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香港特許秘書公會會刊

CGC 2012 review

The rise of the company secretary

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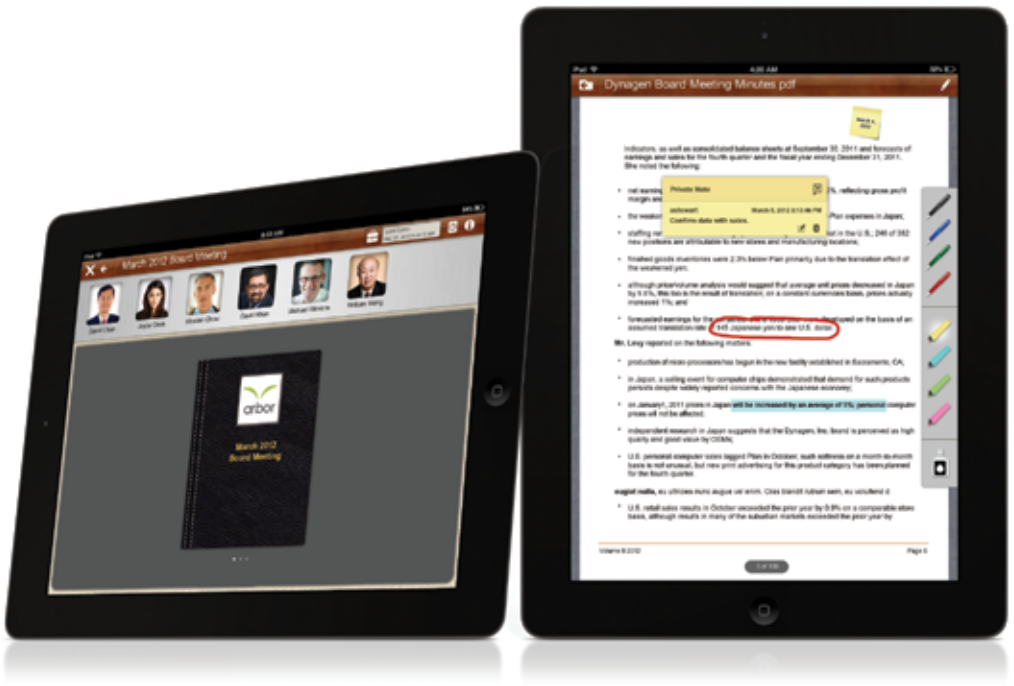

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CHARTERED SECRETARIES 特許秘書

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 5,600 members and approximately 3,200 students.

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Contents

CGC 2012 and the rise of the company secretary

It is an old cliché but some things really do get better with age and this certainly applies to our Institute's corporate governance conferences. We knew that this year's speaker line-up was high quality, but that has also been true of previous conferences. I believe the speakers' superb delivery, combined with the willingness of attendees to interact with both speakers and panellists, made the CGC 2012 a very special event. The attendance was our largest ever, and the fact that the traditional Saturday morning attendance drop-off was almost imperceptible is testament to the quality of the debate that persisted throughout the conference.

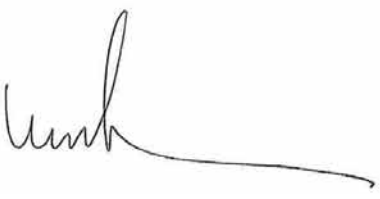
A full review of the CGC 2012 can be found on pages 8–14 of this month's journal, but I would like to take this opportunity to once again thank all of the speakers, panellists, sponsors, supporting organisations and attendees for making the conference so enjoyable, informative and interesting. A special note of thanks should go to our two keynote speakers, Sir CK Chow, Chairman, Hong Kong Exchanges and Clearing, and Dr An Qingsong, Secretary General, China Association for Public Companies, who set the tone for each day with excellent presentations and observations.

This month's journal also reviews the Institute's research report, *The Significance of the Company Secretary in Hong Kong Listed Companies,* authored by Professor Bob Tricker and based on a survey conducted earlier this year (see pages 24–27). The report provides conclusive evidence of just how far the role of the company secretary has developed during the past 17 years – that is, since the first report on company secretaries was published by the Institute (see *The Company Secretary in Hong Kong's Listed Companies,* HKICS, October 1995, also authored by Professor Tricker in association with the University of Hong Kong).

The chief responsibilities of the company secretary used to be organising meetings (board, committee and general), preparing minutes, keeping company records as well as attending to statutory and regulatory filings. Nowadays, while we still undertake administrative duties, we also advise the board on corporate governance and ethical dilemmas (roughly 15% of our time is spent doing so according to the survey); we spend a third of our time on regulatory compliance issues; more than a quarter of our time is spent serving the board and its committees; and a further 15% is spent on shareholder communications. We are the main protagonists within our organisations for corporate social responsibility and sustainability, as well as for compliance with money laundering laws. This is all a very long way from the image of the clerk organising meetings and taking the minutes.

With so many varied responsibilities, it will come as no surprise that the secretarial departments of major Hong Kong listed issuers will need to expand during the coming 12–18 months (this is the prediction of 33% of Hong Kong-based companies and 63% of H-share companies). In 2003, 31% of our members worked for listed issuers, today that figure is almost 40%. The main job activity of 22% of members in 2003 was company secretarial, while today that figure is 35% – and remember the number of members in 2003 was 30% less compared with today. I believe that these upward trends will continue during the coming years. So prospects for members working in the listed company sector are good. In my forward to the report, I suggest that we have not been as pro-active as perhaps we should have been in seizing the opportunities presented to us by the corporate governance crises since Enron in 2001. I hope that members agree that, at least in Hong Kong, we have learned our lesson and company secretaries are now recognised as an important member of the boardroom team. The central role of the company secretary in corporate governance has been recognised by regulators in Hong Kong – earlier this year HKEx codified the role and importance of the company secretary of a Hong Kong listed issuer in the Corporate Governance Code.

The company secretary of today is very different to that portrayed in Professor Tricker's 1995 report. The rise of the company secretary has been fairly slow but steady. It has been built on the firm foundations of a professional qualification backed by an active and strong professional body. As a result, company secretaries can now make a strong case for claiming the title and role of the corporate governance professional for listed issuers.



Edith Shih *FCIS FCS(PE)*

公司治理研讨会2012
公司秘书地位正式提升

俗语有芸：「酒越陈越醇，姜越老越辣」，虽是陈腔滥调，却有其道理。同样，公会的公司治理研讨会也办得越来越出色。我们都知道，今年的讲者阵容强劲，但以往的研讨会讲者质素也不遑多让。我相信讲者讲得精彩，加上参加者乐于与讲者和讨论小组成员互动沟通，是公司治理研讨会2012特别成功的重要因素。今次参加人数是历届之冠，而且星期六早上出席率下降的情况并不明显，有别于一般情况，足见整个研讨会气氛热烈，讨论精彩。

今期第8至14页详尽报道公司治理研讨会2012的盛况。我谨在此再度感谢所有讲者、讨论小组成员、赞助机构、支持机构和参加者出席，使研讨会内容丰富，讨论热烈，生色不少；特别感谢两位作主题发言的嘉宾，分别是香港交易及结算所主席周松岗爵士，以及中国上市公司协会秘书长安青松博士，他们以精彩的演说和独特的见解，让两天的研讨会都有很好的开始。

今期月刊也介绍公会的「香港上市公司公司秘书的重要性」研究报告（见第24至27页）。报告由Bob Tricker教授根据今年较早时进行的一项调查的结果编写而成，提出确实的证据，说明过去17年来公司秘书的角色有重大变化。17年前，公会发表第一份有关公司秘书的报告，也是由Tricker教授联同香港大学合着而成（《香港上市公司的公司秘书》，香港特许秘书公会，1995年10月）。

以往公司秘书的主要职责是安排会议（包括董事会会议、委员会会议和股东大会），撰写会议录，保存公司纪录以及安排法规的呈交等。今天的公司秘书除担任行政工作外，也就公司治理和专业道德事宜向董事会提供意见（调查显示公司秘书用大约15%时间从事这方面的工作）；我们用三分之一的时间处理合规工作；逾四分之一的时间服务董事会和委员会；另15%时间与股东沟通。机构的企业社会责任和可持续发展事务，以及遵守禁止清洗黑钱法规的工作，主要由公司秘书负责。与纯粹安排会议、撰写会议纪录的秘书相比，今天的公司秘书职务要广泛得多。

公司秘书的职责如此多样化，难怪香港主要上市公司的公司秘书部门在未来12至18个月内需要扩充（33%的香港公司和63%的H股公司有这样的预测）。2003年，公会会员中有31%在上市公司工作，今天这数字已接近40%。当年22%会员的主要工作是公司秘书，今天这数字已达35%；而且应留意的是，2003年的会员人数，比今天少30%。我相信这增长趋势在未来数年仍会持续，因此在上市公司工作的会员前景甚佳。

在报告的前言中，我提到2001年安然（Enron）事件后的公司治理危机中，我们大概不够积极把握机会。经一事，长一智，起码在香港，公司秘书现在已成为董事会团队中的重要一员，得到应有的承认，相信会员也会同意。香港的监管机构已承认公司秘书的重要地位：今年初，港交所把香港上市公司公司秘书的角色和重要性，正式写进《企业管治守则》内。

今天的公司秘书，与Tricker教授在1995年发表的报告中描述的公司秘书很不一样。公司秘书地位提升的速度相当慢，然而能稳步发展，以具有实力的专业资格作为坚实的基础，有活跃而稳健的专业团体为后盾。有这样的背景，公司秘书成为上市公司的公司治理专才，实在是实至名归。

施熙德

A bird's eye view

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

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CHARTERED SECRETARIES 特許秘書

Ask the expert

If you would like to ask our experts a question, please contact *CSj* Editor Kieran Colvert: kieran@ninehillsmedia.com

Q: *How can proxy solicitation help support corporate actions?*

A: The current 'shareholder spring' has caused issuers to sharpen their focus on the AGM/ EGM and ensure they have information on how their shareholders will vote and why. A proxy solicitor can provide companies with the valuable insight needed to successfully pass resolutions and offer insight into the outcome of a vote, prior to the votes arriving.

In Hong Kong, CCASS (Central Clearing and Settlement System) holds most of the shares and provides one anonymous vote on behalf of all the banks and brokers who submitted instructions to them. This vote can come in at the last minute leaving little time for remedial action if voting against a resolution. Having insight into the direction this vote might take in advance can give issuers time to alter their resolutions or communications if needed.

Proxy solicitors can analyse various aspects of the shareholder base, to provide insight into the expected outcomes of shareholder meetings based on their experience in engaging wth shareholders globally, throughout the year. Although voted files do not contain the names of the beneficial investors who voted, a proxy solicitor can analyse the issuer's register and determine the expected vote outcome based on the makeup of voters and how shareholders have voted at other meetings. A proxy solicitor can also provide detailed insight into the corporate governance and voting practices of institutional investors and conduct a market review on key issues that draw opposition.

There is often an unknown level of dependency on a proxy advisor's voting recommendations by institutional investors. A proxy solicitor can assess the level of dependency on different proxy advisors along with the associated risk, and facilitate engagement with investors and advisors accordingly.

Issuers can feel more confident going into an AGM/ EGM that their resolutions have the best chance of being passed when utilising a proxy solicitor. Working with a proxy solicitor you can be best prepared for your next AGM/ EGM.

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What is a proxy solicitation firm?

The number of proxy solicitation firms has been steadily rising globally, but what exactly do they do? Essentially, they are service providers engaged by management or groups of shareholders to contact shareholders on a one-to-one basis in advance of a shareholder meeting to request authorisation to vote their shares for or against a resolution at the meeting. While this was the genesis of proxy solicitation firms, their role has evolved and they now often offer many related services, such as analysing shareholders' voting patterns; advising management and boards on hot governance topics and potential shareholder proposals; managing announcement communications; and interacting with influential proxy advisor firms to help anticipate their position on critical issues.

CGC 2012 review

A corporate governance dialogue

Over their 16-year history, the Institute's corporate governance conferences have earned a reputation for generating unusually lively debates and this year's forum was no exception. *CSj* looks at the conclusions of the Corporate Governance Conference (CGC) 2012, held last month at the JW Marriott Hotel in Hong Kong, and revisits some of the highlights of the refreshingly feisty one and a half days of discussion.

This year's corporate governance conference, the eighth in the series of conferences launched by the HKICS back in 1996, set itself the very serious and ambitious task of 'troubleshooting' the modern board of directors. Conference chairman Peter Greenwood, Group Executive Director – Strategy, CLP Holdings Ltd, didn't let that get in the way of the equally important task of keeping the audience awake and engaged in the proceedings.

'Your input is what makes the day and a half of discussions a success', he said to the audience at the launch of the conference, 'this forum should be a dialogue rather than a monologue from the stage.' Speaker presentations were therefore kept to a maximum of 20 minutes and each session was followed by an extended panel discussion which invariably, thanks in large part to Greenwood's take-no-prisoners style of chairmanship, produced a lively exchange of views.

Audience engagement was helped along by two other factors. Firstly, this is the second time the Institute's CGC has utilised instant polling but the full potential of these polls has clearly now been recognised. While they are obviously a useful way to gauge participants' views on the tough questions under discussion – should there be quotas on board diversity? Should director training be mandatory? – they are also surprisingly effective when the discussion needs a kick start. Hence the regular 'curve balls' thrown at the audience such as – is the company secretary a barnacle on the backside of business? Which speaker or panellist least resembles his or her photo in the conference brochure?

Secondly, the liveliness of the proceedings had a lot to do with the topic of this year's forum. Why do boards fail? What can be done to improve board effectiveness? Is the board of directors, an institution inherited from the 17th century, fit for purpose in the 21st century? These are inevitably highly contentious questions.

Conference conclusions

Another characteristic of the Institute's CGCs is their practitioner, and practical, focus. The debate is designed not just to explore contemporary issues in corporate governance, but to make practical recommendations to help company secretaries and other governance practitioners address the many challenges they face in the course of their work.

The conference conclusions, Greenwood pointed out in his summing up address, are what the participants take away with them after the forum. 'We have tried to tackle a vast subject in a short period of time', he said. 'The conference has been an invitation to think deeply about boards, but perhaps its real value will emerge in the conclusions we come to as we take some of those thoughts and implement them in our work.'

Highlights

- 68% of conference participants voted in favour of mandatory directors' training
- 47% voted in favour of retaining the unitary board structure in Hong Kong (though 41% voted in favour of permitting companies to choose between board models)
- 56% of conference delegates did not believe that executive directors, non-executive directors and INEDs should share the same liabilities
- 57% of attendees voted in favour having more female directors on Hong Kong boards, but 51% voted against adding a code provision for listed companies to adopt a diversity policy

> “the iNed position is unlikely to become as desirable as the iPad or the iPhone anytime soon”
>
> Low Chee Keong, Associate Professor in Corporate Law, School of Accountancy, The Chinese University of Hong Kong

One-tier good, two-tier better?

The issue of how to structure the board and how to achieve the optimum balance of executives and non-executives is clearly crucial for board effectiveness. The conference was in favour of retaining the unitary board structure in Hong Kong over the two-tier board structure adopted in mainland China and most of Europe. Some 47% voted to retain the unitary board, although interestingly 41% voted in favour of 'hybrid' board models. Interpretation of this last option should be put into the context of the presentation by Dr YRK Reddy, Founder Trustee & Head, Academy of Corporate Governance. He showed that one-tier and two-tier board structures can, and do, co-exist as different adaptations to different market conditions.

Mainland China, for example, has a hybrid system – companies have supervisory boards *and* independent non-executives (INEDs) on the management board. Dr Reddy said that mainland China demonstrates that there is no need to force fit an existing model – different environments need different board models. He added that mainland China has been able to successfully borrow good ideas from overseas while maintaining its governance preferences. 'No country in corporate history has done so much in so little time on such a huge scale,' he said.

Nevertheless the PRC is rethinking its approach to the supervisory board, noted Professor Li Weian, President, Dongbei University of Finance and Economics, PRC. Professor Li, who has carried out research in this area, said it had been hoped that 'one plus one could be more than two' (referring to the practice of having both a supervisory board and INEDs on the management board), but added that sometimes it appears that the sum has resulted in less than two.

The conference also addressed the system of INEDs within unitary boards. Professor Merritt B Fox, Michael E Patterson Professor of Law, NASDAQ Professor for the Law and Economics of Capital Markets, Columbia Law School, US, showed how the institution of the board has increasingly become, in the US at least, a monitoring board with an ever greater number of independent directors. Independence is beneficial for the effective monitoring of management and ensuring accountability but, panellist Gordon Jones *FCIS FCS*, author and Hong Kong's former Registrar of Companies, warned that the falling number of executive directors on unitary boards might be detrimental to board effectiveness (see his article on the following pages 16–22 for more on this).

Has directors' liability gone too far?

The conference addressed the issue of whether the current trend of increasing directors' liabilities will reduce the talent pool from which companies can draw when recruiting directors to the board.

Robert Cleaver, Partner, Linklaters, highlighted a number of different ways in which the accountability of directors is on the increase. Hong Kong's new PSI disclosure regime, for example, means that officers of the company can be personally liable if there is a breach and they failed to implement measures to prevent such a breach.

Mr Cleaver added, however, that there are ways to manage this increased liability. While many companies have sought to indemnify their directors through clauses in the company's Articles and through more comprehensive D&O insurance policies, a much more effective strategy, he suggested, is to ensure an

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> "directors are a bit like Pavlov dogs, they read what is provided to them but they don't determine what they need to read"
>
> Keith Stephenson, Partner, Risk and Controls Solutions, PwC

effective compliance programme. Most of the legislation imposing new liabilities on directors recognises that putting measures in place to prevent breaches does mitigate the offence. This is certainly true, for example, of Hong Kong's new PSI disclosure regime.

The issue of directors' liability is nowhere more acute than in the case of INEDs. CK Low, Associate Professor in Corporate Law, Chinese University Hong Kong Business School, presented his latest research in this area in session four of the conference. Professor Low studied recent sanctions imposed for disciplinary actions by the Stock Exchange's Listing Committee and found that in four cases the committee imposed tougher sanctions on INEDs than on other directors.

He questioned whether this meant that the fundamental principle of collective responsibility of the board has been abandoned in Hong Kong. Interestingly, 56% of conference delegates did not believe that executive directors, non-executive directors and INEDs should share the same liabilities. Professor Low warned, however, that the increasing mismatch between liabilities and rewards for INEDs may make it increasingly difficult for boards to find suitable candidates for this position. 'The iNed position is unlikely to become as desirable as the iPad or the iPhone anytime soon,' he quipped.

Should we legislate for board diversity?

The CGC 2012 hosted two speakers who highlighted the value and importance of boards ensuring that they have a diversity of perspectives. Professor Judy Tsui, Chair Professor of Accounting, Vice-President (International and Executive Education), the Hong Kong Polytechnic University, argued that Hong Kong has fallen well behind in terms of its regulatory approach to board diversity. Most European jurisdictions, together with the US, UK, Australia, Malaysia and Singapore, have issued rules or code provisions on board diversity. She expressed disappointment that both board diversity and sustainability were notably absent from the latest changes to Hong Kong's Corporate Governance Code.

The case for board diversity usually focuses on its practical value, but Dr Kelvin Wong, Executive Director and Deputy Managing Director, COSCO Pacific Ltd, pointed out that there is also an ethical case to be made for diversity. 'A commitment to diversity is also a commitment to justice,' he said. 'Justice provides an impetus to overcome discriminatory behaviour towards outsiders or people who are different from us.' He urged companies in Hong Kong to widen the criteria for prospective directors and go beyond 'outdated notions of race, ethnicity and gender'.

Panellist Shalini Mahtani, Founder and Board Director, Community Business, appealed to the audience to make a submission to the Stock Exchange on its current board diversity consultation which proposes adding a provision to Hong Kong's Code on Corporate Governance Practices for listed companies to adopt a diversity policy. As a code provision, this would not be a mandatory requirement for listed companies, but would be subject to the comply or explain principle. Despite this, 51% of conference attendees voted against this measure. Indeed, there seemed to be little appetite among participants for any legislative or regulatory measures aimed at ensuring better diversity, only 11% voted in favour of imposing quotas on board diversity.

This was not a vote against diversity however, 57% of participants voted in favour of having more female directors on Hong Kong boards and 61% assented to the notion that board diversity is about more than just gender.

Can I use the 'T' word?

Director training has been a controversial issue in Hong Kong since the Stock Exchange proposed a requirement for eight hours of director training per year. This was shot down in the consultation process but, surprisingly, given the self-regulatory instincts of the conference on other issues, a hefty majority of conference participants voted in favour of mandatory director training (68%).

Grant Kirkpatrick, economist, corporate governance consultant, and former Head, Corporate Affairs Division, OECD, pointed out that there can be little doubt of the necessity for director training these days. 'Induction is a continuing process,' he said. However he acknowledged that company secretaries should be careful about proposing more 'training' for directors – a proposal for more director 'briefing' or director 'development' will perhaps be better received.

He cited an interesting case he came across of a company secretary finding a diplomatic approach to director training. The board of a bank in the Middle East consisted of 11 directors, seven of whom had been appointed by the bank's controlling shareholder and some happened to be members of the royal family. The company secretary knew that he couldn't propose 'training' for these directors, so he appointed a mentor for the chair. Pretty soon they all wanted one and training was accomplished via the board members' mentors.

> "the CSRC understands that there has to be a balance of external and internal forces driving better corporate governance"
>
> Dr An Qingsong, Secretary-General, China Association for Public Companies

Can I use the 'E' word?

If proposing director training is a tough call for company secretaries, proposing board evaluation was seen by some participants as tantamount to suicide. A poll revealed that only 16% thought that such a recommendation would be welcomed by the board, while 40% believed the suggestion would be rejected and 33% believed it would be accepted reluctantly. Rather alarmingly 11% thought the mere recommendation of board evaluation would provide an excuse for the company secretary's dismissal.

It seems likely, however, that the Hong Kong market will acclimatise to the need for regular evaluations of board performance. Simon Osborne *FCIS*, Chief Executive, Institute of Chartered Secretaries and Administrators outlined the way board evaluations were resisted but eventually embraced in the UK. The UK Corporate Governance Code now requires all boards to undertake annual evaluations of its own performance and that of its committees and individual directors. The Code also requires the boards of FTSE 350 companies to be externally facilitated at least every three years. In the wake of these changes to the Code, introduced in 2010, companies in the UK have become a lot more comfortable with the board evaluation process.

The role of regulation

Regulators were well represented among the speakers of the CGC 2012 and one area of discussion was the appropriate role of regulation in board matters. In the wake of the global financial crisis there has been a trend globally for tougher rules-based regulation, but the CGC found that regulators in Hong Kong and mainland China are going in the opposite direction.

'Corporate governance is enlightened self-interest,' pointed out keynote speaker CK

The rise of the company secretary

'With great power', Spiderman comes to realise, 'comes great responsibility.' The CGC 2012 discussed the way the company secretary role has evolved and expanded in recent years, particularly with regard to board support. Perhaps the most consistent theme to emerge from the discussions was that company secretaries need to be ready to take up that challenge.

Often the only thing holding company secretaries back is an outdated concept of what the role entails. Ben Mathews, Company Secretary, Rio Tinto PLC, presented two slides with two very different pictures of the company secretary – the gatekeeper and the minute-keeper. Minute keeping is an essential part of the company secretarial role, but Mr Mathews argued that 'a company secretary's skills have to run much deeper than this today – he is a gatekeeper and a lot more.'

This is also true of the board secretary role on the mainland. Liu Tingan *FCIS FCS*, Deputy Chairman and President, China Life Insurance (Overseas) Company Ltd, pointed out that board secretaries have a very powerful position in mainland companies. 'Often the first person shareholders go after is the board secretary, they believe that the board secretary is the one who gets things done,' he said.

How then should company secretaries rise to this challenge? Mr Mathews believes that company secretaries need to think strategically for the board. 'A good company secretary thinks ahead and plans ahead to root out problems before they arrive,' he said. This point was also made by Keith Stephenson, Partner, Risk and Controls Solutions, PwC. Company secretaries need to move on from the traditional mindset where they ask the chair for the agenda ahead of board meetings, he suggested, they themselves should be proposing the agenda.

'Every company secretary needs to be thinking about what needs to go into that agenda. The directors are often too occupied with fighting fires to be thinking effectively about strategy. Directors are a bit like Pavlov dogs, they read what is provided to them but they don't determine what they need to read,' he said.

Charles Grieve, Senior Director, Corporate Finance, Securities and Futures Commission, pointed out however, that the opportunities discussed above are dependent on the attitudes of the directors toward the company secretary. 'You can't make a real contribution unless your board wants you to,' he said. 'If a company employs a company secretary to shuffle papers that's what you'll do.' For this reason, Keith Stephenson suggested that company secretaries need a good sponsor on the board. 'If you have a sponsor on the board who understands the value you bring, then you are not a lone voice,' he said.

Chow, Chairman, Hong Kong Exchanges and Clearing Ltd (HKEx), 'because better corporate governance makes it easier for companies to raise funds.' He added that the HKEx would maintain its mainly principles-based approach to regulation. Interestingly, the second keynote speaker, Dr An Qingsong, Secretary-General, China Association for Public Companies, revealed that, despite the generally rules-based approach to regulation adopted in the mainland, there has been a shift in recent years from this top down approach to encouraging more self-regulation within companies.

'Governance needs to be self-initiated,' Dr An said. 'We recognise that if the regulatory regime forces too many rules on companies it will be detrimental. The CSRC understands that there has to be a balance of external and internal forces driving better corporate governance.'

The Hong Kong Institute of Chartered Secretaries' Corporate Governance Conference 2012 was held 5–6 October at the JW Marriott Hotel, Hong Kong. The Institute would like to thank the sponsors and participants for their support of this event.

As in previous years there were far more questions from the floor than could be answered in the time available. Two major issues raised by the questions, answered and unanswered, concerned INEDs' independence and recruitment and board diversity. The journal aims to address these issues with reference to the questions raised at the CGC in forthcoming editions.

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Director selection and performance

Can Hong Kong learn from the UK experience?

Gordon Jones *FCIS FCS*, author and Hong Kong's former Registrar of Companies, looks at the corporate governance reforms implemented in the UK in response to the global financial crisis of 2007–2008, with particular reference to director selection and performance, and finds that the UK now imposes significantly higher governance standards in these areas than Hong Kong

The financial crisis of 2007–2008 subjected the boards of major banks and companies to an unparalleled degree of stress and testing. The UK, which was very badly affected by the financial crisis, initiated an immediate high-level corporate governance review of banks and other financial institutions (BOFIs). One of the most important documents to emerge from this review was the 'Walker Report' which reviewed the corporate governance arrangements in BOFIs. Sir David Walker's final report was published on 26 November 2009. In comparison with the knee-jerk reaction in the US during the Enron crisis, there was, however, no call for overreaching and draconian legislation similar to the Sarbanes-Oxley Act 2002. The review found that the UK's Combined Code (now renamed the Corporate Governance Code) remained fit for purpose but made 39 recommendations to further enhance the governance of BOFIs.

UK Reforms

The Walker Report

The Walker Report's recommendations concerned five main issues: board size, composition and qualification; the functioning of the board and evaluation of performance; the role of institutional shareholders; governance of risk; and remuneration. This article will focus on the first two issues, with particular reference to director selection and performance. A very brief summary of the Walker Report's recommendations in these areas is outlined below.

Board size, composition and qualification. In order to improve the contribution of non-executive directors, they should: (1) receive a substantive personalised approach to induction and training (to be reviewed annually); (2) attend regular thematic business awareness sessions; and (3) be provided with dedicated support. The non-executive directors on BOFI boards would also be expected to commit more time than has been normal in the past, with a suggested minimum commitment of 30 to 36 days for those on the boards of major banks.

Functioning of the board and evaluation of performance. As part of a unitary board, non-executive directors should be ready, able and encouraged to challenge and test proposals on strategy put forward by the executive. The board of a BOFI should undertake a formal and rigorous evaluation of its performance with external facilitation of the process every second or third year.

The ICSA Report

Subsequently, it was agreed that the Institute of Chartered Secretaries and Administrators (ICSA) would contribute to the review by conducting research on 'appropriate boardroom behaviours'. The findings of the ICSA's research were also shared with the UK's Financial Reporting Council (FRC) which was concurrently reviewing the operation of the UK Corporate Governance Code. The resulting report – *Boardroom Behaviours* (June 2009) – exposed a number of weaknesses in the composition and practices of boards that had been exposed by the financial crisis, including the balance of executives and non-executives, board diversity and board evaluation.

Highlights

- there has been less pressure for corporate governance reform in Hong Kong since the SAR was largely shielded from the worst aspects of the global financial crisis
- the UK's corporate governance reform agenda in the wake of the global financial crisis can provide a useful model for Hong Kong
- Hong Kong should consider upgrading its current requirements on the independence and role of non-executive directors, board diversity, board evaluation and directors' time commitments and training

Balance of executives and non-executives. The report suggested that the trend to decrease the number of executive directors attending board meetings might be detrimental to board competence, and the balance between executive and non-executive directors might need to be reviewed. It considered the UK Corporate Governance Code's requirement (other than for small companies) that the board should comprise a majority of independent non-executive directors had led to a decrease in the number of executive directors attending to just two – the CEO and the CFO – in order not to increase board size. 'This has led to a situation of information flow through two or sometimes three executive directors who, with the best will in the world, will be unable to master the whole corpus of the company's objectives and operations,' the report states.

Board diversity. The report also highlighted the benefits of having a diverse board membership, precisely because diversity encourages the kind of truly independent challenges and questioning which is needed on the boards of companies encountering difficulties. 'It is evident that boards do not currently contain a sufficiently wide range of skill sets, experience and background – including those recruited from academia, the public and not-for-profit sectors,' the report states.

Board evaluation. The report considered that high standards of rigorous and occasionally independent evaluation are needed to increase boards' effectiveness. Further emphasis should be placed on the means for ensuring accountability in the areas of individual director and whole board performance. Directors should be assessed, *inter alia,* against expectations relating to boardroom performance and behaviours and, where appropriate, their remuneration arrangements should reflect those aspects. At the moment, many executive directors appear to face a potential conflict because they are remunerated on the basis of the way in which they manage the business to maximise short-term value rather than pursuing the goal of a sustainable business model. Generally, these remuneration arrangements seem to place little emphasis on their behaviours as directors in the boardroom working on behalf of shareholders' long-term interests.

Comparing the codes

The UK's FRC undertook to implement the recommendations of the Walker and ICSA's reports which it considered should apply to all listed companies in the UK. These recommendations were incorporated in the UK's Corporate Governance Code which was published in June 2010. At around the same time, Hong Kong Exchanges and Clearing (HKEx) was reviewing Hong Kong's Code on Corporate Governance Practices (now renamed the Corporate Governance Code). The *Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules* was issued in December 2010 and the subsequent *Consultation Conclusions* in October 2011.

A comparison of the two codes in the areas of board appointments and diversity, directors' time commitments and training and board evaluation is illuminating as it indicates the differences between the two jurisdictions

> “a comparison of the two codes ... is illuminating as it indicates the differences between the two jurisdictions and the extent to which good corporate governance practices in the areas under discussion... still continue to be opposed by many listed issuers in Hong Kong”

and the extent to which good corporate governance practices in the areas under discussion, which have been accepted in the UK, still continue to be opposed by many listed issuers in Hong Kong.

Balance of executives and non-executives

The UK. The main principle under section A.4 states quite categorically that: 'as part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy'. Under section B.1, the main principle is that: 'The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.' This is underpinned by the supporting principle that: 'The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors (INEDs)) such that no individual or small group of individuals can dominate the board's decision taking.' Furthermore, under Code Provision (CP) B.1.2 : 'Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.'

Hong Kong. Section A.4 of the UK code regarding the fundamental role of non-executive directors has no equivalent in the Hong Kong code. This is a serious omission as it is not unknown for INEDs to be appointed to listed company boards merely as 'window dressing' and they are not seriously expected to question the decisions of the majority shareholders. If they do, they should expect to part ways with the company very swiftly!

Furthermore, the equivalent provisions in the Hong Kong code are not as comprehensive as those in the UK, although there is a clear emphasis on independence. Under section A.3, the principle is that: 'The board should have a balance of skills and experience appropriate for the requirements of the issuer's business... [however, there is no mention of knowledge of the company]. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors), so that there is a strong independent element on the board which

> “Hong Kong has a far less robust system in place for determining the continuing effectiveness and efficiency of listed company boards”

can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.'

The Hong Kong listing rules mandate that every board of directors of a listed issuer must include at least three INEDs (Rule 3.10). However, as a listed company board will have fewer INEDs than in the UK, it is essential to ensure that their quality, in terms of ability, experience, knowledge and personality, compensates for their lack in numbers. This is why the role of the nomination committee is so important.

Board diversity

The UK. Under section B.2 of the UK code, the main principle is that: 'There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board'. This is underpinned by the supporting principle that: 'The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender'. Furthermore, under CP B.2.2: 'The nomination committee should evaluate the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment'.

Hong Kong. As nomination committees have now become a code provision requirement for all listed companies (CP A.5), it is likely that more listed companies will establish such committees. However, unlike the UK provisions, there are no main and supporting principles outlining the philosophy behind the procedure and criteria to be adopted by nomination committees in identifying potential directors. Furthermore, there is no requirement to prepare a description of the role and capabilities required for a particular appointment. In other words, the Hong Kong approach is far less systematic than that in the UK.

There may, however, be some changes in this respect. On 7 September 2012, HKEx released a consultation paper to collect views on a proposal to require listed companies to ensure that they have a more diverse board representation on their boards – that is, the need to have more women as opposed to middle-aged men. The paper drew attention to the fact that women comprise only 10.3% of the boards of listed companies and 40% of listed companies do not have any female directors. As the proposed change to Hong Kong's Corporate Governance Code would be a code provision, companies not adopting the principle of board diversity would have to explain their reasons for doing so. The consultation period is due to end on 9 November 2012.

Directors' time commitments

The UK. Under section B.3 of the UK code, the main principle is that: 'All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively'. Furthermore, CP B.3.2 states that: '...The letter of appointment (of non-executive directors) should set out the expected time commitment. Non-executive directors should undertake that they will have

sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes'. In other words, directors are left with no uncertainty over the time which the board expects them to spend on their duties.

Hong Kong. By comparison, the Hong Kong requirements are by no means as robust. Initially, HKEx proposed that there should be new code principles (CP A.5.2 (e) and (f)) enabling the nomination committee to, *inter-alia,* regularly review the time required from directors to perform their duties to the issuer and whether they are spending sufficient time as required. However, in the light of widespread opposition, this requirement has now been given the status of a high-level principle under which the board should regularly undertake such reviews. In practice, this means that compliance will vary very widely.

Director training

The UK. Under section B.4 of the UK code, the main principle is that: 'All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge'. This is underpinned by the supporting principle that: 'The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees'. Under CP B.4.1: 'The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board'. As part of this, directors should avail themselves of opportunities to meet major shareholders. Furthermore, under CP B.4.2 'The chairman should regularly review and agree with each director their training and development needs'.

Hong Kong. At present, directors should participate in a programme of continuous professional development to develop and refresh their knowledge and skills (see CP A.6.5). HKEx originally proposed that there should be a new code principle requiring directors to receive at least eight hours of

training in each financial year. However, as a result of widespread criticism that an eight-hour training period was too prescriptive, HKEx has deleted the time requirement from the new code provision. However, a note to CP A.6.5. will require directors to report on what training they have received in the course of a year.

Board evaluation

The UK. Under section B.6 of the UK code: 'The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors'. This is underpinned by the supporting principles that: 'The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors'. In parallel, individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). This is underpinned by CP B.6.1: 'The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted'.

Hong Kong. By comparison, board evaluation is hardly ever undertaken in Hong Kong although it is a natural and logical consequence of adopting a more systematic approach to appointing directors through nomination committees. The most recent HKEx *Analysis of Corporate Governance Practices Disclosures* in 2009 (September 2010) indicated that only one issuer (Standard Chartered Bank) had undertaken a board evaluation in 2009.

As the commercial environment within which companies operate changes all the time, it is essential that the board's membership comprises the right skill sets, experience and expertise to ensure that the company is capable of meeting existing and future challenges. This can only be achieved if boards submit to some form of evaluation which, if it is to be genuinely objective and hence effective, will have to be undertaken by a third party.

In order to remedy this very unsatisfactory situation, HKEx proposed to add a new Recommended Best Practice (RBP) B.1.8 that issuers conduct a regular evaluation of its own and individual directors' performance. However, notwithstanding the fact that it was only a RBP as opposed to a CP, in the context of the consultation exercise, the proposal was opposed by over two thirds of responding issuers, but gained majority support from market practitioners and professional bodies. Many respondents said that they would support the proposal if HKEx omitted the evaluation of individual directors from the RBP. In view of this, HKEx has adopted a new RBP recommending evaluation of the board but not of individual directors. The consequence is that Hong Kong has a far less robust system in place for determining the continuing effectiveness and efficiency of listed company boards.

What next?

Unlike North America and Western Europe, Hong Kong, together with other East Asian jurisdictions was largely shielded from the worst aspects of the financial crisis, for example there were no bank collapses. In retrospect, this may have been a 'bad thing' from the corporate governance angle as it tended to remove the need and pressure for reform. As a consequence, it is not unsurprising that the most recent reforms of Hong Kong's Corporate Governance Code are less far reaching and robust than the reforms of the UK Code.

The ICSA *Boardroom Behaviours* report considered that, if better guidance to directors had been available and, more importantly, observed, some of the consequences of the financial crisis might have been less severe. It also argued that the prevention of a recurrence of the events of 2008 would at least be dependent upon more robust guidance on boardroom behaviour being incorporated into the UK's Corporate Governance Code. However, while this has been done in the UK, there have been no parallel reforms in Hong Kong.

Regrettably, the global history of major regulatory and governance reform indicates that the usual catalysts for such reforms are major economic and corporate crises. In Hong Kong, it took the global crisis of 'Black Monday' on 19 October 1987, before the government undertook to reform the hitherto totally inadequate regulation of the securities market, leading to the establishment of the Securities and Futures Commission. Will reforms regarding director selection and performance have to await another such crisis?

Gordon Jones ***FCIS FCS***
Author and former Registrar of Companies, Hong Kong.

Mr Jones was a panellist in session one of the Corporate Governance Conference 2012.


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New horizons

The evolving role of the company secretary

The Institute's latest research report on the roles and responsibilities of company secretaries in Hong Kong's listed companies, published last month, highlights the growing demands on, and opportunities for, company secretaries in Hong Kong and mainland China

Being a company secretary in the 19th century, when the formal role was first established, must have been a fairly relaxed posting. Your chief responsibilities would have been organising meetings and keeping company records. You would not have been expected to advise the board on tough corporate governance and ethical dilemmas, or to attend seminars on corporate social responsibility, sustainability and anti-money laundering compliance.

Things have, to put it mildly, changed. Company secretaries' in trays these days can include a wide range of duties depending on the skills and qualifications of the individual concerned. Most often this will include, in addition to organising meetings and keeping records – advising directors on corporate governance; looking after the information needs of board members; facilitating induction and director training; ensuring communication flows between the board and management; looking after regulatory compliance; organising annual meetings; preparing the annual report; publishing results; and liaising with the stock exchange and media. As you might expect, to cope with this rather dramatic escalation in duties, company secretarial departments have got bigger, qualification requirements for company secretaries have become tougher and the company secretary has gone from being a 'clerk' of the company to being a board-level officer of the company.

Readers of this journal will be familiar with the historical evolution of the company secretary role sketched above, but where are we now in the second decade of the 21st century? And, perhaps more pertinently, where are we heading? The latest research carried out by the Hong Kong Institute of Chartered Secretaries into the roles and responsibilities of company secretaries in Hong Kong's listed companies (see *'The Significance of the Company Secretary in Hong Kong Listed Companies'* on the HKICS website: www.hkics.org.hk) offers some answers.

The three major themes of the research report are that:

1. the company secretarial role has continued to evolve towards a greater responsibility for corporate governance

2. the responsibilities of company secretaries have increased and become more complex, and

3. company secretarial departments have grown considerably.

The report's findings

1. The governance role

The research report finds that 95% of company secretaries in Hong Kong and 93% of those in mainland China

advise their directors on good corporate governance. The report points out, however, that the importance attached to this advisory role still depends on the standing of company secretaries and the attitude of directors, particularly the chairman, towards them.

Moreover, while this governance advisory role has become a headline part of the services provided by company secretaries, it has certainly not, at least in terms of the time spent on it, eclipsed the role's other core functions. The report found that on average company secretaries spend:

- 33% of their time on regulatory compliance
- 26% on board and committee services
- 15% on advisory roles, and
- 15% on shareholder communication.

The remaining 11% of company secretaries' time is spent on non-routine work such as mergers and acquisitions, joint ventures and other projects.

Nevertheless, there can be no doubt that company secretaries have become even more closely associated with maintaining good corporate governance standards. The report puts this into the context of the increased emphasis and rising expectations, particularly since the global financial crisis, on companies' governance standards. In the wake of the crisis, regulators have increasingly been seeking to exploit the opportunities of the company secretary role to enhance governance and board effectiveness. This has been seen in Hong Kong, for example, with the revisions this year to the Corporate Governance Code and the stock exchange listing rules which have clarified the role of the company secretaries in corporate governance and board support. These changes have also raised the bar with regard to the qualifications, requisite knowledge and experience of company secretaries of listed companies.

The report also puts these developments into the context of what is happening

Highlights

- the company secretarial role has continued to evolve towards a greater responsibility for corporate governance
- the responsibilities of company secretaries have increased and become more complex
- company secretarial departments are getting bigger
- the increased reliance on the company secretary function has given many company secretaries the opportunity to contribute more to top management activities

> **“New horizons have opened up new opportunities for the profession... We must work towards cementing and codifying our position so that company secretaries are de facto chief governance officers. In this way we can continue to grow.”**
>
> Edith Shih *FCIS FCS(PE)*, HKICS President

overseas. It points out for example that many corporate secretaries around the world are now acting as de facto chief governance officers. In the US, many corporate secretaries have acquired 'Chief Governance Officer' as their title.

'New horizons have opened up new opportunities for the profession, which if we are honest, have not always been seized or immediately recognised. This partly stems from the traditional view of the company secretary as being a back office function, rather than a board level advisory one,' commented Edith Shih *FCIS FCS(PE)*, HKICS President, in her foreword to the 2012 report. 'We must work towards cementing and codifying our position so that company secretaries are de facto chief governance officers. In this way we can continue to grow.'

2. Growing responsibilities

The Institute launched its series of research reports on the role of company secretaries in Hong Kong's listed companies in 1995. That first study was followed by a second report in 2001 and the current report has brought the research up to date. These three research reports are a valuable snapshot of the evolution of the company secretary role in Hong Kong over the last 17 years, and perhaps the most obvious trend over that period has been that the responsibilities of company secretaries have increased and become more complex.

'The research has shown growth in the scale, significance and success of company secretarial activities in both Hong Kong and mainland H-share listed companies,' the report states. 'The company secretary faces growing demands, new expectations, and increasing sophistication. The three HKICS studies into the work of the company secretary have shown, over the years, how the profession has faced new challenges, recognised changing expectations, and responded to new opportunities.'

Once again, the report puts these developments into context. Listed companies, particularly the China-based companies now listed in Hong Kong, have increased in size and complexity dramatically over the research period. The Hong Kong market now lists over 1,500 companies with a combined market capitalisation of some HK$20 trillion (US$2.58 trillion). The China H-share market has increased rapidly over the period. The Hong Kong exchange now lists a number of H-share heavyweights such as PetroChina, Industrial and Commercial Bank of China and China Mobile.

3. Bigger is better?

As you might expect with the changes highlighted above, company secretarial departments are getting bigger. The report finds that the average size of company secretarial departments in Hong Kong-based companies was seven and in H-share companies six. Large companies reported an average size of company secretarial departments of 16, medium-sized companies five, and small companies four.

Moreover the general consensus among respondent companies is that they will need to expand their company secretarial departments further in the years ahead. Asked whether they will be likely to expand their secretarial departments in the next 12-18 months, 33% of the Hong Kong-based companies and 63% of the H-share companies said 'yes'. Such expansion plans will inevitably increase the costs of the company secretarial function. This will add to the importance for practitioners to demonstrate that they are adding real, tangible value to their companies, comments Edith Shih in her foreword to the report. 'Rather than being seen as a cost centre, secretarial departments should be seen as something that creates value', she writes.

Where are we heading?

While the trends described above are reflected clearly in the research data, it is harder, of course, to judge how the role of the company secretary will evolve in the years ahead.

> “will we see the emergence of the ‘Company Secretarial Officer’ (CSO), working alongside the Chairman, the CEO, the CFO, and the COO, as a member of senior management?”

Will we see the gradual evolution of the ‘Company Secretary’ into the ‘Chief Governance Officer’ as seems to be happening in the US? Or, in another scenario explored by the report, will we see the emergence of the ‘Company Secretarial Officer’ (CSO), working alongside the Chairman, the CEO, the CFO, and the COO, as a member of senior management? This, the report confirms, is the current set up on the mainland where board secretaries are usually members of top management. Some 89% of the H-share companies in the survey see the board secretary as a member of top management, while in Hong Kong-based companies the figure was 68%. Moreover, involvement in business and strategic decisions were reported to be twice as high in mainland companies (75%) than in Hong Kong (36%).

The report notes signs of a shift towards a senior management role for the company secretary in Hong Kong. The increased reliance on the company secretary function has given many company secretaries the opportunity to contribute more to top management activities. Some 23% of the respondents to the research hold senior management responsibilities in addition to their company secretarial role, such as accounting, administration, finance, company law, insurance, and internal control positions. Some were also directors of their companies.

This trend, however, clearly has major implications for the company secretarial function. Advising on and facilitating decisions is a long way from actually taking those decisions and accepting liability for those decisions. Any major departure from the current advisory role of the company secretary would need to be thoroughly considered by the profession. CSj

Methodology

The Significance of the Company Secretary in Hong Kong Listed Companies, the Institute’s third research project on this topic was carried out under the direction of the Institute’s Technical and Research Director, Mohan Datwani. In March 2012, a survey questionnaire was sent by e-mail to the company secretaries of all listed companies in Hong Kong. Feedback was received online. Of the 1,550 listed companies contacted, 426 responses were received, a response rate overall of 27.5%. The Catalyst research agency provided the statistical analysis. Professor Bob Tricker, author and Honorary Professor at the Open University of Hong Kong and Hong Kong Baptist University, wrote the report based on the questionnaire responses and the research data summarised by Catalyst.

‘The Significance of the Company Secretary in Hong Kong Listed Companies’, was written by Bob Tricker, author and Honorary Professor at the Open University of Hong Kong and Hong Kong Baptist University. The report, together with the previous two reports in the series, is available on the HKICS website (www.hkics.org.hk) under ‘Publications/ Research Papers’.

Anti-corruption compliance: a global view

Increasingly company secretaries in Hong Kong need to keep an eye on international developments in anti-corruption compliance. International initiatives in combating corruption, together with overseas anti-corruption legislation with an extraterritorial reach, have made anti-corruption compliance a global concern.

Edith Shih, HKICS President, wrote in her President's Message in the July edition of this journal that company secretaries should encourage and embrace professional judgement. As Hong Kong has a principles-based regulatory environment, company secretaries should use their skills, knowledge and experience to advise the chairman and board of directors in respect of corporate governance. Compliance with anti-corruption laws, enhancing ethics and the company's reputation are among the major areas included within this duty. Company secretaries should serve as a bridge in terms of communicating anti-corruption policies to all staff in the corporation and assisting the board to establish an anti-corruption policy, an ethical culture and a corruption-free environment.

Apart from helping to establish clear company policies to combat corruption, it is necessary for company secretaries to implement detailed guidelines and procedures to prevent and detect corruption effectively. These procedures have to be regularly reviewed, updated and followed by staff at all levels. Subject to contractual agreements, appropriate procedures should cover third parties such as agents, contractors and joint venture partners. Company secretaries should ensure effective communication and provide training to alert all staff to the risk involved in handling price-sensitive information or transactions with a high exposure to corruption. They should establish a structure to monitor and review the proper implementation of compliance programmes and provide positive support for the observance of ethics and compliance in the company.

While these anti-corruption measures make sense from an ethical point of view, company secretaries will be well

aware that this is also a compliance issue. Companies in Hong Kong clearly need to comply with Hong Kong's Prevention of Bribery Ordinance, but over the last decade there have been a number of international initiatives in combating corruption, together new overseas anti-corruption laws with an extraterritorial reach, so their compliance programmes should not be solely focused on local legal requirements.

Global initiatives

The United Nations Convention Against Corruption (UNCAC) is the most recent major attempt by the international community to combat corruption. Enforced in December 2005, it is a treaty between state parties and has wide implications for international co-operation. Anti-corruption is no longer constrained by state boundaries. With increasing international co-operation, criminal proceeds can be traced and recovered across country boundaries. The increasing effort to exchange information and offer technical assistance in intelligence gathering and analysis has enhanced the prosecution rate.

Article 5(2) of UNCAC commits state parties to establish and promote effective practices aimed at the prevention of corruption, while Article 61(2) encourages state parties to share information with a view to developing common definitions, standards and methodologies for the development of best practices to prevent and combat corruption. As a result, resources, guidelines and best practices such as TRACK (Tools and Resources for Anti-Corruption Knowledge) and Good Practice Guidance (from the OECD) have become available for reference by public and private enterprises, especially for multinational corporations which are more exposed to cross-border risks in corruption.

UNCAC also includes clauses against corruption in the private sector. Article 12(c), for example, requires member countries to establish measures to identify the legal and natural persons involved in the establishment and management of corporate entities. Such measures are designed to boost efforts in combating money laundering and help recover the criminal proceeds of corrupt activities.

Another international initiative company secretaries should be aware of is the OECD Anti-Bribery Convention. As of May 2012 there were 39 signatory countries to the Convention, including non-OECD countries such as Australia, New Zealand, Japan, Korea, Argentina, Brazil, Canada, Chile, Mexico, the US and South Africa. The Convention, which has been in force since 1999, provides directives for signatory countries to implement measures against corruption in international business, in particular:

Highlights

- international conventions have led to tougher anti-corruption legislation around the world
- anti-corruption legislation in the US and the UK can be applied to companies in Hong Kong depending on the degree of their connections with those countries
- company secretaries should serve as a bridge in terms of communicating anti-corruption policies to all staff in the corporation and assist the board to establish an anti-corruption policy, an ethical culture and a corruption-free environment

> “US security issuers, whether domestic concerns or foreign companies, can be held liable for an offence under the Foreign Corrupt Practices Act”

- to establish the liability of legal persons for the bribery of a foreign public official (Article 2) – in addition, Article 3(2) stipulates that legal persons shall be subject to effective and proportionate non-criminal sanctions

- to review the legal basis for jurisdictions to ensure the effectiveness of the fight against cross-border bribery acts, and

- to make the act of incitement, aiding and abetting or authorisation of bribery a criminal offence (Article 1(2)).

One of the main themes of the OECD Convention is to criminalise the giving of bribes to foreign public officials to obtain international business deals. The Convention also requires signatory parties to strengthen measures to counter money laundering activities and to offer mutual legal assistance. Subsequent to the enforcement of the Convention, recommendations to further counter corruption activities have been issued, such as the recommendation issued on 25 May 2009 to disallow tax deductibility of bribes to foreign public officials or expenditures in furtherance of corrupt activities. More importantly, denial of tax deductibility is not contingent on the conducting of investigations or initiation of court proceedings.

Overseas anti-corruption legislation

As mentioned above, company secretaries should also be aware of overseas anti-corruption legislation with an extraterritorial reach, notably the US Foreign Corrupt Practices Act (FCPA) enacted in 1977 and the UK Bribery Act enacted in 2011.

Like the OECD Anti-Bribery Convention, the FCPA is mainly designed to combat the bribery of foreign officials. For example, the FCPA specifies that it is an offence to bribe foreign government officials to obtain or retain business. Under the FCPA, both foreign and domestic issuers on US security exchanges must comply with the requirements to keep records and accounts in reasonable detail to accurately reflect the transactions of the issuers. Annual reports must be certified by independent auditors and issuers are required to file quarterly reports as prescribed by the Securities and Exchange Commission.

The FCPA also covers the civil and criminal liability of corporations and individual directors. It does not require proof of actual knowledge, nor the intent to promise or to actually pay a bribe. A corporation may be held criminally liable for the acts of its agents including employees if the agent commits a crime within the scope of his employment and with intent to benefit the corporation. As regards civil action, Section 78dd-2(d) stipulates that the Attorney General may apply for an injunctive relief against a domestic concern or the officer, employee, agent or stockholder of that concern.

The penalty for bribery applied to individuals is up to five years imprisonment and fines of up to US$250,000. As for corporations, the fine is up to US$2 million.

The UK Bribery Act makes it an offence to offer a bribe to, or accept a bribe from, another person including foreign public officials. Under the Act, two types of criminal liability can be applied to corporations – offences involving fraud in which proof of intention is required and offences of strict liability where there is no need to prove intention.

Recommendations: a search for best practice

To effectively deter corruption in corporations operating in a multinational environment, it is necessary to consider three aspects – prevention, education and enforcement.

1. Prevention

- implement effective human resources management by: avoiding conflicts of interest; separating duties which have a potential risk of bribery; enforcing checks and balances; rotating staff on an irregular basis to assume different responsibilities for different geographical regions
- make management accountable for suspicious transactions
- involve senior management/ board members in developing governance and anti-corruption policies (such as the policy on commissions and rebates)
- enhance corporate transparency (declare outside investments and business involvement or work)
- establish a code of conduct and a checklist for corporate integrity management and conduct integrity checks
- enforce due diligence and internal controls
- automate and streamline manual processes; implement effective control of data especially for price-sensitive information; strengthen data security; use IT systems to manage and review controls; keep proper records
- conduct risk analysis and control (identify high-risk functions such as procurement, recruitment and the setting of senior officers' remuneration), and
- extend communication to all stakeholders, including third parties such as agents, intermediates, contractors and joint venture partners.

2. Education

- conduct periodic briefing of anti-corruption best practices for the board and stakeholders, and
- reward good and ethical behaviour.

3. Enforcement

- conduct regular internal audits and random and irregular checks on quotations
- verify contracts directly with vendors and contact suppliers for their reasons for not submitting bids
- meet with major vendors and clients – senior management should also review frontline operations regularly
- establish procedures to facilitate whistleblowing and direct access to the CEO and board of directors, and
- establish the organisation structure, authority, guideline and procedures for monitoring of corruption reports passed to external law enforcement agencies.

Regarding prevention measures, it should also be noted that under Section 7(2) of the UK Bribery Act it is a defence if organisations and individuals can show they have in place 'adequate procedures' to prevent the act of bribery. The meaning of 'adequate procedures' is not well defined under the Act, but legal cases can be used as a reference for the scope and required substance of such procedures. For example, a UK insurance broker was fined £6.9m for failing to implement effective systems to prevent bribery in the international operations of his firm. The broker had not conducted sufficient due diligence to manage the overseas intermediates leading to unacceptable risks that payments to third parties would be passed on as bribes. It was not necessary to prove that actual bribes were offered.

Criminal liability of a corporation arises when the offence can be attributed to someone who is the directing mind of the company, for example the CEO. Corporate criminal liability may also arise when the board of directors has delegated its management functions and the delegate has full discretion to act independently of instructions from the board. The delegate would normally be a senior officer of the company and there is a distinction between an employee who is a mere agent and those who have the full authority of the board or the owner of the company. A less senior member of staff, such as a branch manager, would not be identified with the company where the board has not delegated any part of its functions to the employee and where his acts are not acts of the company.

The extraterritorial reach of these Ordinances

US security issuers, whether 'domestic concerns' or foreign companies, can be held liable for an offence under the FCPA. An issuer is defined as a corporation that has issued securities on the US securities exchanges. A 'domestic concern' is any individual, corporation or business entity with its principal place of business in the US.

Issuers and domestic concerns are held liable if they act in furtherance of a corrupt payment to a foreign official. US nationals and corporations may also be held liable for acts in furtherance of corrupt payments authorised by employees or agents outside the US, including foreign subsidiaries. A foreign company or person is subject to the FCPA if it causes an act in furtherance of corrupt payments to take place within the US. The action may be as slight as making a transfer to a US bank account or registering American Depository Receipts.

Similarly, Section 12(4) of the UK Bribery Act extends the jurisdiction of the Act to offences committed by persons in and outside the UK as long as these persons have close connections with the UK. Such persons include UK citizens and non-UK nationals ordinarily resident in the UK, and they are also liable for offences committed abroad. Moreover, under Section 7, non-UK commercial organisations are subject to the Act if they carry on a business or part of a business in the UK. This includes setting up an office in the UK, but does not necessarily include listing on a UK stock exchange or merely raising finance there.

There is a difference in terms of jurisdictional reach between the offence of failing to prevent bribery (see Section 7) and the offence of committing the act of bribery (see Sections 1&2). The former extends to foreign corporations (relevant commercial organisations under Section 7(1)) which carry on businesses or part of a business in the UK, while the latter is confined to persons, corporations or entities with a close connection with the UK, for example UK subjects and foreign nationals habitually resident in the UK. Under Section 7(1), a relevant commercial organisation can be guilty of an offence if an 'associated person' of that company commits a bribery offence. An associated person can be a legal or natural person who performs services for and on behalf of the company, regardless of their capacity. Contractors can be associated persons if they perform services for and on behalf of the company. Suppliers are not associated persons if they do no more than supplying goods and services to the company.

The treatment of joint venture (JV) companies is more complicated. The company through an investment of ownership of a JV company benefiting from a bribe offered from an employee of that JV company is unlikely to be liable. However the company would be held liable if the JV company is performing services for and on behalf of the company and the bribe is intended to benefit the investing company. Hence, the degree of control the investing company exercises

Meet the author

Daniel Wong has over 25 years of experience in finance, information management, compliance, forensics and secretarial work in public organisations and private multinational corporations. Upon graduating from the University of Hong Kong in Accounting and Management, he held positions in audit and consulting in one of the leading audit firms before working in various information technology roles in Sydney. Since returning from Australia, he has assumed regional responsibilities in business development, financial management and corporate governance. Daniel possesses three master's degrees covering information technology, dispute resolution and corporate governance obtained respectively from Australian and Hong Kong universities. He also has a post-graduate diploma in UK and Hong Kong law from a UK university.

on the JV company is a key factor to be considered when measuring liabilities.

Hong Kong's Prevention of Bribery Ordinance

This article has focused on global developments in anti-corruption compliance on the basis that readers will be less familiar with these than with local requirements. Compliance programmes also clearly need, however, to take into account Hong Kong's own Prevention of Bribery Ordinance (POBO). Enacted in 1971, the POBO provides separate sections to target different forms of bribery. Section 4 targets the bribery of officials, including the Chief Executive. It imposes an offence of offering or accepting advantages as an inducement to perform any improper act contrary to their capacity as civil servants. Section 3 of the same ordinance imposes an offence for any prescribed officer to accept advantage without the approval of the Chief Executive. There is no need to prove the linkage of the acceptance of advantage to the performance of an improper act in his or her official capacity. The prosecution needs to prove no more than that the prescribed officer intends to solicit or accept an advantage.

For the private sector, Section 9 of the POBO applies to offences of any 'agents', generally referring to employees, soliciting or accepting an advantage as an inducement to do, or forbear to do, any act in relation to the principal's affairs contrary to his/ her duties. It is also an offence for anyone to offer an advantage to an agent as an inducement to show favour or disfavour to any person in relation to his or her principal's business. However, neither of these persons are guilty of offences if permissions are granted by their principals before the offer and acceptance of the advantage.

There is no specific clause in the POBO giving extraterritorial reach to the offences committed by Hong Kong subjects outside Hong Kong territory. However, Section 4(2) of the POBO prohibits civil servants from soliciting or accepting advantages without lawful authority, whether in Hong Kong or elsewhere, as an inducement for not performing their proper official duties.

Daniel Wong *CPA(Aust) ACS ACIS*

Regulators and compliance – be bold!

Preparing for the Financial Conduct Authority's new style of supervision in the UK

As a parent, I know the challenge of supervising teenagers, it can be a little intimidating, particularly when you are outnumbered. In the case of the newly emerging Financial Conduct Authority (FCA), the regulator's supervisory responsibilities also look a little daunting.

The FCA will become the conduct supervisor for 26,000 firms and the prudential supervisor of 23,000 firms (that is, those companies not supervised by the Prudential Regulatory Authority, see 'What is the FCA?' opposite) at a time when the entire financial services landscape is under the microscope.

The conventional wisdom for parenting is to set expectations, allow as much independence as possible, listen to concerns and follow through with consequences for misconduct. This approach came to mind when reading *Journey to the FCA* – in which the Chief Executive designate for the FCA, Martin Wheatley (the former Chief Executive of the Securities and Futures Commission in Hong Kong), has set out a 'new style of supervision' which includes the following:

- ***Fair and reasonable expectations.*** The focus will be on standards of behaviour with an expectation of personal integrity and honesty. The new regime will also focus on consumer protection. By way of an example, the FCA will expect firms to provide customers with financial services and products which are suitable for their personal circumstances, with no misleading promotions and no hidden charges. Interestingly, the FCA may also assume responsibility for credit regulation from the Office of Fair Trading.

- ***Responsibility.*** The paper confirms that senior management have responsibility for setting a firm's culture and treating customers fairly. Under a 'Firm Systematic Framework', the FCA will leave firms to do their own monitoring, self-testing and follow-up to address less important points identified by the FCA's preventative risk assessments. It seems that firms will be required to do more self-attesting. This is a contrast to the 'Arrow' regime which involved extensive regulatory follow-up of most points after a visit.

- ***Consultations and representations.*** The FCA has requested views on its new supervisory approach and will digest comments triggered by consultation papers. Current papers include the draft FCA policy concerning temporary product

intervention rules, draft guidance concerning 'super-complaints' and the consultation paper concerning the draft Prudential Regulatory Authority (PRA) and FCA regimes for approved persons. In addition to consultations and open discussions with the regulator, firms will be able to make representations to the FCA if they believe the regulator is making a wrong decision when exercising its powers.

- ***Intervention/ enforcement.*** The *Journey to the FCA* document refers to 'judgement-based supervision'. This means the regulator will intervene at an early stage if risks to customers are believed to be unacceptably high. There are also plans for the FCA to have the power to ban misleading promotions immediately from the market and publish the reasons for doing so. The FCA will be committed to greater transparency, bringing more enforcement cases and will press for tough penalties.

Although the supervisory approach in the UK will change, the themes are still the same with the regulators placing emphasis on the effectiveness of control systems, management structures and accountability. Notwithstanding these familiar issues, many senior executives feel nervous about their regulatory responsibilities. This is understandable, particularly as conduct at the very top of firms will be the focal point for the FCA. It is clear the regulator will hold members of senior management accountable for their actions.

So how do compliance professionals respond? Part of the answer is to ensure key risk areas (for example, product selection, training, recruitment, remuneration policies and outcomes from monitoring reviews) receive sufficient air time at the board level. Nervousness normally arises when there is some uncertainty. Part of the solution is to ease tensions by jumping on any uncertainties regarding responsibilities, ensure everyone is prepared for their role and provide training if required.

There is also a need to help embed the right behaviours and attitudes by adopting an assertive approach. Martin Wheatley has said the FCA will encourage their staff to be 'more confident in making bold, firm and predictable decisions'. Compliance officers would do well to adopt the same approach when providing advice, escalating issues or making recommendations. But as with a parent, take care when walking that fine line between authority figure and ally!

Mark Taylor *FCIS FCS*
Director, Boxall Barton Ltd

HKICS members may remember Mark Taylor as a highly active member of the Institute back in the 1990s during his tenure as Deputy Company Secretary and subsequently Senior Manager Compliance at HSBC Hong Kong. He moved to the UK in 2003 and can be contacted at: mark@boxalbarton.com.

What is the FCA?

The Financial Conduct Authority (FCA) is a new body created by the latest restructuring of the UK's financial regulatory framework. In June 2010 the UK government announced plans to abolish its single financial services regulator, the Financial Services Authority, and divide its duties between two different bodies:

1. the Financial Conduct Authority will regulate financial firms providing services to consumers and maintain the integrity of the UK's financial markets, and
2. the Prudential Regulatory Authority, a subsidiary of the Bank of England, will carry out the prudential regulation of financial firms, including banks, investment banks, building societies and insurance companies.

To complicate matters somewhat, the FCA will also have responsibility for the prudential regulation of firms that do not fall under the Prudential Regulatory Authority's scope. All other responsibilities will be assumed by the Bank of England.

The 'Journey to the FCA' is available on the Financial Services Authority website: www.fsa.gov.uk.

21st-century board

Recommendations on board effectiveness

The winning paper in this year's Corporate Governance Paper Competition examines some of the common weaknesses that undermine board effectiveness, particularly those highlighted by the Enron case. In part two, to be published in next month's *CSj*, the authors provide practical recommendations to ensure that your board avoids falling prey to the same mistakes.

Before its declaration of bankruptcy on 2 December 2001, Enron Corporation was one of the largest energy, commodities and service companies in the US with reported revenues of US$101 billion in 2000. *Fortune* magazine named Enron as the 'most innovative company' for six consecutive years, from 1996 to 2001. Ken Lay (Enron's former Chairman and CEO) and Jeffrey Skilling (Enron's former President, CEO and COO) received high praise in the media.

We now know of course that while the company was the idol of the market, and while the board was blithely approving the wise and responsible actions of top management, Enron was actually breaking every rule in the book. Many comparisons have been made between Enron's fall and the sinking of the Titanic. Was the board, as Sherron Watkins (the former Enron vice-president who blew the whistle on the company) suggested, making sure the band was still playing while the ship was going down?

The Enron case is a dramatic demonstration of how some common weaknesses in boards can render them ineffective. These weaknesses, however, are symptomatic of a fundamental problem with the board culture. Were the directors only interested in adding an additional title to their business cards? In an article in *Handbook of Frauds, Scams, and Swindles: Failures of Ethics in Leadership* (CRC Press, 2008), Steven Solieri, Joan Hodowanitz and Andrew Felo describe the board culture in the Enron era as 'see no evil, hear no evil, speak no evil and act no evil' (「非礼勿视，非礼勿听，非礼勿言，非礼勿动。」). It seems that the Enron board fulfils the prophecy of influential author and management consultant Peter Drucker who warned in the 1950s that boards may become 'a mere showcase, a place to inject distinguished names, without information, influence or desire for power'.

In this article we provide several recommendations to improve the effectiveness of 21st century corporate boards. Our recommendations emphasise the needs for modern corporate boards to increase board independence and board diversity, provide non-executive directors with better access to information and have a greater commitment to corporate social responsibility (CSR). In short, the culture of corporate boards in the 21st century will need to be changed in order to avoid the mistakes of the Enron board.

Board effectiveness – the challenges

As mentioned above, the Enron case highlights a number of common weaknesses that undermine board effectiveness – in particular a lack of independence, an abuse of information asymmetry and a lack of commitment to CSR.

1. Lack of independence

Independent directors, explains author and corporate governance expert Bob Tricker, 'must have no relationship with any firm in upsteam or downsteam added-value chains, must not have previously been an employee of the company, nor be a nominee for a shareholder or any other supplier of finance to the company' *(Corporate Governance Principles, Policies, and Practices, Oxford University Press, 2012)*. The Enron board compromised its independence in a number of ways.

- ***Board members had interlinking directorships.*** Enron's board had 15 members many of whom were also members of other companies' boards that were related to Enron's suppliers and financial institutions so that they could easily manipulate transaction prices and costs.

- ***Board members served for a long period of time.*** More than 50% of the directors on the Enron board had served for more than 20 years. The directors had therefore become too close to management, leading to groupthink in decision-making and a lack of independence.

- ***Board members became too trusting.*** The CEO and chairman had close personal relationships with the

Highlights

- the Enron case highlights a number of common weaknesses undermining board effectiveness
- Enron's non-executive directors passively relied on disclosures made by executive directors, enabling the executives to disguise fraudulent activities
- Enron's non-executive directors became too close to the company's management and too trusting of their integrity and competence

> "the culture of corporate boards in the 21st century will need to be changed in order to avoid the mistakes of the Enron board"

other board members, who showed a great deal of respect and trust in their integrity and competence. As a result, board members did not criticise top management decisions.

- ***Board members had conflicts of interest.*** Directors, particularly independent non-executive directors, are supposed to act only in the interests of the shareholders of the company. Enron's directors were more concerned with their own self-interest.

2. Information asymmetry

Information asymmetry arises where one party has more or better information than other parties. Often executive directors are party to much more information than their non-executive collegues on a board. However, board dysfunction quickly follows where the executive directors abuse this information advantage by denying important information to the board and to the general public. The Enron board demonstrates the consequences of this abuse of information asymmetry.

- ***Non-executive directors passively relied on disclosures made by executive directors.*** They treated top management as the one and only source of information about their companies' operations and failed to question the veracity of what they were being told. For example, Enron's non-executive directors approved the decision by the CFO to set up a private fund to transact with Enron without enquiring into the fund's nature and the related parties involved.

- ***Executive directors effectively blocked important information from reaching the board.*** Enron's CEO and chairman of the board did not disclose the accounting error made due to the losses from the Raptor hedging investment. They were also able to filter out important information on related party transactions and conflicts of interests.

- ***Executive directors provided misleading information to the board.*** Wendy Zellner points out in her *BusinessWeek* article 'Hitting a wall in the Enron Case' that the Enron board was continually lied to and misled by management.

3. Lack of commitment to CSR

A board of directors with a commitment to CSR would seek to ensure that the company not only complies with the law but also maintains high ethical standards in order to protect the environment, employees, minority shareholders and society as a whole. The Enron board allowed its obsession with maximising profit, as well as the company's stock price and credit rating, to compromise basic ethical standards.

- ***The board failed to uphold ethical accounting practices.*** Directors unethically allowed many transactions to be kept 'off the books' with the aim of showing higher profit in the financial reports to maintain high credit ratings and attract more investors.

- ***The board condoned market manipulation.*** Enron created an artificial California energy crisis, claiming that there was a shortage of energy due to overusage in California. This enabled the company to manipulate the energy trade and boost its stock price.

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and Sardonna Wong Ka Yi
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In the second and final part of this article, to be published in next month's journal, the authors make practical recommendations on how to increase board independence and board diversity, provide better access to information and improve ethical standards.

The Institute's Corporate Governance Paper Competition is designed to promote awareness of corporate governance among local undergraduates. The competition is run in tandem with the Institute's biennial Corporate Governance Conference. Authors of the competing papers also enter a presentation competition and the awardees of both competitions receive their certificates at the conference. More information and photos of this year's award ceremony can be found in this month's student news.

CHARTERED SECRETARIES
特許秘書

Your invitation to

The Hong Kong Institute of Chartered Secretaries'

Annual Dinner 2013

Date	Thursday, 24 January 2013
Time	Cocktail reception starts at 6.30 p.m. Dinner starts at 7.30 p.m.
Guest of Honour	Mr Li Xiaoxue, Executive Vice-Chairman China Association for Public Companies (中國上市公司協會)
Venue	Conrad Hong Kong, Grand Ballroom
Dress code	Lounge suits
Reservation fees	HK$600 per Student HK$800 per Member/Graduate HK$900 per Non-Member HK$9,600 per table (12 seats)

For enquiries, please contact the Secretariat at 2881 6177 or member@hkics.org.hk

Scan to share with other HKICS members!

More than meets the eye.
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Seminar review: September 2012

18 September 2012

参观香港交易所

本会于2012年9月18至22日举办了「中国境外上市公司企业规管高级研修班」。主讲者分别有香港交易所、香港证监会、香港廉政公署及资深从业员代表。是次研讨班有29位来自内地境外上市公司的董事、董事会秘书与高管人员出席，他们透过研讨班提升了对香港上市公司实务操作及良好公司治理的理解。

更多有关相片请浏览公会网页内之照片集('Gallery' Section).

Membership application deadline

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 last submission deadline and the respective approval date for 2012 are Saturday 24 November and mid-December respectively.

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

Mandatory CPD

Mandatory CPD requirements

Members who qualified between 1 January 2005 and 31 July 2011 are now required to accumulate at least 15 mandatory continuing professional development (MCPD) or enhanced continuing professional development (ECPD) points by 31 July in each CPD year.

Members who qualified between 1 August 2011 and 31 July 2012 are already subject to the MCPD requirement and are reminded that they need to accumulate at least 15 MCPD or ECPD points for this CPD year starting from 1 August 2012.

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 the CS sector and/ or for TCSPs have the discretion to select the format and areas of MCPD learning activities that best suits them. These members are *not* required to obtain ECPD points from HKICS (but are encouraged to do so) but nevertheless must obtain 15 MCPD points from suitable providers.

Submission of declaration form

Once the MCPD requirement of 15 CPD points has been fulfilled during the 2012/13 CPD year (that is, 1 August 2012 to 31 July 2013), please fill in the Declaration Form (MCPD Form I) and submit it to the secretariat by fax (2881 5755) or by email (mcpd@hkics.org.hk) by 15 August 2013.

Exemption from mandatory CPD requirements

Exemption from MCPD requirements is available to retired members and honorary members. Members in distress or with special grounds (such as suffering from long-term illness or where it is impractical to attend or access CPD events) may also apply for exemption from MCPD to the Professional Development Committee and are subject to approval by the committee at its sole discretion.

Enhanced CPD programme

The Institute cordially invites you to take part in our ECPD Programme, a professional training programme that best suits the needs of company secretaries of Hong Kong listed issuers who need to comply with the new mandatory requirement of 15 CPD hours every year. The Institute launched its MCPD programme in August last year and, from 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 Hong Kong Exchanges and Clearing (HKEx) requirements can be found in the consultation conclusions to the 'Review of the Corporate Governance Code and Associated Listing Rules' on the HKEx website (www.hkex.com.hk). To learn more about Institute's ECPD Programme, please visit the Institute website (www.hkics.org.hk).

New Graduates

Chui Yat Yung

New Associates

Au Kar Man
Chan Nga Kam, Monica
Chan Po Kei, Peggie
Chan Sin Man
Ching Yuen Pak
Chung Chi Ho
Chung Ching Han, Janice
Fung Wai Yan, Vivien
Gu Wenyuan
Hui Po Shuen
Ip Wing Sze
Ko Tsz San
Koo Ka Hei
Kwok Ka Ho
Kwok Ying Pui
Kwong King Chi
Lai Chi Wai
Lai Po Sing
Lam Ka Kie
Lam Lai Kuen, Katrina
Lau Chi Hung
Lau Shuk Fan
Law Ho Yee
Lee Nga Cheung
Leung Kei Pui
Leung Pui Ling
Leung Wai Tong
Lui Kit Yin
Ng Ka Man
Ng Man Wai
Ng Mei Yi
Ng Pui Ching
Shum Kim Wa
Tse Ka Yan
Wan Yim Ling, Kelly
Wat Wai Kwong
Wong Fai Kit
Wong Pou Hong
Wu Mei Lee
Yeung Hiu Ho
Yim Wai Han
Yiu Sau Wa
Yuen Lai Ying

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
Li Tung Wing *FCIS FCS*	Walker Group Holdings Ltd (stock code: 1386)	12 September 2012
Tsui Kan Chun *ACIS ACS*	China Print Power Group Ltd (stock code: 6828)	14 September 2012
Yeung Wing Kwan *ACIS ACS*	China Daye Non-Ferrous Metals Mining Ltd (stock code: 661)	18 September 2012
Cheng Chung Yung, Ken *ACIS ACS*	China.com Inc (stock code: 8006)	21 September 2012
Pang Kin Man, Edmond *FCIS FCS*	Ruifeng Petroleum Chemical Holdings Ltd (stock code: 8096)	24 September 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, please refer to the Institute's website or contact the Membership section at 2881 6177.

CAPCO delegates visit the Institute

The Secretary-General of the China Association for Public Companies (CAPCO) headed a delegation on a visit to the Institute between 6 and 8 October 2012. The delegation met with the HKICS President and other representatives and discussed extensively a range of issues including: corporate governance and the professionalisation of board secretaries on the mainland; the organisation of the HKICS and Chartered Secretary qualifying requirements; related quality assurance processes and procedures; monitoring of membership admission; professional development planning and implementation; and disciplinary matters.

Following the discussion, four areas of co-operation were identified for follow up:

1. CAPCO invited the HKICS to contribute case studies/ research reports/ guidance on best practice in relation to independent non-executive directors (INEDs) and the supervisory board in Hong Kong and/ or A- and H-share listed issuers for their project to publish the *White paper on the best practice of the board of directors of listed issuers on the mainland* in 2013.

2. The Council of CAPCO has approved the creation of the Board Secretaries Committee (BSC). Once operational with personnel in place, the BSC will maintain a close liaison with the HKICS in relation to the professional qualifying examination set up.

3. To maintain a close liaison and exchange information on trends and development of corporate governance in Hong Kong, China and internationally.

4. To enhance communication and resource sharing between CAPCO and the HKICS by way of establishing a regular conduit of communication and jointly organise board secretaries development activities with the HKICS.

The CAPCO delegation comprised:

- An Qingsong, Secretary-General
- Feng Zengwei, Head of Corporate Governance Department
- He Longcan, Head of PR Department
- Chen Xiang, Head of Training Department
- Tao Yuezheng, Corporate Governance Department.

CAPCO delegates met with the following Institute Council members:

- Edith Shih, President
- April Chan, Immediate Past President and HR Committee Chairman
- Maurice Ngai, Vice-President, Audit Committee Chairman and Professional Development Committee Vice-Chairman
- Susie Cheung, Membership Committee Chairman
- Alberta Sie, Education Committee Chairman
- Jack Chow, Treasurer and Professional Development Committee Chairman

Samruk-Kazyna Corporate University (SKCU) study visit

A delegation comprising 19 corporate secretaries of national corporations from Kazakhstan attended a six-day study tour of Hong Kong from 5–10 October. The group participated in the Corporate Governance Conference (CGC) 2012 from 5–6 October and a three-day training programme from 8–10 October.

Greetings from SKCU: 'Warmest thanks to all of your team for a well-organised and well-planned study tour for corporate secretaries from 5–10 October 2012. It was a big pleasure to work with each member of your staff. Thank you for your hospitality, it was highly appreciated'.

Annual subscription 2012/ 2013

Members and Graduates are reminded to settle their annual subscription for the financial year 2012/ 2013.

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). A HK$100 coupon will be issued to Members or Graduates who settle payment by using the Chartered Secretaries American Express Card only. All coupons can be redeemed against the cost of all ECPD seminars, members' activities and the Annual Dinner held from 1 August 2012 to 31 July 2013 subject to availability. For details of the card benefits and application form, please refer to the Institute's website.

2. Failure to pay the subscription on or before 31 January 2013 may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle a total of three years' subscriptions plus the re-election fee if they want to reinstate their membership.

3. Please update the latest employment information by completing the 'Personal Data Update Form' and returning it to the Institute together with the remittance advice and cheque for payment of subscription (if paying by cheque) by using the return envelope.

Members and Graduates who have not received the remittance advice for the financial year 2012/ 2013, please contact the Membership section at 2881 6177.

Membership activities

Annual Dinner 2013

The Institute's Annual Dinner 2013 will be held on 24 January 2013 at the Conrad Hong Kong. We are delighted to announce Mr Li Xiaoxue, Executive Vice-Chairman, China Association for Public Companies (中国上市公司协会) as the guest of honour.

For details, please refer to the flyer on page 39, the Institute's website or contact the Membership section at 2881 6177.

Guangzhou study tour

The Institute will organise a two-day study tour to Guangzhou from 8–9 November 2012. This tailor-made tour offered to members and students not only includes visits to two H-share companies and a government organisation, but also sightseeing and the opportunity to enjoy some tasty local cuisine.

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

Members' networking: environment - visit to Mai Po

This networking event, held on 27 October 2012, gave participants a chance to enjoy the finest birdwatching experience and remarkable views of Inner Deep Bay while walking along a floating boardwalk in the middle of a magnificent mangrove forest.

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

IQS examination timetable

December 2012

	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

May 2013

	Tuesday 28 May 2013	Wednesday 29 May 2013	Thursday 30 May 2013	Friday 31 May 2013
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

Policy reminder

The sub-degree qualifications listed below will no longer be considered eligible as entry requirements for HKICS studentship registration by the specified dates.

Institution and programme	Date
Caritas Institute of Higher Education – Higher Diploma in Corporate Management	31 December 2013
Institute of Administrative Management (IAM) – Advanced Diploma in Administrative Management	31 December 2012
Institute of Business Administration and Management (IBAM) – Advanced Diploma in Business Administration	31 December 2012

Abolition of examination attendance card

With effect from the December 2012 examination, IQS examination candidates are not required to fill in the attendance card. All candidates must bring their HKID cards and the admission slips to the examination centre for identity verification.

Academic Advisory Panel luncheon

The Institute held an Academic Advisory Panel luncheon on 25 October 2012 at the Club Lusitano with representatives from local universities. Alberta Sie *FCIS FCS (PE)* and Polly Wong *FCIS FCS (PE)* updated the academics on the latest developments from the Institute.

Group photo of the Academic Advisory Panel

Attending academics included:

- Professor Chah Ka Lok, Head, Department of Finance, Hong Kong University of Science and Technology
- Dr Samuel Chan, Associate Professor, School of Accounting and Finance, The Hong Kong Polytechnic University
- Dr Suwina Cheng, Assistant Professor in Accountancy, Lingnan University
- Professor Ip Yiu Keung, Dean, Lee Shau Kee School of Business and Administration, Open University of Hong Kong
- Professor Amy Lau, Chair of Accounting, School of Business, University of Hong Kong
- CK Low, Associate Professor in Corporate Law, School of Accountancy, Chinese University of Hong Kong
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, Chinese University of Hong Kong
- Dr Mark Ng, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Professor Wei Kwok Kee, Dean, College of Business, City University of Hong Kong

Open University of Hong Kong – Orientation of the Master of Corporate Governance programme

The Institute organised an orientation session for Master of Corporate Governance (MCG) students from the Open University of Hong Kong on 4 October 2012. The students were provided with an introduction to the institute and information on the institute's studentship requirements. Simon Lee *ACIS ACS*, an MCG graduate, was invited to share his study experiences with the MCG students.

At the orientation

Corporate Governance Paper Competition and Presentation Award 2012

To promote good corporate governance among local undergraduates, the Institute organised the Corporate Governance Paper Competition and Presentation Award 2012. Addressing the topic 'The 21st-century board', six finalist teams attended the presentation competition on 29 September 2012 to compete for the Best Presenter award.

Awardees, sponsors, reviewers, panel judges and a competition working group member attended the Corporate Governance Conference lunch on 5 October 2012 to receive their certificates/ souvenirs from Alberta Sie *FCIS FCS(PE)*, the Education Committee Chairman.

Paper Presentation group photo

Award winners

Paper Competition

Champion

Ken Chan and Sardonna Wong
Department of Accountancy, City University of Hong Kong

1st Runner-up

Sally Chen, Susanna Lam, Iva Lo
Faculty of Law, Chinese University of Hong Kong

2nd Runner-up

Adrian Fong
Faculty of Law, Chinese University of Hong Kong

Paper Presentation

Best Presenter

Ken Chan and Sardonna Wong
Department of Accountancy, City University of Hong Kong

1st Runner-up

Sally Chen, Susanna Lam, Iva Lo
Faculty of Law, Chinese University of Hong Kong

2nd Runner-up

Chris Kung, Calvin Lam and Elaine Ng
Faculty of Law, Chinese University of Hong Kong

Alberta Sie presenting souvenirs to sponsors of the paper competition (in alphabetical order from left to right): April Chan (CLP Holdings Ltd), Ernest Lee (Ernst & Young), Stephen Mok (Eversheds LLP), Lim Ching Ying (Noble Group) and Natalia Seng (Tricor Services Ltd)

The Institute would like to thank the following individuals and organisations for their contribution to the Corporate Governance Paper Competition and Presentation Award 2012.

Reviewers

- Dr David Bishop, Senior Teaching Consultant, School of Business, University of Hong Kong
- Dr Yuanto Kusnadi, Assistant Professor, Department of Accountancy, City University of Hong Kong
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, Chinese University of Hong Kong
- Dr Mark Ng, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Mr Clement Shum, Associate Professor, Department of Accountancy, Lingnan University
- Professor Mark Williams, Professor, School of Accounting and Finance, Hong Kong Polytechnic University
- Dr Davy Wu, Assistant Professor, Department of Accounting & Law, Hong Kong Baptist University

Panel Judges (for Paper Competition)

- Professor Bob Tricker
- Liu Ting An *FCIS FCS*, Deputy Chairman and President, China Life Insurance (Overseas) Company Ltd
- Tracy Sin *FCIS FCS*, Company Secretarial Manager, Lister Lo Lui & Choy Solicitors

Presentation Judges (for Paper Presentation)

- Dr. Eva Chan *FCIS FCS(PE)*, Head of Investor Relations, CC Land Holdings Ltd
- Patrick Sung *FCIS FCS*, Executive Director and Chief Financial Officer, Guangnan (Holdings) Ltd
- Polly Wong *FCIS FCS(PE)*, Company Secretary and Financial Controller, Dynamics Holdings Ltd

Working Group

- Nelson Chiu *ACIS ACS*, Audit Partner, United Partners CPA Ltd
- Richard Leung *FCIS FCS*, Barrister-at-Law, Des Voeux Chambers
- Winnie Li *ACIS ACS*, Director, CWCC

Sponsors

- CLP Holdings Ltd
- Ernst & Young
- Eversheds LLP
- Noble Group Ltd
- Tricor Services Ltd

Companies Ordinance subsidiary legislation consultation

The new Companies Ordinance was gazetted on 10 August this year, but before it commences operation the government needs to enact 12 pieces of subsidiary legislation so as to provide for administrative, technical and procedural matters. The government launched the first phase of public consultation on this subsidiary legislation in September this year and the deadline for responses to this consultation is 9 November 2012.

Of particular relevance to company secretaries are the proposals in the subsidiary legislation regarding the procedures for listed companies to prepare summary financial reports and the prescribed contents of the business review section of the directors' report to be included in listed companies annual reports. Also of particular interest will be the new requirements concerning model articles for companies.

In addition to these areas, the first phase consultation also covers requirements relating to: company names; non-Hong Kong companies; the rights to inspect and obtain copies of statutory records; and the role of the Hong Kong Institute of Certified Public Accountants as the body for the issuance or specification of accounting standards.

The second phase consultation, to be launched later this year, will cover requirements relating to: trading disclosures; the revision of financial statements and reports; the disclosure of information about the benefits of directors; the disclosure of residential addresses and identification numbers; and unfair prejudice proceedings.

The government hopes to bring the subsidiary legislation into operation in 2014. The consultation document can be downloaded from the websites of the Financial Services and the Treasury Bureau (www.fstb.gov.hk) and the Companies Registry (www.cr.gov.hk).

Appointments

- Carlson Tong succeeded Dr Eddy Fong as the Chairman of the Securities and Futures Commission (SFC) on 20 October 2012. Mr Tong, a certified public accountant who retired as Chairman of KPMG China, has served as a non-executive director in the SFC since April 2011.

- Dr Kelvin Wong Tin-yau has been appointed as a non-executive director of the Securities and Futures Commission for a term of two years from 20 October 2012. Dr Wong has more than 20 years of experience in the banking and securities industries. He is Chairman of the Hong Kong Institute of Directors and sits on the Standing Committee on Company Law Reform. He also serves the Listing Committee of Hong Kong Exchanges and Clearing Ltd.

- Charles Li has been reappointed as the Chief Executive of Hong Kong Exchanges and Clearing Ltd (HKEx) for a further three-year term from 16 October 2012. Mr Li joined HKEx in October 2009 and became the Chief Executive and a director of HKEx effective 16 January 2010.

- David Graham has been appointed as the first Chief Regulatory Officer of Hong Kong Exchanges and Clearing Ltd (HKEx). This new position will oversee the HKEx Listing Division and all other regulatory, legal and compliance functions across HKEx. Mr Graham has over 30 years of experience in legal and financial services and was a member of the Securities and Futures Commission's Takeovers Panel from 2001 to 2011 and served as a Deputy Chairman of the Panel from 2005 to 2012. In his new position, Mr Graham will be Head of Listing (Designate) initially and will succeed current Head of Listing Mark Dickens upon Mr Dickens' scheduled retirement in July 2013. HKEx expects Mr Graham to join the company in early January next year.

- John Poon Cho-ming succeeded Sophia Kao as the Chairman of the Financial Reporting Council (FRC) on 3 October 2012. Mr Poon is a solicitor, a lay member of the FRC and a non-executive director of the Mandatory Provident Fund Schemes Authority.

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