

# CSj

July 2012

Chartered Secretaries.  
More than meets the eye.

特許秘書. 潛能. 超越所見.

The journal of The Hong Kong  
Institute of Chartered Secretaries

香港特許秘書公會會刊

## The rule is... think for yourself

ACRU 2012 review  
Ask the expert (*new*)  
Whistleblower tip-offs



CHARTERED  
SECRETARIES  
特許秘書



## Select Our Team When Time Is of the Essence

RR Donnelley Roman Financial is Asia's largest financial printer. We retain our number #1 position by consistently delivering on complex and time critical deals. Companies like Agriculture Bank of China turned to us with their IPO — the largest in world history — and we would love to help with your deals.

Backed by the global network, strength and expertise of RR Donnelley, we possess the industry's largest printing platform. Our in-depth understanding of regulations allows us to execute your IPOs, M&As, 144As, Equity and Debt Offerings, Circulars, Annual Reports and EDGAR filings with accuracy and efficiency. Our secure Venue<sup>SM</sup> virtual data room and comprehensive translations services are additional tools to support your related project needs.

For any size deal, domestic or worldwide, trust the experienced team of RR Donnelley Roman Financial — we put clients first, always.

**RR DONNELLEY**  
**ROMAN FINANCIAL**

24-hr Customer Service Tel: 852.2522.3803  
Tel: 852.2850.6000 • [asiafinancial.rrd.com](http://asiafinancial.rrd.com) • [venue.rrd.com](http://venue.rrd.com)  
E-mail: [hongkong@rrd.com](mailto:hongkong@rrd.com) • [hkroman@rrd.com](mailto:hkroman@rrd.com)



EBM Consulting

# REDUCE THE RISK

EBM Consulting are specialists in providing market entry and enterprise risk mitigation services, specializing in frontier markets. We deliver detailed business intelligence about individuals, companies & corporates needed to make informed decisions when doing business in Asia, Africa and the Middle East.

We have an unrivalled network of local resources on the ground in 55 jurisdictions worldwide including business intelligence professionals, legal professionals, investigative journalists, and corporate executives who deliver the background information needed to conduct good business.

We provide research, investigation and analysis services when it is helpful to understand the personal & business reputations, military and political links, and criminal & litigation backgrounds of individuals and corporate entities, such as in pre M&A or compliance scenarios.

Our international network of local resources covers 55 jurisdictions worldwide including: Mongolia, Burma, China, Thailand, Cambodia, Laos, Philippines, South Korea, Indonesia, Malaysia, Kazakhstan, Russia, India, Turkey, UAE, Jordan, Egypt & Libya.

**Contact us in confidence for  
a no-obligation consultation**

Spencer Elmer, CEO

Tel. (852) 3621 0980

Email. [ebm@ebmconsulting.com.hk](mailto:ebm@ebmconsulting.com.hk)

Web. [www.ebmconsulting.com.hk](http://www.ebmconsulting.com.hk)

Frontier Market Specialists in Research, Investigation & Analysis

## Good governance comes with membership

### About The Hong Kong Institute of Chartered Secretaries

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 5,500 members and approximately 3,100 students.

### Council

**Edith Shih** *FCIS FCS(PE) – President*  
**Maurice Ngai** *FCIS FCS(PE) – Vice-President*  
**Polly Wong** *FCIS FCS(PE) – Vice-President*  
**Jack Chow** *FCIS FCS – Treasurer*

### Council members with re-elected/ new Council members:

**Susie Cheung** *FCIS FCS(PE)*  
**Eddie Liou** *FCIS FCS(PE)*  
**Paul Moyes** *FCIS FCS*  
**Douglas Oxley** *FCIS FCS*  
**Alberta Sie** *FCIS FCS(PE)*  
**Ivan Tam** *FCIS FCS*  
**Bernard Wu** *FCIS FCS(PE)*

### Ex-Officio

**April Chan** *FCIS FCS(PE) – Immediate Past President*  
**Natalia Seng** *FCIS FCS(PE) – Past President*

### Membership statistics update

As of 8 June 2012, the Institute's membership statistics were as follows:

**Students:** 3,097  
**Graduates:** 439  
**Associates:** 4,704  
**Fellows:** 416

### 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 2012

**Education Committee:**  
**Alberta Sie** *FCIS FCS(PE)*  
**Membership Committee:**  
**Susie Cheung** *FCIS FCS(PE)*  
**Professional Development Committee:**  
**Jack Chow** *FCIS FCS*  
**Nomination Committee:**  
**Neil McNamara** *FCIS FCS (Past President)*

### Secretariat

**Phillip Baldwin** *Chief Executive*  
**Louisa Lau** *FCIS FCS(PE) General Manager,  
& Company Secretary*  
**Candy Wong** *Director, Education and Examinations*  
**Mohan Datwani** *LLB LLM MBA(Iowa) Director,  
Technical and Research*  
**Parry Tam** *ACIS ACS Director, Professional Development*  
**Jiang Guo Liang** *BRO Chief Representative*  
**Cherry Chan** *Director, Membership*  
**Grace Ho** *Manager, Finance  
and Administration*

## July 2012

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

Views expressed are not necessarily the views of The Hong Kong Institute of Chartered Secretaries or Ninehills Media. Any views or comments do not constitute investment or legal advice. No part of this magazine may be reproduced without the permission of the publisher or The Hong Kong Institute of Chartered Secretaries.

Circulation: 9,050  
 Annual subscription: HK\$2600 (US\$340)  
 To subscribe call: +852 2982 0559 or  
 email: enquiries@ninehillsmedia.com

### Editorial Committee

**Phillip Baldwin**  
**Kieran Colvert**  
**Fanny Cheng**

### Credits

**Kieran Colvert**  
 Editor  
**Pearl Tong**  
 China Editor  
**Ester Wensing**  
 Art Director  
**Paul Davis**  
 Commercial Director  
**Harry Harrison**  
 Illustrator (cover)

### Contributors to this edition

**Geraldine Magarey**  
 ICAA  
**Colum Bancroft**  
 Kroll Advisory Solutions  
**Cai Zongqi**  
 Journalist

### 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  
 © Copyright reserved  
 ISSN 1023-4128

# Contents

## Ask the Expert

### Your questions answered 06

This month we launch our new 'Ask the Expert' column which enables you to get specialist advice on any questions you may have related to company secretarial practice. Our first question in the series relates to the allocation of excess rights shares.

## Cover Stories

### The rule is... think for yourself 08

Compliance, particularly in a principles-based regulatory regime, cannot be a box ticking exercise. This year's Annual Corporate and Regulatory Update (ACRU) seminar urged companies to think independently about the corporate governance issues relevant to them.

### ACRU 2012 review 14

CSj highlights the major compliance issues raised at the ACRU seminar.

## In Focus

### Is integrated reporting achievable? 20

Geraldine Magarey FCA, Manager, Sustainability and Regional Australia, Institute of Chartered Accountants in Australia, looks at the rationale behind integrated reporting.

## Mainland Report

### Handling a whistleblower tip-off 26

Colum Bancroft, Managing Director, Kroll Advisory Solutions, indicates some things to look out for when assessing the credibility and seriousness of whistleblower allegations in China.

### 如何处理检举密告 30

Kroll Advisory Solutions 执行董事Colum Bancroft，就中国企业该如何评估指控的可信性和严重程度提出了几点建议。

### PSI disclosure: comparing the Hong Kong and mainland approaches 34

Three Regional Board Secretary Panel meetings organised by the HKICS earlier this year in Shanghai, Shenzhen and Beijing reviewed Hong Kong's new statutory price-sensitive information (PSI) disclosure requirements and compared the PSI disclosure regimes of mainland China and Hong Kong.

### 披露股价敏感资料：香港和内地做法的比较 36

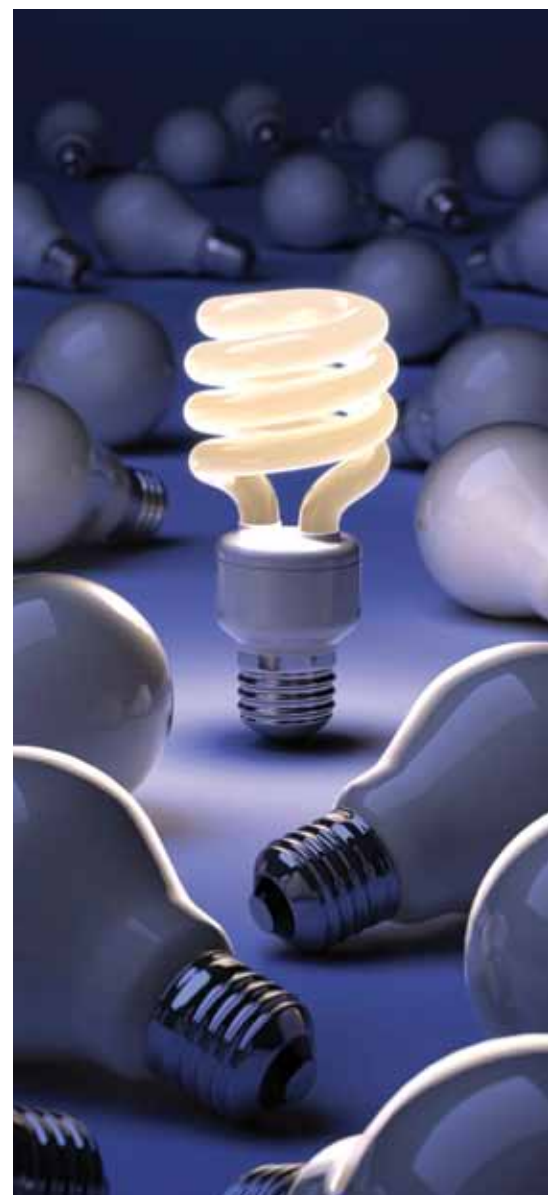
公会今年较早时在上海、深圳和北京举行三场董事会秘书圆桌会议，讨论香港就股价敏感资料的披露要求而推出的新法例，并比较内地和香港的股价敏感资料披露制度。

## HKICS News

### President's Message 04

### Institute News 38

### Student News 47





# PSI and the company secretary

**I**f you think you may have [inside information], you probably do' and so need to tell the market. Such were the words and sentiment of Charles Grieve, Senior Director of Corporate Finance, Securities and Futures Commission (SFC), in his presentation to the Institute's Annual Corporate Regulatory Update (ACRU) held on 23 May 2012 (for a full review of ACRU please see pages 8–19 of this month's journal).

On 1 January 2013 the Securities and Futures (Amendment) Bill (the Amendment Bill) will become law. One of the significant features of this bill in its current form is the fairly loose definition of 'inside information'. Although the SFC has guidelines as to what constitutes inside information – for example it must be specific, not generally known and, if known, likely to materially affect the price of the corporation's securities – the Amendment Bill will still leave considerable room for judgement.

Professional judgement is something that we as Chartered Secretaries should encourage and embrace. In Hong Kong we have a principles-based regulatory system, not a prescriptive one. In such an environment we should be able to use the skills, knowledge and, most important of all, the experience we have gained as professionals to advise the chairman and/ or board of directors whether or not information needs to be disclosed to the market. In his ACRU presentation, Charles Grieve pointed out that assessing whether information is price sensitive is not solely a legal issue which can be decided by the company's legal counsel.

'Don't ask your lawyer,' he said. All inside information must be disclosed, that's the law, but the issue here is what constitutes such information. '[PSI disclosure] is going to be a judgement call. It needs to be thought about,' he added. Those Chartered Secretaries who serve as company secretaries of listed issuers need to be prepared to make such judgement calls.

The situation is, if anything, even more challenging for our colleagues on the mainland. During the recent Regional Board Secretaries Panel (RBSP) meetings held on the mainland, board secretaries of mainland listed issuers, some of which are also listed on the Hong Kong bourse (see pages 34–37 for a full review), expressed their concerns with regard to the more subjective approach on the mainland to PSI disclosure. One representative of the China Securities Regulatory Commission described Hong Kong's Amendment Bill as 'inspiring'.

In my opinion, what is not in doubt is that disclosure of information to the market is an issue on which the company secretary must have a say. My advice to all company secretaries of Hong Kong listed issuers is that if there is any doubt in your mind whether or not something is price sensitive, then you must voice your concerns and give your opinion to the chairman and/ or board of directors. 'If in doubt, shout' may be a simple motto, but it is to the point and will prove highly useful to company secretaries faced with the PSI disclosure challenge.

With regard to the differences in disclosure regimes between Hong Kong and the mainland (and indeed, as pointed out by the RBSP members, the differences between the disclosure requirements of the Shenzhen and Shanghai stock exchanges), this is something which must be faced and dealt with as quickly

as possible. Harmonisation of disclosure policies would benefit all three bourses and more generally the economies of the mainland and Hong Kong.

And finally, last month I mentioned that HKICS representatives would be part of a Corporate Secretaries International Association (CSIA) delegation to the WTO. On 25 June 2012, CSIA presented to the Committee of Specific Commitments regarding the creation of the new 'Corporate Governance, Compliance and Secretarial Advisory Services' heading in its services sectoral classification list. The delegation consisted of HKICS CSIA representatives: the Immediate Past President of both CSIA and HKICS, April Chan; HKICS Chief Executive and Founding President of CSIA, Phillip Baldwin; and myself in my capacity as president of HKICS. The other CSIA representatives were the current CSIA President, Anil Murarka; CSIA President-delegate Nesar Ahmed (both of whom are from the Institute of Company Secretaries of India); and Russell Morrice, Head of Secretariat and Clerk to Council of ICSA (UK). We met with various WTO country representatives prior to and following the presentation. The presentation, I am sure you will understand, is just the start of a long process to try and achieve CSIA's aim of a new classification for our profession in the WTO's 'trade in services' listings.

A handwritten signature in black ink, appearing to read 'Edith Shih', with a long horizontal flourish extending to the right.

Edith Shih FCIS FCS(PE)

# 股价敏感资料与公司秘书

「假如你觉得你可能有（内幕消息），便很可能真的有」，也就需要向市场披露。这是证券及期货事务监察委员会（证监会）企业融资部高级总监纪礼富的看法。他在2012年5月23日公会一年一度的公司规管最新发展研讨会（ACRU）上发言时，就是这么说的。（有关研讨会详情，请参阅本刊今期第8至19页。）

《2011年证券及期货（修订）条例草案》（《修订草案》）将于2013年1月1日生效。现有《修订草案》的一个重要特点，是对「内幕消息」有相当宽松的定义。虽然证监会已发出指引，订明何谓内幕消息——例如消息或资料必须是具体的；并非普遍为人所知；若为人所知，则相当可能会对公司证券的价格造成重大影响——但《修订草案》仍有很大诠释空间，让人自行判断。

身为特许秘书，我们应鼓励和欢迎法例留有专业判断的空间。香港的监管制度以原则为基础，不会在法例里订明所有细节。这容许我们运用专业技巧和知识判断，更重要的是我们可参照专业经验，对于应否向市场披露某些资料，向主席及 / 或董事会提供意见。在ACRU发言时，纪礼富指出，评定某些资料是否股价敏感资料，并非仅是法律观点问题，由公司法律顾问决定便可。他说：「不要问律师。」法例规定所有内幕消息均须披露，但我们要处理的问题是，什么是内幕消息。他补充：「什么是股价敏感资料，关乎判断力，须加以思考。」担任上市公司公司秘书的同业需要做好准备，随时作这种判断。

对中国内地的特许秘书来说，披露股价敏感资料的工作，是更大的考验。最近在内地举行的董事会秘书专责小组会议上，内地上市公司的董事会秘书对于内地较主观的披露要求表示关注（详见第34至37页）。这些董秘任职的公司，有些也在香港上市。内地证监局的一位代表认为香港的《修订草案》「甚有启发性」。

我认为，向市场披露资料一事，公司秘书必须有发言权，这是无可置疑的。我建议香港所有上市公司的公司秘书，若对某项资料是否股价敏感资料存有疑问，必须提出你的关注，并向主席及 / 或董事会表达意见。「有疑问，便提出」，虽是简单的格言，但却一针见血，对于公司秘书处理披露股价敏感资料的问题十分有用。

至于中港两地披露要求不同的情况（而正如董事会秘书专责小组的成员指出，即使深圳和上海证券交易所的披露规定也有所不同），这问题必须面对，也必须尽快解决。协调各地的披露政策，对三个交易所均有裨益，对中港两地的经济也有帮助。

最后，上月我提到，公会代表加入公司秘书国际联合会（CSIA）的代表团，前赴世界贸易组织。2012年6月25日，CSIA向世贸特别事项委员会陈述诉求，提出将「公司治理、合规及秘书顾问服务」纳入世贸服务业分类目录中。代表团成员包括公会在CSIA的代表，即CSIA和公会的上任会长陈姚慧儿与公会总裁兼首任会长布迪云，而本人亦以公会现任会长的身份参予。CSIA其他代表包括CSIA

现任会长Anil Murarka、CSIA会长助理Nesar Ahmed（二人均来自印度公司秘书公会），以及英国特许秘书及行政人员公会理事会秘书长兼秘书处主管 Russell Morrice。面见特别事项委员会前后，我们与多位世贸各国代表会面。相信会员均明白，要达到CSIA的目的，把特许秘书专业纳入世贸服务业分类目录中，须经过漫长的过程，而此行只是个开始。



施熙德

# Ask the Expert

To ask our experts a question, please contact *CSj* Editor Kieran Colvert: [kieran@ninehillsmedia.com](mailto:kieran@ninehillsmedia.com)

**Q:** *We are looking to allocate excess rights shares, what are the issues we should consider?*

**A:** Rights issues have received media coverage recently, particularly some shareholder practices designed to increase the number of excess rights shares allocated to them. These include splitting holdings into odd-lots at differently numbered addresses in the same apartment, or transferring shares to different combinations of joint names.

A rights issue is a way for a company to issue new shares in order to raise capital. Shares are offered to existing shareholders in proportion to their current shareholding. They can take these up partially or in full, sell the rights to other investors or ignore the rights issue. If there are excess shares available from any unsold entitlements, qualifying shareholders can then apply for more than their provisional entitlements.

The allocation for these excess rights shares is typically done at the company's discretion on a fair and reasonable basis and on the following common principles:

A. preference is given to applications for less than a board lot of rights shares where they appear to be made to round up odd-lot holdings to whole-lot holdings, and

B. subject to availability of excess rights shares after allocation under principle A, the remainder (if preference will be given), or all excess rights shares (if no preference will be given), will be allocated to qualifying shareholders who have applied for excess rights shares on (i) a pro-rata basis, or (ii) a sliding scale relative to the number of excess rights shares applied for.

This means that those who split their holding into multiple odd-lots potentially stand more chance of gaining more shares than other shareholders if and when the excess is allocated.

However, for companies wanting to explore different options to ensure a fair allocation to shareholders, there are alternatives that we have developed from our experience in dealing with different rights issues in the past. Get in touch with us to find out more.

*Lina Wynn, Head of Client Services  
Computershare Hong Kong Investor Services Ltd  
[lina.wynn@computershare.com.hk](mailto:lina.wynn@computershare.com.hk)  
[www.computershare.com](http://www.computershare.com)*

## Your chance to ask the expert...

Welcome to our new 'Ask the Expert' column which offers you the chance to pose any question you might have of relevance to company secretarial practice directly to the specialists.

This month's *CSj* reviews the latest Annual Corporate and Regulatory Update seminar. This seminar is the most popular event in the Institute's CPD calendar partly because it enables company secretaries to pitch technical compliance questions directly to the relevant regulator.

In fact, every year the regulators attending ACRU are besieged by so many questions during the Q&A sessions of the seminar that the majority need to be answered after the event via the HKICS website.

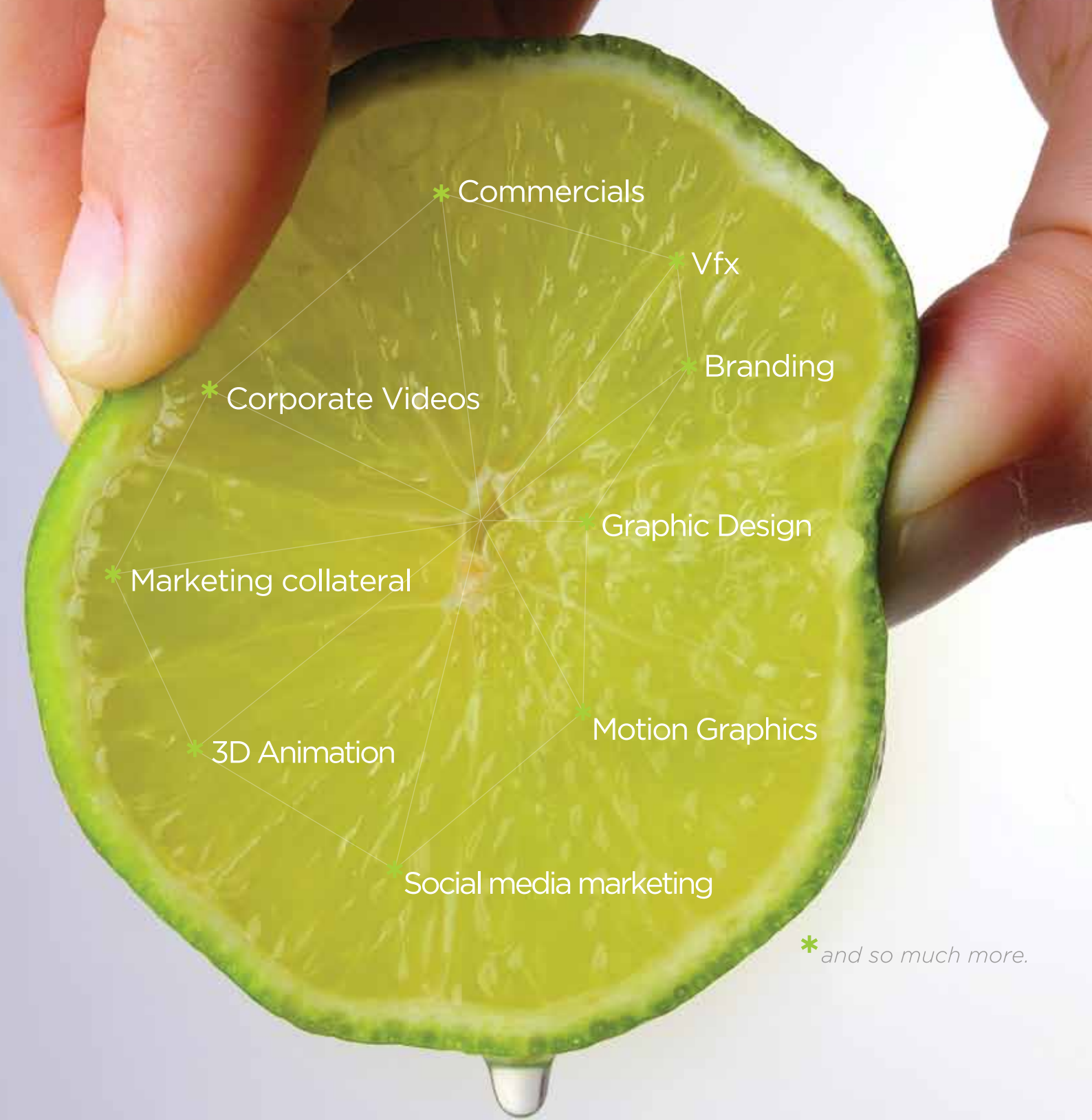
ACRU comes around once a year, of course, but technical questions about company secretarial practice arise on a daily basis for readers of this journal. 'Ask the Expert' will provide you with a year-round opportunity to obtain specialist advice on specific challenges you are facing.

We are very happy to welcome Computershare as our first 'expert' highlighting the important considerations to be taken into account when allocating excess rights shares.

To submit your questions to our expert panel simply email *CSj* Editor Kieran Colvert at: [kieran@ninehillsmedia.com](mailto:kieran@ninehillsmedia.com)

If you would like information about how your company can join our expert panel then please contact Paul Davis at: [paul@ninehillsmedia.com](mailto:paul@ninehillsmedia.com), or telephone: 2982 0559.





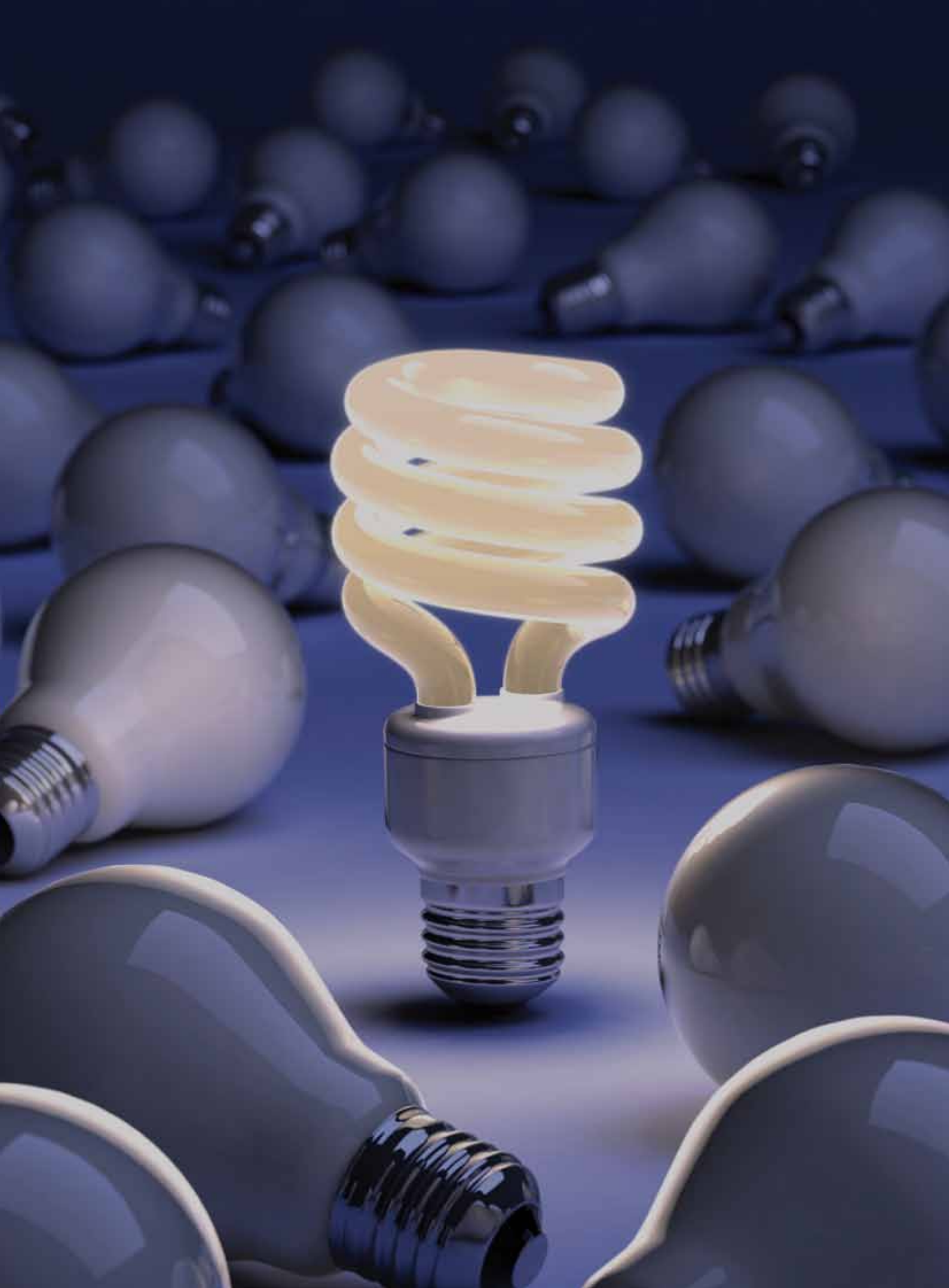
\* *and so much more.*

## SQUEEZE MORE OUT OF YOUR BUDGET

with an award winning creative agency

**lime\***

At Lime we help clients craft their message in an engaging and creative manner using a variety of media. With over 25 years of experience, Lime is Asia's premiere creative shop. Get in touch to see how we can make fresh creative work for you.



# The rule is... think for yourself

## A new approach to compliance

One of the central themes of this year's Annual Corporate and Regulatory Update seminar was that compliance, particularly in a principles-based regulatory regime, cannot be a box ticking exercise – companies, and the company secretaries advising them, need to think independently about the corporate governance issues relevant to them

In theory it sounds fairly straightforward – here is the rule, this is what you have to do. As any company secretary knows, however, compliance is never really that simple. Effective compliance, particularly in a principles-based regime, requires companies to think independently about the issues confronting them. Directors, and the company secretaries advising them, need to know a lot more than the rules governing, say, connected transactions or director independence – they need to be able to make a considered judgement based on their own particular circumstances.

This emerged as one of the central themes of this year's Annual Corporate and Regulatory Update (ACRU) seminar, held on 23 May at the Convention and Exhibition Centre. In particular, speakers from Hong Kong Exchanges and Clearing Ltd (HKEx) and the Securities and Futures Commission (SFC) urged the benefits of thinking for yourself.

### Addicted to rules?

The introduction of the 'comply or explain' principle as the enforcement

mechanism for Hong Kong's Corporate Governance Code was supposed to enable companies to forge their own approaches to corporate governance issues based on their own individual circumstances. This principle allows for some flexibility in the application of the rules set out in the code – where individual rules don't fit the particular organisational setting, companies are expected to deviate.

It has not quite worked out that way. There has been a very high degree of compliance with the code and

this enthusiasm for complying with the code's recommendations and provisions is no bad thing of course, but what conclusions should we draw from the fact that so few companies have opted for the 'explain' option? Why are companies in Hong Kong so reluctant to forge their own solutions to the corporate governance challenges addressed by the code?

Michael Cheng, Senior Vice-President, HKEx, believes that many companies in Hong Kong still approach code compliance with a rules-based frame of

### Highlights

- ACRU speakers urged companies to think independently about the corporate governance issues relevant to them
- companies are encouraged to develop their own compliance solutions to the Corporate Governance Code
- directors are most familiar with their companies' circumstances and are in the best position to make a judgement about the right approach to corporate governance challenges



“  
in certain circumstances  
alternative corporate  
governance arrangements  
are acceptable, even  
desirable, and shareholders  
should not regard these  
alternatives as suspect  
”

Michael Cheng, Senior Vice-President, HKEx

mind. 'Under a principles-based regime you are encouraged to think about corporate governance – it is not a box-ticking exercise,' he said. He added that one reason for companies' reluctance to follow alternative routes to compliance is the assumption that any deviation from the recommendations of the code would be regarded with suspicion by the market.

Again, this is not really how the comply or explain principle is supposed to work. Ideally investors make an informed assessment of any deviations. If non-compliance is justified in the particular circumstances and the deviation from the code is adequately explained, investors would continue to have faith in the stock. If the deviation is due to a failure of governance and the explanation is spurious, then investors would sell. Since directors are interested in delivering shareholder value through higher share prices, comply or explain is therefore supposed to be the perfect 'market based' enforcement mechanism of good corporate governance.

Mr Cheng emphasised that deviations from the code should not be regarded *per se* as 'deviant' governance. 'I often have people saying to me, "Michael I want to comply I don't want to explain", but in certain circumstances alternative corporate governance arrangements are acceptable, even desirable, and shareholders should not regard these alternatives as suspect,' he said.

Another misunderstanding Mr Cheng was keen to address is the notion that any deviation from code provisions would be a breach of the listing rules. The Exchange included in its consultation conclusions on the recent revisions to the code, an explanation of the three different levels of compliance requirements in the rules and the code:

1. **Listing rules** – mandatory for all listed companies and breaches may lead to sanctions
2. **Code provisions** – companies can

either adopt the code provisions, or, if they decide not to adopt them, explain the reasons for this decision in their Corporate Governance Report.

3. **Recommended best practices** – listed companies are encouraged to comply, but if they do not, they do not need to explain why.

Mr Cheng emphasised in his ACRU presentation that both code provisions and recommended best practices are voluntary in nature, they do not have the same status as the mandatory listing rules.

He also pointed out that many code provisions are specifically drafted to allow alternative approaches. For example revised code provision B.1.3 (re-numbered B.1.2) proposes two models for the remuneration committee: either it determines the remuneration of executive directors and senior management, or the board retains authority and the committee

acts as an adviser. The only mandatory element here is that companies need to disclose in their Corporate Governance Report which model they have adopted.

The Exchange's basic approach in drafting the code has always been principles-based, Mr Cheng said. For example, regarding directors' time commitments, 'there have been market concerns that directors, particularly where they hold several directorships, may not be able to devote sufficient time and energy to their duties,' he said, 'but we did not want to be prescriptive so our response was principles-based.' The Exchange has added a new principle for the board (see section A.1) that states that 'the board should regularly review the contribution from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time as required.' Also, new code provision A.6.6 (upgraded from a recommended best practice) states that directors should disclose to the issuer any change to their significant commitments in a timely manner. This is backed up in the listing rules, however, with the expanded main board listing rule 3.08 which requires directors to take an active interest in the issuer's affairs.

#### Call a lawyer or make a judgement call?

From the foregoing, you might imagine that the work of compliance professionals, including company secretaries, would be easier in a rules-based regime. The fact is of course that, whatever a jurisdiction's regulatory philosophy, it is impossible to stipulate precise rules for everything. Indeed, as Charles Grieve, Senior Director of Corporate Finance, SFC, pointed out in his ACRU presentation, there are limits on how precise you can be when drafting rules on complex matters of corporate regulation.

Mr Grieve's presentation discussed the requirements for the disclosure of price-sensitive information (PSI) in the revised Securities and Futures Ordinance (SFO), which will commence operation on 1 January 2013, and a recurrent theme was the need to think through the implications of the requirements for your own specific circumstances. 'It is going to be a judgement call,' he said. 'It needs to be thought about.'

For example, there have been many concerns in the market about the definition of 'inside information'. Mr Grieve looked at each of the three key elements of inside information to demonstrate how its meaning will always depend on specific circumstances.

#### 1. The information must be *'specific'*

Mr Grieve warned that *'specific'* here does not necessarily mean *'precise'* information. 'Thus if your information amounts to "we've lost a lot of money but we don't know yet how much", we regard that as specific information,' he said.

#### 2. The information *'must not be generally known'* to that segment of the market which deals, or would likely deal, in the corporation's securities.

You might expect that readily observable matters such as changes in commodity prices, or foreign exchange and interest rates, would be regarded as information generally known. Mr Grieve pointed out, however, that only the company knows how much these factors will affect the company. Thus, if a company's financial hedging strategy means that a change in

## What is ACRU?

The Institute's Annual Corporate and Regulatory Update seminar is designed to provide practitioners with first-hand information from regulators about the latest corporate and regulatory developments. It was launched in 1999 and has grown to become one of the most successful forums of the Institute's CPD calendar. Regulators participating at this year's event were vocal in their support of the ACRU forum. 'We view stakeholder engagement as very important,' said Michael Cheng, Senior Vice-President, Hong Kong Exchanges and Clearing Ltd, 'and we are grateful to the HKICS for this opportunity through the ACRU forum to reach a key audience.' Mark Steward, Executive Director of Enforcement, Securities and Futures Commission, pointed out that this year's ACRU was particularly timely. 'ACRU is an important event and this year we have particularly important topics to discuss,' he said.

*More information on the Institute's CPD events is available on the HKICS website ([www.hkics.org.hk](http://www.hkics.org.hk)). For enquires, please contact the Institute by email: [ecpd@hkics.org.hk](mailto:ecpd@hkics.org.hk), or by phone: (852) 2881 6177.*

“  
it is going to be a  
judgement call, it needs  
to be thought about  
”

Charles Grieve, Senior Director of  
Corporate Finance, Securities and  
Futures Commission



foreign exchange rates has resulted in substantial losses, the company needs to tell the market.

3. **The information would, if so known, 'be likely to materially affect the price of the corporation's securities.'**

'Everyone has asked about this,' said Mr Grieve. There have been calls from the market and even the Legislative Council for the SFC to issue percentages to determine how significant the price change would need to be to trigger the PSI disclosure obligation. 'It has got to change the price to a significant degree, but we cannot give percentages,' he said.

The good news for companies somewhat daunted by this uncertainty is that the SFC has issued draft guidelines on the implementation of the statutory PSI disclosure regime with examples of events and circumstances which may constitute inside information. These include:

- changes in performance or the expectation of the performance
- changes in financial position, for

example cashflow crisis, credit crunch

- takeovers and mergers
- acquisitions or disposals
- share placing, rights issue, other share issues
- changes in value of assets or financial instruments
- petitions or winding up orders
- legal disputes and proceedings, and
- cancellation of credit lines.

Mr Grieve warned, however, that there are limits to how specific guidance can be. For example, the above list is 'non-exhaustive and purely indicative,' he said. 'For everything on that list, I can think of examples where it is and where it isn't inside information,' he added.

Moreover, companies should not imagine that a phone call to their lawyer will give legal certainty to these issues. 'Don't ask your lawyer,' said Mr Grieve, 'a lawyer cannot advise whether something is inside information or not.' The SFC will provide an informal consultation service for 24 months (until 1 January 2014) on the disclosure requirements, but, once again, Mr Grieve warned that there are limits on how specific this consultation can be. Companies should not expect an officer

of the SFC to know enough about the specific circumstances of any individual company to be able to judge whether a particular piece of information is indeed inside information, he said.

'We get calls from people saying "you are the regulator, surely you can tell me whether I have inside information"', Mr Grieve said. My response would be "if you think you may have, you probably do". The point is, if you call me and ask about this, the chances are I won't even know your company name. You can tell me something about your circumstances but you can't tell me your whole story in 15 minutes. You know your company, you are the only one in a position to make the judgement.' CSj

*This year's Annual Corporate and Regulatory Update seminar was held on 23 May 2012 at the Hong Kong Convention and Exhibition Centre, Wanchai. A full review of the event can be found on the following pages (14–19) and photos of the event are available in this month's Institute News section (page 39) and the Institute's website ([www.hkics.org.hk](http://www.hkics.org.hk))*



CHARTERED SECRETARIES

特許秘書

More than meets the eye.  
潛能. 超越所見.

# The 21st Century Board –

## Thoughts and Trends of Corporate Governance



### Corporate Governance Conference 2012

5 & 6 October 2012  
JW Marriott Hotel Hong Kong



Organiser: The Hong Kong Institute of Chartered Secretaries

Early-bird offer ends 31 August. Visit [www.cgc2012.org.hk](http://www.cgc2012.org.hk) for registration.

Supporting Organisations:



# ACRU 2012 review

Will company secretaries be personally liable for breaches of Hong Kong's new statutory requirements for the disclosure of price-sensitive information? How should company secretaries prepare themselves for the abolition of par value shares? The pace of regulatory change shows no sign of abating in Hong Kong. Small wonder then that this year's Annual Corporate and Regulatory Update (ACRU) seminar was packed to capacity. CSj highlights the major compliance issues raised at the seminar.



The Institute's Annual Corporate and Regulatory Update seminar has grown to become the most popular event in the CPD calendar and this year's event drew a record audience of 850 practitioners (not to mention the further 200 hopefuls on a waiting list). This year's event was particularly timely since practitioners need to prepare themselves for a number of major changes to Hong Kong's regulatory environment, including changes to:

- ***the Corporate Governance Code and associated listing rules*** (effective April this year) – speakers discussed the new section on company secretaries, higher standards for directors' duties and training and the work of board committees
- ***the revised Securities and Futures Ordinance*** (effective 1 January

2013) – speakers discussed the new statutory requirements for the disclosure of price-sensitive information, and

- ***the revised Companies Ordinance*** (effective late 2013/ early 2014) – speakers discussed the abolition of par value shares and the Memorandum of Association.

The Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing (HKEx) and the Companies Registry were on hand to brief attendees on these critical developments. As usual, however, the seminar was a mix of regulatory issues and more practical issues in company secretarial practice. This year the Companies Registry and the Inland Revenue Department briefed attendees on the advantages for practitioners of their new e-services.

## Regulatory issues

### Building a disclosure culture

The SFC fielded two speakers – Mark Steward, Executive Director of Enforcement, and Charles Grieve, Senior Director of Corporate Finance – to prepare practitioners for the transition to Hong Kong's statutory price-sensitive information (PSI) disclosure regime. One of their central themes was that the new regime will require a change of mindset. 'It will require a cultural shift in Hong Kong,' said Mr Steward. He added that the main responsibility for ensuring that minds do indeed change does not lie with the SFC. 'That belongs with the market, with companies and with you. The SFC enforcement capacity should only be a backstop if that doesn't happen,' he said. This point was reinforced by Mr Grieve, 'we can take action, but we don't want to do this through enforcement,' he said.





“getting it wrong is not the trigger for liability, personal liability for officers is dependent on proof of actual fault”

Mark Steward, Executive Director of Enforcement, SFC (*on the personal liability company officers face for breaches of Hong Kong's statutory PSI requirements*)

Enforcement, however, is Mr Steward's day job and he took the opportunity of the ACRU forum to explain the SFC's general approach to it. 'Our approach is not only to take action against misconduct, where the focus is on the wrongdoer, but also to remediate the consequences of fraud and misconduct, where the focus is on the wrongdoing,' he said. 'Seeing the wrongdoer in jail doesn't really help you if you've lost all your money.'

He then turned to a number of recent cases of the misuse of inside information by way of introduction to Hong Kong's new PSI disclosure regime. He urged company secretaries to ensure their companies have good internal controls to effectively manage inside information between the time the information comes into being and the moment of disclosure.

These controls should include processes to identify sensitive information, protect confidentiality before disclosure and ensure disclosure is efficient and timely. 'Proper, well-defined controls should become a habit, a discipline,' he said, 'for companies and for company secretaries. I don't want to overstate the role of

company secretaries, they are one among many players, but the role and function of company secretaries is a key one in ensuring that information is not abused.'

He then turned to a topic of particular interest to company secretaries regarding the new PSI regime – liability.

## Highlights

- companies should review their internal controls to ensure against breaches of Hong Kong's statutory requirements for the disclosure of price-sensitive information
- company secretaries face personal liability for breaches of the new statutory PSI disclosure requirements *only* where there is proof of intention, recklessness, and/ or negligence
- companies should review their constitutional documents to prepare for the abolition of par value shares



“  
I urge you to look at your constitutional documents to see if there is anything you need to do  
”

Phyllis Mckenna, Deputy Principal Solicitor (Company Law Reform), Companies Registry  
*(on the need to prepare for the abolition of par value shares)*

He acknowledged that there have been significant concerns about the personal liability of company secretaries for breaches of the statutory PSI requirements. 'There has been concern that we are imposing liability on individuals, but it is important to bear in mind that the legislation does not impose personal liability on company officers trying to do the right thing. Getting it wrong is not the trigger for liability, personal liability for officers is dependent on proof of actual fault,' he said. He stressed that there would need to be proof of intention, recklessness, and/ or negligence for company secretaries to be personally liable.

He added that similar statutory requirements in other jurisdictions did not open the floodgates of personal liability cases. In fact, actions have tended to be against companies rather than individual officers.

#### Preparing for Hong Kong's new Companies Ordinance

It has been a long time coming, but Hong Kong's new Companies Ordinance is expected to be implemented in late 2013 or early 2014. Phyllis Mckenna, Deputy

Principal Solicitor (Company Law Reform), Companies Registry, updated ACRU attendees on two significant reforms which the new ordinance will implement.

#### 1. Retiring the concept of par value.

The 'par' or 'nominal' value of a share is the minimum price at which the share can be issued. The Companies Bill abolishes this concept since, Ms Mckenna pointed out, it no longer serves its original purpose of protecting creditors and shareholders and gives no indication of the real value of shares.

The Ordinance adopts a 'big bang' approach to the abolition of par value. This means that, upon the commencement of the revised Companies Ordinance, there will be a mandatory migration to no par for all companies with a share capital. The concepts of 'nominal value' and 'share premium' will be abolished. The existing share capital amount will be amalgamated with the share premium account and capital redemption reserve. There will be deeming provisions to ensure that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par. 'The

deeming provisions will save considerable work, expense and time for companies and reduce the possibility of disputes,' said Ms Mckenna.

She added that this mandatory migration to no par will be simpler for all concerned. 'An optional no par system would require legislating for, and administering, two parallel legal systems, thus necessitating additional costs and complexity,' she said. She also pointed out that the commencement date of the Companies Bill is expected to be at least 14 months after its enactment, so there will be a transition period to allow companies to review their articles etc. 'I urge you to look at your constitutional documents to see if there is anything you need to do,' she said.

#### 2. Abolition of the Memorandum of Association.

Another retiree under the revised Companies Ordinance will be the Memorandum of Association. Ms Mckenna explained that, with the abolition of the *Ultra Vires* rule, objects clauses have become less significant for most companies and the need for the Memorandum as a separate constitutional document has diminished.

## “ your ESG report is not a public relations document ”

Sarah Chow, Senior Manager, HKEx



Upon the commencement of the revised Ordinance, companies can incorporate with the relevant incorporation form and a copy of the Articles of Association – there will be no need for a Memorandum. Of course, this does raise the question of what a company with an existing Memorandum should do. 'They don't have to do anything,' said Ms McKenna, 'the existing memorandum will be deemed to be an Article of Association.' She also clarified that provisions in an existing Memorandum will be deemed to be provisions of the company's Articles. Moreover, in any ordinance in force before the commencement of the revised Companies Ordinance or in any other document made before that date a reference to the Memorandum is a reference to the company's Articles and a reference to a condition of the Memorandum is a reference to a condition of the Articles.

### Corporate governance changes

The Exchange's latest revisions to the Corporate Governance Code and associated listing rules took effect in April this year (except for the requirement that INEDs represent at least one-third of the board

which becomes effective 31 December 2012). Two speakers from HKEx – Michael Cheng, Senior Vice-President, and Ellie Pang, Assistant Vice-President – updated attendees on these changes.

These changes have been covered in this journal (see *CSj*, January and February 2012 editions) and are therefore not discussed in detail here. The changes are nevertheless highly relevant to company secretaries in Hong Kong – not least because they centralise the role of company secretaries in corporate governance. Ms Pang said the new section in the code devoted to the company secretary (section F) is designed to highlight the important role of company secretaries in corporate governance. 'To elevate the company secretary position in companies we have brought in a code provision that company secretaries should report to the chief executive or the chairman,' she said.

She also highlighted the new code provision stating that the board's decision to appoint or dismiss the company secretary should be made at a physical board meeting rather than by written resolution. 'We believe that the

appointment or dismissal of the company secretary is an important matter, and should be decided by a physical meeting to give the board the opportunity to hear and debate all the issues.'

### ESG reporting

The Exchange also highlighted its new initiative to encourage wider reporting on environmental and social issues in Hong Kong. It recently published its draft *Environmental, Social and Governance Reporting Guide*. Sarah Chow, Senior Manager, HKEx, updated ACUR attendees on the intentions of the guide.

She started her presentation with a snap poll on the number of attendees who are involved in 'ESG' reporting. Very few hands were raised. This may not, however, be representative since the term 'ESG' is relatively new. Companies may see their ESG reporting as 'corporate sustainability', or 'environmental', or 'corporate social responsibility' reporting. Ms Chow demonstrated that over the last two decades the nature of non-financial reporting has expanded. Where initially it was overwhelmingly concerned with the environment, now it typically includes

## ACRU 2012: the speaker line-up

### **Mark Steward, Executive Director of Enforcement Division, SFC**

Mark Steward is responsible for surveillance of the securities and futures markets to identify unacceptable conduct, investigating statutory offences and breaches of the legislation enforced by the SFC, and disciplining licensed persons and initiating prosecutions where appropriate.

### **Charles Grieve, Senior Director of Corporate Finance Division, SFC**

Charles Grieve is responsible for policy matters relating to listed companies including corporate governance and has been closely involved with the new legislation on inside information.

### **Phyllis Mckenna, Deputy Principal Solicitor (Company Law Reform), CR**

Phyllis Mckenna supervises the Companies Bill Team (Policy and Research Division 2) which deals with those parts of the new Companies Bill relating to, amongst other things, incorporation, share capital, charges and investigations and enquiries.

### **Wendy Ma, Deputy Registry Manager (Development), CR**

Wendy Ma is responsible for overseeing the development of the e-Registry, for delivering electronic incorporation and document submission services, and other electronic services such as e-Monitor under Phase Two of the Integrated Companies Registry Information System (ICRIS).

### **Nancy Yau, Deputy Registry Manager (Company Formation & Enforcement Division), CR**

Nancy Yau is currently working on company formation and enforcement at the Registry.

### **Christine Kan, Senior Vice-President, HKEx**

Christine Kan heads the Compliance and Monitoring Department of the Listing Division.

### **Michael Cheng, Senior Vice-President, HKEx**

Michael Cheng heads the Listing Policy, Secretariat Services and Support Department of the Listing Division.

### **Ellie Pang, Assistant Vice-President, HKEx**

Ellie Pang has been closely involved in the changes to the corporate governance code and associated listing rules in the Exchange's Listing Division.

### **Sarah Chow, Senior Manager, HKEx**

Sarah Chow works in the Listing Policy, Secretariat Services & Support Department of the Listing Division.

### **Tse Yuk Yip, Assistant Commissioner of Inland Revenue, IRD**

YY Tse oversees the operation of the unit covering collection and enforcement, stamp duty, business registration, estate duty, betting duty and inspection.

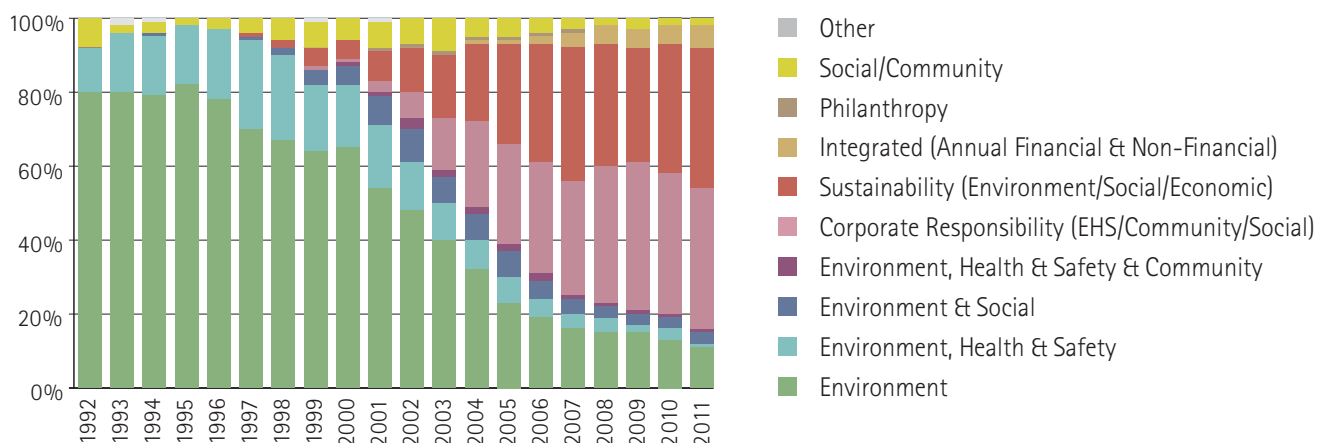
social issues and has become a lot more integrated in nature (see 'Global non-financial reporting by type' on page 19).

'ESG' stands for environmental, social and governance. The governance side of things is relatively well looked after in Hong Kong, but the two other pillars – environmental and social – are relatively neglected. Ms Chow's main theme was that 'your ESG report is not a public relations document.' Informal feedback received by the Exchange has indicated that some companies are avoiding addressing environmental and social issues because they don't want to focus on 'negative' issues. Company reports need to address the issues of concern to stakeholders, she pointed out, and issues like pollution, climate change and employee health and safety are therefore highly relevant.

She quoted, on an anonymous basis, a corporate social responsibility statement from a recent annual report of a Hong Kong company to demonstrate the need for a much more rigorous approach to ESG reporting, particularly in the context of the increasing awareness among investors about the risks companies face as a result of environmental and social issues. A statement about how the company 'cherishes the natural environment' is not that helpful to investors who want to know about the company's emissions, energy usage or waste generation. Similarly, a statement that the company is 'treating its employees with respect', does not inform investors about the company's employee turnover rate or the number of work fatalities in the year.

Investors want to know what companies are doing to address environmental

Global report output by type and year 1992–2011



Source: *CorporateRegister.com*

and social risks, she pointed out. The new ESG guide therefore suggests ways companies can start using 'key performance indicators' to track their performance in areas including: working conditions, health and safety, labour standards, emissions, use of resources, the environment and natural resources, supply chain management, product responsibility, anti-corruption and community investment.

#### Connected transactions

There has been an increasing focus on the regulation of connected transactions in Hong Kong, and the listing rules now contain new safeguards against listed issuers' directors, chief executives and substantial shareholders (or their associates) taking advantage of their positions when the listed issuer enters into such transactions. Ms Christine Kan, Senior Vice-President, HKEx, updated ACRU attendees on the new HKEx *Guide on Connected Transaction Rules* which was published on HKEx website in April 2012. The guide is available on the HKEx

website ([www.hkex.com.hk](http://www.hkex.com.hk)) via Rules and regulations/ Guidance on listing matters/ Guidance materials/ Other matters.


#### Practical issues

##### Electronic incorporation

Over the last decade the Companies Registry has made major advances in the computerisation of its services. Wendy Ma, Deputy Registry Manager (Development), gave ACRU attendees an update on some of the key e-services for company secretaries, such as the e-submission of annual returns. Her colleague, Nancy Yau, Deputy Registry Manager (Company Formation & Enforcement Division), updated attendees on the highest profile of the Registry's new e-services – the e-incorporation service. This service has been available since 18 March 2011, but uptake has been relatively slow (see *CSj*, April 2012, pages 6–10). Ms Yau urged ACRU attendees to make use of the new service which can reduce the time needed for incorporation from four days to one hour. She also gave a number of tips on how to get the best

out of the service – in particular via the user registration process, the use of model M&As, e-form filling and signing and payment methods.

##### Electronic tax

This year's ACRU seminar also included a presentation by the Inland Revenue Department (IRD) on electronic tax (e-tax). Tse Yuk Yip, Assistant Commissioner of Inland Revenue, gave some tips on how to open an e-tax account, the e-filing of tax returns and the e-payment of tax demands. She outlined the benefits of migrating to e-tax. 'We are committed to collecting revenue efficiently and cost effectively,' she said. Her presentation also addressed the issue of business registration. The IRD, in conjunction with the Companies Registry, has launched a one-stop online company and business registration service via the e-Registry ([www.eregistry.gov.hk](http://www.eregistry.gov.hk)). 

*More information on the Institute's CPD events is available on the HKICS website ([www.hkics.org.hk](http://www.hkics.org.hk)).*

# Is integrated reporting achievable?

It is essential that organisations get out of a compliance mindset and start to communicate their financial story in the most effective and transparent way. This, argues Geraldine Magarey *FCA*, Manager, Sustainability and Regional Australia, Institute of Chartered Accountants in Australia, is what integrated reporting sets out to do.

The annual report has a key role to play as a means of furthering accountability, while also being an important channel for communication between typically larger organisations and their many stakeholders. Increasingly, the value and relevance of the information provided in an annual report are being questioned.

Around the globe, there have been calls to find a solution to the mountains of information (both financial and narrative) that need to be provided according to compliance rules. This is where the

concept of integrated reporting is proving to be increasingly welcomed by preparers and users of annual reports.

In 2010, the Prince of Wales's Accounting for Sustainability Project (A4S) and the Global Reporting Initiative (GRI) announced the formation of the International Integrated Reporting Council (IIRC). The IIRC's stated mission is to create a globally accepted integrated reporting framework. In September 2011, the IIRC released its discussion paper *Towards integrated reporting: communicating value in the 21st*

*century*. The paper sets out the rationale for integrated reporting.

There is no single agreed definition of integrated reporting. The IIRC defines integrated reporting as 'a new approach to corporate reporting that demonstrates the linkages between an organisation's strategy, governance and financial performance and the social, environmental and economic context within which it operates'. Integrated reporting has been adopted by several forward-thinking companies around the world. South African companies listed



on the Johannesburg Stock Exchange (JSE) have been mandated to prepare integrated reports. Many listed companies are now in their second year as the initial start was for financial years starting on and after 1 March 2010.

The concept of integrated reporting is not new. In 2008, the Institute of Chartered Accountants in Australia (ICAA) launched its paper *Broad based business reporting: the complete reporting tool*. There were two important aspects of broad based business reporting. First is its value proposition that businesses can benefit from clearly reporting on their strategy, their performance in implementing it, and insights about their performance prospects. Second, it is the requirement for businesses to manage limited resources effectively in delivering on strategy, and then clearly monitoring and reporting sustainable progress in achieving stated objectives.

### Linking strategy to finance and sustainability

Integrated reporting brings together material information about the strategy, governance and performance of an organisation. How does that differ from the current annual report? The annual report is focused predominantly on financial and commercial aspects and often does not reflect social and environmental information that is material to the organisation. An integrated report provides insight into an organisation's strategic focus. It explains how the organisation can create and sustain value over the short, medium and long term.

An integrated report does not replace the need for financial statements. Financial statements contain important information about an organisation. It is vital that this

information is reported and available to all stakeholders, however, it should not be the primary report on an organisation's performance.

Currently, many organisations tend to produce a suite of reports which serve different purposes and meet the needs of different stakeholders. This reporting is often fragmented, voluminous, complex and ultimately without regard for how the information is actually used. An integrated report would eliminate this overwhelming load of information while at the same time aligning an organisation's reports with the information needs of its various stakeholders.

The IIRC discussion paper sets out five guiding principles that underpin the preparation of an integrated report in terms of both content and presentation.

1. **Strategic focus** – an integrated report should provide insight into the organisation's strategic objectives, and how those objectives relate to its ability to create and sustain value.
2. **Connectivity of information** – an integrated report shows the

connections between the business model, external factors and the resources and relationships on which the organisation depends.

3. **Future orientation** – it should include management's expectations about the future so that users can understand and assess the organisation's prospects.
4. **Responsiveness and stakeholder inclusiveness** – an insight should be provided into an organisation's relationships with key stakeholders and how it understands, takes into account and responds to the needs of these stakeholders.
5. **Conciseness, reliability and materiality** – if integrated reporting is to be seen as a credible and primary report for stakeholders, it needs to provide concise, reliable information that is material to the organisation.

These guiding principles are crucial to the success of integrated reporting. However, getting it right is a challenge. Entities that are preparing to report on an integrated

## Highlights

- an integrated report provides insight into an organisation's strategic focus and transcends purely financial information generally provided in an annual report
- it is essential that organisations get out of a compliance mindset and start to communicate in the most effective and transparent way
- there are many potential benefits to organisations from integrated reporting but there is still a need for practical guidance

basis often explain that connectivity of information is the biggest challenge they face.

Because of the advent of the *King Report on Governance for South Africa 2009* (King III), many South African companies are well advanced with regard to integrated reporting. Vodacom is an example of one South African company which has found that integrated reporting is a journey beginning at board level.

**What is included in an integrated report?**

The IIRC discussion paper also provides an outline of the content it believes should be included in an integrated report.

1. **Organisational overview and business model** – this should explain what the organisation does and how it creates and sustains value over time.
2. **Operating context, including risks and opportunities** – the report should explain the circumstances in which the organisation operates, including details of the key resources and relationships the organisation depends on. It should also explain the key risks and opportunities the organisation faces.
3. **Strategic objectives and strategies to achieve those objectives** – this section should explain the strategic direction of the organisation and its plan for achieving these objectives.
4. **Governance and remuneration** – an integrated report should explain an organisation's governance structure as well as how this structure assists the organisation to achieve its

strategic objectives. The link between executive and board remuneration and performance in the short, medium and long term should be explained.

5. **Performance** – the organisation needs to explain how it has performed against its strategic objectives and related strategies.
6. **Future outlook** – the organisation should outline the opportunities, challenges and uncertainties it is likely to encounter in achieving its strategic objectives as well as the implications for achieving these objectives.

Although most reporters agree with the suggested content, further guidance is required to assist report preparers understand what is required. Two areas which will be discussed further as we look at the issues associated with integrated reporting are around business models and future outlook.

**The business case for integrated reporting**

Many organisations are already benefiting from reporting on an integrated basis. Research on the experience of these organisations has identified a number of benefits.

- **Improving the quality of information reported so that it better aligns with the needs of investors** - this can result in a lower cost of, and better access to, capital.
- **Alignment of reporting cycles** - some organisations report on different areas of the organisation over different time frames. Aligning



the reporting cycles of its various reports such as financial and sustainability reports can result in cost savings.

- **Better risk management including reduced reputational risk** - conversely, it also allows for better identification of opportunities.
- **Improved engagement with key stakeholders** - these include including employees and investors.

Although the benefits of integrated reporting are explained in the IIRC's discussion paper, more work is required to further explore and explain these benefits.

Why should a board of directors embrace integrated reporting? Consider the following.

**Communicating versus complying**  
It is now a universal complaint of boards and finance professionals that financial reporting is not achieving what it sets





“  
around the globe,  
there have been calls  
to find a solution  
to the mountains  
of information  
(both financial and  
narrative) that need to  
be provided according  
to compliance rules  
”

out to do. The complaint is that it is too complex with a focus on compliance whereas it should be really about communication. The recent leadership paper jointly developed by the ICAA, the Financial Reporting Council (FRC), and the Institute of Chartered Accountants of Scotland (ICAS) explores the merits of increased communication emanating from the audit committee at a board level (see *Walk the line: discussions and insights with leading audit committee members*, available from [www.charteredaccountants.com.au/walktheline](http://www.charteredaccountants.com.au/walktheline)). It is essential that organisations get out of a compliance mindset and start to communicate their financial story in the most effective and transparent way. This is exactly what integrated reporting sets out to do.

#### Reporting intangibles

According to the IIRC discussion paper, 83% of market value in 1975 was explained by physical and financial assets whereas by 2009 the figure was down to 19%. Directors, investors and other stakeholders are realising that the value

drivers of an organisation are increasingly intangible and include items such as intellectual and human capital as well as environmental, social and governance issues. The change in how value is driven has not been matched by changes in financial reporting. This goes to the heart of integrated reporting.

#### Breaking down silos

Integrated reporting shifts the focus away from traditional financial reporting and looks at an organisation on multiple levels. This helps to break down silos and encourages information sharing.

#### Increased transparency

So where does integrated reporting lead us? Communicating better and more useful information will lead to increased transparency. Bob Laux, Senior Director, Financial Accounting and Reporting at Microsoft, believes increased transparency 'gives CFOs a chance to take a leadership role in telling the company story in a more effective way, making an even bigger impact on their organisations'.

#### Concerns with the proposed integrated reporting framework

While the IIRC's discussion paper identifies a number of benefits of integrated reporting, many reporters believe there are a number of concerns with both the paper and with the concept of integrated reporting. In fact one of the issues with the discussion paper is that it examines the benefits more than the challenges. Although many of these concerns have not been fully explored in the discussion paper, they will receive further scrutiny and discussion as a result of the IIRC receiving over 200 responses to the paper.

The concept of value creation is a key plank of integrated reporting. However, issues have been identified with this concept. The main issue is the definition of value. Who is the value created for? Is it investors, stakeholders or society at large?

Materiality is very important to the success of truly reporting on an integrated basis. The definition of materiality will also involve a number of challenges for



“ entities that are preparing to report on an integrated basis often explain that connectivity of information is the biggest challenge they face ”

reporters and for stakeholders. Materiality is a long-accepted notion in accounting; however, it is applied in a different sense in other forms of reporting such as sustainability reports.

The suggested content of an integrated report includes a section on future outlook. Many are concerned with potential liability issues for both the organisation and those charged with governance related to making forward-looking statements.

For any report to be useful there must be a degree of comparability and consistency. This applies both internally and externally. The information provided in an integrated report must be comparable from one period to the next for report users to understand how the organisation has performed over time. It is also crucial for organisations to report in ways that allow information between entities to be compared. Although there are some differences in how accounting standards are sometimes applied and which standards are used, the current financial reporting regime enables

a degree of comparability between organisations.

A crucial plank of any organisation's governance structure should be its external audit function. Integrated reporting and the need to report on non-financial information may provide a challenge in having the information audited. Some have questioned whether it is possible to audit this information. Many organisations that already report on an integrated basis obtain some form of audit or assurance over their information as they understand the benefit of audit in ensuring the credibility of their reports and the role audit provides in their governance structure. Chartered Accountants provide assurance over non-financial information such as carbon emissions and sustainability reports. They have proven methodologies and standards to guide this work which can be utilised in an integrated reporting framework. For its 2011 annual report, the ICAA was one of the first member bodies in Australia to engage external auditors to conduct a limited assurance review on the non-

financial information contained in its annual report.

Concerns have been raised over an organisation needing additional resources and the potential costs associated with these resources to produce an integrated report. However, many who already report on an integrated basis have experienced a more efficient use of existing resources as the many existing reports they had were streamlined into fewer reports and reporting cycles were synchronised.

Another area of concern for reporters is around the requirement to discuss business models.

First, there is a lack of an agreed definition of what is meant by a business model. To achieve comparability and for integrated reporting to be credible, there needs to be a commonly accepted definition of a business model.

The second area of concern relates to confidentiality. Although there was substantial support for discussing business models and an organisation's

ability to create and sustain value, some have raised concerns about alerting competitors to information that is potentially commercially sensitive.

### Potential pitfalls

For those forward-looking organisations that are contemplating integrating their reporting, the best lessons we can learn about the pitfalls come from the experiences of listed South African organisations where integrated reporting is mandated.

Materiality is very important to achieving an integrated report. Materiality can mean different things to different people. What may be material in one part of an organisation may not be material to the organisation as a whole. Materiality is commonly used in relation to financial information. The challenges come when assessing materiality in relation to nonfinancial information. The Integrated Reporting Committee of South Africa has provided guidance on materiality for non-financial data in its discussion paper released in January 2011, *Framework for integrated reporting and the integrated report*.

The most common observation of the integrated reports produced in South Africa in 2011 was that most were simply a combining of the annual report and the sustainability report. This is not integrated reporting. It resulted in lengthier reports which did not enhance or provide any further insight into the organisation.

Nearly all organisations have reported that getting the linkages right between financial and non-financial information provided the toughest challenge for them. The connectivity of information is one of the guiding principles so the

importance of getting the linkages right is paramount.

### Pilot programme

The IIRC is running a pilot programme which currently features over 60 organisations from around the world. Among global giants such as Microsoft, Coca Cola Company and Marks and Spencers are three Australian organisations: bankmecu Ltd, National Australia Bank Ltd and Stockland. The pilot programme will underpin the formation of the integrated reporting framework and test the principles and practicalities of integrated reporting. It is hoped this testing will support the creation of a global standard in integrated reporting.

### The outlook

The IIRC has identified a number of next steps it will take following the release of its 2011 discussion paper and the launch of the pilot programme. These include:

- developing an international integrated reporting framework exposure draft – this will draw on the responses received to the discussion paper and the lessons learned from the pilot programme
- working with others to support the development of emerging measurement and reporting practices relevant to integrated reporting
- raising awareness among investors and other stakeholders and encouraging organisations to adopt and contribute to the evolution of integrated reporting
- exploring opportunities for harmonising reporting requirements within and across jurisdictions, and

- developing institutional arrangements for the ongoing governance of integrated reporting.

The results from the pilot programme will play an important role in shaping these next steps.

Many forward-looking organisations are already starting to report on an integrated basis or making plans to change the way they report. They understand the benefits to their organisations and are making changes to the way they report in advance of the draft framework. The IIRC has provided some good theoretical principles. However, there is definitely a need for practical guidance to assist in making integrated reporting a reality.

It will be interesting whether more countries follow South Africa's lead and mandate the need for integrated reporting. For forward-looking organisations seeking to distinguish themselves from the pack and to demonstrate stewardship and how they create and sustain value, the early adoption of integrated reporting may bring rewards.

### Geraldine Magarey FCA,

*Manager, Sustainability and Regional Australia, Institute of Chartered Accountants in Australia*

*Geraldine Magarey can be contacted on (02) 9290 1344 or by email at: [Geraldine.Magarey@charteredaccountants.com.au](mailto:Geraldine.Magarey@charteredaccountants.com.au). This article was first published in the May 2012 issue of 'Keeping Good Companies', the journal of Chartered Secretaries Australia. Reprinted with kind permission of the publisher.*



# Handling a whistleblower tip-off

Much effort has gone into ensuring that companies have channels for whistleblowers to report corporate misdemeanours, but what do you do when you receive a whistleblower tip-off? Colum Bancroft, Managing Director, Kroll Advisory Solutions, indicates some of the things to look out for when assessing the credibility and seriousness of whistleblower allegations in China.

Fraud and corruption are ongoing concerns in China. According to Kroll's 2011/ 2012 *Global Fraud Report*, 84% of companies in China noted they were a victim of fraud, the second highest proportion of companies of any country or region measured in the report. The most common malpractices identified were procurement fraud, information theft and management conflict of interest.

Fraud schemes in China are considerably more complex today than in previous years and often involve collusion among internal employees across departments or with external parties. A single perpetrator will usually not be able to take their corrupt or fraudulent act far without including others in their scheme. They may also be motivated, perhaps simply by greed, to recruit like-minded people in order to increase their potential financial reward, although the more people involved, the greater the chance that the scheme will be discovered. Often the whistle is blown by one of the accomplices who is no longer happy with the financial reward that he or she is receiving.

According to the Association of Certified Fraud Examiners, 40.2% of occupational frauds are detected by a tip-off, of which employees are the most common source. However, time and time again we come across situations where management is unsure of how to deal with a whistleblower allegation and often makes the mistake of ignoring it altogether. Knowing how to read between the lines is key when evaluating whether an allegation is genuine or not. While some allegations come from disgruntled or malicious employees and can be dealt with quickly, others highlighting alarming concerns may require further investigation.

### Points to consider when reviewing a whistleblower allegation

When an anonymous whistleblower allegation is received, the designated individuals should consider the nature and severity of the allegations that are being made, as well as the seniority of the employee against whom the allegations have been made. The possible identity of the whistleblowers – whether they are inside or outside the company, or from which department within the company if the former – and what their ulterior motives, if any, may be, are other factors that need to be taken into account in assessing the likely validity of the allegations.

The investigative approach should be shared on a strictly need-to-know basis with others in the organisation. The investigation may start by comparing the purported facts stated in the whistleblower letter with facts from other sources, such as the company's existing books and records and discreet enquiries with appropriate staff members. If information gathered from these sources corroborates the information



“  
knowing how to  
read between  
the lines is key  
when evaluating  
whether an  
allegation is  
genuine or not  
”

in the whistleblower allegation, further steps will need to be considered in order to verify the allegation and identify the possible impact on the company or its stakeholders. If the allegation appears to be refuted by the information gathered from these other sources, allegations received in the future should be closely monitored and reviewed for indications of the same issues.

### Highlights

- companies need to have policies and procedures in place when it comes to reviewing whistleblower allegations
- management should treat every reported allegation seriously, take appropriate steps to validate which allegations seem to be genuine and implement robust response strategies in dealing with the allegations
- don't ignore whistleblower allegations – if an allegation is not dealt with quickly and appropriately, it could cause serious harm to a company's reputation
- if the tip-off lacks credibility it can be dealt with internally, if the allegation is serious it may require a full independent investigation



“  
**if whistleblowers believe they have not been heard, they may try other avenues such as blogs and the media to expose their insight**  
 ”

The approach to reviewing an allegation can vary from country to country. Management should consider cultural influences in order to understand the context of the allegations, as well as the possible motivations of the whistleblower.

As elsewhere, whistleblowing, frequently by email, can come from any part of the company – from factory workers to senior level managers. However, in China, a few considerations stand out when trying to identify the whistleblower in order to understand the motives behind the accusation:

1. The Chinese characters in the message may contain clues to identify the whistleblower. For example, how Chinese names are spelt can indicate that the individual speaks Cantonese or Putonghua, or is a native of mainland China, Taiwan or Hong Kong.
2. Chinese whistleblowers may also attempt to disguise their identity in a number of ways, for example by sending emails written from an outsider's perspective when they are

really an employee of the company; or by sending multiple letters or emails from different locations or addresses, with some differences in the specifics of certain allegations and/ or new allegations inserted. Close examination of the writing style and content in both cases, and analysis of the common features in the second example, can assist in narrowing down the source of the whistleblower.

3. Although less common than emails, letters sent by post might show the sender's location on the postmark, so the information on the envelope should be analysed.
4. Whistleblowers also rarely keep to a single accusation, often damning the subject of their messages with a list of charges. For instance, a whistleblower may typically make allegations about everything from biased company suppliers to the treatment of girlfriends and colleagues by the person accused. Both the nature of the individual accusations, and their likely source,

will impact the investigative work that may be required. For example if the accusations are mainly commercially-based, covering issues such as potential kickbacks being received by the procurement department but also includes some personal accusations, such as the alleged infidelity of the procurement manager, the latter accusation may help to understand the likely identity of the whistleblower without detracting from the possible validity of the former accusation. The additional information may also assist the investigation by identifying an additional party (that is the mistress) who may be implicated in the scheme.

When interviewing employees and the whistleblower, management need to pin down people for details and look for signs that something is being held back. Whilst interviewees can be specific if they wish, where they seek to avoid a question – or if they are embarrassed about not knowing – they may use vague language. Such interview characteristics may point to specific areas which need to be further investigated.

Companies need to have policies and procedures in place when it comes to reviewing whistleblower allegations, and need to effectively evaluate the credibility and seriousness of the claims. If the tip-off lacks credibility, it can be dealt with internally. If the allegation is serious, it may require a full independent investigation.

**Don't ignore the allegation**

Most overseas regulatory bodies encourage individuals to alert the authorities about violations of federal

securities and/ or anti-bribery laws. Some, such as the Securities and Exchange Commission (SEC), in conjunction with the US Department of Justice under the recently-enacted Dodd-Frank whistleblower provisions, offers monetary rewards to whistleblowers whose tip-offs lead to successful prosecutions or settlements. If a company decides to dismiss a tip-off without investigating it, the whistleblower may go straight to the regulatory bodies, which could lead to a harsh penalty for the company if the allegation turns out to be correct. Additionally, if whistleblowers believe they have not been heard, they may try other avenues such as blogs and the media to expose their insight. In short, if an allegation is not dealt with quickly

and appropriately, the tip-off could cause serious harm to a company's reputation.

Steps can be taken from the outset to shed light on the accused fraudster mentioned in the whistleblower allegation without drawing attention to the matter. Where lawful to do so, a review of company emails and internet browsing history will shed significant light on an insider's activities and associations. In cases involving suspected kickbacks or conflicts of interest, a review of sales or purchasing records may reveal anomalous patterns or suspicious trends indicative of corruption. Where possible, a review of corporate filings might show an employee's ownership interest in one or more vendors, whose share of

purchase orders has been increased by the insider.

Amid the high number of whistleblower reports that companies in China are receiving every day, management should treat every reported allegation seriously, take appropriate steps to validate which allegations seem to be genuine and implement robust response strategies in dealing with the allegations. Where appropriate, engaging external consultants for specific advice or to carry out a credible independent investigation should be considered.

#### Colum Bancroft

*Managing Director, Kroll Advisory Solutions*

## Case study

A case of an apparently minor allegation made by an anonymous tipster was a red flag for a much wider and more serious issue.

An anonymous tip was received by the management of a multinational company operating in China, claiming that one of the regional offices of the company was fabricating revenue figures. While an initial review of documents by the company's internal audit team did not reveal any irregularities and the transactions seemed to be substantiated by proper documentation, management requested an independent investigation to validate the allegation.

The investigation involved a thorough review of the regional office's sales contracts, sales orders, commission payments, rebates and receipt records. Interviews with the sales and customer service teams were also conducted. The review identified that some of the sales recorded in the accounting ledgers could not be vouched to genuine supporting documents. The sales contracts were found to be fictitious, with discrepancies noted between the regional

office's copies and the copies provided to the company's headquarters. As a result, the investigation was expanded to review documents kept in other regional offices and compare the same with the headquarters' records. It was found that a large proportion of the contracts were not legitimate. The company was eventually ordered by the SEC to restate its revenue for the past three years due to unreliable reported financial performance.

Furthermore, there were initially no concerns over corruption and bribery between the company's sales team and its customers. A basic review, by the client, of its documentation also did not find any inappropriate activities in this respect. However, the expanded investigation included conducting background searches on some of the company's employees and third-party consultants used in the selling process. The extended research and analysis identified that third-party intermediaries had been used to channel funds and rebates to certain entities. Working alongside the company's external counsel, the identified violations of the Foreign Corrupt Practices Act resulted in significant financial exposure for the company.



## 如何处理检举密告

为确保检举者可以通过有效渠道对企业内的不法行为进行检举，很多企业已做了很大努力。但当你收到检举人的密告时又该如何处理呢？Colum Bancroft Kroll Advisory Solutions 的执行董事，就中国企业该如何评估指控的可信性和严重程度提出了几点建议。

**欺**诈和腐败行为是让中国企业持续担忧的严重问题。根据Kroll公司的《2011/2012全球反欺诈报告》，84%的中国企业承认曾遭受过欺诈行为的侵害，这一比例是全球所有国家或地区中的第二高。发生率最高的欺诈行为包括采购欺诈、信息盗窃，以及管理层利益冲突。

与前几年的情况相比，当今中国企业内所发生的欺诈案更为复杂，常涉及不同部门员工或内部员工与外部人员的串通

作案，可能因为单个作案人通常无法使其腐败或欺诈阴谋得逞。此外，出于贪婪，作案人为获得更多的不法收入，也可能有勾结同伙作案的动机。但参与犯案的人数越多，被发现的几率也越大。在很多情况下，因不满分赃不均，某一参与犯案的人员就会进行检举。

根据注册反欺诈审查师协会发布的数据，40.2%的企业欺诈案是通过检举密告而被发现的，其中来自员工的检举所占比例

最高。但是我们经常发现企业管理层并不知道该如何适当地处理检举人所提出的指控，而且经常犯下完全忽略这些指控的错误。了解如何解读检举信的言外之意，这是判定指控是否属实的关键。尽管一些指控可能是心怀不满的员工恶意捏造的，但另外一些足以引起管理层警觉的指控则可能需要进一步的调查。

### 审查检举指控时需考虑的要点

在收到匿名检举信后，负责处理的团队



或人员应评估检举指控的性质和严重程度，以及被指控的员工在企业中的职位和级别。此外，推想检举人的身份——企业内部的员工（以及是哪一个部门的员工）或是外部人员——以及检举人提出指控的隐秘动机也是在评估指控有多大可信度时需要考虑的因素。

根据指控所进行的调查应仅限于让企业内部必要知情的人员知晓。调查可先将检举信中所指称的事实与从其他来源（如企业的帐簿和记录、对相关员工的审慎询问等）所了解到的事实加以比较。如果从这些来源所收集到的信息证实了检举信中所指称的事实，则需要采取进一步的行动，以核实检举指控，并确定其对企业或利益相关方的潜在影响。如果检举指控已被这些从其他来源所收集到的信息所否认，则应当对以后所收到的针对同一问题的检举指控进行密切的监测和审查。

在不同的国家，对检举指控进行审查的方式各有不同。为了了解做出检举指控的背景以及检举人可能的动机，企业管理层必须考虑文化因素的影响。

与其他国家的情况一样，中国企业所收到的检举信（通常以电子邮件发出）可来自任何内部员工——从工厂工人到高级管理人员。不过对中国企业来说，在试图辨认检举人的身份从而了解其提出检举指控的动机时，以下几点需要特别注意：

1. 检举信息中的中文字可能包含发现检举人身份的线索。例如，检举信中文姓名是如何拼写的就可能表明检举人是说广东话还是普通话，是土生土长的中国大陆居民，或是来自台湾或香港的居民。
2. 中国的检举人还可能使用多种方式试图掩盖其身份。例如，企业内部员工以外部人员视角撰写检举信并以电子邮件发出，或从不同的地址

## “ 了解如何解读检举信的 言外之意，这是判定指 控是否属实的关键

”



或邮箱发出多份检举信或电子邮件，其中包含一些不同的检举指控内容和/或新的检举指控。在这两种情况下，对检举信的写作风格和内容进行细查，及在后一种情况下对多份检举信的共同特点进行分析，均有助于缩小检举人的范围。

3. 尽管与电子邮件相比并不那么常见，但在通过邮局发出的检举信上所盖的邮戳，也可能指出发信人的发信地点，因此，应当对信封上的信息进行分析。
4. 检举人通常很少仅提出一项检举指控，而是会混杂地提出多项指控。例如，检举人通常会指控被检举人的一系列不端行为，从偏袒供应商

到对女性友人和同事的不当对待。检举指控的性质及其可能的来源，均对可能需要进行的调查产生影响。例如，如果所指控的行为主要涉及商业交易，如采购部收取回扣等，但同时也包括一些关于个人行为的指控，如采购经理对家庭不忠等，那么后一指控可能有助于查明检举人的可能身份，且不影响前一指控的真实性。这些额外的检举信息还可能有助于调查人发现参与不法行为的其他方（如采购经理的情妇）。

在与员工和检举人面谈时，管理层需要了解细节信息，并寻求是否有事项被隐瞒的迹象。尽管接受询问的人若愿意可以将所知资讯全盘托出，但如果他们希望回避一些问题，或不愿承认是否知

## 摘要

- 在审查检举人所提出的指控时，企业需要制定相关的公司政策和规程。
- 企业的管理层应当认真对待每一宗检举指控，采取适当的步骤核实检举内容是否属实，并采用强有力的应对策略予以处理。
- 不能忽视检举指控——如果一家企业未及时和适当地处理检举指控，其声誉可能受到严重损害。
- 如果检举缺乏可信性，在企业内部处理即可。但如果所检举的事项属严重违法行为，则可能需要进行全面的独立调查。



“  
如果检举人认为他们所提出的指控被忽视，则可能转而使用其他渠道如博客和媒体等将之公诸于众  
”

情，则可能会使用含糊的言辞。这种情况可能需要深入调查来了解隐藏的资讯。

在审查检举人所提出的指控时，企业需要制定相关的公司政策和规程，并有效地评估检举指控的可信性和严重程度。如果检举缺乏可信性，在企业内部处理即可。但如果所检举的事项属严重违法行为，则可能需要进行全面的独立调查。

#### 不能忽视检举指控

绝大多数海外监管机构都鼓励个人检举违反联邦证券法和/或反贿赂法的行为。一

些监管机构，如美国的证券交易委员会，连同美国司法部，根据最近颁布的《多德-弗兰克法》中的检举规定向检举人授予奖金；这些举报信息对案件起诉或达成和解起到关键作用。如果一家企业在收到检举后置之不理且不进行调查，那么检举人则可能直接向监管机构举报，若检举指控被证明属实，该企业可能会遭受严厉处罚。此外，如果检举人认为他们所提出的指控被忽视，则可能转而使用其他渠道如博客和媒体等将之公诸于众。简言之，如果一家企业未及时和适当地处理检举指控，其声誉可能受到严重损害。

企业应该从一开始就可采取行动，在不惊动检举信中所指称的嫌疑者的情况下开展调查。对公司电子邮件和互联网浏览历史记录进行合法的审查，将为查明内部人员的行为和其外部联系提供重要线索。如果是对涉嫌收受回扣或利益冲突案的调查，对销售或采购记录的审查可揭示出异常的模式或隐蔽贪污的可疑动向。对企业登记文件的审查，则可显示公司内部员工在一家或多家供应商中拥有的股权，反映该员工是否为这些供应商从公司谋取了更多数量的采购订单。

中国企业的管理层应当认真对待每一宗收到的检举报告，采取适当的行动核实检举内容是否属实，并采用强有力的应对策略予以处理。如有需要，应当考虑聘请外部咨询师提供具体建议，或进行可信的独立调查。

#### Colum Bancroft

*Kroll Advisory Solutions*  
执行董事

## 案例研究

匿名检举信中所提出的轻微指控可能是一个牵涉面甚广且更为严重的问题的危险信号。

一家在华跨国公司的管理层收到了一封匿名检举信，指控该公司的一地区办事处伪造营业收入数字。尽管该公司的内部审计团队对相关文件的初步审查显示并无任何会计舞弊行为，相关交易表面上看来都有合适的文件作为凭证，但为了核实指控是否属实，管理层决定聘请独立调查机构进行调查。

调查涉及对该地区办事处的销售合同、销售订单、佣金支付、回扣和收据记录进行全面彻底的审查，此外还进行了与销售和客服团队成员的面谈。所进行的审查发现，一些在会计账簿上记录的销售交易并没有真实的证明文件作为凭证。一些销售合同被证实是虚假的，在该地区办事处保存的合同文本与

提交给公司总部的合同文本间有巨大差异。因此，调查范围扩大到对其他地区办事处保存的合同文件与提交给公司总部的同一文件进行对比。调查发现，很大一部分合同都是不合法的。由于所报告的财务业绩不实，该公司最终被美国证券交易委员会责令重报过去三年的营业收入。

此外，最初该公司并未关注公司销售团队和客户之间存在的贿赂等腐败行为，对公司相关文件所进行的基本审查也未发现任何不法行为。但是在调查范围扩大到对公司一些员工及销售过程中所聘用的第三方咨询师的背景进行调查之后，调研和分析结果显示第三方中介机构被用于向一些实体转移资金和支付回扣。通过与该公司外部法律顾问合作，独立调查机构证实，所查明的违反《反海外腐败法》的行为已导致该公司蒙受重大财务风险。

# Rewarding the Extraordinary



CHARTERED  
SECRETARIES  
特許秘書

More than meets the eye.  
潛能. 超越所見.



## The Hong Kong Institute of Chartered Secretaries Prize 2012

### Call for Nominations

‘Company secretaries have to be prepared to get involved, to volunteer for the Institute’s committees, and in general be proactive in making themselves heard.’

Mike Scales, Former Regional Company Secretary, Asia Pacific, HSBC (Awardee of 2010 HKICS Prize)

‘Voluntary work for the Institute gives you an opportunity to work with high-level professionals who are ideal role models.’

Duffy Wong, Partner, Ho, Wong & Wong, Solicitors & Notaries (Awardee of 2011 HKICS Prize)

The nomination deadline is Saturday, 29 September 2012. Please visit [www.hkics.org.hk](http://www.hkics.org.hk) or contact the Secretariat at 28816177 for more details.



# PSI disclosure: comparing the Hong Kong and mainland approaches

Three Regional Board Secretary Panel meetings organised by the HKICS earlier this year in Shanghai, Shenzhen and Beijing reviewed Hong Kong's new statutory price-sensitive information (PSI) disclosure requirements and compared the PSI disclosure regimes of mainland China and Hong Kong.

The Hong Kong Institute of Chartered Secretaries (HKICS) organised three Regional Board Secretary Panel meetings on 17 and 20 February and April 13 in Shanghai, Shenzhen and Beijing respectively. At the meetings, Dr Maurice Ngai, HKICS Vice-President, explained the requirements for the disclosure of price-sensitive information (PSI) by listed corporations under the Securities and Futures (Amendment) Bill 2011 which will become effective on 1 January 2013. Attendees, including board secretaries, representatives of mainland regulators and Hong Kong Exchanges and Clearing (HKEx) and the HKICS, discussed the types of PSI to be disclosed, the necessary preparatory work to meet the new requirements and the differences between the PSI disclosure regimes of mainland China and Hong Kong.

## The Hong Kong approach

'The purpose of the Amendment Bill is to nurture a culture of continuous disclosure among listed corporations, enhance market transparency and quality, and to follow the requirements of international capital markets,' Dr Maurice Ngai said. He began his presentation by covering the background to the Securities and Futures (Amendment) Bill 2011 (the Amendment Bill) and outlining its key elements. The Amendment Bill obliges listed corporations to make timely disclosure of PSI. Corporations in breach of the requirements will be subject to civil sanction. Administrative procedures will be simplified by enabling the Securities and Futures Commission (SFC) to institute proceedings before the Market Misconduct Tribunal, and the opportunity will be taken to enable the

SFC to establish a cross-sectoral Investor Education Council. Certain technical amendments will also be made to the Securities and Futures Ordinance (SFO).

The board secretaries at the meetings were concerned about the definition of PSI in the Amendment Bill. The Bill proposes that the concept of 'relevant information' currently used in the 'insider dealing' regime in the SFO be borrowed to define PSI, and such information would be renamed 'inside information'. 'Inside information' is information currently prohibited from being used for trading securities in the relevant listed corporation. Apart from the prohibition from being used for insider dealing, such information must be disclosed to the public in a timely manner. The Amendment Bill stresses

that listed corporations should, as soon as reasonably practicable, disclose inside information that has come to its knowledge. An officer involved in the management of the corporation should take all reasonable measures to ensure that proper safeguards exist to prevent breaches. The Amendment Bill also contains provisions on the responsibility of officers of listed corporations for non-disclosure. The meeting was also briefed on the applicability of the 'safe harbours', the civil sanctions for breaches of the disclosure requirements and the remedies available to investors.

At the meetings, a comparison was made between the continuous disclosure obligations under the Amendment Bill and those described in the listing rules of Hong Kong Exchanges and Clearing Ltd (HKEx). The board secretaries present, together with mainland regulator representatives, HKEx and HKICS, also discussed issues relating to the implementation of the Amendment Bill requirements; the differences in disclosure requirements between mainland China and Hong Kong and the need for harmonisation of these requirements; the role of board secretaries in managing PSI and preventing insider dealing; and the role of the board secretary in the governance of listed corporations.

#### The mainland approach

During the discussion, a representative of the Shanghai Branch of the China Securities Regulatory Commission said that, from a policy perspective, the Amendment Bill introduced into the Hong Kong Legislative Council was inspiring. Information disclosure requirements are not as clearly defined in mainland Chinese law, and this results in different approaches to regulating

insider dealing in mainland China and Hong Kong. The basic concept of insider dealing as 'a person's failure to disclose information that should be disclosed, thereby adversely affecting the market' is generally accepted in Hong Kong and mainland China, but there are some aspects of the Amendment Bill which are potentially problematic. Under the Bill, for example, could a company secretary be liable for his corporation's failure to make disclosure of discloseable information even where that information may not have come to the notice of the company secretary? This would be a very significant departure from the common understanding in the industry of inside information. Dr Ngai also pointed out that, from an operational perspective, there is a high degree of uncertainty as to what constitutes inside information – does this include information considered 'trade secrets' by listed corporations, for example?

Dr Ngai said that the market will need time to adapt to the statutory PSI disclosure regulatory regime. Listed corporations will need to familiarise themselves with the new requirements and adapt their internal controls to ensure compliance. The SFC will promulgate guidelines on the Amendment Bill and will provide an informal consultation service for 24 months after the implementation of the PSI disclosure requirements in January 2013 to facilitate listed corporations' compliance. During implementation, the SFC has the power to amend the regulations and introduce more safe harbours, taking into account the market situation. For example, consideration will be given to the implications of the 'trade secrets' of corporations, and the issue of different

standards of disclosure for large corporations and small companies.

At the Regional Board Secretary Panel meetings, Lan Qi, Board Secretary of the China Merchants Bank and Guo Xiangdong, Board Secretary of Guangshen Railway Company Ltd, also pointed out that companies concurrently listed in Shanghai and Shenzhen were subject to different regulatory and disclosure requirements. How to align the regulatory and disclosure regimes of the two places is an issue that warrants early consideration by regulators and listed companies in China. They should proactively learn from the successful experience of the regulators in Hong Kong.

Kenneth Jiang, Chief Representative of the Beijing Representative Office of the HKICS, said that HKICS has conducted a study to compare the information disclosure regimes in the mainland and Hong Kong and provided the results of the study to HKEx, Shanghai Stock Exchange and Shenzhen Stock Exchange. The HKICS will continue to work with all parties on the issue of information disclosure.

#### Cai Zongqi

*Journalist*

*The revised Securities and Futures Ordinance will become effective on 1 January 2013.*

*The HKICS set up four Regional Board Secretary Panels in Beijing, Shanghai, Guangzhou and Shenzhen in 2010. For a review of the Regional Board Secretary Panel meeting held on 12 January in Hong Kong, see CSj, April edition, pages 18–24).*



## 披露股价敏感资料： 香港和内地做法的比较

公会今年较早时在上海、深圳和北京举行三场董事会秘书圆桌会议，讨论香港就股价敏感资料的披露要求而推出的新法例，并比较内地和香港的股价敏感资料披露制度。

今年2月17日、20日和4月13日，香港特许秘书公会分别在上海、深圳和北京三地举行董事会秘书圆桌会议。香港特许秘书公会副会长魏伟峰博士就《2011年证券及期货（修订）条例草案》对上市公司披露股价敏感资料进行了解读，与出席会议的逾50名参会董秘进行了细致探讨，并对披露股价敏感资料的类型及新条例要求下需步署的工作交换了意见。

### 香港经验

「修订草案出台的目的在于培育上市公司持续披露信息的氛围，提升市场透明度和素质，并跟随其他国际资本市场要求。」魏伟峰博士首先介绍了香港《2011年证券及期货（修订）条例草案》（以下简称《修订草案》）出台的背景情况和主要内容。他表示，草案首先规定了上市公司有适时披露股价敏感资料的责任，如违反有关规定，则应受到相应的民事制裁。《修订草案》简化行政程式，授权香港证监会可直接在市场失当行为为审裁处启动调查程式，并以此为契机，授权香港证监会成立跨部门的投资者教育局；最后，对《证券及期货条例》进行若干技术性修订。

与会董秘对于《修订草案》中涉及的“股价敏感资料”的界定问题颇为关注，进行了深入讨论。《修订草案》建议采用现有《证券及期货条例》禁止内幕交易制度中“有关消息”的概念来界定股价敏感资料，并被称为“内幕消息”。“内幕消息”等同于现时被禁止用作交易有关上市公司的证券的资料，除禁止利用其进行内幕交易外，还需适时向公众披露。《修订草案》强调，上市公司须在合理且切实可行范围内，尽快向公众披露任何已知道的“内幕消息”。而且，参与管理的“高级人员”须采取一切合理措施，以确保有妥善的预防措施，防止有关公司违反披露要求。《修订草案》中也对上市公司高级人员未按要求进行披露的责任认定进行了规定。会议还简要介绍了公司信息

“安全港”所适用的范围，违反披露要求所应承担的相应民事责任，以及对投资人的相关补救措施。

会上还将《修订草案》与港交所《上市规则》中对持续披露责任的表述进行了对比研究，出席会议的董秘与监管机构代表、交易所代表及协会代表就《修订草案》相关修改意见的具体操作、两地披露的差异及协调、董秘如何有效管控股价敏感信息和防止内幕交易、如何在上市公司治理中发挥作用等问题进行了讨论。

### 内地实践

讨论中，上海证监局代表指出，从目前的政策角度出发，香港财经事务及库务局出台《修订草案》这样的法律值得思考。由于内地有关信息披露责任的法律界定尚不明确，香港和内地对内幕交易的监管的概念并不一致。而将内幕交易理解为“由于当事人未披露应予以披露的信息而造成对市场不利影响的行为”，这个概念能够为香港和内地业界广泛接受。但目前香港新出台的《修订草案》理解上仍有一定困难。该草案认为，董秘所在公司有应予披露的信息但实际上董秘不一定知悉，而董秘未进行披露将要被追究法律责任，这与目前业界对内幕信息的共识性理解存在一定距离，他亦表示，从实际操作来看，「有不少信息，是否能够被确定为内幕信息？很多涉及到上市公司商业机密的，界定有一定的难度。」

魏伟峰博士表示，披露制度是一个交易市场必须考虑发展形成的机制，上市公司和交易所都需要一个过程来熟悉新的要求、适应并充分使用这个机制。香港证监会亦就新修订的草案提供配套指引，并就如何应用新的披露要求提供为期24个月的非正式咨询服务，以便上市公司更好的适应并遵守新的披露敏感信息的要求。同时，在制定这个制度的实施过程中，证监会亦根据市场情况有权作出附例的修订及加入更多安全港，例

“  
由于内地有关信息披露责任的法律界定尚不明确，香港和内地对内幕交易的监管的概念并不一致”

如要考虑到商业秘密对公司的影响，大企业和小企业披露信息不同尺度而造成的标准问题。

与会的招商银行董秘兰奇及广深铁路股份有限公司董秘郭向东提出，上市公司在上海和深圳两地上市，所面临的监管和披露要求是不同的，如何平等、规范两地的监管和披露机制，是目前大陆监管机构和上市公司应及早思考的问题。有关问题，香港的监管机构有一些成功的经验，应当积极进行交流和借鉴。

对于上述热点，香港特许秘书公会北京代表处首席代表姜国梁表示，公会已经就香港和中国上市公司之持续披露课题进行了对比研究，公会也将研究结果及大家讨论中提到的两地法规要求及实际监管中存在的差异或不协调的问题回馈给了港交所、上交所和深交所，公会将会在信息披露方面继续与大家一道合作。

### 记者 蔡宗琦

经修订的《证券及期货条例》，将于2013年1月1日生效。

2010年，公会在北京、上海、广州和深圳成立四个董事会秘书专责小组。最近一次深圳董事会秘书专责小组会议，于1月12日在香港举行，当中也讨论了披露股价敏感资料的课题。本刊4月号报道了该次会议的情况（见4月号第18至24页）。

## A review of seminars: May 2012

---

25 May 2012



Eric Chan (Chair) and Wilfred Wu

*From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Wilfred Wu, Principal, Specialist Advisory Services, BDO, on 'Shareholder disputes'.*

'Mr Wu gave us an interesting presentation on the many different aspects of shareholder disputes. His seminar was highly practical in focus, using real life examples of such disputes and suggesting possible remedies to the challenges. Useful answers were given during the Q&A session!'

## 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 for the current CPD year ending 31 July 2012 and every CPD year thereafter.

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](http://www.hkex.com.hk)).*

*To learn more about Institute's ECPD programme, please visit the Institute's website ([www.hkics.org.hk](http://www.hkics.org.hk)).*



## ACRU 2012 photo gallery

The Institute's 13th Annual Corporate and Regulatory Update (ACRU) was successfully held on 23 May 2012 at the Hong Kong Convention and Exhibition Centre. There were four sessions this year with presentations by speakers from the Companies Registry (CR), Hong Kong Exchanges and Clearing Ltd (HKEx), the Inland Revenue Department (IRD) and the Securities and Futures Commission (SFC). This month's CSj brings you full coverage of the event in our cover stories (see pages 8–19).

*The Institute would like to thank the sponsors, speakers, supporting organisations, chairpersons, attendees and the HKICS secretariat for their support of this event.*



*(From left to right) Charles Grieve, Senior Director of Corporate Finance, SFC; Edith Shih, President, HKICS; and Mark Steward, Executive Director of Enforcement Division, SFC*



*(From left to right) Terence Kwok, Senior Assessor (Computer), IRD; Eric Wan, Senior Assessor (Business Registration), IRD; Tse Yuk Yip, Assistant Commissioner of Inland Revenue, IRD; and Polly Wong, Vice-President, HKICS*



*(From left to right) Mohan Datwani, Director of Technical & Research, HKICS; Natalia Seng, Past President, HKICS; Edith Shih, President, HKICS; Phyllis Mckenna, Deputy Principal Solicitor (Company Law Reform), CR; Phillip Baldwin, Chief Executive, HKICS; Nancy Yau, Deputy Registry Manager (Company Formation & Enforcement Division), CR; Wendy Ma, Deputy Registry Manager (Development) CR; and Parry Tam, Director of Professional Development, HKICS*



*(From left to right) Louisa Lau, General Manager and Company Secretary, HKICS; Natalia Seng, Past President, HKICS; Alberta Sie, Chairman of Education Committee, HKICS; Sarah Chow, Senior Manager, HKEx; Phillip Baldwin, Chief Executive, HKICS; Ellie Pang, Assistant Vice-President, HKEx; Michael Cheng, Senior Vice-President, HKEx; Christine Kan, Senior Vice-President, HKEx; Maurice Ngai, Vice-President, HKICS; Parry Tam, Director of Professional Development, HKICS; and Mohan Datwani, Director of Technical & Research, HKICS*

## New Graduates

Ho On Kin  
 Lau Wing Kai, Anthony  
 Ng Chui Shan  
 Siu Miu Ling  
 So Yi Ha

## New Associates

Chan Ka Sin	Leung Siu Hing
Huang Jia Jun	Lu Hong Yu
Kwok Pui Yuk	Ng Hin Wai
Lai, Cora	Ngai Lai Wan, Winnie
Lai Mei Yan	Tsang Wan Chi
Lai Yin Fei	Wong Yun Yin
Lee Cho Yan, Joanne	Wu So Chee

## 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
Soon Yuk Tai <i>FCIS FCS</i>	China Minsheng Banking Corp Ltd (stock code: 1988)	26 April 2012
Kung Yuk Lan <i>ACIS ACS</i>	Carry Wealth Holdings Ltd (stock code: 643)	9 May 2012
Tam Ngai Hung, Terry <i>ACIS ACS</i>	CCT Telecom Holdings Ltd (stock code: 138)	10 May 2012
Li Yan Wing, Rita <i>FCIS FCS</i>	China Outfitters Holdings Ltd (stock code: 1146)	14 May 2012
Lau Lai Yee <i>ACIS ACS</i>	PacMos Technologies Holdings Ltd (stock code: 1010)	17 May 2012
Ho Wing Yan <i>ACIS ACS(PE)</i>	Flyke International Holdings Ltd (stock code: 1998)	18 May 2012
Lam Mei Kam, Catharine <i>ACIS ACS</i>	Bright Smart Securities Et Commodities Group Ltd (stock code: 1428)	28 May 2012
Tam Lai Kwan, Terry <i>ACIS ACS</i>	Sinopoly Battery Ltd (stock code: 729)	29 May 2012

## New Fellows

### Cheng Kim Sing FCIS FCS

Mr Cheng is currently the Finance Manager of Good View Fruits Co Ltd. He is responsible for financial and company secretarial affairs, internal controls and providing advice on strategic business development to the board. Mr Cheng holds a master's degree in Professional Accounting from the Hong Kong Polytechnic University, a master's degree in Business Administration from the Hong Kong Baptist University and a master's degree in Law from the Renmin University of China. He is a Fellow of HKICPA, ACCA and CIMA. He is also a CIA and CISA.



### Fu Yat Hung, David FCIS FCS

Mr Fu joined the Swire group in 1988 and has worked with the group in Hong Kong and Beijing. He is the Company Secretary of Swire Pacific Ltd (stock codes: 19 and 87), Swire Properties Ltd (stock code: 1972), Cathay Pacific Airways Ltd (stock code: 293) and Hong Kong Aircraft Engineering Company Ltd (stock code: 44). He is responsible for the full spectrum of company secretarial functions of the group. Mr Fu graduated from the University of Oxford with a master's degree in Engineering, Economics and Management and also holds a postgraduate diploma in Corporate Administration from the City University of Hong Kong. He has been a member of the Institute's Company Secretaries Panel since 2006.



## 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

## New membership re-election policy

With effect from 1 August 2012, members applying for re-election will not be required to settle all subscriptions in arrears. As an effort to encourage lapsed members to rejoin the Institute, re-elected members will only be required to pay a total of three years' subscriptions plus the re-election fee under the new policy. The three years' subscriptions (based on current fees at the time of application) will include:

- i. subscription for the current year
- ii. subscription for the lapsed year, and
- iii. an additional year of subscription to cover the year(s) in between i) and ii) above regardless of the length of the lapsed period.

We understand that members might have reluctantly chosen not to renew their membership due to sickness, unemployment, pregnancy, etc. This new re-election policy aims to encourage lapsed members to rejoin the Institute. All applications are to be approved by the Membership Committee.

*For further details on re-election application procedures, please refer to the Institute's website or contact the Membership section at 2881 6177.*

## HKICS president makes official visit to Beijing

On 11 June 2012, Institute President Edith Shih; Vice-President Maurice Ngai; General Manager & Company Secretary Louisa Lau; and Chief Representative, Beijing Representative Office Kenneth Jiang, visited the China Association for Public Companies (CAPCO), the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) and the Ministry of Commerce (MoC) of the People's Republic of China.

The Institute's delegates were warmly welcomed by CAPCO Executive Vice-Chairman Li Xiaoxue, CAPCO Secretary-General An Qingsong and other CAPCO officials. During the meeting, Li Xiaoxue spoke highly of the Institute's continuing effort to promote good corporate governance and board secretary professionalisation over the past 20 years in mainland China. The Institute's delegates and Li Xiaoxue exchanged views on board secretary professionalisation and agreed to discuss further collaboration on the development of the board secretary professional qualification system. This is one of the major responsibilities of CAPCO as part of its remit to enhance efficient self-regulation in the mainland's capital markets. The two parties



*Group photo of the Institute's delegates and CAPCO officials*



*Lunch gathering with Beijing board secretaries and CAPCO officials*

also discussed other areas for possible cooperation and ways to strengthen mutual communication and understanding.

During the visit to SASAC, the Institute's delegates met with Li Bing, Director-General of Bureau of Enterprise Restructuring, SASAC, and other SASAC officials. The two parties exchanged information on recent developments, and discussed and reached a consensus on several proposals for future cooperation.

At the meeting with MoC officials, the two parties discussed the current proposal put forward by the Institute and the Corporate Secretaries International Association to add a 'Corporate Governance, Compliance and Secretarial Advisory Services (CGCSA)' sector classification to the WTO's services sectoral classification list. This proposal aims to enhance the international recognition of the distinct nature of CGCSA services and promote the status of CGCSA professionals. Hong Xiaodong, Deputy Director – General of Department of WTO Affairs, MoC, and other MoC officials, were supportive of this proposal and provided constructive and practical suggestions.

The Institute's delegates and CAPCO officials also met and communicated with around 15 Affiliated Persons of the Beijing region at a lunch meeting on 11 June.

These visits were constructive in establishing and maintaining an effective dialogue with the Institute's stakeholders in the mainland, getting updates from mainland regulators and, especially, laying a cornerstone for future collaboration with CAPCO.

The Institute would like to express its sincere thanks to the officials from CAPCO, SASAC and MoC for sharing their valuable views with the Institute's delegates during the visits. Also, a special thanks to Huadian Power International Corporation Ltd for sponsoring the lunch gathering.

## About CAPCO

The China Association for Public Companies (CAPCO) was established on 15 February 2012 in accordance with the Securities Law of the People's Republic of China and the Regulation of the People's Republic of China on Social Organisation Registration. Being a non-profit incorporated and national self-regulatory organisation, CAPCO members consist of listed companies and relevant agencies dedicated to the maintenance of, and compliance with, the operating rules of mainland China's capital market. Its business operations are subject to oversight by the China Securities Regulatory Commission (CSRC).

CAPCO regards 'service, self-regulation, compliance and enhancement' as its basic functions and responsibilities. It is committed to improving the quality of listed companies, promoting sound corporate governance and culture, and pursuing the ultimate goal of upgrading the overall quality of mainland China's capital markets.

CAPCO is composed of an assembly, council and a supervisory board, all of which are based on membership representation. Such a governance structure is conducive to building itself into a modern NGO dedicated to protecting the overall interests and providing quality service to its members. In addition, CAPCO will help promote both regulatory and self-regulatory requirements so as to foster a more mature and developed capital market regime in mainland China.

CAPCO has 228 public companies as its founding members. The first assembly elected 249 representatives as council members (both corporate and non-corporate); 119 representatives as directors on the executive board (24 representing non-corporate members); and 34 representatives as supervisors. Mr Chen Qingtai and Mr Li Xiaoxue were elected as chairman and executive vice-chairman respectively at the first council meeting.

## Special rate for Fellowship election

Our Fellows are the leaders of our profession. They have the most influence over our profession because only Fellows can stand for election to Council. These highly qualified and respected 'role models' are crucial in maintaining the growth of the Institute. Fellows are:

1. eligible to stand for election to Council and to be appointed to committees, working groups and panels, thus giving them the opportunity to represent other Members, Graduates and Students and to participate in the development, planning and management of both the profession and the Institute's affairs
2. invited as representatives of the profession to events hosted by the Institute, regulatory or governmental bodies, etc
3. eligible to attend the special 'Fellows-only events'
4. invited to share expertise and experience at the new Fellows' Sharing events in a relaxed and informal environment
5. given priority to participate in Institute events, and
6. invited as speakers or chairpersons at our ECPD seminars (extra CPD points are awarded for these roles).

To encourage highly-qualified Associates to join our league of Fellows, the Institute will continue to offer a special rate for the Fellowship election fee at HK\$1,000 for 2012/ 2013. All applications will be considered by Membership Committee on a regular basis.

*For further details please refer to the Institute's website or contact the Membership section at 2881 6177.*

## Convocation 2012

The Institute will organise its annual Convocation on 15 August 2012 at Jardine Penthouse with Anthony Rogers *FCIS FCS*, Former Chairman, Standing Committee on Company Law Reform & Former Vice-President, Court of Appeal, as the guest of honour. Newly elected Fellows, Associates and Graduates during the financial year 2011/ 2012 will receive an invitation to the event to acknowledge their achievement.

## The 25th Affiliated Persons (AP) ECPD Seminars in Shanghai

The 25th Affiliated Persons (AP) ECPD seminars were held on 17 and 18 May 2012 in Shanghai on the theme of **'Internal control and risk management'**. Over 100 participants attended the seminars, including 66 from H-share companies, four from A+H share companies, seven from A-share companies, four from Red Chip companies and other professionals. Dr Wang Hong from the Ministry of Finance and Dr Xu Minglei from the Shanghai Stock Exchange were the keynote speakers.

A dinner gathering was held after the seminars on 17 May for networking and mingling. The Institute would like to express its sincere thanks to the seminars' associate organiser, Shinewing CPA Ltd, and sponsor, Equity Financial Press Ltd for supporting and sponsoring the AP ECPD seminars and the dinner gathering.

The key issues discussed at the seminars are discussed (in Chinese) opposite.



At the event



Group photo of panel speakers



Dr Wang Hong, Director, CPA Management Division, Ministry of Finance



Dr Xu Minglei, Senior Manager, Shanghai Stock Exchange

## 香港特许秘书公会 内控会议

### 内控经验谈

为剖析企业风险管理及内部控制，适应日新月异的市场变化和监管要求，香港特许秘书公会5月17日在上海召开第二十五期联席成员强化持续专业发展讲座，来自财政部、上海证券交易所、会计师事务所以及多家大型上市公司的一线专家就企业内控法规、内控报告的编写以及公司实践案例进行了讲解，以帮助企业走好内控钢丝。

### 中石油的内控经验

何谓内控？

普华永道合伙人魏宝星在讲座上指出，内控是由企业董事会、监事会、经理层和全体员工实施的，旨在实现控制目标的过程。通过内控，企业将实现五大目标：合理保证企业经营管理合法合规；资产安全；财务报告及相关信息真实完整；提高经营效率和效果；促进企业实现发展战略。

目前，中国大陆地区针对内部控制有系列政策法规要求。如上交所《上市公司2011年年度报告工作备忘录第一号内控报告的编制》(2012)，规定了内控报告的编制、审议和披露；证监会企业内部控制规范体系实施工作领导小组《上市公司实施企业内部控制规范体系监管问题解答一、二》(2011-2012)则明确了财务报告内部控制、执行基本规范在年报披露信息、董事会自评报告格式、并购交易的豁免、核心商业秘密发生重大缺陷的豁免披露等等；财政部则下发了《企业内部控制规范体系实施中相关问题解答第1号》(2012)，根据企业在实施内控基本规范过程中遇到的原则性问题进行了解释。

虽然规范日渐清晰，但从企业角度来看，进行合格的内控绝非易事。中国石油天然气股份有限公司副总裁兼董秘李华林在座谈会上与参会嘉宾分享了中石油的内控经验。在他看来，中石油的内控

## PRC IQS Working Group meeting

On 16 May 2012, the PRC IQS Working Group met with Zhou Qinye (周勤业), the former Chief Accountant of the Shanghai Stock Exchange (SSE) to discuss the PRC IQS programme and its development in the mainland.



(From left to right) Bernard Wu FCIS FCS, Gao Wei FCIS FCS, Maurice Ngai FCIS FCS(PE), Zhou Qinye, and Louisa Lau FCIS FCS(PE)

## IQS information session

The Institute organised an IQS information session on 17 May in Shanghai with 15 students and potential candidates attending. Louisa Lau FCIS FCS(PE), HKICS General Manager & Company Secretary, gave an introduction to the Institute, the IQS examinations and the career prospects for Chartered Secretaries and board secretaries on the mainland. She also shared her views on how to prepare for the IQS examinations. Institute members Charlotte Xiao ACIS ACS and Liu Xiaohua ACIS ACS shared their study experiences and provided study recommendations to the participants.



IQS information session in Shanghai

实践凝结三大经验：首先，要实施全面风险管理，并涵盖全部业务流程，并对生产经营和战略决策全过程进行有效监督；其次，在李华林看来，「没有不受监督的权力，没有不受约束的事项」，合格的内控应确保内控体系建设扎实可靠、确保所有经营风险得到有效控制；此外，还需确保内控体系持续健全完善、动态跟踪考核、结合实际、融入业务、形成文化，充分调动业务部门和全员参与的积极性，确保内控体系的生命力；要把内控理念和受控意识融入企业文化，营造良好的内控环境。

他将中石油搭建内控的步骤分为六项工作，一是高度重视，科学组织；二是培训宣传，营造氛围；三是风险导向，全面延伸；四是继承传统，精心设计；五是规范流程，强化管控；六是落实责任，有效监控。正是在上述工作下，中石油的内控从单一制度建设向综合性的管理体系转变；从传统管理向风险管理转变；从事后监督向过程监督转变；从职能管理向流程管理转变。

### 不好写的内控报告

内控报告编写则是讲座上来自公司一线嘉宾最为关注的问题，事实上，近年来上市公司编制内控报告的变化有目共睹。上海证券交易所提供的调查显示，2007-2008年间，沪市最长的一份内控报告长达3万字，最短的一份仅有1700字，多数公司的报告拖沓冗长，详细描述了内控制度却缺乏对内控有效性的结论；2009年，多数公司将内控报告的字数控制在5000字以内，但依然存在不少冗余信息，对内控的内涵和外延理解也存在较大差异。2010年，多数公司已经能按照规定的格式和内容编制报告，而且字数一般控制在500-2000字左右，且结论明确，较之以往的报告在格式的统一性和内容的可读性上均有所提高。

尽管内控报告字数简短，但编制绝非易事，上交所公司管理部高级经理徐明磊坦言，现行内控体系主要针对一般制造型企业的业务特点，而且企业面对的风险千差万别，其风险承受能力也各不相同，因此内控缺乏重要性评价标准不可能完全统一。因此编制报告还需企业根据自身特点编写报告。

如何编写合格的内控报告？过往经验值得借鉴，上交所统计信息显示，目前沪市上市公司内控信息披露依然存在三大问题，一是信息含量有待提高，徐明磊十分遗憾的表示，几乎没有一家公司披露了其中内部控制自我评估过程中所发现的自身存在的重大缺陷，更为明显的是，相当数量的公司存在会计差错更正的情况，但没有一家公司将其作为重大缺陷披露。二是内控报告的审计质量有待提高，至今沪市上市公司的内控审计报告都没有出现过一份非标意见。三是与公允价值相关的内控披露严重不足，大大阻碍了投资者对财报的理解和有效使用。

此外，徐明磊分析了2010年沪市的内控报告编制情况指出，之所以报告编制总体进步明显，首先在于报告的目标基本明确且较为集中，「以往年度，多数公司空泛的照搬COSO框架中的三大目标，使得内控范围涉及上市公司管理的各项制度和规则，不同行业及规模的公司差异较大。2010年，多数公司的内控目标集中在财务报告内部控制及防范重大错报风险，大大提高了内控报告的可读性和可比性。」

「内控报告仍然存在无用信息。」尽管进步明显，值得关注的是，徐明磊还指出了上市公司内控报告依然存在四大冗余信息供上市公司参考：一是曾经多次披露的公司基本情况；二是公司内部控制的建立过程；三是公司具体的内控制度；四是公司内控工作取得的成就。

## Membership activities

---

### 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.

### The environment – visit to an organic farm

A visit to the HKFYG Organic Farm was held on 19 May 2012 with over 50 participants attending. The event was highly successful as members learned about leading an organic and healthy lifestyle and about the technology of organic farming. The group also enjoyed tasty organic food and purchased organic products at the farm. Members commented that this was a worthwhile experience and recommended the visit be held on a seasonal basis.



Group photo at the HKFYG Organic Farm



Briefing on organic farming



Guided tour of the Farm



Eric Chan FCIS FCS(PE), Membership Committee Member (second from right), and participants enjoying tasty organic food

### IT – ‘Tips to be a smart iPhone and iPad user’

This networking event, held on 21 June 2012, gave participants a chance to learn from an expert some practical tips on being a smart iPhone and iPad user. Details with photos will be reported in the next issue of CSj.

### Personal development – ‘Dress code and grooming for professionals’

This networking event, to be held on 10 July 2012, will give participants a chance to learn from an expert some practical tips on the magic of colour, style and texture of clothing, so as to project a professional, well groomed image. Details with photos will be reported in the next issue of CSj.

### Members' Luncheon

The Institute will organise a Members' Luncheon on 18 July 2012. We are delighted to have Andrew Sheng, President, Fung Global Institute, and Chief Adviser, China Banking Regulatory Commission, as the guest speaker to present on the topic 'Post-crisis thinking on corporate governance'.

*For details, please refer to the flyer on page 49, the Institute's website or contact the Membership section at 2881 6177.*

***There are a few seats left for this event, book now to avoid disappointment.***

### HKICS dragon boat team 2012

The Institute's dragon boat team participated at the 7th Stanley Dragon Boat Warm-up Races on 26 May 2012 and won the third runners-up in the Mixed Teams Gold Bowl! They also entered the International Dragon Boat Races on 2 July 2012. Details of the two races with more photos will be reported in the next issue of CSj.



Third runners-up in the Mixed Teams Gold Bowl



## December 2012 Examination

	Tuesday 4 December 2012	Wednesday 5 December 2012	Thursday 6 December 2012	Friday 7 December 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

### IQS recommended reading: corporate governance

The second edition of *Corporate Governance: Principles, Policies and Practices* (Bob Tricker, Oxford University Press, 2012) is available. As an HKICS student, you can enjoy a 15% discount on this title (discounted price: HK\$340, original price: HK\$400). Please refer to the Institute's website for the order form.

For enquiries, please contact Amy Cheng of the Academic & Professional Book Centre (tel: 2774 3740)

### The Hong Kong Polytechnic University – 'Enterprise Scholarship Scheme' appreciation ceremony

Louisa Lau *FCIS FCS(PE)*, HKICS General Manager, and Company Secretary attended the Hong Kong Polytechnic University 'Enterprise Scholarship Scheme' appreciation ceremony cum 'House of Innovation' relaunching ceremony on 27 April 2012.



At the ceremony

### Lingnan University – annual presentation ceremony

Candy Wong, Director – Education & Examinations, HKICS, attended the annual presentation ceremony of Lingnan University on 23 April 2012.



Candy Wong (right) and the recipient Lai Sin Man, a third year accounting student

### HKU SPACE school open day (增值空间开放日)

Wilson Toe *ACIS ACS* gave a presentation on 'Anti-money laundering and counter-terrorist financing – know your client & due diligence' at the HKU SPACE school open day on 9 June 2012.



Wilson Toe presenting at the HKU SPACE School open day

## Seminar for collaborative courses students

On 2 June 2012, the Institute organised a seminar at the Open University of Hong Kong (OpenU) for collaborative courses students. The guest speaker, April Chan FCIS FCS(PE), the Institute's Immediate Past President and Company Secretary of CLP Holdings Ltd, gave a presentation on **'The shortcomings of corporate governance – issues and concerns'**. The seminar was well received by the attendees.



*Dr Susana Yuen (left), OpenU, presenting a souvenir to April Chan FCIS FCS(PE)*

## 'PRC corporate practices': new HKU SPACE training programme

A new programme series **'PRC corporate practices'** has been launched in collaboration with the College of Business & Finance, HKU SPACE. This advanced training programme (which will earn participants the Institute's ECPD points) is designed to strengthen professionals' understanding of PRC corporate governance and administration. The first module **'Corporate governance in the PRC'** (中国公司治理) was held in June 2012.



*(From left to right), Alberta Sie (Education Committee Chairman), Edith Shih (President), Dr Ren Zhi Hong 任志宏博士 (class tutor), Louisa Lau (General Manager) and BJ Lee (Programme Director, HKU SPACE)*

## Policy update

### Exemption policy (Corporate Financial Management) supplementary note

The subject of Corporate Financial Management is *not* granted on a subject by subject basis. It can only be granted to applicants with relevant accounting/ finance qualifications (either an

academic degree or a professional qualification) from recognised Institution.

*Please visit the Institute's website for further details.*

## Upcoming activities

### IQS information session

This *free* seminar will include information on the International Qualifying Scheme (IQS) and Winnie Li ACIS ACS, Director, CWCC, has been invited to share her valuable experience and discuss the career prospects of the Chartered Secretarial qualification.

*Members and students are encouraged to recommend this session to any friends or colleagues who may be interested to learn more about the IQS and the Chartered Secretarial profession. For enquiries, please contact the Education and Examinations section at 2881 6177.*

<b>Date:</b>	18 July 2012 (Wednesday)
<b>Time:</b>	19:00 – 20:30
<b>Venue:</b>	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
<b>Speaker:</b>	Winnie Li ACIS ACS Director, CWCC
<b>Enrolment Deadline:</b>	11 July 2012 (Wednesday) applications accepted on a first-come-first-served basis. Participants will receive an email confirmation.



CHARTERED  
SECRETARIES  
特許秘書

More than meets the eye.  
潛能. 超越所見.



## The Hong Kong Institute of Chartered Secretaries Members' Luncheon

### Post-crisis thinking on Corporate Governance

**Presenter:** Mr Andrew Sheng  
- President, Fung Global Institute  
- Chief Adviser, China Banking Regulatory Commission

**Date:** Wednesday, 18 July 2012

**Time:** 12.15 p.m. to 2.00 p.m.

**Programme:**

12.15 p.m. – 12.45 p.m. Registration & Cocktail Reception  
12.45 p.m. – 1.20 p.m. Lunch served  
1.20 p.m. – 2.00 p.m. Presentation and Q & A

**Venue:** Main Dining Room  
The Foreign Correspondents' Club Hong Kong  
North Block, 2 Lower Albert Road  
Central, Hong Kong

**Language:** English

<b>HKICS MCPD point:</b> 1 Point
----------------------------------

**Fee:** HK\$240 per head\*

*\*This event is open to Fellows & Associates ONLY. Places are limited and enrolment is accepted on a first-come, first-served basis.*

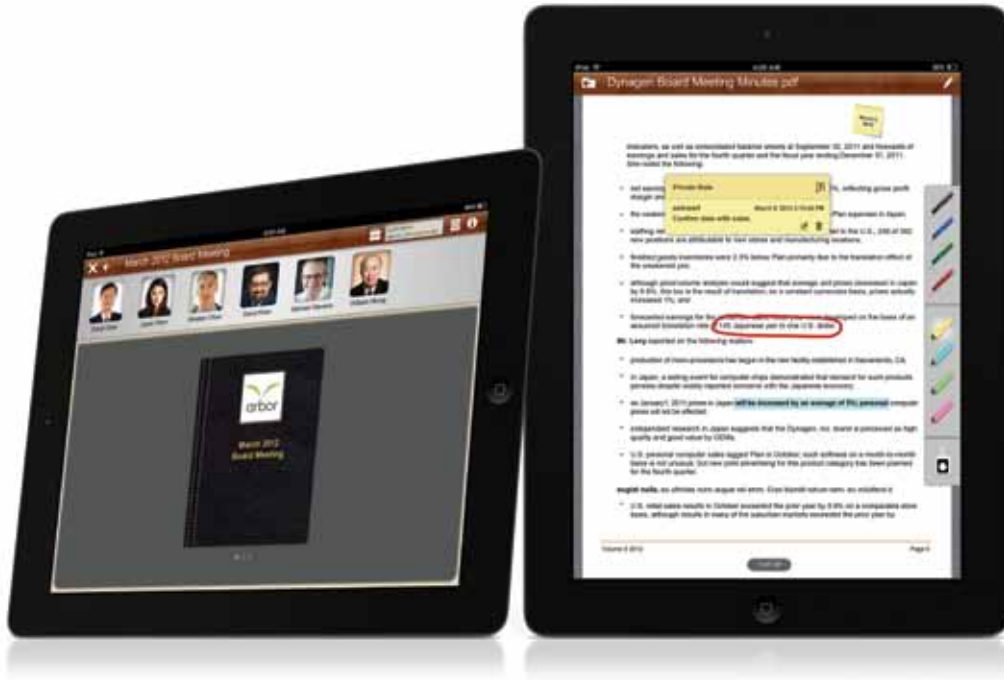


Scan to share with other  
HKICS members!

For more information, please visit the Institute's website at [www.hkics.org.hk](http://www.hkics.org.hk) or contact the Secretariat at 2881 6177.

# The paperless boardroom is here.

從此跟文件夾說再見, 以後會議更輕鬆.



BoardVantage is the leading provider of secure board portals for the browser and the iPad.

- Offline Briefcase
- Annotations
- Book Access
- Approvals
- Secure Email

Call +852 2293 2698 or visit [www.boardvantage.com](http://www.boardvantage.com)

**BOARDVantage**

8/F, Cambridge House, Taikoo Place  
979 King's Road, Island East, Hong Kong