of intermediaries; the obligations of supervisors and improvements to the disclosure of raised funds.

The FAQs also provide detailed guidelines on the following areas:

- the respective responsibilities of the board of shareholders, the board of directors and the board of supervisors
- the statutory requirements on the ratio of independent directors and the qualifications of independent director candidates

- the responsibilities and obligations of senior management, a conduct code for the chairman and independent directors and the need for the company to monitor the stock transactions of key personnel
- the protection of the rights and interests of minority shareholders and codes of conduct for matters such as internet voting, equality of all shareholders and improvements to the management of investor relations, and
- codes of conduct for controlling shareholders and actual controllers, and equity changes of listed

companies, major shareholders, and actual controllers etc.

Regarding the legal liabilities of listed companies, the FAQs set out companies' accountability for violations of statutory requirements. They set out the civil and criminal liabilities for matters such as fraud in issuing stocks and bonds; false statements; misappropriation of the listed company's assets; insider dealing; and the manipulation of the securities and futures markets. CSj

Reporting by Stephanie Chin,
Journalist

This year's China Corporate and Regulatory Update seminar, which drew 43 attendees, was held on 11 January 2012 at the Pavilion Hotel, Shenzhen, China. Its sister event, the Annual Corporate and Regulatory Update (ACRU) seminar, will be held in Hong Kong on 23 May 2012.

The recent changes to Hong Kong's Corporate Governance Code and related listing rules are covered on pages 12–17 of this month's journal.

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香港及中国 监管机构的任务

2012年中国企业规管 最新发展研讨会

香港特许秘书公会最近主办 [2012年中国企业规管最新发展研讨会]，一月在深圳举行。讲者们突显了一个信息，就是香港与中国监管机构除了传统的监督角色，更愈来愈重视教育和指导的任务。本文重点介绍研讨会中中国证券监督管理委员会，和香港、上海和深圳证券交易所的发言观点。

本年一月在深圳举行的研讨会，其中所带出的一个讯息是，光是警务般的监管工作本身，并不足以投资者提供高质量的市场。来自中国证监会和香港、上海和深圳证券交易所的发言人，详述他们在提供实用性指导方面的最新措施，以帮助企业明白日益相互依存的中国大陆和香港市场的合规要求。他们还重点讲解了最新的监管和执法措施，然而，要有效的监管，必需采用胡萝卜加大棒方法。

如果你今年无法出席研讨会，秘书公会在此为各位介绍，并总括一些重点：

港交所 — 香港上市规则概览与最新发展

1. 《企业管治守则》及有关上市规则的修订；
2. 公司治理及内控实务问题；
3. 审查在财务报告中的财务信息的披露；

1. 《企业管治守则》和《上市规则》的修订

港交所在研讨会强调，最新的修订《企业管治守则》和《上市规则》将会为所有上市公司创造出一个公平的竞争环境，不论他们是否在中国内地或香港注册。这种改变将对H股上市公司董事会秘书有非常直接的影响，例如，包括：

- 公司秘书不再要求通常在香港居住；
- 废除上市规则19A.16条，大陆上市公司秘书的要求将与其他上市公司一样；
- 新上市规则3.29要求公司秘书在一个财政年度内进行15小时的专业培训。

港交所在研讨会澄清，《企业管治守则》和其所建议的最佳做法与《上市规则》不同，并非强制性。《上市规则》是强制性的，如违反则会受到惩罚。

《企业管治守则》和其所建议的最佳做

法有不同的要求，分别是：

- **《企业管治守则》**需依从[不遵守就解释]规定；上市公司可以选择遵守与否，但如选择不遵守，则需在公司管治报告中解释原因。这并非违反《上市规则》，不受惩罚。
- **建议的最佳做法**只是鼓励上市公司最好这样做，如果不做也无需解释。

2. 公司治理及内控实务问题

中国内地监管机构倾向于严格控制如何建立有效的企业内部控制，并设有非常详细的指引。企业内部管控也一直是香港的关注重点。港交所提醒大家，上市公司必须设有一个适当的组织和管理结构，以及有效的内部控制，以保护公司的资产。

一个有效的内部控制系统，可避免一些风险事故发生，例如违规事件、股价敏感资料及市场流言、管理人员和职员职业道德等问题。这些风险经常变化，因此，香港的企业管治守则，也包括《香港企业管治守则C.2条》，建议董事应至少每年一次检讨公司及其附属公司内部控制系统的有效性，并在其企业管治报告中通知股东有关此项检讨。

3. 香港财务信息的披露

港交所最近审查了香港上市公司的财务报告，包括年度、季度和中期报告。包括：

- 确保披露的资料遵守“上市规则”、“公司条例”、和会计准则。(香港财务报告准则，国际财务报告准则，CASBE等)；
- 找出披露可能出现的问题；
- 找可能提高透明度的方法。

审阅的标准以“风险为本”，随机抽样，如果发现有了严重的问题，个案将被转介到财务汇报局(FRC)。港交所强调，香港财务信息披露的一个特别重要的环节

就是关连交易。港交所提醒与会者《上市规则》，特别是主板规则“第14A.38条”清楚列明上市公司参与关连交易所需的守则。

该规则旨在上市公司在涉及关连交易时，确保整体股东的利益得到保障。规则还包括了防止上市发行人的董事、行政总裁或主要股东（或其联系人）滥用其职权的保障。

港交所也提醒出席人士，年度报告必需包括核数师确认一些事项，例如持续关连交易。所有关连交易，必需经董事会批准，并符合发行人的定价政策。

中国证监会 — 中国境内并购政策与监管的最新情况

中国证监会的演讲重点在于讨论中国合并和收购（并购）活动近年来爆炸性增长。全球及中国并购重组市场自2002年起交易额不断提升，过去三年提升了50%。2006年至2011年11月止，累计交易额12,933亿（人民币），平均上市公司重组交易额为42.97亿元，是2006年前每宗4.17亿元的10.3倍。这一趋势清楚表明，并购在中国市场具有巨大潜力。

中国证监会的目标，不仅是规范在中国大陆的并购重组活动，也在于协助其发展。它并且指出2009年8月以来中国证券监督管理委员会正不断完善并购重组机制，包括强制信息披露和强化公平决策，改进设计，以支持该行业。

中国证监会在规范中国大陆并购重组活动的10项目标，包括：

1. 加大资本市场支持并购重组的力度；
2. 支持上市公司创新并购重组方式，提高资源配置效率；
3. 推动部份改制上市公司整体上市，解决同业竞争、关联交易等问题；
4. 规范、引导借壳上市活动；
5. 完善相关规章及配套政策，健全市场化定价机制；

6. 推动建立内幕交易综合防控体系；不断净化市场环境；
7. 完善停复牌制度和信息披露工作，强化股价异动监管；
8. 发挥中介机构在并购重组中的作用和责任，切实提高中介执业的效率和质量；
9. 规范和改进并购重组审批工作；
10. 优化上市公司并购重组外部环境。

上交所 — 上市公司管治动态及趋势

上海证券交易所介绍上海证券市场的主要情况如下：

一 净利润同比上升

上海市全体上市公司2011年上半年营业收入82,551.78亿元，较去年同期分别上升26.4%；净资产收益较去年同期上升12.2%。上证50板块的上市公司共实现营业收入50,232亿元，归属于母公司股东的净利润6,241亿元，分别占全部上市公司总营业收入和归属于母公司股东的净利润的60.9%和73.1%。

从行业情况看，2011年上半年大部分行业的业绩增长，总体利润最高的行业为金融保险业和采掘业，行业实现净利润分别占全体上市公司净利润总额的58.8%和15.7%。

二 净资产增长

上海市全体上市公司2011年上半年末净资产约为99,785.5亿元，较去年同期增长22.8%；每股净资产较去年同期增长11.9%。

三 经营活动现金流净额下降

上海市全体上市公司2011年上半年现金流量净额为10,093.04亿元，较去年同期下降38.9%；每股现金流量较去年同期下降44.3%。半数以上上市公司经营活动产生的现金流量净额较同期减少，下降较明显的上市公司集中在银行、证券、石油石化、制造业等行业。

四 利润贡献相对集中

上海市2011年上半年前十大盈利公司，归属于母公司股东的净利润5,236亿元，占上海市全部上市公司的61.3%。

上交所指出，他们正在严格监管下列各项：

- 上市公司的对外担保和委托理财、委托贷款；
- 督促上市公司明确分红政策，（但绝不是强制上市公司分红）；
- 关联交易 — 上交所对出席人士指出可参阅《关联交易实施指引》相关指引。

深交所 — 深圳上市公司规范运作指引

深圳证券交易所重点介绍了对上市公司规范运作的最新指引，旨在向深圳的上市公司提供一系列公司管治和合规问题的指示。深交所并且发出了日常业务和上市公司的法律责任等常见问题的指引。

“最新修订的《企业管治守则》和《上市规则》将会为所有上市公司创造出一个公平的竞争环境，不论他们在中国内地或香港注册。”

1. 上市公司规范运作指引

目的在于：

- 推动公司治理结构完善、健全内控抑制风险；
- 保障中小股东合法权益；
- 引导和强化董监高行为规范；
- 加强关键人交易监管遏制内幕交易；
- 强化大股东及实际控制人行为规范；
- 督促保护投资者权益及履行社会责任。

2. 日常业务规范运作常见问题和法律责任

深交所在研讨会的发言指出，对深圳的上市公司来说，对外提供财务资助对相关规定的合规是非常重要的。深交所最新的常见问题，强调上市公司需要加强对外提供财务资助的监管，防止变相占用公司资金的情况发生。日常业务规范运作指引列明了如何管理公司的筹资政



Qualified for the
real world

策提供细节的要求、提高中介机构的监管、监督的义务、和改善披露募集资金。

日常业务规范运作指引也提供了下列指示：

- 股东大会、董事会、和监事会的责任
- 关于董事的比例是否符合法定要求，和独立董事候选人的资格
- 关于高管个人行为规范，董事长和独立董事个人行为规范，和加强关键人员股票交易监管
- 关于保障中小股东权益及其他行为规范，包括网络投票，平等对待所有股东，改进投资者关系管理
- 关于控股股东、实际控制人的行为；上市公司股权变动、大股东及其实际控制人行为等

日常业务规范运作指引也提供了有关上市公司规范运作中的法律责任，和违反违规的责任追究，包括民事和刑事责任。如：欺诈发行股票、债券罪；虚假陈述罪；掏空上市公司资产罪；内幕交易罪；和操纵证券、期货市场罪等。

钱淑娴

记者报导

本年[中国企业规管最新发展研讨会]于2012年1月11日在深圳圣廷苑酒店举行，共43人出席。另一相关会议[公司规管最新发展研讨会] (ACRU)，将于2012年5月23日在香港举行。

最新修订的香港企业管治守则及相关上市规则，可参阅本刊12-17页[监管需要你]的第二和最后部分。若需更详细资料，可参阅香港交易及结算所网站 (www.hkex.com.hk)。

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How 'fair' is fair value?

Fair value accounting has come under a lot of criticism since the global financial crisis of 2008/ 2009 – how do you calculate the 'fair' value of an asset when no market exists for that asset? How accurate is an estimate of the 'fair' value likely to be when you are forced to calculate its selling price during unfavourable or volatile times? Moreover, does fair value accounting, being a market-based measurement, increase short-termism and volatility? Despite the many drawbacks of fair value accounting, Raymond Yuen Wai Pong *CFA FCPA*, Consultant, Creative Development International, argues that fair value continues to represent the best available methodology for determining and reporting the value of assets.



In 2005, Hong Kong adopted international accounting standards and moved from historical cost accounting to a 'fair value' accounting basis. This was Hong Kong's 'big bang' in accounting. Before 2005, Hong Kong used the UK GAAP accounting basis where accounts were largely booked, prepared and reported using historical transaction values.

Under this system, a lot of off-balance sheet financial exposures were not accounted for or disclosed. The new Hong Kong Financial Reporting Standard (HKFRS) and Hong Kong Accounting Standard (HKAS) requirements are much more extensive and are designed to ensure company accounts measure and report not only the historical figures, but also the business realities behind those figures. There are currently 13 HKFRSs and 29 HKASs in effect amounting to over 2,500 pages of accounting/ reporting standards.

The advantages of fair value accounting

What is fair value accounting? Before answering this question, we need to know the definition of fair value from an accounting perspective. According to HKFRS, fair value is defined as: 'the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date,' (see HKFRS 13, Fair Value Measurement, Para 9).

This is further elaborated in HKFRS 13, Para 2, which states that fair value is a market-based measurement, not an entity-specific measurement. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, this information might not be

available. However, the objective of a fair value measurement in both cases is the same – to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market condition. That is, it represents an exit price at the measurement date from the perspective of a market participant who holds the asset or owes the liability.

This gives fair value accounting a notable advantage over historical cost accounting in that it better reflects the current situation of the company and is therefore more relevant and useful to the user of the financial statement. It also better reflects the temporal aspects of asset values, the associated risk aspects and it accounts for corporate actions with dilution effects. As a result, financial statements under HKFRS are more useful, especially to investors and potential shareholders of the company, as HKFRS has deepened and widened the disclosure requirements of financial statements.

The disadvantages of fair value accounting

Fair value accounting also has its drawbacks. The three big drawbacks are subjectivity, volatility and the high cost of preparation.

1. Subjectivity

Under fair value accounting, asset values are calculated with reference to their market price. Where there is no open market for such assets, directors of the company have to resort to estimates for booking the fair value. Some of the estimates are prepared by third parties such as appraisers. Though still subjective, where the appraiser is professional and independent, the quality of the financial

statements may not be compromised too much. However, if the estimates are prepared by the company itself, the subjectivity problem may become more acute. Figures may be subject to manipulation if the company is not honest.

Moreover, the fair value estimation of the assets may depend heavily on the intended usage of the asset by management. For instance, where management intends to dispose of the asset, it will be accounted for as a non-current asset held for sale. This is another part of fair value accounting where subjectivity comes into play.

There is also some confusion as to the meaning of 'fair value' – for example, should we base fair value on market price, economic value, replacement value, depreciated value, or intrinsic value? Of these values, I believe the intrinsic value concept is the most relevant one for most investors and users of financial statements. Clearly, where assets have an open market, the open market price will provide the most objective measurement, but where assets do not have an open market, the current fair value measurement methods required are best aligned with the intrinsic value concept such as using discounted cash flow, similar asset benchmark or even very advanced methods such as Black Scholes Model.

2. Volatility

As fair value accounting is based on market-based measurements, asset values may be subject to big fluctuations, particularly where they are financial assets. For instance, during the recent financial crisis, the price of some bonds dropped in value by more than 60%.



“ fair value accounting provides more relevant information to the user by referring to the market value, or estimates of the market value, of assets ”

Many have therefore criticised fair value accounting as encouraging short-termism in the users of the accounts.

Of course, the fall in value will usually be remedied after the financial crisis, and the value of the bond does not always have to be 'marked-to-market' – it may be based on an amortised cost where the holder intends to hold the bond for investment rather than trading. This will reduce the 'short-termism' in the accounts.

Furthermore, the reporting standard will be further refined in the coming HKFRS 9 Financial Instruments, which will replace HKAS 39 Financial Instruments: Recognition and Measurement. The major change will be to replace the scattered criteria for measuring with fair value or amortised cost under HKAS 39 with a coherent single approach under HKFRS 9, which has to be applied by January 2013 with the option of early adoption.

3. *The high cost of preparation*

Fair value accounting requires companies, from time to time, to employ an appraiser to estimate the value of assets and this naturally raises the administrative cost of the preparation of financial statements.

Furthermore, the measurement and disclosure of HKFRS is much more complicated and extensive than the pre-2005 accounting standards. This increases the cost of preparation of the financial statements. For instance, measurement of the value of hybrid bonds with convertible features that split the bond into fixed interest components and equity components will involve the use of complicated models to split the value.

Disclosure requirements of HKFRS are also much more extensive as compared with pre-2005 HK GAAP. For instance, in addition to giving the figures, a quantitative and qualitative information on a hybrid bond would be required for the user to appreciate the risk of the

hybrid bond to the company. However, all this information is very important to appreciate the financial performance and financial position of a business.

Is fair value the best available method?

Despite the disadvantages of fair value accounting listed above, it is worth asking whether there is a better method available to us. In my view, despite the many controversies surrounding this method, particularly after the recent financial crisis, fair value accounting is still the best available method to account for the financial performance of businesses.

Consider a moment what a return to historical cost accounting would mean for the accounting of derivatives. Derivatives involve hidden leverage, off-balance sheet exposures and expose companies to sometimes highly volatile financial markets. According to Wikipedia, the global derivatives market was valued in June 2007 at over US\$500 trillion, which

is equal to more than eight times the total GDP of the world, or over 30 times the GDP of the world's biggest economy – the US. Furthermore, while the growth rate of the derivatives market has slowed in OECD countries in recent years, the growth rate in developing countries like the PRC is still in double digits.

Historical cost accounting fails to account for financial products like derivatives, which could be a make or break for many businesses. For instance, the Hong Kong listed company First Natural (HKEX Code: 1076) went into provisional liquidation in September 2010 because of its exposure to a huge amount of derivatives products. The company was still suspended from listing when this article went to print.

Furthermore, there are provisions to deal with the most obvious drawback of fair value accounting – namely how to estimate the value of assets in the absence of an open market for them.

Under HKFRS 13 Fair Value Measurement, for example, the fair value estimates are cascaded into a three-level hierarchy, as reported by Deloitte in their *IAS Plus Update* (March 2009).

Level 1 is based on quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 is based on inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (that is as prices) or indirectly (that is derived from prices).

Level 3 is based on inputs for the asset or liability that are not based on observable market data (unobservable inputs).

Extensive disclosure and reconciliation are required for any transfer between these levels. As the HKFRS and HKAS requirements are very extensive and are beyond the scope of this article, readers interested in understanding more about this should refer to the *IAS Plus Update* issued by Deloitte in March 2009, or refer directly to HKFRS 13, Fair Value Measurement.

Conclusion

In conclusion I would argue that, despite the drawbacks of fair value accounting, it remains a great improvement in the accounting standards of the business world. Fair value accounting:

- provides more relevant information to the user by referring to the market value, or estimates of the market value, of assets
- provides more extensive disclosure to the user, including information on risk exposures and the business rationale behind the figures, and
- raises the quality of information in the financial statements by including a very important class of financial assets – derivatives – which can be subject to great fluctuations in value and which would otherwise be off-balance sheet exposures.

Raymond Yuen Wai Pong *CFA FCPA*
Consultant, Creative
Development International

The opinions expressed are the author's and do not necessarily reflect those of Creative Development International.

“
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”



The nation-state reborn

Reports of the death of the nation-state, argues Dani Rodrik, Professor of International Political Economy at Harvard University, have been greatly exaggerated.

One of our era's foundational myths is that globalisation has condemned the nation-state to irrelevance. The revolution in transport and communications, we hear, has vaporised borders and shrunk the world. New modes of governance, ranging from transnational networks of regulators to international civil-society organisations and multilateral institutions, are transcending and supplanting national lawmakers. Domestic policymakers, it is said, are largely powerless in the face of global markets.

The global financial crisis has shattered this myth. Who bailed out the banks, pumped in the liquidity, engaged in fiscal stimulus, and provided the safety nets for the unemployed to thwart an escalating catastrophe? Who is re-writing the rules on financial market supervision and regulation to prevent another occurrence? Who gets the lion's share of the blame for everything that goes wrong? The answer

is always the same: national governments. The G-20, the International Monetary Fund, and the Basel Committee on Banking Supervision have been largely sideshows.

Even in Europe, where regional institutions are comparatively strong, it is national interest and national policymakers, largely in the person of German Chancellor Angela Merkel, who have dominated policymaking. Had Merkel been less enamored of austerity for Europe's debt-distressed countries, and had she managed to convince her domestic electorate of the need for a different approach, the eurozone crisis would have played out quite differently.

Yet even as the nation-state



survives, its reputation lies in tatters. The intellectual assault on it takes two forms. First, there is the critique by economists who view governments as an impediment to the freer flow of goods, capital and people around the world. Prevent domestic policymakers from intervening with their regulations and barriers, they say, and global markets will take care of themselves, in the process creating a more integrated and efficient world economy.

But who will provide the market rules and regulations if not nation-states? *Laissez-faire* is a recipe for more financial crises and greater political backlash. Moreover, it would require entrusting economic policy to international technocrats, insulated as they are from the push and pull of politics – a stance that severely circumscribes democracy and political accountability. In short, *laissez-faire* and international technocracy does not provide a plausible alternative to the nation-state. Indeed, the erosion of the nation-state ultimately does little good for global markets as long as we lack viable mechanisms of global governance.

Second, there are cosmopolitan ethicists who decry the artificiality of national borders. As the philosopher Peter Singer has put it, the communications revolution has spawned a 'global audience' that creates the basis for a 'global ethics'. If we identify ourselves with the nation, our morality remains national. But, if we increasingly associate ourselves with the world at large, our loyalties will expand too. Similarly, the Nobel laureate economist Amartya Sen speaks of our 'multiple identities' – ethnic, religious, national, local, professional, and political – many of which cross national boundaries.

It is unclear how much of this is wishful

thinking and how much is based on real shifts in identities and attachments. Survey evidence shows that attachment to the nation-state remains quite strong.

A few years ago, the World Values Survey questioned respondents in scores of countries about their attachments to their local communities, their nations and to the world at large. Not surprisingly, those who viewed themselves as national citizens greatly outnumbered those who regarded themselves as world citizens. But, strikingly, national identity overshadowed even local identity in the US, Europe, India, China and most other regions.

“
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”

The same surveys indicate that younger people, the highly educated and those who identify themselves as upper class, are more likely to associate themselves with the world. Nevertheless, it is difficult to identify any demographic segment in which attachment to the global community outweighs attachment to the country.

As large as the decline in transport and communications costs has been, it has not obliterated geography. Economic, social and political activity remains clustered on the basis of preferences, needs and historical trajectories that vary around the globe.

Geographical distance is as strong a determinant of economic exchange as it was a half-century ago. Even the internet, it turns out, is not as borderless as it seems:

one study found that Americans are much more likely to visit websites from countries that are physically close than from countries that are far away, even after controlling for language, income, and many other factors.

The trouble is that we are still in the grasp of the myth of the nation-state's decline. Political leaders plead impotence, intellectuals dream up implausible global governance schemes and the losers increasingly blame immigrants or imports. Talk about re-empowering the nation-state and respectable people run for cover, as if one has proposed reviving the plague.

To be sure, the geography of attachments and identities is not fixed; indeed, it has changed over the course of history. That means that we should not entirely dismiss the likelihood that a true global consciousness will develop in the future, along with transnational political communities.

But today's challenges cannot be met by institutions that do not (yet) exist. For now, people still must turn for solutions to their national governments, which remain the best hope for collective action. The nation-state may be a relic bequeathed to us by the French Revolution, but it is all that we have.

Dani Rodrik

*Professor of International
Political Economy, Harvard
University*

*Dani Rodrik is the author of
'The globalisation paradox:
democracy and the future of
the world economy'.*

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A review of seminars: January – February 2012

6 January 2012



Polly Wong (Chair), John Richardson and Pauline Woo

From Polly Wong FCIS FCS(PE), Company Secretary and Assistant Financial Controller, Dynamic Holdings Ltd, and chair of the seminar delivered by John Richardson, Consultant, Deacons, and Pauline Woo, Senior Associate, Deacons, on 'Personal Data (Privacy) (Amendment) Bill 2011 – update and implications':

'Mr Richardson and Ms Woo jointly delivered a well-organised and precise update pertaining to the Personal Data (Privacy) (Amendment) Bill 2011. Ms Woo concisely explained the requirements of the Bill and its implications for the administration of personal data. The additional comments of Mr Richardson and his presentation of various case studies related to the Bill further enhanced attendees' understanding of its interpretation and implications.'

16 January 2012



Alberta Sie (Chair), John Richardson and Pauline Woo

From Alberta Sie FCIS FCS(PE), Company Secretary, EFA Secretarial Ltd, and chair of the seminar delivered by John Richardson, Consultant, Deacons, and Pauline Woo, Senior Associate, Deacons, on 'Personal Data (Privacy) (Amendment) Bill 2011 – update and implications (evening session)':

'This was an evening seminar, additional to the luncheon session reviewed above. The topic was the same – the Personal Data (Privacy) (Amendment) Bill 2011 – but this longer seminar gave the speakers more time for their presentations on this important topic. Critical issues were raised by the audience and the speakers gave clear and succinct answers. Further interest of the audience was aroused at the end of the seminar by Mr Richardson's lively illustration of a credit card case in relation to privacy protection.'

19 January 2012



Eva Chan (Chair) and Stan Ho

From Eva Chan FCIS FCS(PE), Head of Investor Relations, CC Land Holdings Ltd, and chair of the seminar delivered by Stan Ho, Adjunct Professor, School of Accounting and Finance, Hong Kong Polytechnic University, on 'Credit rating: myths, realities and the road ahead in 2012':

'This seminar was very comprehensive the many practical examples discussed by the speaker were highly useful. The speaker delivered his presentation with high energy and had a lot of interaction with the participants.'

7 February 2012



Susan Lo (Chair) and Bolivia Cheung

From Susan Lo FCIS FCS(PE), Director – Corporate Services, Tricor Services Ltd, and chair of the seminar delivered by Bolivia Cheung, FCPA ACCA CPA, on **'Common structures and operations of China-based companies listed in Hong Kong'**.

'Bolivia is a frequent speaker at our ECPD events. Her interactive, passionate and energetic style is engaging as well as informative on every occasion. In addition to the fundamental concept of establishments in China, Bolivia shared with the audience up-to-date knowledge and practical skills for handling various tax issues. We all enjoyed the seminar. Well done Bolivia!'

8 February 2012



Ivan Kuan, Roger Leung (Chair) and Simon McConnell

From Roger Leung FCIS FCS, Chief Legal and Compliance Officer of Shanghai Industrial Holdings Ltd, and chair of the seminar delivered by Simon McConnell, Leading Insurance Practitioners, Allens Arthur Robinson, and Ivan Kuan, Executive Director, Willis Hong Kong Ltd, on **'Recent amendments of the Hong Kong listing rules related to the risk exposure of directors and officers, and solutions'**.

'This seminar was well-organised, balanced and well thought out. Both speakers, Simon and Ivan, are experienced professionals and practitioners as well as excellent speakers and the seminar attracted a full-house registration. Despite the relative complexity and depth of the topic, the speakers retained the participants' focused interest throughout the seminar. I suggest that similar seminars may need an extra 30 minutes in the future to cater for the Q&A session.'

9 February 2012



Eric Chan (Chair) and Raymond Yuen

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Raymond Yuen BSocSc (First Hon) MBA FCPA CFA, on **'Investment performance measurement, appraisal and attribution with related interpretation of Global Investment Performance Standards (GIPS) 2010'**.

'The speaker not only shared his technical knowledge of investment performance standards, but also demonstrated the practical use of the standards in real life situations.'

Mandatory CPD

Members who qualified between 1 January 2005 and 31 July 2011 need to accumulate at least 15 mandatory continuing professional development (MCPD) or enhanced continuing professional development (ECPD) points in each CPD year starting from **1 August 2011**.

Members who work in the corporate secretarial (CS) sector and/ or for trust and company service providers (TCSPs) have to obtain at least three points out of the 15 required points from the Institute's own ECPD activities.

Members who do not work in CS sector and/ or for a TCSP have the discretion to select the format and areas of MCPD learning activities that best suit them. These members are not required to obtain MCPD points from the HKICS (though they are encouraged to do so), but nevertheless they must obtain 15 MCPD points from suitable providers.

When to submit the declaration form?

Those who have achieved the MCPD requirements of 15 CPD points during the CPD year (1 August 2011 – 31 July 2012) are required to fill out the Institute's declaration form (see 'MCPD Form I' on the Institute's website). The deadline for submitting the declaration form is **14 August 2012**.

To learn more about MCPD please visit the Institute's website.

Enhanced CPD Programme

The Institute cordially invites you to take part in our Enhanced Continuing Professional Development (ECPD) Programme, a professional training programme that best suits the needs of company secretaries of Hong Kong listed issuers who will need to comply with the new mandatory requirement of 15 CPD hours every year. The Institute launched its mandatory CPD programme in August this year and, since January 2012, its requirement for Chartered Secretaries to accumulate at least 15 CPD points each year has been backed up by a similar requirement in Hong Kong's listing rules.

More information on the new Hong Kong Exchanges and Clearing (HKEx) requirements can be found in the consultation conclusions to the 'Review of the Corporate Governance Code and Associated Listing Rules' on the HKEx website (www.hkex.com.hk).

To learn more about Institute's ECPD programme, please visit the Institute's website (www.hkics.org.hk).

China Activities

China Corporate and Regulatory Update (CCRU) 2012



This year's China Corporate and Regulatory Update (CCRU) seminar, was held on 11 January 2012 and featured a strong line-up of speakers, including key regulators from Hong Kong and mainland China. They updated participants on corporate and regulatory developments in both mainland China and Hong Kong.

Speakers at this event were (in the sequence of delivery):

- Ma Xiao, Deputy Division Director, Department of Listed Company Supervision, Division 1 of Mergers and Acquisitions, China Securities Regulatory Commission
- Vincent Lin, Senior Consultant, Listing Division, Hong Kong Exchanges and Clearing Ltd
- Fan Zhi Peng, Senior Manager, Listed Company Management Department, Shanghai Stock Exchange
- Ma Wei Jie, Senior Manager, Listed Company Management Department, Shenzhen Stock Exchange

This event is covered on pages 18–27 of this month's journal. More photos taken at the seminar are available at the gallery section on the Institute's website.

New graduates

The Institute is pleased to announce that:

- 25 students successfully completed the HKICS International Qualifying Scheme at the December 2011 examination, and
- 22 students graduated via the Collaborative Courses (CCA) organised by the Hong Kong Polytechnic University, City University of Hong Kong and the Open University of Hong Kong.

Congratulations to our 47 new graduates!

IQS graduates

Chan Fai Ho	Lu Hongyu
Chan Ka Sin	Ng Andrew, Bernard
Cheang Yee Wah, Eva	Ng Ka Yan, Candy
Hon So Fan	Ng Pui Ching
Kong Kai Yue	Ng Wai Ting
Kwok Ying Pui	Ng Wai Yan
Lai Mei Yan	Ngai Lai Wan, Winnie
Lau Siu Yee, Jessica	Suen Ka Lin
Lau Yuk Ping, Sandy	Tse Woon Lam
Lee Jeng Toa	Wong Hiu Wong
Li Miu Yee	Wong Yun Yin
Li Siu Man	Zhong Yan
Lo Man Wai	

CCA graduates

Chan Mei, May	Man Choi Ha
Chan Yee Man	Ou Yuk Ha
Cheung Ming Wai	Shum Kim Wa
Cheung Ngai Yuen	Shum Kwok Wing
Chung Fong Hang	Wong Ching Sum
Fan Karen	Wong Etchia
Fe Chun Yeung	Wu Cheuk Ying
Ho Yee Kwan	Yi Yi
Lai Ka Siu, Victor	Yip Tsz Sum, Ophelia
Lau Hoi Ling	Zhou Mo, Helen
Leung Karmen	
Leung Pui Yi, Pearl	

New technical and research director



The Institute would like to introduce to members its new Director, Technical and Research, Mohan Datwani. Mohan started work last month and will be working on, among other things, the Institute's technical submissions, research reports and this year's corporate governance conference.

HKICS dragon boat team 2012 – recruitment

The Institute will enter a team into the 7th Stanley Dragon Boat Warm-up Races in Stanley and the International Dragon Boat Races in May and July 2012 respectively.

Formed in 2006, our dragon boat team comprises both Institute members and students. This year, we need a squad of 23 paddlers including reserves and one drummer. The 12 practice sessions will start from 24 March 2012, every Saturday afternoon (15.00–17.00) at Sai Sha Wan beach, Sai Kung.

The enrolment deadline is 16 March 2012 (Friday). Join us to share this excellent experience – be part of the HKICS dragon boat team!

For details, please refer to the flyer on page 45, the Institute's website or contact the Membership section at 2881 6177.

Regional Board Secretaries Panel Meeting

A regional board secretaries panel meeting was held on 12 January 2012 in Hong Kong. The Institute's Affiliated Persons and H-share company board secretaries shared views and practical advice on 'Developments of Renminbi products in Hong Kong' and 'Price-sensitive information disclosure and the role of the board secretary'.

This event will be covered in more detail in a forthcoming edition of CSj.

December 2011 examination

1. Release of examination results

All results slips of the December 2011 examinations were posted to candidates on **13 February 2012**. If you did not receive your results slip, please contact the Education and Examinations section at 2881 6177. Students can refer to the examination papers, suggested answers and examiners' reports at the login area of the Institute's website.

A survey questionnaire was also mailed with the examination results – students are invited to participate in this examination survey. Please return the completed questionnaire by **16 March 2012**. All respondents will be entered into a lucky draw. For details, please refer to the survey documentation.

2. IQS examination pass rates

Part I	Pass rate
Strategic and Operations Management	41%
Hong Kong Corporate Law	12%
Hong Kong Taxation	36%
Hong Kong Financial Accounting	29%
Part II	
Corporate Governance	18%
Corporate Administration	28%
Corporate Secretaryship	31%
Corporate Financial Management	18%

3. Subject prize winners and merit certificate awardees

The Institute is pleased to announce that the following students were awarded subject prizes (attaining the highest 'distinction' grade) and merit certificates (attaining the score of 65 or above) at the December 2011 examinations. Congratulations to our students!

Subject prize winners

Candidate	Subject
Cheang Yee Wah, Eva	Corporate Secretaryship
Lu Hongyu	Corporate Financial Management
Poon Tsz Yan	Corporate Administration

Merit certificate awardees

Candidate	Subject
Chan Siu Kwan	Corporate Administration
Chan Yee Man	Corporate Administration
Cheang Yee Wah, Eva	Hong Kong Corporate Law
Cheng Sze Wai	Hong Kong Financial Accounting Hong Kong Taxation
Chiu Chun Hay	Corporate Secretaryship
Chu Ka Yee	Corporate Secretaryship
Chung Chor Wai	Corporate Secretaryship
Kong Kin Wai	Hong Kong Taxation
Lau Siu Yee, Jessica	Corporate Administration
Law Sin Pui	Strategic & Operations Management
Ng Wai Ting	Corporate Governance
Pak Yuen Yu	Corporate Governance
Tsang Pui Man, Janet	Corporate Administration
Wong Lai Yin	Corporate Administration
Wong Po Mui	Hong Kong Corporate Law
Yeung Yim, Ava	Hong Kong Corporate Law

June 2012 examination enrolment

The enrolment period for the June 2012 examination is from **1–31 March 2012**. The examination entry form is available for download at the Institute's website. Entries must be received by the secretariat either by hand before 6pm on **31 March 2012**, or by post with a post-mark on or before **31 March 2012**. Late

applications will *not* be accepted under any circumstances. To avoid postal errors or delays, candidates are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre after the examination application has been submitted.

IQS examination timetable (June 2012)

	Tuesday 29 May 2012	Wednesday 30 May 2012	Thursday 31 May 2012	Friday 1 June 2012
09:30–12:30	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
14:00–17:00	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Recommended reading

The second edition of *Corporate Governance: Principles, Policies and Practices*, by Bob Tricker (Oxford University Press), is scheduled to be published in the UK in late March 2012. The actual publication date is still to be confirmed and it will take at least two weeks for delivery.

There is a limited stock of the first edition available for HK\$321 per copy at the Academic & Professional (A&P) Book Centre. The first edition will soon

be out of stock, if you intend to purchase this book for your June 2012 examination preparation please contact the A&P book centre at: 2774 3740 (Tsim Sha Tsui Branch), or 2873 2226 (Causeway Bay Branch) for ordering.

Exclusive offer (20% discount) to HKICS members and students

A 20% discount is offered on *Hong Kong Company Secretary's Practice Manual*, Belinda Wong, (CCH Hong Kong Ltd, 2011) at the discounted price of HK\$960 per copy (down from the original price of HK\$1,200). The offer is valid until 31 March 2012. Please refer to the Institute's website for the order form. For enquiries, please contact CCH Hong Kong Ltd at 2526 0192.

Academic Cocktail 2012

The Institute organised its annual Academic Cocktail – designed to provide a valuable networking opportunity for local academics, educational institutions and the Institute – on 23 February 2012. The evening began with a welcoming address by HKICS President, Edith Shih *FCIS FCS(PE)* and the Institute's Education Committee Chairman, Alberta Sie *FCIS FCS(PE)*. Other members of the Institute's Council, committees and sub-committees in attendance were:

1. April Chan *FCIS FCS(PE)*
2. Polly Wong *FCIS FCS(PE)*
3. Ivan Tam *FCIS FCS*
4. Bernard Wu *FCIS FCS(PE)*
5. Dr Brian Lo *FCIS FCS*
6. Dr Susana Yuen *ACIS ACS*
7. Horace Wong *FCIS FCS*
8. Patrick Sung *FCIS FCS*
9. Jerry Tong *ACIS ACS*

Guest list

Professor Alan Au

Associate Dean, Lee Shau Kee School of Business & Administration, Open University of Hong Kong

Dr David Bishop

Senior Teaching Consultant, School of Business, University of Hong Kong

Professor Dennis Chan

Adjunct Associate Professor, Department of Accounting, Hong Kong University of Science and Technology

Eunice Chan

Lecturer, Hong Kong Community College, The Hong Kong Polytechnic University

Michelle Cheng

Senior Teaching Consultant, Professional Legal Education, University of Hong Kong

Dr Suwina Cheng

Assistant Professor, Department of Accountancy, Lingnan University

Edward Chiu

Associate Professor, Centennial College, University of Hong Kong

Rainey Choi

Programme Manager, College of Business & Finance, HKU SPACE

Grace Chow

Director, Admissions and Financial Aids, Chinese University of Hong Kong

Dr Guan Wenwei

Assistant Professor, School of Law, City University of Hong Kong

Mandy Ho

Programme Leader, Department of Business Administration, Caritas Institute of Higher Education

Albert Hung

Senior Programme Director & Acting Head, College of Business and Finance, HKU SPACE

Dr Shirley Kan

Senior Instructor, School of Accountancy, Chinese University of Hong Kong

Dr Anthony Ko

Strand Leader & Associate Professor, Lee Shau Kee School of Business & Administration, Open University of Hong Kong

Lydia Lam

Programme Manager, College of Business & Finance, HKU SPACE

Dr Lee Hua

Assistant Professor, Department of Accounting, Hong Kong Shue Yan University

BJ Lee

Programme Manager, College of Business & Finance, HKU SPACE

Isabel Leung

Programme Manager, College of Business & Finance, HKU SPACE

Bruce Li

Teaching Fellow, School of Accounting & Finance, The Hong Kong Polytechnic University

Prof Lin Zhijun

Head & Professor, Department of Accountancy and Law, Hong Kong Baptist University

Professor Phyllis Mo

Professor, Department of Accountancy, City University of Hong Kong

Dr Christina Ng

Senior Teaching Consultant, School of Business, University of Hong Kong

Ivy Ngan

Assistant Director, Business School, Hong Kong University of Science and Technology

Professor Lynn Pi

Adjunct Associate Professor, Department of Finance, Hong Kong University of Science and Technology

Academic Cocktail 2012 – photo gallery

Dr Tony Shieh

The Hong Kong Polytechnic University

Clement Shum

Associate Professor, Department of Accountancy, Lingnan University

Dr Richard Simmons

Associate Professor, Faculty of Business, Lingnan University

Suzette So

Executive Officer, Office of Admissions and Financial Aid, Chinese University of Hong Kong



Professor Judy Tsui

Vice-President (International and Executive Education), The Hong Kong Polytechnic University

Claire Wilson

Lecturer, Department of Law and Business, Hong Kong Shue Yan University



Dr Raymond Wong

Assistant Professor, Department of Accountancy, City University of Hong Kong

Dr Brossa Wong

Associate Professor and Chairperson, Department of Accountancy, Hang Seng Management College



Matthew Wong

Senior Student Services Officer, Office of Student Affairs, Hong Kong Shue Yan University

Dr Yeung Wing Lok

Associate Director of Business Programme, Lingnan University



Student Ambassadors Programme (SAP) 2012 – workshop on interviews and CV preparation

On 25 February 2012, the Institute organised a workshop on interviews and CV preparation as part of its Student Ambassadors Programme (SAP). Edith Shih *FCIS FCS (PE)*, HKICS President, gave advice and tips on writing job applications and CVs. Her presentation was followed by a group discussion and mock interview. The workshop gave student ambassadors practical insights into the whole process of job applications and interviews.



Edith Shih FCIS FCS presenting to the participants



At the workshop

Upcoming activities

New Student Orientation

All students registered since September 2011 are welcome to attend the Institute's free New Students Orientation. This event aims to give new students up-to-date information about the Institute. It also serves as a platform for them to meet with other students.

The Academic & Professional Book Centre will set up an IQS textbook display at the orientation. Students can make an order in advance and pick up the books at the orientation. The book order form can be found on the Institute's website. Please call 2774 3740 (A&P Book Centre) for details.

Date:	15 March 2012 (Thursday)
Time:	19:00 – 20:30
Venue:	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Enrolment deadline:	8 March 2012 (Thursday) [applications accepted on first-come-first-served basis. Participants will receive an email confirmation]

Upcoming activities

Student Ambassadors Programme (SAP) 2012 – visit to PARKnSHOP Fresh Food Distribution Centre

Date:	14 April 2012 (Saturday)
Time:	10:00 – 12:00 (with lunch afterwards)
Venue:	PARKnSHOP Fresh Food Distribution Centre, 6 Ka Fu House, Sheung Shui, New Territories
Fee:	HK\$100 for registered students & members* (lunch & transportation fee included)
Enrolment deadline:	30 March 2012 (Friday) [applications accepted on first-come-first-served basis. Participants will receive an email confirmation]

* This is a Student Ambassadors Programme (SAP) event aimed at student ambassadors, but registered students and members are also welcome to join.

The SAP provides a platform for undergraduates to understand the Chartered Secretarial profession through various visits, seminars and social activities. Members and students are encouraged to recommend this programme to undergraduate friends from all local universities in any discipline.

IQS information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute will be invited to share valuable experience on the career prospects of qualified Chartered Secretaries.

Date:	25 April 2012 (Wednesday)
Time:	19:00 – 20:30
Venue:	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Speaker:	Rebecca Yu <i>FCIS FCS, Company Secretary, Hastings & Co.</i>
Enrolment deadline:	18 April 2012 (Wednesday) [applications accepted on first-come-first-served basis. Participants will receive an email confirmation]

Members and students are encouraged to recommend this event to friends or colleagues who may be interested in learning more about the IQS and the Chartered Secretarial profession.

CAPCO: a step towards the professionalisation of board secretaries?

Mainland China set up its long-awaited national listed company association last month. The China Association for Public Companies (CAPCO), which was officially established in Beijing on 15 February, has been in the planning phase for a number of years as increasing number of regional listed company associations have been set up around the country.

The launch of CAPCO is likely to have a particular significance for board secretaries in mainland China. In the absence of a professional body, CAPCO will provide board secretaries a platform to share information and work together. CAPCO is also tipped to play a key role in the training and professionalisation of board

secretaries. One proposal is for a board secretary committee to be set up within CAPCO to consider the introduction of a professional qualification system for board secretaries.

CAPCO aims to provide similar networking, training and information exchange benefits to directors and others involved in listed company work. One possibility will be for CAPCO to nominate and even appoint independent directors to listed companies to improve their independence and their effectiveness.

It is still uncertain exactly how CAPCO will function, but its official aims include a responsibility to:

- improve the governance of listed companies and their standards of regulatory compliance
- foster a dialogue between listed companies, regulatory authorities and government agencies
- develop self-regulatory rules, standards of practice and codes of conduct for listed companies, and
- establish guidelines of conduct, professional ethics and other rules of self-regulation that govern directors, supervisors and senior management.

More information (in Chinese) is available on the official CAPCO website: www.capco.org.cn.

Financial disclosure standards in Hong Kong

The latest Hong Kong Exchanges and Clearing (HKEx) review of Hong Kong listed company financial reports is available on the HKEx website. The HKEx Financial Statements Review Programme reviews, on a sample basis, the financial reports of companies listed on the Hong Kong Stock Exchange. The objective of the programme is to monitor compliance with the disclosure requirements of the listing rules and accounting standards. HKEx releases key the findings of its review on a regular basis to encourage higher standards of financial disclosure.

The key findings of the latest report, the third in the series, included:

- discussions in the 'management discussion and analysis' section should be consistent with the

financial statements and should provide an additional useful narrative to explain the company's performance and financial position

- additional information should be presented in financial reports to provide a better understanding of the nature and impact of significant events or material balances and transactions, and
- improvements in connected and related-party disclosure were noted but there is room for further improvement.

HKEx encourages directors and other persons responsible for financial reporting to take note of the matters discussed in the report and to review their existing financial reporting systems to ensure the information presented in their

financial reports is specific, relevant and material, in compliance with the disclosure requirements, and will be useful to users in making economic decisions.

The latest review looked at the of annual, interim and quarterly financial reports released by companies listed on the Hong Kong Stock Exchange between October 2009 and April 2011. It is available under the 'Rules & Regulations – Rules and Guidance on Listing Matters – Guidance Materials – Financial Reporting Matters' section of the HKEx website (www.hkex.com.hk).



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The Hong Kong Institute of Chartered Secretaries Dragon Boat Races 2012



Formed in 2006, our dragon boat team comprises of both Institute members and students. Apart from building a team with great team spirit, this provides a valuable opportunity for members' networking and friendship, as well as personal challenges and satisfaction. To prepare for the upcoming races, the team will have practice sessions in Sai Kung every Saturday commencing in late March 2012. Join us to share this excellent experience!

Races entered

1. 7th Stanley Dragon Boat Warm-up Races 2012
(26 May 2012)
2. Hong Kong International Dragon Boat Races 2012
(Scheduled during 4-8 July 2012)

Team composition

22 Paddlers & 1 Drummer

Training details (total: 12 sessions)

Date: March 24, 31; April 14, 21, 28;
May 5, 12, 19; June 2, 9, 16, 30
Time: 3.00 p.m. – 5.00 p.m.
Venue: Sai Sha Wan Beach at Sai Kung

Enrolment deadline

16 March 2012 (Friday)

Note:

1. All team members must be capable of swimming 100M and physically fit.
2. The group personal accident insurance is included.
3. Each member will receive a T-shirt and a pair of gloves.



Scan to view photos
of last year's races!

For more information, please visit the Institute's website at www.hkics.org.hk or contact the Secretariat at 2881 6177.

Appointing registered agents at the e-Registry

The Companies Registry has launched a new measure aimed at facilitating electronic filing and improving the user-friendliness of its e-Registry portal (www.eregistry.gov.hk). Company and individual users of the e-Registry may now appoint agents registered at the e-Registry for the purpose of electronic filing. To appoint an agent to deliver electronic documents on your behalf, you can submit paper Form RAG1 (the appointment/ cessation of appointment of registered agents) available under the 'download' section of the e-Registry and the 'Electronic Services – Electronic Services at the e-Registry' section of the Registry's website (www.cr.gov.hk).

Upon registration of Form RAG1 by the Registry, the registered agents may deliver electronic documents at the e-Registry on behalf of their respective principals. As the appointment of registered agents is to facilitate electronic filing, the arrangement is not applicable to delivery of documents in paper form to the Registry's offices.

The new measure is part of a number of improvements to the Registry's electronic services. Also of interest to company

secretaries is the expansion in the number of forms which can now be submitted to the e-Registry, namely:

- D2A (notification of change of secretary and director – appointment/ cessation)
- D2B (notification of change of particulars of secretary and director)
- D4 (notification of resignation of secretary and director)
- R1 (notification of change of address of registered office)

These forms are available under the 'e-Submission Services – Local Companies' section of the e-Registry. Electronic forms may only be submitted through the e-Registry. Hard copies of completed electronic forms will not be accepted by the Companies Registry for submissions over the counter. The electronic forms can be submitted individually or in bulk through the e-Registry.

The R1 Form mentioned above represents a new service jointly introduced by the Companies Registry and the Inland Revenue Department (IRD). This service is an electronic, one-stop notification service for a company to report any

change in its registered office address, or a change of business address as stated on the Business Registration Certificate.

The Registrar will notify the Commissioner of Inland Revenue that the company's business address, as registered under the Business Registration Ordinance, has changed to its new registered office address with effect from the effective date of change as stated in Form R1. The Business Registration Office (BRO) of the IRD will normally issue an updated Business Registration Certificate to the company by post on the next working day following the date the Registry registers Form R1. The BRO will also update the business address in the business register for public inspection.

For further details on business registration matters, please refer to the IRD's website (www.ird.gov.hk). Information is also available on the Companies Registry website: www.cr.gov.hk (see in particular the Registry's external circulars 6/2011 and 1/2012), and at the e-Registry portal: www.eregistry.gov.hk.

Appointments to the SCCLR

HKICS president Edith Shih has been re-appointed to serve on the Standing Committee on Company Law Reform (SCCLR). Other re-appointees include: Anne Carver, Vincent Fan Chor-wah, Peter Greenwood, Stephen Birkett, Rock Chen Chung-nin and Dr Kelvin Wong Tin-yau. Their new term started on 1 February 2012. The SCCLR was set up in 1984 to advise the government on company law

(focusing on corporate governance and shareholders' protection matters in the Companies Ordinance and the Securities and Futures Ordinance). It has been closely involved in the development of the Companies Bill currently being debated by LegCo. Looking ahead, the SCCLR will be tasked with advising the government on its exercise to modernise Hong Kong's corporate insolvency law. The government

is seeking to reform Hong Kong's existing corporate insolvency regime in a bid to facilitate more efficient administration of the winding-up of companies and enhance the protection of creditors.

A full list of the new SCCLR line-up is available on the Financial Services and Treasury Bureau website (www.fstb.gov.hk).

Pricing environmental and social costs: new UN report

The UN has released a new report on sustainable development, *Resilient People, Resilient Planet: A Future Worth Choosing*. The report focuses on the need to move sustainable development into mainstream economics. The report includes recommendations to:

- establish price signals to make transparent the full ecological and human costs of economic decisions (for example, carbon emissions should not be free and price- and trade-distorting subsidies for fossil fuels should be made transparent and phased out by 2020)
- establish a regular 'Global Sustainability Outlook' that integrates knowledge across sectors and institutions (highlighting the scientific thresholds that define a 'safe operating space' for humanity), and
- develop a set of universally applicable sustainable development goals that can galvanise long-term action beyond electoral cycles.

The report also highlights the need for social equity – arguing that promoting fairness and inclusion is necessary for lasting prosperity and stability.

The report was prepared by the 22-member 'High-level Panel on Global Sustainability', co-chaired by Finnish President Tarja Halonen and South African President Jacob Zuma, which was established by the UN Secretary-General in August 2010 to formulate a new blueprint for sustainable development and low-carbon prosperity. It is available online at: www.un.org/gsp/report.

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COMPANY SECRETARY

Our client is an established provider of company formation and business administration services. They are now seeking a qualified company secretary to support their growing client base. This will be a challenging role for an up and coming corporate services professional, who is looking for an opportunity to join a dynamic business. The successful candidate can expect lots of client contact and a genuine career path.

REQUIREMENTS:

- Five years company secretarial and corporate services experience
- Well versed and knowledgeable in Hong Kong, Offshore and China related cross-border corporate structuring and company secretarial matters
- A member of the HKICS
- Fluent in English and Chinese
- Experience with bookkeeping, payroll and MPF administration would be a definite advantage
- Strong interpersonal & communication skills
- Good client management skills
- Well organized and has initiative
- A good problem solver and happy to use initiative

If you are interested in applying for this position, please submit your resume directly to info@astusrecruitment.com. If you would like to have a confidential discussion about this opportunity, please contact one of our consultants on +852 2104 7799.

All information collected will be used for recruitment purposes only.

Astus Recruitment Limited

Rm 1901 Lyndhurst Tower, 1 Lyndhurst Terrace, Central, Hong Kong
T: +852 2104 7799 F: +852 3010 1798 www.astusrecruitment.com

Astus Bell Interim Management Limited

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Hedge Fund Compliance Officer

International Hedge Fund

Our client is actively seeking a Compliance Officer to handle their General Compliance function and relations with external regulators. You will handle all compliance responsibilities and review all business agreements, compliance policies and marketing materials to make sure that no rule has been breached. To be eligible for this role you must have relevant experience working within Hong Kong and Asia Pacific regulations.

Senior Company Secretary

Leading Listed Company

This leading listed property development group is seeking a company secretary to lead the department and handle the full set of company secretarial duties. The candidate is also expected to develop and oversee the systems that ensure the company complies with all applicable compliance. A minimum 10 years' relevant working experience is required with prior listed company experience a must.

Company Secretary

Leading International Law Firm

In this role you will be handling company secretarial related matters to meet with listing rules and company ordinance requirements. You will be assisting preparation of annual company reports and ensuring decisions made are communicated to the relevant company stake holders. A minimum 7 years' relevant experience required ideally with listed companies. Candidates must have excellent written and spoken English together with strong Chinese.

Head of Regulatory Compliance

International Financial Institution

As part of their new organization structure, this leading global bank is seeking a Head of Infrastructure and Regulatory Compliance. This role will be responsible for being the Compliance interface of infrastructure functions reporting to the Regional Head of Compliance. The role requires working closely with Legal, compliance and other risk functions in responding to SFC, HKMA and other regulatory enquiries.

Accounting . Compliance . Company Secretary . Legal . Business Development . Sales . Marketing

For a discussion about these and other career opportunities, please contact Guy Erricker

www.charterhouse.com.hk
e : guye@charterhouse.com.hk . t : +852 3151 1317

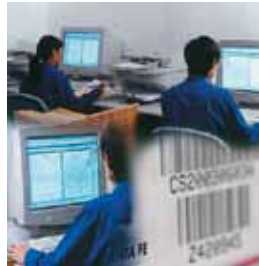
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Global Share Alliance

In June 2011, Tricolor Investor Services formed a strategic alliance with Equiniti Limited, a UK company, and Link Market Services Limited, an Australia-based company, to deliver world class securities market and investor services to globally listed companies. Together, we become the Global Share Alliance (GSA).

The GSA will further strengthen our existing strong global servicing network, including USA and Canada.

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