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May 2012

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



In search of a balanced board

Board diversity
Contract management
New arbitration rules



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Company secretaries need to be proficient in a wide range of practice areas. *CSj*, the journal of The Hong Kong Institute of Chartered Secretaries, is the only journal in Hong Kong dedicated to covering these areas, keeping readers informed of the latest developments in company secretarial practice while also providing an engaging and entertaining read. Topics covered regularly in the journal include:

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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.

The 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 3,000 students.

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Membership statistics update

As of 23 April 2012, the Institute's membership statistics were as follows:

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Graduates: 483
Associates: 4,652
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The Hong Kong Institute of Chartered Secretaries

(Incorporated with limited liability)
 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
 Tel: (852) 2881 6177 Fax: (852) 2881 5050
 Email: ask@hkics.org.hk (general) ecpd@hkics.org.hk (Professional Development)
 member@hkics.org.hk (member) student@hkics.org.hk (student)
 Worldwide Web: www.hkics.org.hk

Beijing Representative Office

Rooms 1014-1015, 10th Floor, Jinyu Mansion, No 129 Xuanwumen Xidajie
 Xicheng District, Beijing, China, P.C.: 100031
 Tel: (86 10) 6641 9368 Fax: (86 10) 6641 9078 Email: bro@hkics.org.hk

Institute of Chartered Secretaries and Administrators

Chartered Secretaries Australia Ltd
 Level 10, 5 Hunter Street
 Sydney, NSW 2000
 Australia
 Tel: (02) 9223 5744
 Fax: (02) 9232 7174
 Email: info@CSAust.com
 Website: www.CSAust.com

The Institute of Chartered Secretaries & Administrators in Canada
 202-300 March Road,
 Ottawa, ON, Canada K2K 2E2
 Tel: (613) 595 1151
 Fax: (613) 595 1155

The Malaysian Institute of Chartered Secretaries and Administrators
 No. 57 The Boulevard, Mid Valley City, Lingkaran
 Syed Putra,
 59200 Kuala Lumpur, Malaysia
 Tel: (603) 2282 9276
 Fax: (603) 2282 9281

Chartered Secretaries New Zealand Inc
 Level 2, Administrator House
 44 Anzac Ave Auckland 1001
 New Zealand
 Tel: 64 9 377 0130
 Fax: 64 9 366 3979

Committee chairmen 2010

Education Committee:
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May 2012

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 To subscribe call: +852 2982 0559 or
 email: enquiries@ninehillsmedia.com

Editorial Committee

Phillip Baldwin
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Credits

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Contributors to this edition

Gina Miller
 Journalist
Minxin Pei
 Claremont McKenna College, US
Matthew McKee
 Argyle Lawyers Pty Ltd, Australia
Helen Chan
 Thomson Reuters

Advertising sales enquiries

Paul Davis
 Commercial Director
 Ninehills Media
 Tel: +852 2982 0559
 Email: paul@ninehillsmedia.com

Ninehills Media Ltd

PO Box 9963
 General Post Office
 Hong Kong
 Tel: 2982 0559
 Fax: 3020 7442
 Internet: www.ninehillsmedia.com
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中国国际经济贸易仲裁委员会发出新规则，日后委员会参与争议案件调解工作和仲裁程序时，国际地位可望更形重要。

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Speed bumps?

In response to our cover story last month on the Companies Registry's electronic incorporation service – see 'No more paperwork?' *CSj*, April 2012, pages 6-10 – a reader has suggested that, contrary to information supplied by the Companies Registry in the article, using customised M&As to register a company slows down the e-incorporation process. This was also the view of one of the respondents we interviewed for the article. We queried this with the Companies Registry, which replied that use of customised M&As should not affect the speed of e-incorporation. What is your experience? Any comments/ suggestions on this issue will be most welcome.

You can post your comments on the Institute's new weblog (www.governancemaze.com), or contact 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.



The case for diversity

This month's journal looks at a topic that you are likely to hear a lot more about in the months and years ahead – board diversity. Finding good candidates to sit on the boards of Hong Kong companies is not always an easy task, and, at a time when board composition is increasingly subject to regulatory constraints, there may be those who feel that it is an added burden to have to consider the ethnic background and gender of board members as well as their skills and suitability for the position.

Company secretaries will know first hand, however, why it is so important to get a good mix of backgrounds and perspectives on the board. Put simply, board diversity, whether in terms of the ethnic, gender, expertise or cultural backgrounds of directors, brings a diversity of perspectives to the board and helps 'balance' board thinking. It also helps the board keep in touch with stakeholder concerns.

Board diversity is not yet a compliance issue, but we believe strongly that it is an issue on which the voice our profession and Institute needs to be heard. It will be the subject of an Institute research report due out later this year. We are also planning to include a session on board

diversity in this year's biennial corporate governance conference scheduled for 5 and 6 October.

As the cover story this month (see pages 6-15) delineates, company secretaries are in a uniquely favourable position to champion board diversity and ensure that boards recognise its importance. There are many practical reasons for this. Company secretaries understand the various voices on the board, and what expertise and/or perspectives may be lacking. In many companies, company secretaries are also in a good position to encourage diversity of board candidates through their work on the director recruitment process. The cover story this month has some useful recommendations on how companies can expand their recruitment beyond the traditional corporate sectors.

Beyond these practical reasons, however, there is of course the duty of company secretaries to alert the board and management to emerging corporate governance issues. Is board diversity a corporate governance issue? I, and our Institute, would argue strongly that it is, and I can tell you from first-hand knowledge that it is on the radar screens of our regulators. It may not be long before we see a recommendation added to our Corporate Governance Code for listed companies to include in their annual reports a description of the board's policy

on diversity, including gender, and any concrete measures taken to achieve the company's objectives in this area.

While board diversity is not a regulatory compliance issue in Hong Kong currently, and I do not think we will be seeing quotas for female representation on the boards of listed companies in Hong Kong in the near term, this is an issue where company secretaries can take the lead and fulfil our vocation to be the company's risk sentinel and conscience.

Finally, I would like to remind members to enrol in our Institute's biggest annual event, the Annual Corporate Regulatory Update (ACRU) which is scheduled to be held on 23 May 2012. There are only very few places still available so please enrol now at www.hkics.org.hk and make sure you do not miss out. I would like to thank the Securities and Futures Commission, Hong Kong Exchanges and Clearing, the Companies Registry and the Inland Revenue Department for their participation, as well as our sponsors and supporting organisations for their continuing support.

Edith Shih FCIS FCS(PE)

董事会成员应否多元化

本期的专题探讨董事会成员应否多元化，这议题在未来的日子里会有更多人谈论。一直以来，香港的企业要物色理想的董事人选殊非易事；而近期有关董事会组成的法规限制日益增加，若再要考虑董事会成员的种族背景、性别、专长和是否适合担任董事，有些人会觉得是额外负担。

董事会成员有不同背景和观点是十分重要的，个中原因公司秘书最清楚。简单来说，若能保持董事会成员在种族、性别、专长或文化背景方面的多样性，就可使董事会的观点多元化，有助「平衡」董事会的思维。不同背景的董事会成员，亦令董事会不致与各利益相关人士的关注脱节。

法规暂时并无要求董事会成员必须多元化，但我们深信在这议题上，各界应聆听专业特许秘书和公会的声音。今年稍后，公会将发表有关的研究报告。此外，两年一度的企业管治研讨会将于今年10月5日至6日举行，本会正计划在研讨会期间专辟讨论董事会成员应否多元化的环节。

正如本月的封面专题（见第6至15页）指出，公司秘书具备独有的条件，可助提倡董事会成员多元化，并确保董事会明白有关的重要性。实际的原因有许多。

公司秘书了解董事会中的不同声音，知道可能欠缺哪些专长及 / 或观点。不少企业的公司秘书也参与甄选董事的过程，因而有助促进董事人选多元化。今期的封面专题提出一些有用的建议，帮助公司在传统的企业界别以外物色董事人选。

除了这些实际的原因外，公司秘书当然有责任提醒董事会和管理层注意新的企业管治议题。董事会成员多元化是否一个企业管治议题？我和公会深信这是不容置疑的事实，而根据我所得的第一手资料，这是监管机构一直注视的问题。相信不久以后，我们便可看到有建议修订企业管治守则，规定上市公司在年报内说明董事会成员多元化的政策，包括董事会成员的性别，以及有何具体措施达到这方面的目标。

香港法规暂时并无有关董事会成员多元化的规定，我们也不预见短期内当局会

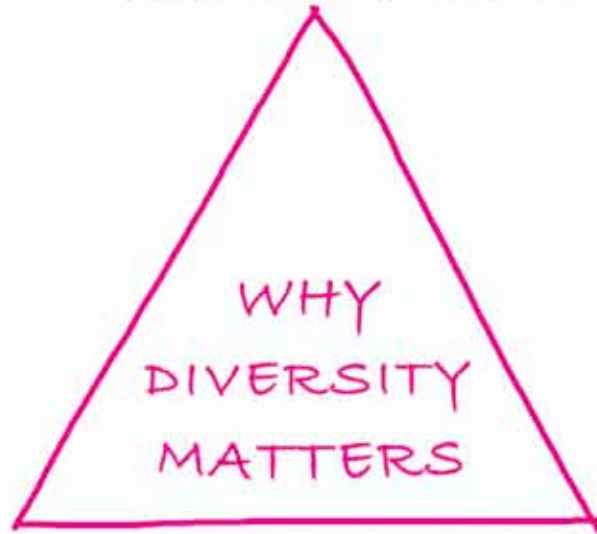
限定香港上市公司的女性董事人数；然而公司秘书可作为先行者，履行我们作为公司良心和风险哨兵的天职。

最后，我要提醒会员报名参加公会一年一度最大型的盛事——企业规管最新发展研讨会（ACRU）。研讨会订于2012年5月23日举行，目前仅余极少量名额，为免向隅，请即登入www.hkics.org.hk 报名参加。谨此感谢证监会、港交所、公司注册处和税务局参与盛会，亦感谢赞助商和各大机构一直以来的支持。



施熙德

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EXPECTATIONS



TALENT POOL

DECISION MAKING

In search of a balanced board

The case for diversity

Many female readers of this journal will no doubt have had the experience of being the only woman present at board meetings. How would they pitch to their male colleagues the need for better board diversity? *CSj* outlines a fictional company secretary's defence of diversity.

The board chairman called the regular meeting of the board of directors of Roosters Ltd to order at 11:00am. The meeting agenda was swiftly dispatched in the usual manner, but just as the directors were ready to break for their traditional post-meeting lunch, the company secretary, the only woman present, asks whether the board should consider the issue of board diversity. There follows a stunned silence. Not only has this question never been asked before, but the assembled directors have clearly never even heard of this newfangled concept.

Standing in between the directors and their collegial lunch, our company secretary has to explain why board diversity should at least be on their meeting agenda. Company secretaries interviewed for this article believe her pitch should include the following.

Why diversity matters

1. Stakeholder expectations

Stakeholders around the world have

become increasingly vocal in their demands for better board diversity. This can be seen, for example, in the 'lively' debate in the social media about Facebook's all-male board. 'Shareholder advocacy is increasingly on the rise and investors are proactively calling on companies to diversify their boards of directors,' says Daniel Lin, a Managing Partner at Grant Thornton Hong Kong.

Shalini Mahtani, Founder and Director of Community Business in Hong Kong, adds that simply staying in touch with the concerns of the company's stakeholders is a lot easier where the board's composition reflects those of its major stakeholders. 'In the realm of basic business performance, 60% of consumer decisions are made by women,' she points out, 'so if women are the primary decision makers for consumer

Highlights

- stakeholders have become increasingly vocal in their demands for better board diversity
- a diverse board enhances decision making
- company secretaries should ensure the board is properly advised on this issue
- companies need to broaden their selection criteria for board directorships and look outside the traditional corporate sectors for candidate directors

“
if you want to have the
best people, you must
include women
”

Shalini Mahtani, Founder and Director of
Community Business in Hong Kong



goods then a mono-ethnic, single gender board will be out of touch with the market.'

This point is seconded by Peter Greenwood, Group Executive Director of Strategy for CLP Holdings. 'It makes every sense if the board of a company is a reasonable reflection of the characteristics and interests of the key stakeholders in the company,' he says. 'It is obviously advantageous that the board is in tune with the people with whom the company interacts. At CLP, we are providers of a public service, so the board should be highly aware of and understand the interests and concerns of the society we serve.'

2. A question of talent

Some 48% of Hong Kong's labour force are women and 56% of university graduates are women. For Shalini Mahtani, the maths is very simple. 'If you want to have the best people, you must include women,' she says.

Greenwood agrees: 'It's in the interests of the company and the shareholders to make the fullest possible use of the wide range of talent on a company's board, rather than deny a company and shareholders access to this talent with an unfairly narrow focus on board members,' he says.

3. Better decision making

Non-diverse boards are also in much greater danger of descending into 'group think' than boards with a good mix of perspectives. 'A diverse board enhances decision making,' says Peter Greenwood. 'And diversity comes in many shapes and forms; it's not just gender, it's age, experience, ethnicity, countries where people reside and countries where they have worked. The real advantage of diversity of the board is that all those different characteristics lead to more thought-provoking and rewarding positions and decision making.'

Caricature or portrait?

Is Roosters Ltd a caricature of the typical Hong Kong board? Yes and no. When compared with other markets in the Asia Pacific region, Hong Kong is certainly no laggard in terms of board diversity. The city is China's most cosmopolitan and internationalised urban centre which helps improve the ethnic mix on its boards. Moreover, Hong Kong ranks third in the Asia Pacific region for female representation on its boards.

This sounds like some kind of achievement until you learn that this high ranking has been earned even though, according to Governance Metrics International's (GMI) *2012 Women on Boards Survey* (available at www.gmiratings.com), women make up just 9.4% of Hong Kong directors. Moreover, our fictional scenario of the lone female company secretary advising an all male board is not particularly far fetched when you consider that,

according to the same GMI study, some 40% of Hong Kong companies don't have a single female director. The numbers get even worse when you look at listed companies. Of the 48 companies listed on the Hang Seng Index, 20 don't have any women directors. Only China Resources Power Holdings Company Ltd has a female chair and Hang Seng Bank Ltd has a female CEO.

Elsewhere in the region the numbers paint an even bleaker picture. In Japan barely 1% of directors are women. Even the region's best performer on gender diversity – Australia – has only managed to raise the proportion of women on its boards to the not-so-stellar heights of 13.8%.

Outside the region, the picture is hardly more encouraging. According to GMI, the global average for female directors is currently 10.5%, and the pace at which gender diversity is improving is glacially slow – the proportion of women on boards globally increased by 0.7% in 2011.

Are mandatory quotas the answer?

The response of regulators and governments to this issue varies enormously around the world. Currently, there are no requirements in Hong Kong relating to board diversity. Some jurisdictions at the other end of the spectrum have opted for mandatory quotas. Malaysia, for example, recently introduced a 30% quota for the senior management of publicly listed companies.

Should Hong Kong impose mandatory quotas for board diversity? Elspeth Renshaw, Partner, Talent Partners, believes that while many business leaders, politicians and academics are conflicted over the question of quotas, there can be no doubt that they work.

'The question always raises thorny issues around merit and whether there are sufficiently qualified women to take seats at the boardroom table. However, the evidence that quotas work is there already.' The latest GMI statistics do indeed indicate that, where gender quotas have been imposed, the number of women board members has instantly accelerated. Norway imposed a 40% quota for women on boards in 2003 and now has the world's highest female representation at the executive level (36%). France's National Assembly passed a law in 2010 requiring French boards to have 20% female composition within three years and 40% in six. Now the percentage of female representation in France has reached an all time high at 16.6%.

Renshaw points out that while quotas are generally not supported at the time of their introduction – even in Norway, for example, unionists and women's groups were opposed to the quota – they quickly become accepted and uncontroversial.

Argument over? Well, not quite. The GMI statistics also show that non-mandatory measures can also accelerate the momentum towards better board diversity. Australia, for example, decided against imposing quotas, but has required listed companies to report on their diversity policies and performance. Australia is second only to France in the pace at which it is adding women to its boards – the increase in female directors last year was 3.5% and 5.4% over the last two years.

Most respondents to this article are opposed to quotas. 'They are mechanistic and formulaic,' says Peter Greenwood of CLP. Daniel Lin of Grant Thornton

Food for thought

'if women are the primary decision makers for consumer goods then a mono-ethnic, single gender board will be out of touch with the market'
Shalini Mahtani, Founder and Director of Community Business in Hong Kong

'it makes every sense if the board of a company is a reasonable reflection of the characteristics and interests of the key stakeholders in the company'
Peter Greenwood, Group Executive Director of Strategy for CLP Holdings

'regulators can play a conducive role, but this is insufficient without companies knowing the true value of business diversity on board representation'
Daniel Lin, Managing partner of Grant Thornton Hong Kong

'the old boys network is still very much alive in Hong Kong'
Teresa Ko, China Chairperson of Freshfields Bruckhaus Deringer

'the patrician elite clubs (sporting, social, legal circles) appear to be the likely source of a board appointee rather than a thorough search and selection process'
Elspeth Renshaw, Partner, Talent Partners

believes diversity is chiefly a matter for self-education. 'While many countries have set quotas for gender representation on boards and have brought about a marked change with speed, organisations and shareholders should also be pro-active about increasing diversified representation

and do this with genuine drive. At the heart of the matter, businesses need to understand why diversity makes business sense. Regulators can play a conducive role but this is insufficient without companies knowing the true value of business diversity on board representation,' he says.

The diversity issue is certainly on the radar screens of regulators here, but, given Hong Kong's generally *laissez faire* approach to the market, quotas are unlikely anytime soon. More likely will be something along the lines of the approach taken in Australia and the UK where listed companies are required to report on diversity.

Board diversity: the *bright* as well as the *right* thing to do?

If, as this article argues, there are clear and unambiguous advantages to having a more diverse board, you would expect to find empirical evidence that board diversity improves company performance. There have been many studies to date that have looked at the relationship between gender diversity and company performance, and, sure enough, many of them have found a positive correlation between the two.

'Looking at data from 2007 to 2010, McKinsey established that gender-diverse boards out-performed their competitors by 40% using an average return on equity for comparison,' says Elspeth Renshaw, Partner, Talent Partners. 'The same data was used to establish that the same companies had a 55% higher EBIT margin ['Earnings Before Interest and Tax' – a measurement of a company's operating profitability]. An older piece of research completed in 2001 involved almost 20 years of data and concluded that 25 Fortune 500 firms with significant evidence of promoting women to executive level roles showed between 20% to 70% higher profitability than the median Fortune 500 firms in same industry.'

For Shalini Mahtani, Founder and Director of Community Business in Hong Kong, bringing more women and increasing ethnic diversity into the boardroom is not about women's rights or affirmative action, it is about driving profitable growth and enhancing performance. 'It's a simple equation', says Mahtani, 'more diversity on the board results in better return on investments, on capital and on sales.'

There has been a research project in Hong Kong – *Female directors and earning's quality*, by Professor Judy Tsui of PolyU and Professor Ferdinand Gul of CityU – which found evidence to back this claim. 'The presence of female directors in monitoring positions on audit and corporate governance committees makes for more transparent reporting and earnings quality. There is evidence that boards with female directors promote greater vigilance over financial reporting, exhibit greater independence of thought and ensure a more rigorous monitoring process... This study finds significantly higher earnings quality in firms with female board participation,' the study states.

As with other contested theories about improving corporate performance, however, there is data to back both sides of the argument. Elspeth Renshaw concedes that 'while there is evidence of a correlation between gender distribution on boards and overall profitability, this evidence is contested and controversial.' Daniel Lin, Managing Partner, Grant Thornton, Hong Kong Ltd, believes that in the short term, greater diversity on the board may actually reduce board cohesiveness. 'In some instances, diverse boards may underperform against homogenous boards where individuals are more likely to disagree thereby weakening the team consensus. This may result in slower action and responses to the ever-changing business environment during boardroom meetings. But this is believed to be only a short-term effect, which is outweighed by longer-term benefits of diverse board with diverse perspectives and skills,' he says.

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“shareholder advocacy is increasingly on the rise and investors are proactively calling on companies to diversify their boards of directors”

Daniel Lin, Managing Partner of Grant Thornton Hong Kong

The UK has revised its corporate governance code (the changes will apply on or after 1 October 2012), to require listed companies to include in their annual reports a description of the 'board's policy on diversity, including gender, [and] any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives'. The annual evaluation of boards is also to be extended to include an assessment of the diversity of board members which includes gender criteria. The chairman of a UK listed company will be required to act on the results of these evaluations and address any weaknesses of the board by, for example, proposing new members to be appointed.

The latest revisions to our corporate governance code in Hong Kong, which took effect last month, have taken tentative steps towards an obligation to report on board diversity. The code

now includes a new provision requiring nomination committees to review the structure, size and *composition* of the board at least annually (emphasis added). Daniel Lin believes that one of the considerations of the 'composition' of the board will be diversity. He adds that, companies will have to disclose any lack of compliance with this code provision in their corporate governance report.

Peter Greenwood believes this is the right approach for Hong Kong. 'It would not be right for the Exchange to be a social engineer and specify requirements; it seems preferable that the Exchange promotes an approach whereby companies should report what their diversity policies are so others, including their shareholders, can judge whether these meet their expectations,' he says.

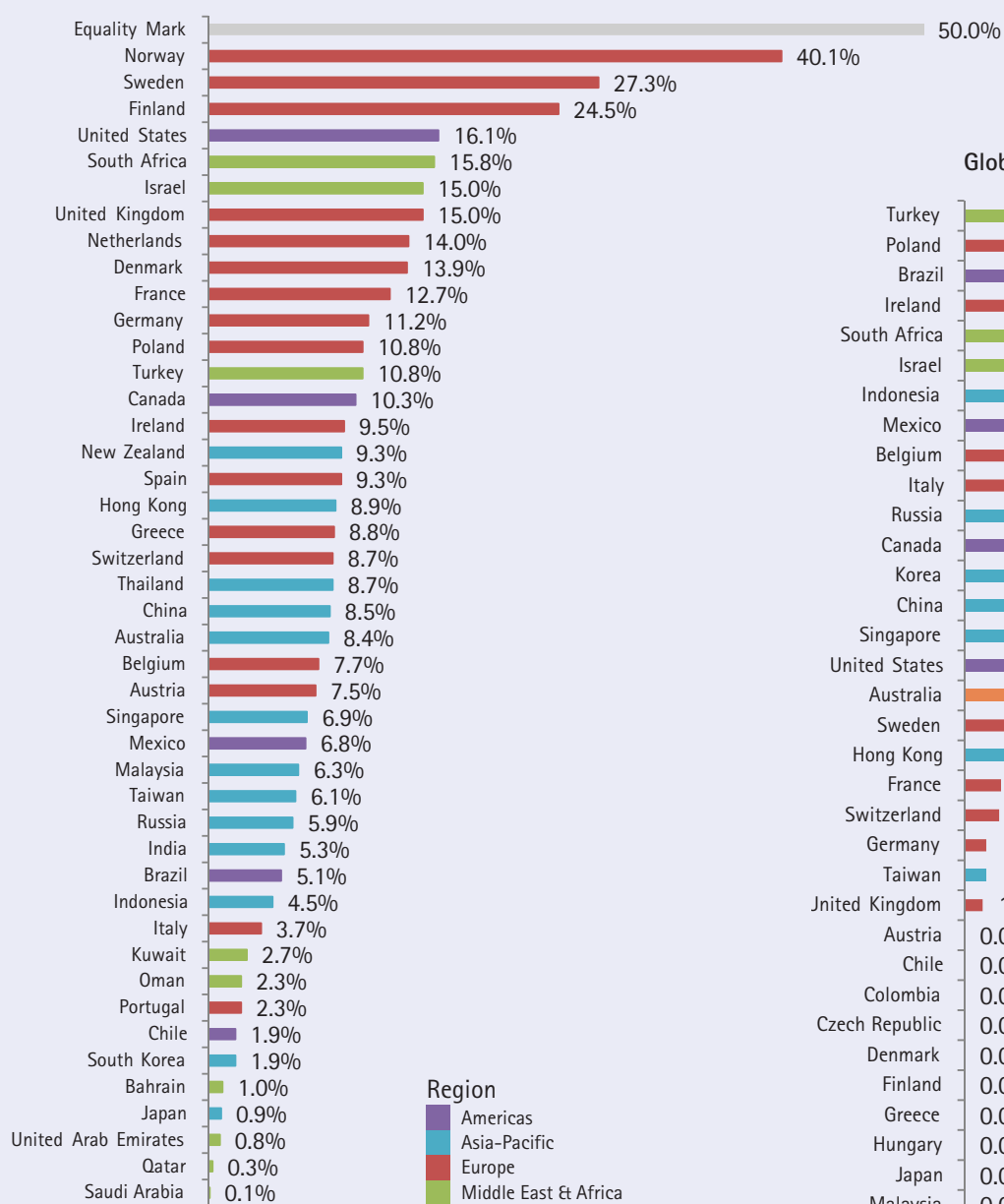
The company secretary role
Given the fact that board diversity is

not, yet, a regulatory compliance issue in Hong Kong, can company secretaries safely ignore the issue? The HKICS has been arguing for some time that company secretaries need to be more vocal on issues relevant to their role as 'counselor, adviser and a thought-provoker for the board' as Peter Greenwood puts it. The Institute believes that board diversity is precisely the kind of issue where the company secretary can add value. Firstly, in terms of gender diversity, the gender balance in the profession is actually tipped in favour of women – some 64% of the Institute's overall membership (members and students) is female and 73% of the Institute's students and new graduates are female. Secondly their unique vantage point on the board means that company secretaries see first-hand the benefits of bringing in fresh perspectives to board discussions. What then, can company secretaries do to encourage their boards to address this issue?

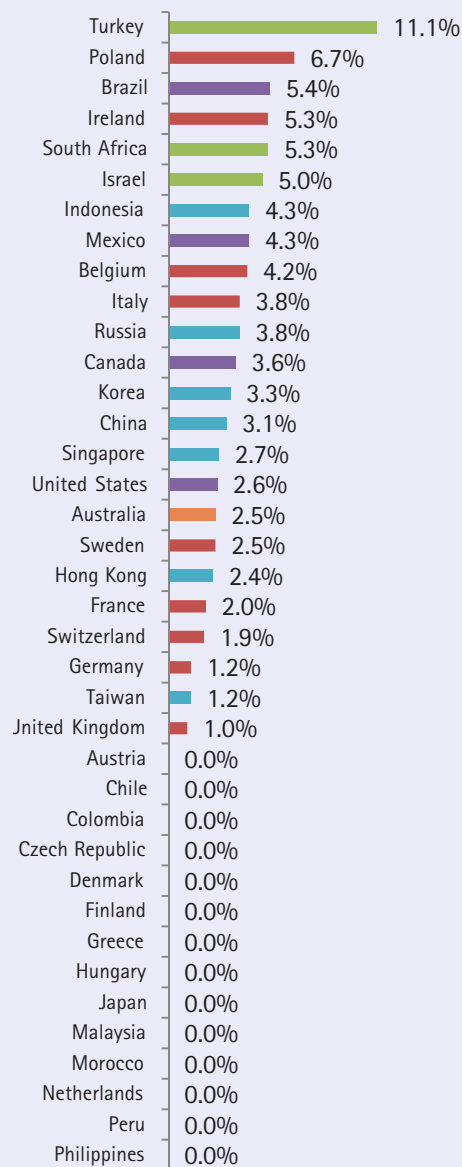
What the numbers say: the global picture

There is very little empirical data on the ethnic diversity of boards around the world, but there is a wealth of facts and figures relating to gender diversity.

Global board seats held by women



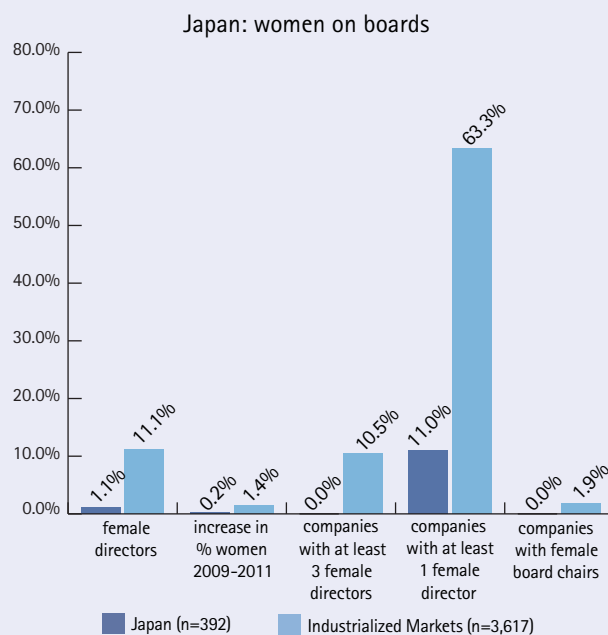
Global women board chairs



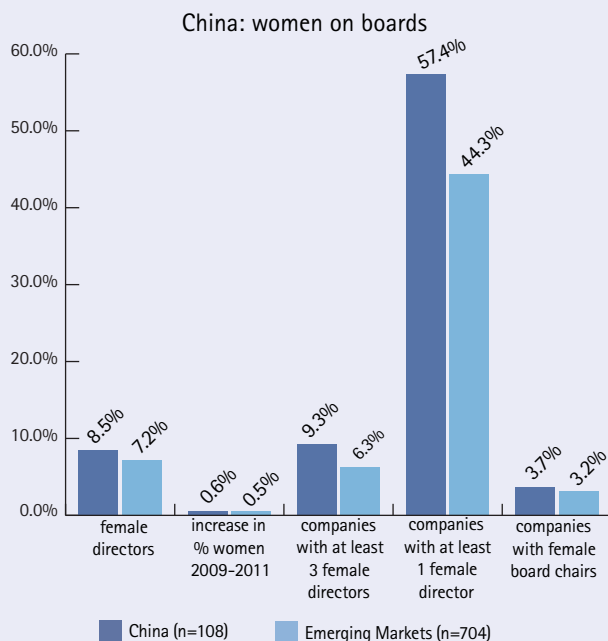
Copyright: Catalyst 2012

What the numbers say: a tale of two markets

Japan has the worst performance in terms of the gender diversity of its boards, both of the Asia Pacific region and of any industrialised economy. A mere 1.1% of current directors in the GMI study are women, a number that has been virtually unchanged since 2009. Only 11% of companies have even one female director, and none have three or more.



In Mao's China women were supposed to hold up 'half the sky.' In these days of capitalism with Chinese characteristics, women it seems are permitted to hold up 8.5% of the sky. Nevertheless, China is a great contrast to Japan in terms of the gender diversity on its boards. In many areas it is well above the overall developing-world percentages and close to the industrialised world percentages.



Copyright: GMI Ratings

1. Ensure the board is properly advised

Perhaps the most obvious first step is for company secretaries to ensure the issue is on the board's agenda. 'Company secretaries act as gatekeepers to the board and their duties include providing professional recommendations to the board and management. They can help promote a diversified board,' says Daniel Lin.

Peter Greenwood points out, however, that the chairman's role is also critical here. 'I think that in this era company secretaries can support, prompt and promote effective boards if a company secretary has a good relationship with the chairman and can bring to the chair's attention the importance, advantages and investor expectations of opening the board,' he says.

2. Look beyond the usual suspects

On a more practical level, company secretaries can also encourage a better diversity of board candidates through their involvement with the director recruitment process. Elspeth Renshaw of Talent Partners believes that the biggest obstacle to better board diversity is the persistence of the 'old boy's network' in the director selection process. 'The patrician elite clubs (sporting, social and legal circles) appear to be the likely source of a board appointee rather than a thorough search and selection process,' she says.

Teresa Ko, the China Chairperson of Freshfields Bruckhaus Deringer, agrees. 'The old boy's network is still very much alive in Hong Kong,' she says. But she also points to the so-called 'leaky pipeline' phenomenon. 'The more senior the management rank, the more women get left behind due to a variety of reasons –



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In Hong Kong, you don't get a gold star for putting women on boards and you don't get a black rabbit not doing so
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Teresa Ko, China Chairperson of Freshfields Bruckhaus Deringer

they drop out due to lack of sponsorship, or for a change of lifestyle, or because of an institutional or individual mindset that does not support the advancement in women,' she says.

She stresses that there needs to be a change of mindset and an internal commitment within companies to have more women on boards. 'In Hong Kong, you don't get a gold star for putting women on boards and you don't get a black rabbit not doing so. There is no disclosure of board diversity required anywhere – I am not counting photos of board directors in annual reports – and leaving it to current board members to fill *ad hoc* vacancies tends to result in more men being appointed.'

Company secretaries can help broaden their company's selection criteria for board directorships. 'Companies should review their existing criteria for eligibility and see if it is too narrow and not tapping the range of qualities and background experiences that will lead to better decision-making and problem solving. It is apparent that boards need to be able to call on the knowledge and expertise outside of the traditional corporate sectors,' Daniel Lin says.

One way of achieving this is to use a professional board search firm. 'The advantage of using an executive search consultant is that they tend to have a structured and well-tested methodology, and may have a broader range of known candidates than those that may be in the immediate field vision of the chair and current board,' says Peter Greenwood.

He cautions, however, that the desire to have a better diversity of board candidates needs to be made explicit to such firms. 'An executive search consultant is only as good as the instructions he or she is given. If a company wishes to broaden from a narrow base, that instruction must be made clear to the consultant,' Greenwood says.

Gina Miller and Kieran Colvert

Gina Miller is a Hong Kong-based journalist. Kieran Colvert is the Editorial Director of Ninehills Media and the editor of CSj.

The GMI '2012 Women on Boards Survey' can be found at www.gmiratings.com. The HKICS hopes to release the findings of its current board diversity research project later this year.

A man with dark hair and glasses, wearing a brown suit jacket over a white shirt, stands on a balcony. He is leaning against a dark metal railing with his hands clasped. The background features a dense green hedge and a city skyline with tall buildings under a clear sky.

Keeping in touch

Linking companies and their owners

This month's interviewee – Naz Sarkar *ACIS*, the regional CEO for the UK, the Channel Islands, Ireland and Africa at Computershare Investor Services PLC – discusses the way that Chartered Secretaries involved in the share registration business can help develop and deliver a company's shareholder strategy.

Thanks for talking to us today, can we start with some personal background about yourself – where were you born and brought up?

'I was born in Yorkshire in the north of the UK to parents who emigrated from India. We moved to London when I was nine, so I grew up in London and I studied political science in Birmingham in the Midlands.

I got into the profession, as many people do, partly by accident. I had a couple of summer jobs and ended up working for the share registration business of Lloyds bank. I joined them on a graduate scheme after I left university and they sponsored me to do the Chartered Secretary exams. At Lloyds I had the benefit of working in many different areas of the share registry business and that gave me the background to develop my career both at Lloyds and subsequently when I joined Computershare.'

How relevant is the Chartered Secretary training for your current work?

'In the share registry business, the Chartered Secretary qualification is the most relevant qualification for the work we do. The qualification covers things like company law, the law of meetings, voting rights and the management of share registries. Those technical aspects of being a registrar are covered in the syllabus of the company secretarial practice paper. The company secretary has many roles but one of the fundamental roles is ensuring that the legal ownership of the company is properly managed and maintained.

So the Chartered Secretary qualification is the professional qualification of choice for the share registry business and it has been an important part of supporting my career. In addition to the technical aspects of managing share registers, the qualification also covers accounting and legal matters as well as business strategy – so it is a generalist qualification in the broader remit of a company's governance structures. I wouldn't be able to fulfil my role properly today, if I didn't have all those elements.'

What proportion of your staff are Chartered Secretaries?

'All of our senior relationship managers in our share registration business have done the company secretarial practice paper – which is the one most relevant to their role. The full Chartered Secretary qualification is a very good one, but the ICSA in the UK also supports other certificates and smaller foundation course type qualifications, for example the company secretarial

practice paper and the employee share plan paper. We have been fortunate to put a number of people through those types of qualification, as well as supporting those who want to go on to do the full qualification.'

Do you think the Chartered Secretarial qualification opens doors to many different careers – that is, it is not solely focused on the corporate secretarial career path?

'I studied with a number of people and the emphasis was not on corporate secretaryship alone. Some were following that career path and some were following the share registration path, but there were some who were there without either of those career paths in mind. They liked the mixture of accounting and legal knowledge, together with the business strategy elements, and they too were being sponsored.

Company secretaries see the operation of the business and the board at close hand. They see the formation of the company's strategy and they see the interpersonal maneuverings around the board at close quarters. They are involved in the legal structures and the financial reporting of the company, so it's a good general qualification to develop a career.

I have been extremely fortunate to have trained as a Chartered Secretary, I don't think I could do the role I'm doing without that background. I can call on people for legal and accounting functions, but I need to have a level of understanding to talk to these experts and understand the core issues they face.'

Highlights

- the Chartered Secretary qualification is the professional qualification of choice for the share registry business
- good corporate governance relies on companies having a transparent and quick connection to the owners of the company
- long and complex ownership chains are an obstacle to efficient shareholder communications
- company secretaries need to involve their share registrar in corporate transactions at an early stage



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I think the crisis has taught us a very basic lesson in the importance of record keeping and legal ownership
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As chains of share ownership become more complex, do you think companies today are in danger of losing touch with their shareholders?

'Different markets have different models, but the fundamental issue is that good corporate governance relies on companies having a transparent and quick connection to the owners of the company. Those models that put distance and separation between companies and their owners will have problems.

One of the things we try to do is to give people a sense of the alternatives. Computershare operates in most of the markets around the world, so we can point to jurisdictions where that connection works better. I don't see this as a threat but as an opportunity since there is a common objective around the world of good governance – good transparency in companies' operations, good disclosure from companies and considered voting from shareholders – these are common objectives everywhere.'

Do you think we will see more convergence globally of corporate governance standards and practices?

'I think that's going to be one of the fundamental and long-lasting effects of the global crisis actually, I think the crisis has taught us a very basic lesson in the importance of record keeping and legal ownership. The Lehman brothers collapse

demonstrated that understanding where legal ownership resides is crucial for when the music stops. If you don't know who your counterparties are, you don't know where your exposures are when the music stops.

We've been preaching this for some time – difficult and long ownership chains are fundamentally against risk management and good governance. Where there are lots of counterparties between issuers and owners – custodians and sub-custodians – not only does ownership become confused but also the issuance of information between issuers and owners becomes long-winded and prone to incorrect translation and breakdown, and that stops the governance process working effectively. For example, you may have a large investor voting in favour of the company's position on remuneration completely unaware that the back office has lent the stock – they may be the economic owner but they may no longer control it.'

Another aspect of your work at Computershare which will be of interest to CSj readers is the management of AGMs. I guess that gives you a good snapshot of investor concerns in the jurisdictions you work in, are there any trends you have seen emerging in recent years?

'It would be a little premature to talk about this season, but over the last few years there has been a clear theme, certainly from

retail investors, about remuneration and benefits. Investors want to make sure they get fair treatment and I suspect that will continue this season. In the tough economic conditions we have had over the last few years, company performance has been challenged. Most investors, and certainly retail investors, have become far more vocal about the need for a correlation between performance and pay. The focus has been on the banks, but this year I think we'll see that in the wider market as well.

Another area of concern is board diversity. Is the voluntary approach working in the UK? Will the government ratchet up the pressure for more diverse representation on company boards? These are certainly investor concerns.'

What do you think company secretaries should be prepared for in the years ahead?

'Well, there has been a period of subdued economic activity around the world, but I think we have got to look ahead at the recovery phase when it comes. And when it comes, I think we will see the nature of corporate transactions change, requiring a different kind of mindset to complete them. Transactions are becoming increasingly global. Look at the way Kraft took over Cadbury – Kraft shares were tendered as part of the offer to Cadbury stockholders, which meant of course that the UK shareholders ended up owning stock in a US-listed company. I think, as economies recover, we will also see corporate transactions becoming increasingly complex.

These transactions always fall on company secretaries to execute and if you are in the business of having to act upon a board's decision to implement a transaction, it makes good sense to do your homework while it's still relatively quiet to see how such a transaction would work. In 2008 and 2009, there were a whole plethora of rights issues – we probably had 20 of them in the UK raising trillions of pounds for companies – but we had seen nothing on that scale of capital raising in the market for 20 years. Between March 2008 and December 2009 I was getting calls at all times of the day from company secretaries saying "please come and see me immediately".

The next phase will be a different one and no one quite knows what that challenges will be – it could be a surge in cross-border takeovers or capital reorganisations, but company secretaries need to be ready. This is part of our ultimate brief in terms of our vocation, which is *be prepared*.

Unfortunately, in our business, we often get told about transactions after they have been designed and we just have to make it work. That's why we need to be prepared for potential problems not on the day the problem arises but far in advance of that. No one wants to be told about a problem at a late stage. The savviest company secretaries are those who involve their share registrar early so they can provide the right advice to their board.

And where there are problems, I think we have to be vigorous in alerting those concerned. I've been in boardrooms where the investment bankers and the lawyers are discussing a deal and have had to politely ask "how are you going to get this done?". The response is usually, "I don't know, aren't you going to do that?" Then you need to suggest changes to make the transaction work.

Regulators around the world are seeing this and are increasingly requiring that, before transactions and deals are announced, there is a clear plan for how the execution of the transaction is going to work and that everyone in the chain, including us, are properly contracted with.'

Both the UK and Hong Kong are currently considering moving to a scripless securities market (or dematerialisation as it is known in the UK) – do you think this will be a positive move?

'I think we are going to see more harmonisation of processes around the globe because, increasingly, investors are all around

Career notes

Naz Sarkar joined Computershare in August 2005. He has responsibility for all business lines across the UK, Channel Islands, Irish and African regions. Prior to joining Computershare, Naz was with Lloyds Registrars for more than 15 years. Naz has over 20 years of market experience; leading teams delivering registry, dealing and employee share plan services. He also has career experience in marketing, hands-on registry and planning and development, including knowledge gained on secondment to the London Stock Exchange. Naz is a fully qualified Chartered Secretary.

the world and they invest in companies which are listed, traded and run from all around the world. There has therefore been an increased focus on making sure that we operate in global markets in which everyone understands who is beholden to whom at any one point.

Certainly, the European Union (EU) has issued a number of directives aimed at harmonising its capital markets. These directives are still developing and some will take longer than

Going scripless

Going scripless (or 'dematerialisation' as it is known in the UK) enables investors to hold their shares electronically instead of taking physical possession of share certificates. This permits a more efficient settlement system by removing the need for paperwork, however in Hong Kong there is an added advantage due to the establishment of the Central Clearing and Settlement System (CCASS). CCASS and the Automatic Order Matching and Execution System (AMS) were introduced in 1993 to enable investors to hold and trade shares electronically, but retail investors were obliged to rely on their broker as the custodian of their shares. Generally, securities traded via the CCASS system are held in the name of HKSCC Nominees Ltd and issuers deal with HKSCC, as the registered owner of their shares, for the transmission of communications and entitlements. The scripless model proposed by the Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Ltd (HKEx) and the Federation of Share Registrars Ltd in 2009 aims to provide an alternative for investors to hold and transfer securities electronically in their own names.

More information on Hong Kong's transition to a scripless securities market is available on the SFC and HKEx websites (www.sfc.hk and www.hkex.com.hk)

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those markets which put
distance and separation
between companies and their
owners will have problems
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others to implement, but dematerialisation falls into that context. We want a single market for financial services in Europe and a uniform mechanism for trading and settlement will facilitate that. The EU wants all EU markets to be dematerialised by 2020. That may seem a long way away, and I and many others have argued that we shouldn't have to wait that long, but we'll see how the consultations go.'

Is dematerialisation popular with shareholders – will they continue to enjoy similar types and levels of services as they do currently?

'People's views on dematerialisation depend on how you present it. Clearly, people like to have a choice of broker, a clear proof of ownership, the right to go to the company's AGMs and to receive direct communications from the company. However, if you ask: "do you want to enjoy all of those privileges and be able to trade your shares more easily and avoid the difficulty of losing your certificate", most shareholders want to have both.'

What about shareholders who don't own a computer and want to retain a physical share certificate?

'Shareholders can still receive a paper share certificate if that's what they want – we as the registrar can issue a statement of ownership. Also, dematerialisation does not mean shareholders have to have a computer or a mobile phone. That said, there needs to be a substantial period of warning in the transition to dematerialisation and there is a lot of work to be done.

We operate in many markets where we have seen dematerialisation work really well, in Australia for example. Those lessons could help to avoid some of the mistakes that have been made elsewhere and bring about the advantages of dematerialisation more quickly. But in the UK, the argument has shifted from "are we for or are we against dematerialisation", to "how are we going to meet this timetable and what is the best model to achieve this"'. 

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Format: Sessions by CR, HKEx, IRD and SFC (Four in total)

Language: English

Venue: Room N201, Hong Kong Convention and Exhibition Centre, Wanchai,
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China 2030

China 2030: building a modern, harmonious and creative high-income society, published by the World Bank in collaboration with China's Ministry of Finance (MOF) and the Development Research Center of the State Council (DRC), assesses China's medium-term development challenges to 2030 and makes policy recommendations designed to help China transition to the next stage of its development.



The World Bank's *China 2030* report acknowledges the extraordinary feat that China has accomplished over the last three decades, transforming itself from a largely rural and impoverished nation to the world's largest exporter and manufacturer, and its second largest economy, but will China be able to sustain this performance over the next two decades?

China 2030 is in no doubt that the influence of China on the global economy will continue to grow in the years ahead. 'Perhaps the most important global megatrend is the rise of China itself. No other country is poised to have as much impact on the global economy over the next two decades. Even if China's growth rate slows as projected, it would still replace the United States as the world's largest economy by 2030, and its share in world trade could be twice as high,' the report states.

Nevertheless China, the report argues, is coming to a crossroads. Thirty years ago Deng Xiaoping launched the reforms which set China on its current growth trajectory, and the report suggests that China has now reached another turning point in its development path when a second strategic, and no less fundamental, shift is called for.

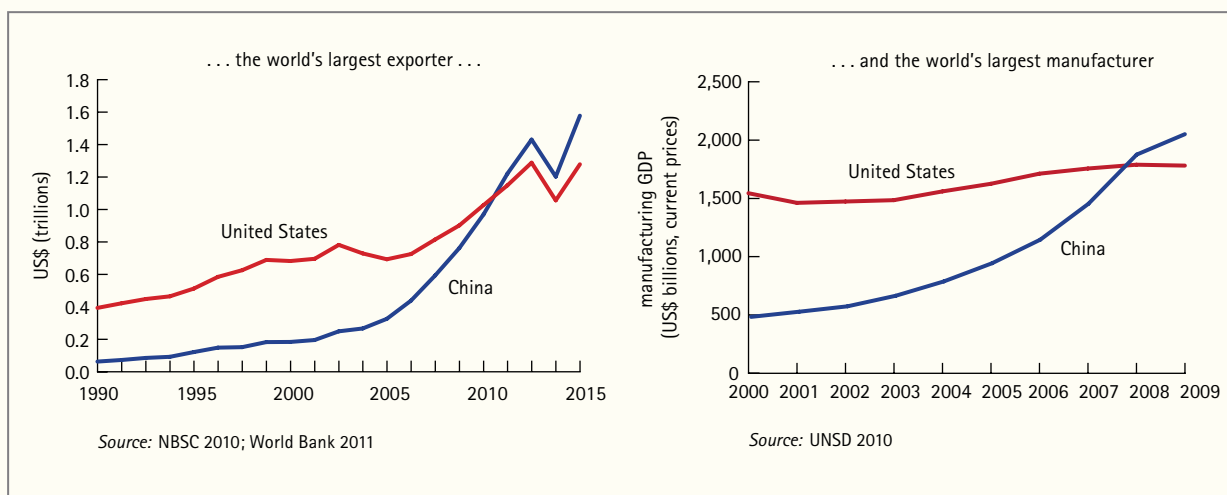
Can China transition to the next stage?

The report notes that China's growth rates are on a downward trend and predicts that its GDP growth will decline gradually from an average near 8.5 percent in 2011–2015 to around five percent in 2026–30. This is partly due to the difficult external economic environment (chiefly the eurozone sovereign debt crisis the weak US economic outlook), but it is also due to many structural, internal reasons highlighted by the report.

As countries develop there comes a time when the old tricks no longer work. China was able to transition from a low- to a middle-income country by producing labour-intensive, low-cost products using technologies developed abroad. As it reaches middle-income levels, however, it is heading inexorably towards the 'middle-income trap'. Basically, the underemployed rural labour force diminishes and wages rise, eroding competitiveness. Escaping this trap is not easy – most economies in Latin America and the Middle East, the report points out, reached middle-income status as early as the 1960s and 1970s and have remained there ever since.

As if that challenge was not enough, China also faces some fairly major 'structural' challenges that have resulted from its struggle to join the middle-income club. Firstly, its breakneck development has placed considerable

China has overtaken the US as:

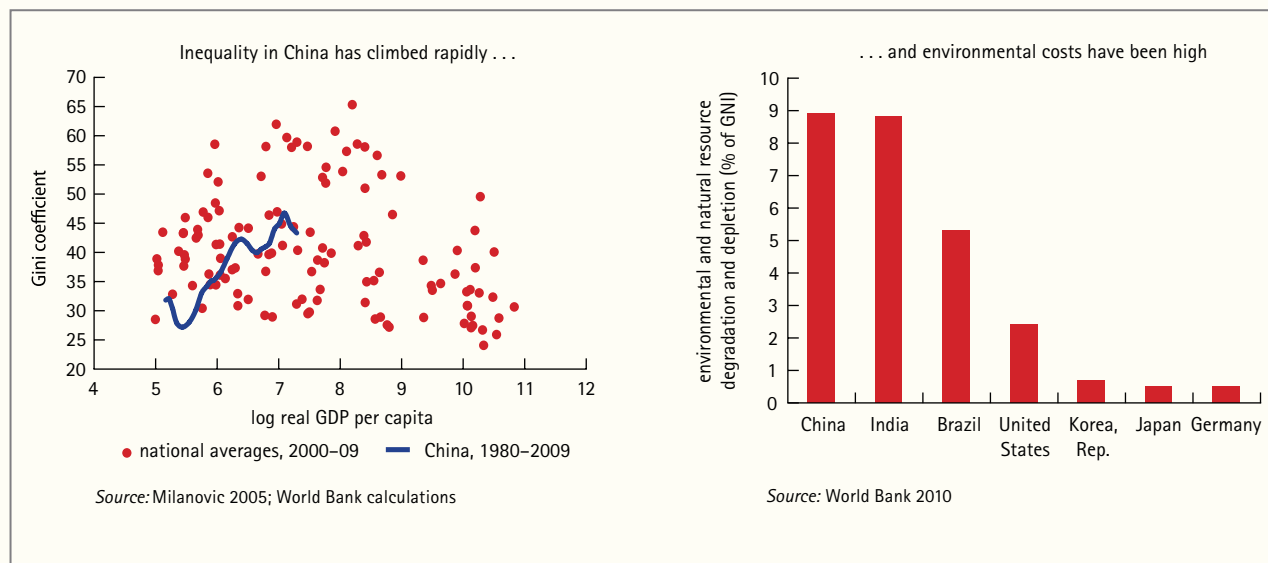


China's projected growth pattern (assuming steady reforms and no major shocks)

Indicator	1995-2010	2011-2015	2016-20	2021-25	2026-30
GDP growth (percent per year)	9.9	8.6	7.0	5.9	5.0
Labour growth	0.9	0.3	-0.2	-0.2	-0.4
Labour productivity growth	8.9	8.3	7.1	6.2	5.5
Structure of economy (end of period, %)					
Investment/GDP ratio	46.4	42	38	36	34
Consumption/GDP ratio	48.6	56	60	63	66
Industry/GDP ratio	46.9	43.8	41.0	38.0	34.6
Services/GDP ratio	43.0	47.6	51.6	56.1	61.1
Share of employment in agriculture	38.1	30.0	23.7	18.2	12.5
Share of employment in services	34.1	42.0	47.6	52.9	59.0

Source: DRC

China's structural challenges (in addition to its economic and demographic challenges)



stress on the environment and has imposed increased pressure on the availability of natural resources. Secondly, income inequality in China has climbed dramatically over the past two decades, due largely to rural-urban differences in access to jobs, key public services, and social protection.

Finally, all of these problems need to be addressed in the context of China's looming demographic challenge – the report predicts that China's old age dependency ratio will double in the next two decades and the size of China's labour force may start shrinking as early as 2015.

Band-aid solutions won't work

Despite the challenges highlighted above, *China 2030* argues that the PRC is well placed to join the ranks of the world's high-income countries. It points out that the country's economic development has

swelled the ranks of the middle class and accelerated domestic demand. Moreover, it is located in a region of other growing emerging markets providing opportunities for growth.

Nevertheless, the report warns that there are no temporary, quick-fix solutions to China's structural challenges – they call for considered policy reforms. If, for example, the government applies macroeconomic measures to stimulate the economy, rather than addressing China's economic structural problems, then inflation and instability could result.

The report proposes six strategic directions for China's new development strategy:

1. rethinking the role of the state and the private sector to encourage increased competition in the economy

2. encouraging innovation and adopting an open innovation system with links to global research and development networks
3. looking to green development as a significant new growth opportunity
4. promoting equality of opportunity and social protection for all
5. strengthening the fiscal system and improving fiscal sustainability, and
6. ensuring that China, as an international stakeholder, continues its integration with global markets. CSj

'China 2030' is available free of charge from the World Bank's document archive (<http://documents.worldbank.org/curated/en/home>), enter 'China 2030' in the search field to download the report. See this month's Viewpoint article on pages (26-27) for more analysis of the report's recommendations.

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China's politics of the economically possible

The World Bank's *China 2030* report recommends, among other things, that China should eliminate privileges for state-owned enterprises, increase spending on social services and open its budget to public scrutiny. Sound advice, argues Minxin Pei, Professor of Government at Claremont McKenna College in the US, but the report shies away from addressing the one, very obvious impediment to these reforms – China's one-party state.

When sound economic advice is divorced from political reality, it probably will not be very useful advice. The history of multilateral financial institutions like the International Monetary Fund and the World Bank is littered with well-intentioned and technically feasible economic policy prescriptions that political leaders ignored. But that has not stopped these institutions from trying.

The latest attempt is the World Bank's just-released and much-applauded report *China 2030: building a modern, harmonious and creative high-income society*. As far as technical economic advice goes, the report is hard to top. It provides a detailed, thoughtful, and honest diagnosis of the Chinese economy's structural and institutional flaws, and calls

for coherent and bold reforms to remove these fundamental obstacles to sustainable growth.

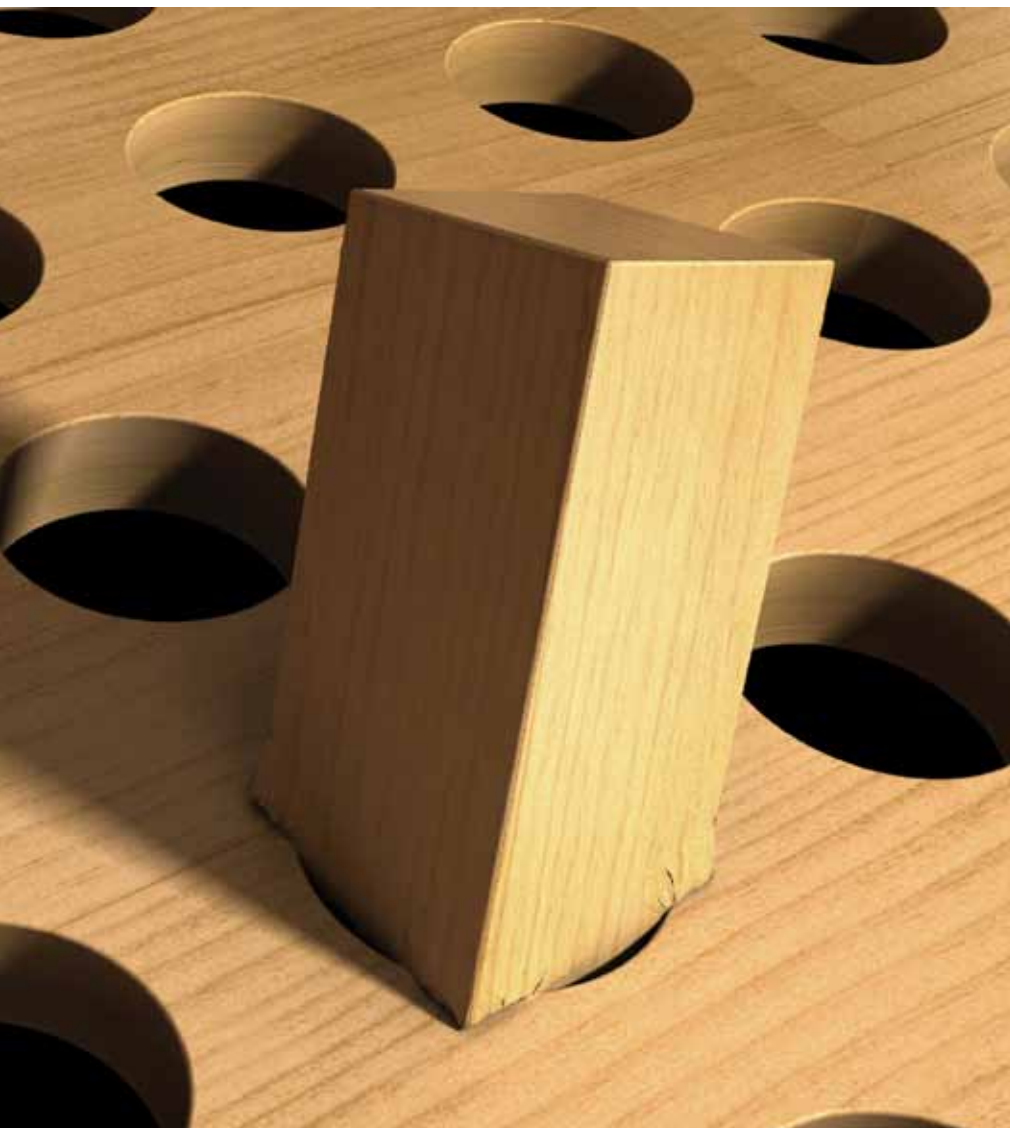
Unfortunately, while the Bank's report has laid out a clear economic course that Chinese leaders should pursue for the sake of China, the Bank has shied away from the most critical question: will the Chinese government actually heed its advice and swallow the bitter medicine, given the country's one-party political system?

For example, among the most urgent reforms that *China 2030* recommends is reduction of the state's role in the economy. This can be achieved by eliminating privileges for state-owned enterprises (SOEs), such as subsidised capital and monopolies, and by allowing the private

sector more freedom. But, curiously, the report's authors seem to forget that this would entail prohibitive, if not disastrous, costs for the ruling Chinese Communist Party (CCP).

China's giant SOEs may have some economic usefulness, but their existential value is political. The CCP uses the SOEs to provide good jobs and perks for its members. Of the CCP's roughly 80 million members, more than five million hold executive positions in state-owned or affiliated firms. Factoring in the regulators and local administrators whose jobs similarly depend on maintaining the current level of state intervention in the economy, World Bank-style reforms would jeopardise probably close to 10 million official sinecures.





There is little doubt that reducing the SOEs' power would make the Chinese economy far more efficient and dynamic. But it is hard to imagine that a one-party regime would be willing to destroy its political base.

Fiscal reform is another urgent priority highlighted by *China 2030*. China's highly regressive fiscal system (the poor are taxed more than the wealthy) entails excessive revenues for the central government and relatively little expenditure on social services. In nominal terms, aggregate tax and non-tax revenues collected by both the central and local governments exceed 35% of GDP. But the bulk of the revenues is spent on administration, fixed-asset investment, domestic security, defence, and assorted

lavish perks – entertainment, junkets, housing, cars, and high-quality healthcare – for government officials.

China 2030 suggests that China should gradually increase its spending on social services by 7-8% of GDP over the next 20 years. But why should the CCP do so? After all, the overall real taxation level in China is already quite high, which means that doubling social spending from the current level without raising taxes further would require severe cuts in expenditures that chiefly benefit the ruling elites.

The budgetary transparency that the World Bank has recommended will most likely not be realised for the same reason. Current public spending is so skewed toward the ruling elites that the CCP

would risk losing its legitimacy should the budget become subject to public scrutiny.

Making China a 'harmonious' society – the aim of the report's advice on reducing inequality – is clearly a desirable goal. However, it is a tired slogan even by Chinese standards. Trotted out by China's rulers many years ago, the 'harmonious society' campaign has yielded, at best, modest changes in policy. The underlying political drivers of social frustration and conflict – disenfranchisement, repression, pervasive official corruption, unaccountable rulers, and predatory state institutions and policies – remain unchanged.

Addressing these fundamental causes of social discontent and unsustainable economic performance requires not advice and pleas to the ruling elites, but a change in China's political reality that compels those who benefit from the status quo to surrender their privileges for the good of the country.

Only two likely developments could lead to this outcome. One is the political empowerment of the Chinese people. But democratisation is currently unlikely, given the CCP's clear determination to defend one-party rule.

That leaves political change at the mercy of a system-threatening crisis, brought on by China's failure to tackle the pathologies the World Bank has so ably diagnosed. And, alas, China's ruling elites are almost certain to dismiss *China 2030* as politically undesirable and irrelevant.

Minxin Pei

*Professor of Government,
Claremont McKenna College, US
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Contract management – avoiding the horror stories

There are many stories about doing business in mainland China – some exceptionally successful, others diabolical failures. Matthew McKee, Solicitor, Argyle Lawyers Pty Ltd, argues that what makes these disaster stories worse is that they are usually easily avoidable. While some fear that the enforcement of legal rights in mainland China is somewhat of a hopeless endeavour, the author argues that in reality obtaining a just result is very achievable.



When doing business in mainland China, problems generally occur where, in order to minimise costs or in an attempt to get a deal done quickly in a foreign language, foreign parties fail to seek appropriate representation and too much reliance is placed on people that the foreign parties know. Local legal representation is appropriate but the right local is the key. An insufficient attention to Chinese legal requirements when drafting a contract, and during the period of its performance, is fatal. This is further compounded because of a failure, in most cases, to undertake any form of valuable and practical due diligence prior to entering into contractual relationships.

The war stories should not stop you from doing business in mainland China. Rather, they should reinforce the need to get the basics right. Our experience shows that simple measures can be adopted to prevent problems and to provide you with the best 'fighting chance' should things go wrong down the track. Let's look at a couple of simple examples and solutions to the problems.

Practice point 1 – know who you are contracting with

This may seem like a simple question but when doing business in a country where English is not the native language it is something that, all too often, is ignored. The English name of Chinese companies is not the official name and it is the Chinese name that is important.

The following example, the experience of one of our clients, is illustrative. We have removed client identifiers and used generic names to maintain confidentiality.

Acme Aussie Pty Ltd (AA) is introduced to a potential distributor in China that they

know by the name of Beijing Pipes Co Ltd (BP). As the representatives of both sides can read and write English they decide there is no reason to have a Chinese-language version contract. AA delivers the pipes but receives no payment from BP. After a few months, AA decides to engage lawyers in China to recover the debt. The lawyers ask AA for the Chinese name of BP. AA is not able to provide this – they only know the English name. AA's lawyers indicate that there are no records of any companies with that name and accordingly cannot take any further action.

Whether the company ever existed or whether there is simply no record of the English name doesn't matter, the debt cannot be enforced. This problem can be avoided from the very beginning by obtaining a copy of the corporate documents of the company maintained by the relevant branch of the Administration for Industry and Commerce – China's official company registrar. This is a very routine search and can be undertaken for a minimal cost.

Practice point 2 – obtaining judgment in an Australian court may be worthless

When entering into a contract it is natural that a party will desire that any dispute arising out of the contract be heard before a court with which they are most familiar – a court in the party's home jurisdiction.

In most cases, such as where the Chinese party has no assets outside China, such insistence is, from a practical perspective, rather pointless. If the Australian party was to sue the Chinese party in Australia, any judgment may ultimately prove fruitless. This is because Australian court judgments are not enforceable in China.

Importantly, pursuant to Article 265 of the Civil Procedure Law of the People's Republic of China there are only two bases on which a foreign judgment can be enforced in China: if the country in which the judgment is made has a relevant mutual recognition treaty with China or the country recognises Chinese judgments.

Neither the existence of an international treaty nor reciprocity applies in the case of Australia. Accordingly, in such cases the foreign party would need to re-litigate the matter in China in accordance with Article 318 of the Opinions of the Supreme People's Court on some issues concerning the application of the Civil Procedure Law of the People's Republic of China. This effectively means that if you obtain a judgment against a Chinese client in an Australian court you will have no ability to enforce it against any assets located in China.

Highlights

- obtaining a just result in mainland courts is very achievable
- appropriate due diligence must be carried out prior to entering into contractual relationships
- insufficient attention to Chinese legal requirements when drafting a contract is fatal
- it is far easier to enforce foreign arbitral awards in China than it is to enforce foreign court judgments
- keep proper documentation

“
the English name of
Chinese companies is
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and it is the Chinese
name that is important
”



Practice point 3 – avoiding Chinese courts

The consequence of practice point two does not mean that foreign parties need to rely upon the Chinese court system, as long as an appropriate arbitration clause has been included in the relevant contract.

Arbitration is an alternative form of dispute resolution where, rather than using the public court system, the parties' dispute is heard before a private arbitrator. Importantly, arbitration in China can only be made mandatory via a specified clause in the relevant contract. The parties have the right to choose the arbitral body, the arbitration rules applied and the arbitration location.

An arbitration hearing is not open and the decisions/ judgments are not made publicly available.

There are a number of advantages of arbitration over litigation where a Chinese party is involved – the single biggest advantage being that it is far easier, in accordance with the New York Convention, to enforce foreign arbitral awards in China than it is to enforce foreign court judgments.

Importantly, and as noted above, arbitration can only be made mandatory via a specified clause in the relevant contract. The clause needs to specify the arbitral body, the location where the arbitration will be held, the language of the arbitration, the applicable procedural rules and any other relevant matters. It is extremely important that the arbitral body be stipulated, it is not sufficient to simply say that the arbitration 'will be governed by the Rules of the Beijing Arbitration Commission'. Article 4 of the Interpretation of the Supreme People's Court concerning some issues on the

application of the Arbitration Law of the People's Republic of China provides that:

'Where an agreement for arbitration only stipulates the arbitration rules applicable to the dispute, it shall be deemed that the arbitration institution is not stipulated'.

Practice point 4 – be aware of limitation periods

Article 135 of the *General Principles of the Civil Law of the People's Republic of China* (the General Principles) provides that: except as otherwise stipulated by law, the limitation of action regarding applications to a people's court for protection of civil rights shall be two years.

The limitation period generally commences when the person knows or should know that his rights have been infringed upon (section 137 of the General Principles). However, interestingly Article 140 the General Principles and Article 10



“whole cases can fall apart because of an inability to produce evidence that complies with China’s technical evidentiary requirements”

of the *Provisions of the Supreme People’s Court on several issues concerning the application of the Statute of Limitations during the trial of civil cases* provides that the limitation period will be suspended where ‘one party makes a claim’, which includes making a claim by correspondence or data message, and the claim reaches or should have reached the opposite party. The result is that if a time limit is approaching, a party can extend the period by sending a demand to the other party.

Practice point 5 – proper documentation

Almost as important as the drafting of a contract, is the management of the correspondence and documentation between the parties. This is because of the unique evidentiary requirements in China. Whole cases can fall apart because of an inability to produce evidence that complies with China’s

technical evidentiary requirements. In understanding the evidentiary requirements in China, it is necessary to understand an integral feature of Chinese civil procedure – case acceptance. In all legal proceedings in China, the first step that a plaintiff must undertake in respect of a case is this case acceptance procedure. This is where the plaintiff’s claim, and supporting evidence, is reviewed by a judge to determine whether there is a sufficient case for legal proceedings to commence. This can be a relatively high standard, and surprisingly, is often when the substantial part of the work in relation to a plaintiff’s case is undertaken.

Our experience is that it can take six months (although it is usually less) to get a case accepted, after initial instructions are received. If this seems long, it may take only another three

months before the allocation of a hearing date!

All five practice points represent simple ways of reducing the risk of doing business in mainland China.

Matthew McKee

Solicitor, Argyle Lawyers Pty Ltd

Argyle Lawyers Pty Ltd (www.argylelawyers.com.au) is a member of Pacific Legal Network (www.pln.com.au). The author can be contacted by phone: + 61 2 8263 6600, or by email: MMcKee@argylelawyers.com.au. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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Arbitration in China

New rules issued by the China International Economic Trade Arbitration Commission should improve its standing as an international player in dispute resolution and arbitration proceedings

Revised arbitration rules for the China International Economic Trade Arbitration Commission (CIETAC) are expected to usher in a number of positive changes in China-based dispute resolution and arbitration proceedings. The new changes to the law reflect the increased complexity and the global nature of international arbitration and should help make CIETAC a more effective

and prominent player in international contract disputes.

For parties whose disputes fall under the jurisdiction of CIETAC, the new rules, which came into effect on 1 May 2012, will, among other things, increase CIETAC's flexibility to consider circumstances on a case-by-case basis, drop Chinese as the default language for arbitration and

allow CIETAC to issue interim measures as necessary – all steps geared toward making the commission a more prominent force in arbitration and dispute resolution. The hope is that CIETAC's popularity will rise among the business community, making it a more important international player.

Commercial arbitration plays a large role in dispute resolution in PRC-related contracts,

particularly for cross-border businesses with a presence in China. An alternative to lengthy litigation and uncertainty surrounding the enforcement of court judgments in jurisdictions with different court systems, CIETAC remains an important forum for onshore arbitration proceedings in China.

Offshore arbitration is generally not recognised under PRC law unless the dispute is considered to be 'foreign-related'. As such, disputes involving a variable interest entity or a PRC-incorporated subsidiary of a foreign enterprise may not qualify for arbitration outside the PRC. Wholly foreign-owned enterprises such as China-based subsidiaries of foreign firms are unlikely to be considered 'foreign-related' as well for arbitration purposes.

Due to legal complications regarding the validity of offshore arbitration when Chinese entities are involved, companies with China-based subsidiaries such as

Highlights

Under the 2012 Arbitration Rules, CIETAC can:

- issue interim measures, for example to preserve property and/ or evidence
- drop Chinese as the default language for arbitration
- consolidate two or more arbitrations into a single arbitration
- designate the seat of arbitration in cities outside the PRC

“the hope is that CIETAC’s popularity will rise among the business community, making it a more important international player”

NASDAQ-listed recruitment firm 51Job Inc, as well as internet conglomerates Baidu Inc and Youku Inc, explicitly require in their commercial agreements that disputes be arbitrated through CIETAC.

The 2012 Arbitration Rules introduce new amendments pertaining to the designation of the seat of arbitration where parties to a dispute have not previously agreed on the jurisdictions where arbitration proceedings should take place.

Under the new rules, CIETAC will be able to designate the seat of arbitration in cities outside the PRC, which would affect the current Chinese law governing the arbitration proceeding. Arbitration for domestic Chinese companies will remain within PRC borders due to the requirement that a dispute must be 'foreign-related' in order to be arbitrated outside mainland China.

In a move that could give CIETAC some legal weight on the international stage, the 2012 Arbitration Rules will allow arbitral tribunals to grant interim measures if necessary. A power traditionally reserved for PRC courts, the ability to grant such orders will assist arbitral tribunals in preserving disputed assets and evidence during proceedings. CIETAC arbitrations seated outside the PRC will be able to grant interim measures depending on whether the law of the seating jurisdictions permits such actions.

In an additional step to broaden CIETAC's international appeal, the new rules eliminate Chinese as the default language for CIETAC arbitration if the parties fail to agree on a language. Under the 2012 Arbitration Rules, CIETAC will determine the language to be used in proceedings based on the individual circumstances of the dispute.

Some key aspects of the reforms, such as how responsive Chinese courts will be to CIETAC's expanded powers, remain uncertain. If it is successful, however, the new legislation could go a long way toward building an international fan base and fostering CIETAC's development as a major international arbitration institution.

Helen Chan

Asia Pacific Legal Editor, Business Law Currents

The CIETAC Arbitration Rules (2012) came into effect from 1 May 2012. They are available online at: www.cietac.org/index.cms. This article was first published by Business Law Currents, a provider of legal analysis and news on governance, transactions and legal risk. For more information, please see <http://currents.westlawbusiness.com>.

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中国的仲裁机制

中国国际经济贸易仲裁委员会发出新规则，日后委员会参与争议案件调解工作和仲裁程序时，国际地位可望更形重要。

中国国际经济贸易仲裁委员会（仲裁委员会）修订仲裁规则，预料会为国内的争议调解工作和仲裁程序带来正面的改变。法规的修订，反映国际仲裁工作日趋复杂，性质日益全球化。规则修订后，应有助仲裁委员会在处理国际合同争议时，发挥更大的效力和更显著的作用。

新规则于2012年5月1日起生效。修订涵盖多方面的内容，包括容许仲裁委员会在处理权限以内的争议案件时，可有弹性按个别个案的需要考虑不同的情况，不再以中文作为仲裁程序的当然语言，并可按需要决定采取临时措施。凡此种种，均可使仲裁委员会在仲裁和争议调解工作上发挥更显著的作用，希望仲裁委员会更为商界所接受，在国际层面上成为争议调解工作的重要参与者。

与中国内地有关的合约，尤其是在中国有业务的跨境企业，如产生合同争议，商业仲裁是十分重要的解决方法。当事

人不必经过冗长的诉讼程序，也不必担忧在法院制度不同的地区可否强制执行法院的判决；仲裁委员会仍是处理中国国内仲裁个案的重要机构。

除非属涉外争议案件，否则中国法律一般不承认离岸仲裁。因此，涉及可变利益实体或涉及外国企业在中国所成立子公司的争议，可能不符合资格在中国境外寻求仲裁。完全由外资拥有的企业，例如外国企业以中国为基地的子公司，在考虑仲裁地点时，同样未必可能视为涉外案件。

涉及中国企业的争议案件，若选择离岸仲裁，其合法性将成疑。鉴于这些法律问题，企业如有以中国为基地的子公司，例如在纳斯达克证券交易所上市的招聘公司51Job Inc.、以及互联网大企业百度（Baidu Inc）和优酷（Youku Inc），在商业合约内均明文规定，如有争议，须经仲裁委员会仲裁。

针对争议双方事先对仲裁地未作约定的情况，2012年的仲裁规则就指定仲裁地一事提出了修订。在新规则下，仲裁委员会可指定在中国以外的城市进行仲裁，这对现行有关仲裁程序的中国法律有所影响。由于规定只有涉外争议案件才可在中国以外进行仲裁，国内公司的仲裁程序仍只可在中国境内进行。

2012年的仲裁规则容许仲裁庭必要时决定采取临时措施。这将在国际层面提升仲裁委员会的法律地位。这项权力，一

向只限于中国法院所有；若仲裁庭也可决定采取临时措施，将有助在仲裁期间保全有争议的资产和证据。在仲裁地的法律容许的情况下，仲裁委员会在中国境外进行的仲裁，也可决定采取临时措施。

为进一步增强仲裁委员会的国际吸引力，新规则规定，若争议双方未能协定仲裁语言，仲裁程序不会以中文作为当然语言。2012年的仲裁规则规定，仲裁委员会将视案件的具体情形，确定仲裁语言。

这次改革的影响尚未明朗，例如仲裁委员会的权力扩大后，中国法院如何配合，仍是未知之数。不过，假如新法规推行成功，将大大有助提高国际层面对仲裁委员会的支持，促进仲裁委员会发展成为主要的国际仲裁机构。

Helen Chan 陈晓桦

Business Law Currents

亚太区法律编辑

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重点

2012年的仲裁规则规定，仲裁委可以：

- 决定临时措施，例如保全财物及 / 或证据
- 不再以中文作为仲裁程序的当然语言
- 把两项或多项仲裁结合为一项
- 指定中国境外的城市为仲裁地

A review of seminars: March 2012

13 March 2012



Davy Lee (Chair) and Bolivia Cheung

*From Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group, 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'***

'This was a very useful and practical seminar for company secretaries and accountants. Very up to date and helpful cases and examples were analysed and studied.'

20 March 2012



Bernard Wu (Chair) and Patrick Rozario

*From Bernard Wu FCIS FCS(PE), Managing Director, Agricultural Bank of China Group – ABC Investment Management Ltd, and chair of the seminar delivered by Patrick Rozario, Director and Head of Risk Advisory Services, BDO Ltd, on **'Preparation of corporate governance reports'***

'The topic of this seminar is very timely as companies need to prepare their annual reports and corporate governance reports. Patrick Rozario delivered the seminar in a well thought-out manner and made use of lots of good examples.'

22 March 2012



Gloria Ma (Chair), Roy Lo and Gloria So

*From Gloria Ma FCIS FCS(PE), Director – Corporate Secretarial, KCS Hong Kong Ltd, and chair of the seminar delivered by Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd, and Gloria So, Risk Manager, Shinewing (HK) Risk Services Ltd, on **'Review of the corporate governance code and associated listing rules'***

'Mr Lo and Ms So delivered a concise and up-to-date seminar on the topic of Hong Kong's new corporate governance code and associated listing rules. They started with an overview of the code and its development. Mr Lo highlighted the main corporate governance issues in various areas and wrapped up the seminar with an analysis of some specific cases which were highly useful to the attendees.'

23 March 2012



Angie Fung (Chair) and Angel Ho

From Angie Fung FCIS FCS, Head of Company Secretarial Services, Hong Kong Land Ltd, and chair of the seminar delivered by Angel Ho, Director, Rainbow Consultancy Ltd, on **'Corporate social responsibility – its correlation with corporate governance and the enhancement of business development strategy'**.

'Since the Stock Exchange of Hong Kong has just recently published its consultation paper on environmental, social and governance (ESG) reporting, it was prime time that a talk on corporate social responsibility (CSR) was presented. Ms Ho gave us a well-structured and very informative talk on the topic. She argued that CSR has become an essential way for companies to enhance their business development strategy, and that stakeholders increasingly want to see that companies care about their social responsibilities.'

29 March 2012



Susan Lo (Chair), Roy Lo and Gloria So

From Susan Lo FCIS FCS(PE), Director – Corporate Services, Tricor Services Ltd, and chair of the seminar delivered by Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd, and Gloria So, Risk Manager, Shinewing (HK) Risk Services Ltd, on **'IPO readiness – internal control systems'**.

'As regulation on internal controls has been strengthened in major markets around the world, listed companies are now expected to pay much more attention to this issue. Members had the good fortune to be updated on this subject by Roy and Gloria, experts in this field. Our two speakers kindly shared with the audience, in a precise and lively manner, the fundamental principles and essential methodology of internal controls. The coverage was both comprehensive and practical.'

30 March 2012



Honice Ip and Mohan Datwani (Chair)

From Mohan Datwani LLB PCLL LLM MBA, Director, Technical & Research of the Hong Kong Institute of Chartered Secretaries, and chair of the seminar delivered by Honice Ip, Barrister-at-law, Garry Soo's Chambers, on **'An overview of the new Arbitration Ordinance of Hong Kong'**.

'Mr Ip spoke on the topic with enthusiasm and experience. He was able to offer a mix of commercial and practitioner perspectives on an otherwise technical topic. The presentation was lively and interesting and did serve to advance the knowledge of the participants on arbitration as an alternative dispute resolution method offering advantages of costs and confidentiality, among other things.'

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 last 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).

Regional Board Secretary Panel meeting and dinner gathering

The Institute organised the third Regional Board Secretary Panel meeting and dinner gathering in Beijing on 13 April 2012. Some 17 board secretaries and delegates from the China Association for Public Companies (CAPCO), the Beijing Representative Office of Hong Kong Exchanges and Clearing (HKEx) and the Beijing Listed Companies Association (BLCA) attended. This event is a continuation of the two Regional Board Secretary Panel meetings and gatherings in Shanghai and Shenzhen in February. The participants shared their views on Hong Kong's new statutory requirements for the disclosure of price-sensitive information by listed companies and expressed their support for the regulatory effort to cultivate a continuous disclosure culture among listed companies. Concerns relating to the differences in the disclosure requirements and practices in Hong Kong and the mainland were also raised and discussed.



Regional Board Secretary Panel Meeting in Beijing

Newly appointed company secretaries

The Institute would like to congratulate the following members on their appointments as company secretaries of listed companies:

Company secretary	Listed company	Date of appointment
Tang Lo Nar, Luler <i>ACIS ACS</i>	Yueshou Environmental Holdings Ltd (stock code: 1191)	12 March 2012
Chan Kwong Leung, Eric <i>ACIS ACS</i>	Dore Holdings Ltd (stock code: 628)	12 March 2012
Chiong Lai Lai <i>FCIS FCS</i>	Schramm Holding AG (stock code: 955)	15 March 2012
Ho Siu Pik <i>FCIS FCS(PE)</i>	China Molybdenum Co Ltd (stock code: 3993)	21 March 2012
Chan Yin Wah <i>ACIS ACS</i>	CCID Consulting Co Ltd (stock code: 8235)	28 March 2012
Cho Wing Han <i>ACIS ACS(PE)</i>	Allied Group Ltd (stock code: 3731)	29 March 2012
Lau Tung Ni <i>ACIS ACS</i>	Allied Properties (HK) Ltd (stock code: 56)	29 March 2012
Cheung Mei Ki, Maggie <i>ACIS ACS</i>	Chu Kong Shipping Development Co Ltd (stock code: 560)	01 April 2012
Pang Kai Fai, Angus <i>ACIS ACS</i>	Uni-President China Holdings Ltd (stock code: 220)	05 April 2012

New Graduates

Chan Hoi Ling	Ng Hin Wai
Chan Wai Yan, Vigna	Tang Wing Fong
Chau Wing Si, Alice	Teh Ka Yin
Check Siu Fun, Karen	Tsang Wan Chi
Li Mei Yan	Wong Ka Wai

HKICS dragon boat team 2012

The Institute's dragon boat team will enter into the 7th Stanley Dragon Boat Warm-up Races on 26 May and the International Dragon Boat Races on 2 July 2012 respectively. If you want to take part as the cheering team, please contact the Membership section at 2881 6177.

Membership activities – the social side

Being a Chartered Secretary is not all about gaining the relevant technical expertise. It is also about being part of a social and professional network that has a lot to offer in terms of personal development and fulfillment. In addition to our essential CPD events and seminars, the Institute aims to provide members with the opportunity to gather in a relaxed and informal environment for social and networking activities. Such events include members' luncheons and our members' networking events.

Fellows' Sharing – Mr Gordon Jones

This month sees a new addition to our members' services – the 'Fellows' sharing' series of events are designed to provide greater opportunities for Fellows, as senior members and leaders of the profession, to share their expertise and experience in a relaxed and sophisticated environment. To kick-start this new series, the Institute organised a cocktail reception on 2 May

2012 at the Hong Kong Club with Mr Gordon Jones *FCIS FCS*, Former Registrar of Companies, to celebrate the launch of his new book entitled *Corporate Governance and Compliance in Hong Kong*.

Details with photos will be reported in next issue of CSj.

Members' networking

The Institute's networking events aim to assist in your personal development via informal and enjoyable activities. The Institute will organise more networking events this year in three areas: the environment, personal development and IT.

Environment – organic farm visit

Come and join our visit to the HKFYG Organic Farm to learn more about organic farming and leading a healthy life. The visit will be your chance to experience organic farming, learn about the health

benefits of organic produce and the need for environmental protection. Participants will also be able to sample some tasty organic food! *For details, please refer to the flyer on the inside back cover.*

IT – getting the most out of your iPhone

Ever wondered what functions your iPhone has that you are not using? How can this IT tool help you in your business and daily life? Come and join this gathering to learn from the expert some practical tips on being a smart iPhone user. *For details, please refer to the flyer on page 45.*

As an Institute established by members and for members, the HKICS strives to provide a wide range of services that best fit our members' needs. Do let us know what you think of our membership activities. You can either contact our Membership section at 2881 6177, and member@hkics.org.hk, or post your comments on the Institute's new weblog (www.governancemaze.com).

Membership application deadlines

Members and Graduates are encouraged to advance their membership status once they have obtained sufficient relevant working experience. Fellowship and Associateship applications will be approved by the Membership Committee on a regular basis. If you plan to apply, please note the following submission deadlines and the respective approval dates.

For details, please contact the Membership section at 2881 6177.

Submission deadlines	Approval dates
Saturday 21 July 2012	Thursday 16 August 2012
Saturday 8 September 2012	Tuesday 9 October 2012
Saturday 24 November 2012	Mid-December 2012

Academic Advisory Panel luncheon

The Institute held an Academic Advisory Panel luncheon on 19 April 2012 at the American Club. Representatives from local universities attended. Alberta Sie *FCIS FCS (PE)* and Ivan Tam *FCIS FCS* updated the attendees on the latest developments of the Institute.



Group photo of the Academic Advisory Panel

Academics attending this event included:

1. Professor Chan Koon Hung – JK Lee Chair Professor of Accountancy, Lingnan University
2. Dr Samuel Chan – Associate Professor, School of Accounting and Finance, the Hong Kong Polytechnic University
3. Professor Jeong Bon Kim – Head and Chair Professor of Accountancy, City University of Hong Kong
4. Mr Beau Lefler – Senior Teaching Consultant, Faculty of Business and Economics, University of Hong Kong
5. Professor CK Low – Associate Professor in Corporate Law, School of Accountancy, Chinese University of Hong Kong
6. Dr Mark Ng – Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University

Professional seminar at Hong Kong Shue Yan University

Dr Eva Chan *FCIS FCS(PE)*, Head of Investor Relations of CC Land Holdings Ltd, gave a presentation on '**Corporate social responsibility**' to the BBA undergraduates of Hong Kong Shue Yan University on 19 March 2012. The seminar was well received by over 100 students.

Dr Eva Chan FCIS FCS (PE) (left) receiving a souvenir from Dr Lubanski Lam, Assistant Professor of Hong Kong Shue Yan University (right)



Professional seminar at the Open University of Hong Kong

On 28 March 2012, Richard Leung *FCIS FCS*, a Past President of the Institute, was invited to present a seminar on **'The importance of companies secretaries in corporate governance'** to the students of BBA in Corporate Administration at Open University of Hong Kong.



Richard Leung FCIS FCS presenting at the seminar

Networking Day at Lingnan University

The Institute participated at the Networking Day organised by Lingnan University on 28 March 2012. A presentation regarding the Chartered Secretarial profession was given to students.



Group photo of the participants

June 2012 Examination

1. Examination timetable

	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

2. Admission slips

The admission slips will be posted to candidates on 4 May 2012. If candidates do not receive their results slips by 11 May 2012, please contact the Education and Examinations section at 2881 6177, or student@hkics.org.hk.

Student Ambassadors Programme (SAP) – visits

The Institute organised the following visits for its Student Ambassadors in April 2012:

1. Visit to PARKnSHOP Fresh Food Distribution Centre (14 April)
2. Visit to the Securities and Futures Commission (18 April)

The Institute would like to thank all involved for their support of the programme.



At the PARKnSHOP Fresh Food Distribution Centre



At the Securities and Futures Commission

IQS information session

On 25 April 2012, the Institute held an IQS information session for members of the general public interested in learning about or pursuing the Chartered Secretarial profession. Rebecca Yu FCIS FCS from Hasting & Co shared her work experience as a company secretary with the attendees.



Rebecca Yu FCIS FCS sharing her experience with the participants



Candy Wong presenting a souvenir to Rebecca Yu FCIS FCS

Policy Update

Studentship renewal

Student renewal fees are due each year on the anniversary of the date of registration. The Institute's secretariat will send a renewal notice in advance of the deadline reminding students to renew their studentship.

Payment reminders are sent via SMS and email. Students are **obliged** to provide **correct and updated** correspondence (including mobile numbers, and email and correspondence addresses) to avoid any miscommunication. Should there be any change to your contact information, you must inform the secretariat as soon as possible. Please refer to the Institute's website for details.

Anti-money laundering review tribunal

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), came into effect on 1 April 2012. The AMLO establishes an independent review tribunal to review decisions made by the relevant authorities in respect of the imposition of supervisory sanctions, as well as decisions on licensing matters made by the Commissioner of Customs and Excise in respect of money service operators.

The government has appointed Mr Martin Liao Cheung-kong as the Chairperson of the tribunal and a panel of nine members. The terms of office of the appointees has been staggered to allow for continuity. The Chairperson and six of the panel members will be appointed for a term of three years from 1 April 2012 to 31 March 2015, and three panel members will be appointed for a term of two years from 1 April 2012 to 31 March 2014.

Under the AMLO, specified financial institutions, including banks, securities firms, insurance companies and intermediaries, and remittance agents and money changers have a statutory obligation to conduct customer due diligence on their customers and keep the relevant records for a specified period. Non-compliance may render them liable to supervisory and criminal sanctions.

As from 1 April 2012, the Customs and Excise Department (C&ED) will operate a statutory licensing regime for remittance agents and money changers (RAMCs), who are categorised as money service operators under the new Ordinance.

More information is available on the Financial Services and the Treasury Bureau website (www.fstb.gov.hk/fsb).

Company secretary convicted

Asian Capital Resources (Holdings) Ltd (ACR) and its former company secretary have been convicted of providing false or misleading information to the Stock Exchange of Hong Kong. ACR pleaded guilty to five summonses. The company secretary, who is not a member of the Hong Kong Institute of Chartered Secretaries, pleaded guilty to two summonses.

The allegations related to company announcements about the shareholdings of an executive director of the company. The executive director held shares in ACR, amounting to approximately 13% of the issued share capital of ACR, through a

company beneficially owned by him. The Securities and Futures Commission (SFC) alleged that, despite the company and company secretary's knowledge of this shareholding, ACR informed the market that the director had no interest, or incorrectly stated the level of his interests in ACR.

The company secretary was fined HK\$10,000, and ACR was fined HK\$100,000 and ordered to pay the SFC's investigation costs.

More information is available on the SFC website (www.sfc.hk).

Takeovers-related amendments take effect

The following amendments to the Codes on Takeovers and Mergers and Share Repurchases (Codes) have taken immediate effect:

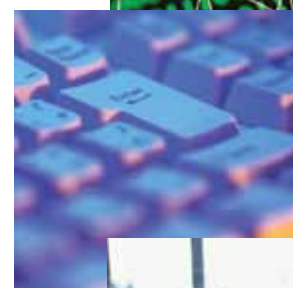
- Property valuation requirements now only apply to offers when the offeror is an interested party. An interested party refers to:
 - (i) a party holding, or together with parties acting in concert with it holding, immediately before either the commencement of an offer period or an obligation arises to make a mandatory offer under Rule 26.1, 30% or more of the voting rights of the offeree company
 - (ii) a director of the offeree company, or
 - (iii) a party acting in concert with any of (i) or (ii).
- Regarding confirmations of independence of placees in placing and top-up transactions, it is the responsibility of the financial adviser, placing agent and acquirer of the voting rights to confirm the independence of placees.
- The prescribed period for payment of acceptance of an offer is no longer 10 days but seven business days.

The Securities and Futures Commission (SFC) launched a public consultation on the proposed amendments in August 2011. The conclusions paper is available on the SFC website (www.sfc.hk).



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The Hong Kong Institute of Chartered Secretaries Members' Networking - IT

Tips to be a Smart iPhone User

To enhance members' networking, your Institute will organise more networking events this year in three areas - Environment, Personal Development and IT.

Finding ways to smartly utilise your iPhone functions in your business and daily life! Come and join this gathering and learn from an expert practical tips on how to be a smart iPhone user.

Outline

- Smartly utilize iPhone functions
 - iPhone photography
 - FaceTime
 - Useful Apps for business and travel
- Maintenance and security
 - Find my iPhone
 - Battery capacitance issues
 - AppleCare services
- Practical tips
 - Save money on data roaming charge
 - Junk call management
 - Text in different languages (International keyboards)

And more...

Date	: 21 June 2012 (Thursday)
Time	: 6.45 p.m. – 8.30 p.m. (Networking starts at 6.30 p.m.)
Venue	: Room 1 and 2, 10/F., United Centre, 95 Queensway, Hong Kong
Speaker	: Mr Derek Ngai, Chairman, MACitizen (a forum on Apple's products established in 2001); Regular speaker of One2free and 1010's iPhone workshops
Fee	: HK\$100
Language	: Cantonese

*This event is open to Fellows, Associates & Graduates ONLY on a first-come, first-served basis. Priority enrolment for Fellows.

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



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Trust law reform consultation deadline

The deadline for responses to the government's public consultation on trust law reform is 21 May 2012. The reform seeks to modernise Hong Kong's trust law to better cater for the needs of modern-day trusts and enhance the interests of parties to a trust. The consultation document sets out draft provisions to amend the Trustee Ordinance and the Perpetuities and Accumulations Ordinance. These provisions serve three major objectives:

1. They seek to clarify trustees' duties and power to provide clearer guidelines on the role of trustees. Specifically, the draft provisions seek to:
 - impose a statutory duty of care on trustees
 - provide trustees with a general power to appoint agents, nominees and custodians
 - give trustees wider powers to insure trust property against risks of loss, and
 - allow professional trustees to receive remuneration for services rendered to trusts.
2. Statutory provisions will be introduced to enhance the protection of beneficiaries' interests. These include provisions to regulate exemption clauses that seek to relieve professional trustees from liabilities for breach of trust. Beneficiaries will also be given the right to remove trustees through a simple, time-saving and court-free process.
3. The trust law will be modernised. A provision will be introduced to clarify that a trust will not be invalidated only by reason of a settlor reserving to himself some limited power. The outdated rules that set time limits on the duration of trusts and the accumulations of income will be abolished.

The consultation document can be downloaded from the Financial Services and the Treasury Bureau website (www.fstb.gov.hk/fsb). The government hopes to finalise the amendment bill for introduction into the Legislative Council in the 2012-2013 legislative year.

Islamic bond market consultation deadline

The deadline for responses to the government's consultation on the proposed amendments to the Inland Revenue Ordinance and Stamp Duty Ordinance for the purpose of promoting the development of an Islamic bond (sukuk) market in Hong Kong is 28 May 2012.

The proposed legislative amendments seek to level the playing field for common types of sukuk vis-à-vis their conventional counterparts in terms of profits tax, property tax and stamp duty liabilities. The structuring of sukuk often involves transfer of underlying assets and setting up of special purpose vehicles, which

may give rise to additional tax and stamp duty implications and uncertainty under the existing laws, putting sukuk at a disadvantage when compared with conventional counterparts.

The government hopes the measures will help develop Islamic finance in Hong Kong with a view to diversifying the SAR's financial platform and consolidating its status as an international financial centre.

The consultation proposes to adopt a prescriptive and religion-neutral approach similar to that adopted in the UK. Under this approach, there will not be any specific reference to, or

mentioning of, Shariah in the legislation. The advantage of this approach is that it avoids incorporating religious concepts into Hong Kong's tax laws and avoids the possible issue of discrimination, religious or otherwise.

The consultation paper can be downloaded from the Financial Services and the Treasury Bureau website (www.fstb.gov.hk/fsb). The government hopes to introduce the relevant amendment bill into the Legislative Council in the next legislative session.

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- ✦ A minimum of two years in a company secretarial or professional services support role
- ✦ Experience in setting up companies in Hong Kong and common offshore jurisdictions
- ✦ A member of the HKICS would be preferred but non members are encouraged to apply
- ✦ Fluent in English and Chinese
- ✦ Strong interpersonal and communication skills
- ✦ Good client management skills and the ability to work on multiple assignments at the same time
- ✦ Well organized and able to use your initiative
- ✦ A can do attitude

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The Hong Kong Institute of Chartered Secretaries

Manager, Finance & Administration (Report to Chief Executive)

Company Description

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 Mainland China as well as the development of the profession of Chartered Secretary. We have more than 5,500 members and 3,100 students.

Job Duties

Finance

- Prepare full set of books and account on a timely basis
- Prepare budgets and monthly management accounts
- Ensure compliance with the Institute's policies, statutory & HKAS
- Responsible for the taxation issues of the Institute
- Supervise the Accounts Officer to perform accounting jobs

Administration

- Supervise a small team of administrative staff to perform front-desk and risk management task
- Support the CRM maintenance and development
- Responsible for monthly payroll and MPF issues
- Review the medical plan policy and other staff benefits annually

Requirement

- Qualified HKICPA/ACCA or equivalent (Member of HKICS is an advantage)
- Minimum 5 years full set accounting experience
- Proficient in MYOB, MS Office and CRM system and knowledge on IT management is preferred
- Fluent in both written and spoken English and Putonghua
- Able to work independently and work with the team
- Must be able to handle tasks other than accounting field
- Immediate available is preferred

We offer 5 days (one duty every four Saturday) work and attractive remuneration package to the right candidate. Interested parties please send your full resume, current salary and expected salary via email at recruit@hkics.org.hk. Data collected will be used for recruitment purposes only.



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We are looking for high calibers of all levels in our Trust & Corporate Services to be located in Hong Kong.

Assistant/Supervisor/Manager

- > Qualified professional member of ICSC/HKICS
- > Must have relevant experience in a professional firm at supervisory/management level for senior positions
- > Experience in handling trusts will be an advantage
- > Candidate with less experience and fresh graduates will also be considered as assistant
- > Good command of both written and spoken English and Chinese, and proficient in Word and Chinese Word Processing

We offer attractive remuneration and fringe benefits to the right candidate(s) including 5-day week, medical insurance, discretionary bonus, and in-house trainings with development opportunities. Please send your application by email in full resume with salary expectation and contact telephone number to the HR Department, Intertrust Resources Management Limited, 38/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong or by email to hkreruitment@intertrustgroup.com.

We are an equal opportunity employer and welcome applications from all qualified candidates. Personal Data collected will be used for recruitment purposes only and will be destroyed after 6 months.



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Leading Bank

Our client is a sizeable and well established bank in Hong Kong. They are currently looking to hire a Compliance Manager to ensure that the internal rules and processes comply with the regulatory requirements. This vacancy is the opportunity to work with an ambitious and growing bank.

The main responsibility of the position is to support the different business lines in the development, implementation and regular review of policies in respect of requirements coming from the regulatory bodies. You will monitor the bank's compliance program and investigate on any suspicious transactions that are reported. You will also manage the compliance controls' review and will initiate appropriate action to improve the controls when necessary. Your role will involve handling HKMA enquiries and maintain the compliance awareness among all business units and employees. On a regular basis, you will track on outstanding issues that have not been responded to by the bank yet.

Degree holders in Law, Accounting or any other relevant disciplines, along with 5 years experience in compliance will be considered for this position. It is essential to have a good knowledge in banking laws and operations. Pro action, independency and good communication skills in English and Mandarin are a must.

Compliance Manager - Insurance

Leading Global Insurance Company

Our client is a leading global insurance company with a strong presence in Asia Pacific. As part of their expansion plan, and to make sure that they always comply with external regulations, they are looking to hire an experienced Compliance Manager. This is a good opportunity to join a dynamic and well recognized group.

The main responsibility of this position is to be the main point of contact to the external regulators, to respond to their queries and surveys, and solve any potential issues. Your role will also include participating in the AML screening and make sure that all the marketing documents comply with the internal and external regulations. On a daily basis, you will manage the compliance manuals and training programs, and share your compliance knowledge when you are asked for advice. On a more legal level, you might be involved in complaint or litigation cases.

To be eligible for this position, you need to have at least 5 years experience in the insurance industry with strong interaction with local regulators. Your past experiences involved to review internal compliance control and procedure manuals. You must be a business or law degree holder, with strong analytical skills. You have good interpersonal skills and can speak fluent English.

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The Hong Kong Institute of Chartered Secretaries Members' Networking – Environment Visit to an Organic Farm

To enhance members' networking, your Institute will organise more networking events during this year in three areas: Environment, Personal Development and IT.

Come and join this visit to learn about an organic and healthy life, understand environmental technology farming, experience organic farming and try tasty organic food at the farm. Fresh and tasty seasonal vegetables, fruits and organic products (e.g. organic vanilla salt) are available for purchase during the visit.

Programme:

- 9.15 a.m. Assemble at Kowloon Tong
- 10.30 a.m. Visit to Organic Farm
- Introduction on organic farming and environmental technology
 - Guided tour
 - Organic farming experience
 - 6-dishes organic lunch
 - DIY organic vanilla soap
 - Purchase of organic products
- 4.30 p.m. Arrive at Kowloon Tong

Date:	19 May 2012 (Saturday)
Time:	10.30 a.m. – 4.30 p.m.
Venue:	The HKFYG Organic Farm 1 Family Walk, Ho Pui Reservoir, Pat Hueng, Yuen Long, N.T.
Fee:	HK\$100 for Member/Graduate/Student HK\$130 for non-member

*Enrolment is on a first-come-first-served basis.
Priority enrolment for Fellows.

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



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