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The journal of The Hong Kong
Institute of Chartered Secretaries

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Can a 17th-century
institution run a
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, as well as the development of the profession of the Chartered Secretary.

The HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994, and today has more than 5,600 members and approximately 3,200 students.

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October 2012

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

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

Circulation: 9,100

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

To subscribe call: +852 2982 0559 or

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ISSN 1023-4128

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CGC 2012

Can a 17th-century institution run a 21st-century company?

This edition of *CSj* serves as a guide to The Hong Kong Institute of Chartered Secretaries' Corporate Governance Conference (CGC) 2012 to be held on 5 and 6 October at the JW Marriott hotel. Uniquely, we have two guests of honour so I would like to welcome both Sir CK Chow, Chairman of Hong Kong Exchanges and Clearing Ltd, and Dr An Qingsong, Secretary-General, China Association for Public Companies, as well as the other speakers, panellists and attendees from the US, UK, Australia, India, mainland China, Hong Kong and other countries who have come to Hong Kong to participate in our eighth biennial CGC. We believe that this blend of international experience combined with local expertise provides an impressive mix of practitioners, regulators and academics and serves to give the CGC its uniqueness, relevance and usefulness.

Once again the conference will focus on the practical side of good governance, rather than the theory. This approach has been the hallmark of the Institute's conferences over the years and has proved to be a successful formula. The theme of the CGC 2012 is 'The 21st-century board – thoughts and trends of corporate governance' and I am personally looking forward to an exciting and thought-provoking conference.

Although the 21st century has witnessed a dramatic change in the composition of the board, it is still fundamentally the same structure as it was when it first surfaced in the companies of 17th-century Europe. But, to quote LP Hartley's

famous opening line in *The Go-Between*, 'The past is a foreign country: they do things differently there.' 17th-century Europe is very much in the past and the owners and directors of the trading companies in 17th-century Holland and England could not seriously have predicted the enormity of multinational conglomerates today, let alone the complexities of modern day listings. And yet is it their concept of management in the form of a board (and in some cases a dual-board structure with executive and supervisory boards) which the 21st-century corporation has inherited.

The conference will explore whether or not the 17th-century board can really guide the modern corporation through the dynamic and complex business environment today. We will try to predict what new corporate governance challenges lie ahead and how the board might evolve to cope with them, and we will look at the relevant experiences of countries from which we can learn.

The cover stories in this special edition of *CSj* are a good introduction to the CGC 2012. The first one looks at the evolution of the modern board of directors and gives a company secretary's perspective on how to improve board effectiveness. The cover stories authored by CGC speakers make for interesting and sometimes uncomfortable reading. Dr Grant Kirkpatrick, economist, corporate governance consultant and until recently the Deputy Head of the Corporate Affairs Division of the OECD, writes about the importance of positioning boards in challenging times focusing on the role of the company secretary in ensuring that directors are effectively briefed. He writes '...company secretaries must seek to prepare the board so that it represents

what the company really needs' and further adds '...directors need to be effectively briefed in order to perform their monitoring and oversight roles'. Dr YRK Reddy, Founder Trustee & Head, Academy of Corporate Governance, examines the pros and cons of the one-tier *vis-à-vis* the two-tier board and argues in favour of a greater appreciation of diverse approaches to board structure since different board models are suited to different markets.

As you might expect from a conference hosted by our Institute, the theme of the importance of the expanding roles and responsibilities of the company secretary in 21st-century companies is one that will recur throughout the conference. Perhaps after all the speeches have been made, the discussions held and the articles read, we will conclude that, while not perfect, the board of directors – that strange, clunky, awkward relic of the 17th century – will suffice so long as directors are dedicated and properly briefed by the professionals that serve them. Professionals such as Chartered Secretaries.

Finally, I would like to offer my sincere thanks to all conference attendees, sponsors, speakers and of course our hard working secretariat for organising the conference. I hope you all enjoy it and I look forward to meeting you at the CGC 2012.

Edith Shih FCIS FCS(PE)

公司治理研讨会2012

17世纪的架构可以治理21世纪的公司吗？

公司治理研讨会2012将于今年10月5日至6日假万豪酒店举行，今期专门介绍研讨会的内容。这一届研讨会很独特，有两位嘉宾作主题发言，我谨在此欢迎香港交易及结算所有限公司（港交所）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，并欢迎来自美国、英国、澳洲、印度、中国内地、香港和其他国家的讲者、讨论小组成员和参加者，感谢他们专程到香港参与两年一度的第八届公司治理研讨会。相信具备国际经验和本地专长的从业员、监管机构人员和学者聚首一堂，可令研讨会更显独特，内容切合实际，为出席人士带来实用的观点与知识。

今届研讨会再度集中探讨良好公司治理的实务而非理论。这个取向是公会主办的研讨会多年来的特点，事实证明相当成功。今年的主题是「21世纪的董事会——公司治理的观念与趋势」，我个人期望研讨会讨论热烈，内容引人深思。

在21世纪，董事会的组成经历了戏剧性的变化，但董事会的结构基本上与公司董事会刚于17世纪欧洲产生时相同。引用LP Hartley在《幽情密使》开首的名言：「『过去』是一个陌生的国度，这里做事的方法不一样。」17世纪的欧洲已成过去，17世纪荷兰和英国贸易公司的东主和董事没有可能预料得到今天的跨国集团可以有这么大的规模，更难想像今天上市的复杂安排。然而，21世纪的公司所继承的，正是他们当年以董事

会（有时是行政与监察并行的双轨董事会）为管理核心的概念。

研讨会将探讨17世纪的董事会能否真正带领现代企业面对今天复杂多变的商业环境。我们会预测公司治理的新挑战，以及董事会应如何演变以应付新考验，同时参考各国的相关经验，从中学习。

今期是CSj 特别版，封面故事详尽介绍公司治理研讨会2012的内容。第一篇文章探讨现代董事会的演变，从公司秘书的角度看如何提升董事会的效能。由研讨会讲者执笔的封面故事，读起来饶有兴味，有时却又惹人不安。身兼经济学家和公司治理顾问，最近才离任的经济合作及发展组织企业事务部前任副主管Dr Grant Kirkpatrick，在文章中论述在充满挑战的时刻为董事会定位的重要性，特别集中讨论公司秘书有责任确保董事得到恰当的资讯。他写道：「公司秘书必须为董事会作好准备，配合公司真正的需要」，又指出「董事必须获得恰当的资讯，以便履行监察与监督的职责。」公司治理学院创校理事兼校长Dr YRK Reddy剖析一层及两层董事会架构的利弊，主张百花齐放，原因是不同的市场适宜采用不同的董事会模式。

研讨会既由公会主办，大家都会料到，21世纪公司的公司秘书日益重要的角色与职责，会是贯穿研讨会的主题。在听过所有发言和讨论，读过所有文章后，我们或会得到以下结论：17世纪流传至

今的董事会，既怪异又不能发挥很好的作用；然而董事会虽非完美，却已足以应付需要，只要董事克己尽责，并有专业人士为他们提供恰当的资讯便可。特许秘书便是专业人士的其中一个例子。

最后，我谨向研讨会的所有参加者、赞助机构和讲者衷心致谢，当然也感谢秘书处同事辛勤工作，筹备这次研讨会。希望大家喜欢这项盛事。期待在公司治理研讨会2012中与你见面。



施熙德



The 21st-century board

A company secretary's perspective

This month the Institute's eighth biennial Corporate Governance Conference (CGC) will ask whether the institution of the board of directors, inherited from the 17th century, is fit for purpose in today's business environment. CSj looks at the evolution of the modern board of directors and gives a company secretary's perspective on how to improve board effectiveness.

If you were designing an institution to sit at the top of the corporate decision-making hierarchy, tasked with taking all the company's most important decisions, setting strategic direction and keeping a watchful eye on the performance of management, how likely is it that you would come up with something akin to the board of directors that sits at the helm of most companies globally today? Well, there are a number of fairly obvious design faults with the board as it is currently constituted.

Two of the more salient faults have been recognised for some time. Firstly, one of the primary roles of the board is to monitor management, but it carries out this important task on the basis of information supplied to it by... you guessed it, management. Something not quite right there. Secondly, the other primary role of the board of directors is to direct the company. The proverbial 'buck' stops with the board. Directors make all the major strategic decisions that need to be taken and they take collective responsibility for those decisions. But to whom do we entrust all this power and responsibility? Part-timers. Boards typically meet around eight times per

year and directors typically spend an average of 16–20 hours a month on board business (see Korn/ Ferry '34th Annual Board of Directors Study', 2007).

The fact is, of course, that the board of directors has not been designed but has evolved over the last few hundred years from the governing boards of trading companies in the 17th century. The sheer prevalence of the board of directors as the top institution of corporate governance around the world may give the impression that it is the institution best suited to the

governance of modern companies, but is it? As Franklin A Gevurtz, Professor of Law, University of the Pacific, McGeorge School of Law, points out in his 2004 article, 'The European origins and the spread of the corporate board of directors', the board is not like the steam engine or the personal computer – a brilliant innovation that quickly spreads around the world because of its obvious advantages. While it certainly has spread to all parts of the world, professor Gevurtz believes that it has done so, not so much through its own merits, but because it hitch-hiked on the

Highlights

- the institution of the board has been under the spotlight since it spectacularly failed the 'stress test' of the global financial crisis
- boards need to address the risk of directors becoming too independent to be good managers or not independent enough to be good monitors
- regulators have increasingly been seeking to exploit the opportunities of the company secretary role to enhance board effectiveness
- company secretaries have a professional obligation to ensure that directors have access to independent and reliable information

“
 one positive benefit
 of the global financial
 crisis has been
 to ask some hard
 questions about board
 effectiveness
 ”



global spread of the joint-stock company (see 'Highly evolved?' opposite).

So is it time to give the board of directors a rethink? Can the problems mentioned above be overcome, or, more radically, do we need to devise a completely different governance structure to direct companies in the 21st century? A new degree of urgency has been given to these questions since the board spectacularly failed the 'stress test' of the global financial crisis. In 2007/2008, when a broad range of financial institutions were heading for catastrophic losses and bankruptcy, their boards were apparently oblivious to the risk, continuing to approve management performance and, to add insult to injury, continuing to award themselves hefty pay increases and bonuses for the hard work they were putting into watching over the demise of their companies.

The crisis has led to a new willingness to consider alternatives to the institution of the board of directors. 'The board of directors has outlived its purpose,' writes

Kelli Alces, Florida State University College of Law, in her 2011 article 'Beyond the board of directors' (published on SSRN at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1893207). It has also led to a number of reports – such as those by the OECD and the Walker Review in the UK – which have tried to identify and correct existing obstacles to board effectiveness. 'Our approach to regulation in the past was based on the assumption that financial markets could to a large extent be left to themselves, and that financial institutions and their boards were best placed to control risk and defend their firms. These assumptions took a hard hit in the crisis, causing an abrupt shift to far more intrusive regulation,' writes Howard Davies, former Chairman of Britain's Financial Services Authority, in a recent article – 'Economics in denial' published on the project syndicate website (www.project-syndicate.org).

One positive benefit of the global financial crisis has been to ask some hard questions about board effectiveness

and the measures needed to address the deficiencies so graphically highlighted by the crisis. Since an effective board of directors is arguably the most critical element to good corporate governance, the importance of getting this right cannot be underestimated. For these reasons the Hong Kong Institute of Chartered Secretaries has put these issues at the centre of its latest corporate governance conference. In this special conference edition, CSj takes a look at the evolution of the modern board of directors and gives a company secretary's perspective on improving board effectiveness.

The independence paradox

The original prototype of today's boards – the governing boards of 17th-century trading companies – were 'management' boards because they were made up primarily of controlling owner/shareholders. This, of course, is still the case with family-run companies where the board is mainly composed of the founders of the business and their closest friends and relatives.

In more widely-held companies, however, where you do not have controlling shareholders, the board's role tends to become increasingly advisory. Modern corporate governance regulation tends to accelerate this transition from 'management' to 'monitoring' boards through requirements for a greater number of independent directors and greater reliance on those directors – they are commonly mandated for example in audit and remuneration committees.

Independence is beneficial for the effective monitoring of management and ensuring accountability (the so-called 'conformance' role of the board). There are also benefits to be gained in terms of providing owner/ managers with an independent perspective on the direction of the company. If independence is taken too far, however, the board may lose touch with the company and be ineffective at its 'performance' role (setting corporate strategy and ensuring that it is properly translated into policies and plans for management action).

In interview with *CSj* (see our June 2010 edition), author and governance expert Bob Tricker called this the independence paradox. 'Many independent directors fulfil the criteria for being "independent". They have not been employees, they are not major suppliers or customers, they have no family affiliation with the company, but what you actually need is a director who understands the business, who knows the company, who is familiar with its work and can decide the risks it faces. Here lies the paradox, the more you know about the company the less independent you become, by definition. I believe you need directors who understand the business but are independently minded. They need to

Highly evolved?

It is tempting to see the board of directors as an evolutionary success story. Why would it have spread to all corners of the earth unless it was clearly superior to other governance forms? Franklin A Gevurtz, Professor of Law, University of the Pacific, McGeorge School of Law, believes that the board of directors has achieved its world dominion, not so much through its own merits, but because it successfully hitch-hiked on the back of the joint-stock company.

In his fascinating 2004 article, 'The European origins and the spread of the corporate board of directors', Professor Gevurtz argues that the joint-stock company had obvious advantages over preceding business forms (such as merchant guilds) because it enabled large numbers of individuals to make passive investments and receive shares in business ventures. These advantages helped it spread as the dominant business form around the world.

When non-European nations adopted the joint-stock company, they tended to adopt the governance structure it came with – the board of directors – assuming that this was an integral and necessary part of how such companies worked. Professor Gevurtz believes that this could not have been further from the truth – the board was an optional extra, not a 'necessary' part of the governance structure of joint stock companies.

The board as an institution for corporate governance even predates the invention of the joint-stock company by a century or more. The East India companies (both British and Dutch) used governing boards as early as the beginning of the 17th century, although these boards were nothing like boards of directors as we know them today. Back then, the East India companies were still essentially 'regulated companies' – guilds whose membership consisted of merchants conducting independent operations under their guild's franchise. Over the course of the century they evolved into companies based on the joint-stock model.

This transformation turned the company from a confederation of merchants into a vehicle for passive investment by the general public – that is, the prototype for today's business corporations. As the company form evolved, so too did the board into the institution we recognise today where directors, both executive and non-executive, are elected by shareholders to monitor management.

Professor Gevurtz's article is available online at: <http://www.law.stetson.edu/lawreview/media/the-european-origins-and-the-spread-of-the-corporate-board-of-directors.pdf>.



be tough-minded enough to take a stand against a powerful chairman, particularly where the chairman is also the chief executive.'

Both of the 'design faults' highlighted at the beginning of this article are related to this central dilemma the board faces – how to reconcile its conformance and performance roles. What is the ideal balance between independent and executive directors on the board? Are boards, as they are currently constituted, 'both too independent to be good managers and not independent enough to be good monitors,' as Kelli Alces puts it? Of course, different boards address this issue in different ways. Two-tier boards split the conformance and performance roles between two boards, supervisory and executive. Dr YRK Reddy, Founder Trustee & Head, Academy of Corporate Governance, and a speaker in session one of the conference, discusses some of the different approaches, two-tier, unitary and hybrid, in this month's third cover story on pages 16-19.

Improving board effectiveness – a company secretarial perspective

Improving board effectiveness has become a corporate governance priority since

the global financial crisis and regulators, politicians, academics and the media have weighed into this debate – but what useful contribution can company secretaries make?

As readers of this journal are well aware, the company secretary occupies a unique role with regard to the board, and regulators have increasingly been seeking to exploit the opportunities of this role to enhance board effectiveness. For example, changes have been made to Hong Kong's Corporate Governance Code to make more explicit the role company secretaries are expected to play in ensuring boards function properly.

In particular, Hong Kong Exchanges and Clearing (HKEx) has sought to highlight in the code company secretaries' governance advisory roles, as well as their responsibility to ensure that directors have access to independent and reliable information. This is perhaps where company secretaries can make their most

significant contribution to improving board effectiveness. They are responsible for, among other things:

- advising the board on corporate governance issues
- preparing and circulating board papers before board meetings
- facilitating proper induction and ongoing training and meeting the information needs of board members, particularly non-executive directors, and
- ensuring communication flows between the board and the established committees (audit, remuneration, nomination).

Of course, company secretaries are a part of senior management so they may seem to be of little use in reducing the reliance of the board of directors on information supplied by senior management, but they



“
 here lies the paradox, the more you know about the company the less independent you become... I believe you need directors who understand the business but are independently minded
 ”


Bob Tricker, author and Honorary Professor at the Open University of Hong Kong and Hong Kong Baptist University

are in an unusual position in contrast to other senior managers. While as officers of the company they owe loyalty to their company, they also owe loyalty to their profession. They are in-house gatekeepers, their job description and their professional integrity requires them to have the determination to stand up for ethical practice. Moreover, they are explicitly required to be independent in providing advice, and where necessary they are responsible for assisting directors to seek outside, independent, professional advice.

Both the UK and Hong Kong corporate governance codes make explicit the company secretary's duty to ensure directors' access to information. For example, new section F of Hong Kong's Corporate Governance Code states that the company secretary is responsible for, among other things:

- ensuring good information flow within the board

- advising the board on governance matters, and
- facilitating induction and directors' professional development.

Section F also states that the company secretary is responsible for 'ensuring board policy and procedures are followed! This innocuous sounding item is arguably just as critical as the provision of independent advice. The company secretary's administrative board support tasks – such as arranging meetings; ensuring board procedures are followed; ensuring that the board complies with regulatory requirements; and that directors have appropriate levels of Directors & Officers liability insurance – are vital components of a supportive decision-making environment for the board. 

This edition of CSj is dedicated to the CGC 2012, featuring cover stories by conference speakers on

pages 12–19 and the conference guide section (comprising the conference programme and speaker biographies) on pages 20–28.

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Positioning boards in challenging times

Ensuring directors are effectively briefed

Few would question the value of director training – least of all Dr Grant Kirkpatrick, corporate governance consultant and economist, who will be speaking on this subject at this month's CGC 2012. However, in this article he shifts the focus from general director training, something which all directors should already have, to the company's in-house briefing of its directors on company-specific challenges – a process with a particular relevance for the company secretarial function.

Around the world one of the most heard calls in almost every field is for training – or at least re-training. However, when applied to board members, company secretaries will need to be more diplomatic and specific: surely board members are there because they are already 'trained' in the sense of having appropriate business and professional experience? So what is intended and how to do it? It is argued here that business conditions such as technology developments are much as before, and are the stock in trade of a professional board member. However, there are new challenges that are more company-specific and for which the board and board members need to be properly prepared – call it 'positioning', 'briefing' or even 'board training'. Thus, rather than taking the board as exogenous or given by shareholders, company secretaries must seek to prepare the board so that it represents what the company really needs. It is a two-way street.

What are the new company-specific challenges?

Amongst the key services board members should rightly expect is to be appropriately inducted into the company when they first join the board. This is quite rightly not termed, or thought of, as 'training'. The same applies to having board meetings in different locations and perhaps operating divisions. But companies are highly specific in many

other ways and boards need to be well prepared to deal with them. However, to call it 'training' is to miss the nature of the challenge.

Company boards must oversee management as they respond to external market challenges such as new technology, or new markets as a result of market opening or deregulation. This is their stock in trade even though board nomination and election is sometimes deeply flawed and the best or most suitable candidate is not always nominated. What is new and quite firm-specific are other softer external conditions loosely termed 'social' or 'environmental' in the true sense of the word as external conditions.

Four factors stand out.

1. **Environmental issues.** Though poorly specified by law and regulation, there is the quite general demand for companies to take environmental issues into account, such as liability for residues, rising energy prices, etc. This has now found form in the even looser concept of 'sustainability' that more investors are said to be taking seriously. There is also the Global Reporting Initiative and sustainability reports, and now demands for integrated reporting which pushes the already overloaded

disclosure demands to their limit. It is easy to dismiss these demands as sectional and as fads, but there are potential risks for a company and not just reputational. Boards need to be positioned to deal with these challenges. It will not come easily to demand of boards to sign off on, say, integrated reports when the question of liability has not been thoroughly discussed. Boiler plating reports, as already happens with MD&A reports, will only raise suspicions that the board is trying to hide something.

Highlights

- directors need to be effectively briefed in order to perform their monitoring and oversight roles
- general director training is the personal and professional responsibility of directors themselves, companies should focus on the need for effective briefing about company-specific challenges
- the corporate secretarial function has a major coordinating role to play, to prepare the board to fulfil its duties effectively

“
**company secretaries must
 seek to prepare the board so
 that it represents what the
 company really needs**
 ”

2. **Worker health and safety standards.** Around the world, worker health and safety standards are steadily rising and infractions are more frequently specified as criminal offences. This often means that board members might face criminal liability or at least the threat of it. They must therefore be assured that monitoring and control mechanisms are in place and be able to show (that is, *prove*) that they have undertaken their own due diligence.
3. **Human rights.** Like it or not, human rights also represent a significant liability for a company about which the board must be fully aware. This goes even further now to the need to demonstrate that the company's raw materials are not sourced from conflict zones, and perhaps even still further to the need to demonstrate that the company's suppliers have not sourced from such zones. Thus the boundaries of company liability have steadily widened, as risk management professionals understand.
4. **Product liability.** Product liability has tended to widen, demanding more attention by companies and

their boards. The long-term toxicity of the product, for example, must also be considered and not just the danger to the actual user.

In these four areas it will be important for the board and its members to be fully informed or briefed in order to perform their monitoring and oversight role. They must be well positioned. Call it 'training' if you wish, the outcome should be the same. By their very nature these new challenges are highly firm-specific so that general training, which board members should already have, is not a useful approach. What is needed is full briefing of the board about these issues by the full-time staff, foremost among them in terms of coordination will be the company secretarial function.

Of course, other issues do arise that will require careful board preparation. To give an example, when Enron imploded 'special purpose vehicles' suddenly entered the popular and board vocabularies. To position its board, General Electric immediately organised a weekend meeting of board members to inform them about the issues and about exactly how GE was, or might be, affected. This brought together many company specialists with the task to brief or position the board.

What are the consequences for corporate secretaries?

Clearly, the corporate secretarial function has a major coordinating role to play, first in understanding the issues and then in being able to bring together the internal and, where necessary, external resources to prepare the board to fulfil its duties effectively.

As noted above, one aspect will be to enable board members to fulfil their duty of due diligence with respect to internal controls and risk management procedures. This goes well beyond the normal functioning of the audit committee. Business life and societal expectations have gone much further. A company might have excellent and sound financial statements but still fail important standards and expectations.

This does not take away from the importance of institutes of directors and others in preparing potential board members early in their careers. Imparting broad knowledge and experience really is something that can be termed training. Raising general awareness about issues such as corporate governance and health and safety issues is much the same. Once a director joins a specific board, however, the challenges will be company-specific and much less general requiring a different approach by company secretaries.

Dr Grant Kirkpatrick

Dr Grant Kirkpatrick is a corporate governance consultant and economist, and was formerly the Deputy Head of the Corporate Affairs Division of the OECD. He will be a speaker and panellist in session five of the CGC 2012.

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Board structure

The case for diversity

For decades the debate over the relative merits of the one-tier versus the two-tier board structure has raged in academic papers, seminars, conferences and, yes, in boardrooms themselves. What is the answer to this dilemma? Corporate governance expert Dr YRK Reddy, who will be speaking in session one of the CGC 2012, believes we need a greater appreciation of diverse approaches to board structure since different models are suited to different markets.

Academics have sought to examine board structures mainly from a binary perspective – the one-tier/ unitary model and the two-tier one. Many have argued the merits of one over the other as eventual points of convergence. Some comparative studies have even sought to link the models with economic outcomes for the firm and for the economy. This debate continues even as countries known to represent these classic models themselves seem to be borrowing from each other and elsewhere. That should not be surprising as the management world in the US and UK has seen much learning from the Japanese and the Germans in earlier decades followed by the reversal apparent during the last decade.

The adaptations of the classical one-tier model

The one-tier model, which has been traditionally popular with the international investing community, is typified by boards in the UK and the US

and is followed in almost all countries in the common law tradition. When the Cadbury Report – which generated a slew of codes all over the world – drew attention to the need for independent directors, independent audit committees and separation of the chairperson from the executive, there was understandable criticism from some quarters that it was superimposing the supervisory board idea. It implied that the supervisory role and control function of the board must dominate over its more strategic management role. Further, in many of the common law countries, regulatory codes define corporate governance as the manner in which companies are 'directed and controlled' – a supervisory function – even as their law treats non-executive directors as 'officers at default' along with executive directors and key managerial personnel!

Some believed, and in many countries they still do, that these changes to the one-tier board model induces bureaucracy, erodes

competitiveness and imposes higher transaction costs in general. However, most felt that the opportunities provided by internationalisation and capital markets required that adjustment to bring in more investor confidence and their money. Further refinements, such as the introduction of lead independent directors and separate meetings of the independent directors, reinforce abundantly this disposition towards enhanced stewardship as against the managerial role.

Simultaneously, it has become the norm for all big corporations to have a formal management/ executive committee comprising the senior management which in many ways mimics the management board of the two-tier model but without a legal status, unless provided for in the articles of the company.

There is another manner in which the disposition of civil law countries with their two-tier boards has possibly seeped into





the one-tier system. The recent emphasis on corporate social responsibility; triple bottom-line and sustainability reporting; special statements regarding environmental compliance in respect of some types of industries; and even ethics (most exemplified by the King Committee III of South Africa); reflects the shift from the shareholder model to at least recognising the stakeholder idea. Further, despite the expected tradition of 'comply/apply or explain', some aspects have slowly started creeping into legislation, regulatory directives and prudential standards. This is exemplified by Sarbanes-Oxley in the US; the changes to listing agreements with securities exchange regulators in many countries; prudential standards relating to governance as issued by banking/ financial regulators; and the changing remits of statutory auditors in some countries.

One may recall that there were some in the UK who seriously argued in favour of

a two-tier model during the 1970s, but the issue that stalled the move was that of providing space for labour *a la* Germany. Nevertheless, in many common law countries where state-owned enterprises are significant, it is not unusual to have a stakeholder representative on the board by law or on the state's directive. Such representatives are often from the unions/ collectives, minority shareholder or depositors in the case of banks. The

state's intervention in board composition to represent public interest has also been evident intermittently in cases of major corporate failures or bailouts in these countries. This is most recently witnessed in the US and the UK, once again reflecting the stakeholder assertions witnessed in the civil law countries.

The changes to the classical two-tier board

Though the Dutch two-tier board has enjoyed a 400-year history, it is the German variety that has come to represent the model. According to German law, all public companies (*Aktiengesellschaften*) are required to have a management board (*Vorstand*) and supervisory board (*Aufsichtsrat*). The members of the supervisory board are normally representatives of shareholders and labour. By a separate labour-related law on codetermination, companies with more than 500 employees are required to have employee representatives (which could be up to 50% of the board where the company has more than 2,000 employees), elected through a highly-structured process. By law, the 'labour director' on the management board also may be required to be elected by the workers.

Highlights

- faith in the supremacy of the one-tier board structure has taken a severe knock in recent years following the global financial and economic crises
- both the one-tier and the two-tier board structures can, and do, co-exist as different adaptations to different market conditions
- there is evidence that both board models are learning from each other as civil law and common law jurisdictions are borrowing from each other and elsewhere



“
It would be hard to predict convergence to, or divergence from, any one model, but instead of being frustrated by a world of diverse models and practices, wise policy makers and institutional investors should welcome the prospect
”

The duties of the supervisory board are distinct from those of the management board – and are mainly hiring and disciplining the management board; monitoring its performance; providing control; approving accounts, etc. The articles of the corporation may also supplement the defined duties with possibilities of delegation, approval procedures and appellate process in the case of disputes between the two. Though the division of duties and responsibilities appear to be clear and the management board acts independently, it is observed by some that the supervisory board has tended to be more hands-on in recent years compared to the past. This is especially so as the German code enjoins the supervisory board to 'advise regularly' and be involved in decisions 'of fundamental importance to the enterprise'. The monitoring and disciplining role of the supervisory board is further enhanced in countries like Germany where it is not uncommon to

have concentration of ownership and where the markets for control may not be very active.

Moreover, many have pointed out that the adoption of a code on a 'comply or explain' basis in Germany is indicative of the influence of the common law countries. It is said that German corporations are more accustomed to following law, regulations and directives rather than self-regulatory codes of best practice as introduced prominently by the UK and followed by many others.

Is diversity a bad thing?

If one looks at the board structures adopted around the world, particularly in Asia, one is struck by the enormous differences. There are similar differences in board models among the BRIC countries. Some researchers take an optimistic view of the forces for convergence, such as institutional investors, major auditing/ consulting

firms and international accounting standards. But then, one must also take into account several other forces and factors that will ensure diversity in both form and substance.

1. Economic structures. The economic structures of countries vary vastly, especially in relation to the size of their capital markets; the need for foreign investment versus domestic capital; the size and importance of publicly-traded companies in economic development; ownership structures/ concentration; the extent and size of state-ownership; etc. Consequently, despite the meticulously stated 'business case' for a unitary corporate governance framework under assumed market conditions, many countries may be slow to warm to the idea. The one-tier board corporate governance framework may have been dominant over the last two decades – riding on the buoyancy of many Western economies, the promise of financial flows

and the growth prospects of capital markets – but all these have taken a severe knock in recent years following the global financial and economic crises. The appetite for market-driven policies has also been tempered around the world though none disputes their logic *per se*. Perhaps, there is a measured and muted pause now to understand how other types of economic policies and management have continued to be resilient – and perhaps greater appreciation of diverse approaches.

2. Political structures. Many countries, especially in Asia and Latin America, have diverse political structures, governance models and legal frameworks that are in transition in some manner or other. They may not be mindlessly bound by legal traditions and be path dependent/persistent to the extent assumed by some writers. Board structures and corporate

governance reforms are contingent on the larger changes and cannot race ahead or be in contradiction. Many of these countries seem to favour incremental changes and regulatory forbearance/ tolerance for differences in the pace of progress. This is especially so in the absence of evidence-based categorical solutions to corporate governance-related issues that seems to haunt both models.

3. Regulatory philosophy. International standards, such as those arising from the OECD principles, are themselves inclusive and accommodative of diverse board structures, ownership structures and legal forms.

4. Competitive advantages. Even if there are signs of convergence in some aspects, there is a strong likelihood of variance in operations/ substance that

may not necessarily be undesirable. Drawing from the world of management, corporations in different countries in the same product/ market segments have similar organisation designs, technological processes, accounting standards, information systems, operations, and supply and distribution chains – yet they are vastly different in the manner in which they function. They derive competitive advantage mainly out of the softer aspects in the organisation. Thus, when comparing British, Japanese, Korean and Indian management styles, one finds overwhelming apparent similarities and yet many differences. The same should be true of board structures.

In the light of the above It would be hard to predict convergence to, or divergence from, any one model, but instead of being frustrated by a world of diverse models and practices, wise policy makers and institutional investors should welcome the prospect as it only increases the alternatives for investments, depending on what works best in the given socio-cultural-political-economic-legal transitory conditions. This diversity ensures different markets for different types of finance/ investors, spreads the risks and promises greater value. It is already evident that, even as many countries in the West with either of the board models are tottering amidst crises, there are other countries and models that are thriving – no doubt investors are already finding great value in them.

Dr YRK Reddy

Dr YRK Reddy is an international advisor, speaker and commentator on corporate governance policy and practice. He will be speaking in session one of the CGC 2012.

The EU experiment

The EU is a perfect example of how one-tier and two-tier board structures can happily live alongside each other. The EU sought initially to impose standardisation on board structures, but over the last three decades this project has increasingly been seen as futile – there is no conclusive proof that one model is superior to the other.

Many countries in Europe now provide alternatives to companies (mostly by way of shareholder resolutions or articles of incorporation) to follow either one-tier or two-tier boards. The Netherlands, France, Italy and Portugal are prominent examples in this respect. Some like Denmark reportedly have an even more distinguishing system of a compulsory executive board and an optional supervisory board.

Moreover, since 2004 the EU has established the option of the 'Societas Europaea' (SE). A survey of these in 2009 indicated that there were 369 SEs registered, of which nearly 38% were shell/ shelf entities. They seem to be concentrated in countries where the two-tier system is compulsory with employee involvement. Most have opted for the single-tier board in these territories.

Conference Programme

Day 1 (October 5)

Time	Rundown and topics	Speakers/ panellists
8.15 am	Registration	
8.45 am	Opening address	Edith Shih <i>FCIS FCS(PE)</i> <i>President, The Hong Kong Institute of Chartered Secretaries</i>
8.55 am	Keynote address	Sir CK Chow <i>Chairman, Hong Kong Exchanges and Clearing Ltd</i>
9.15 am	Session one: 17th-century board – 21st-century businesses? The board structure we inherited: will it carry us through?	
	An accident of history? The board as we have inherited it.	Professor Merritt B Fox <i>Michael E Patterson Professor of Law, NASDAQ Professor for the Law and Economics of Capital Markets, Columbia Law School, Columbia University</i>
	The Chinese model – better, worse or just different?	Professor Li Weian <i>President, Dongbei University of Finance and Economics</i> Liu Tingan <i>FCIS FCS</i> <i>Deputy Chairman and President, China Life Insurance (Overseas) Company Ltd</i> Dr YRK Reddy <i>Founder Trustee & Head, Academy of Corporate Governance</i>
10.45 am	Networking break	
11.00 am	Panel discussion and Q&A Panel Chairman: Peter Greenwood <i>FCIS FCS</i> <i>Group Executive Director – Strategy, CLP Holdings Ltd</i>	Professor Merritt B Fox Professor Li Weian Liu Tingan <i>FCIS FCS</i> Dr YRK Reddy Gordon Jones <i>FCIS FCS</i> <i>Author & former Registrar of Companies, Hong Kong</i>
12.00 noon	Lunch	
1.15 pm	Session two: what good are you doing? Knowing your position and enhancing it.	
	Chairman – figurehead or leader?	To be confirmed
	Directors – watchdogs or lapdogs?	Charles Grieve <i>Senior Director, Corporate Finance, Securities and Futures Commission, Hong Kong</i>
	Company secretary – gatekeeper or minute-keeper?	Ben Mathews <i>Company Secretary, Rio Tinto PLC</i>
2.15 pm	Panel discussion and Q&A Panel Chairman: April Chan <i>FCIS FCS(PE)</i> <i>Company Secretary, CLP Holdings Ltd</i>	Charles Grieve Ben Mathews Anthony Muh <i>FHKSI</i> <i>Chairman, Hong Kong Securities and Investment Institute, and Principal, HRL Morrison and Co</i>
2.55 pm	Networking break	
3.10 pm	Session three: the usual suspects or new blood? Too grey for good? A diversity perspective.	
	Grey men in grey suits? The HKICS research. (Sponsor: CLP Holdings Ltd)	Professor Judy Tsui <i>FCIS FCS</i> <i>Vice-President (International and Executive Education), Polytechnic University, Hong Kong, and Independent Non-Executive Director, CLP Holdings Ltd</i>
	You've got talent? Broadening the board.	Dr Kelvin Wong <i>Executive Director & Deputy Managing Director, COSCO Pacific Ltd</i>

Time	Rundown and topics	Speakers/ panellists
4.00 pm	Panel discussion and Q&A Panel Chairman: Peter Greenwood FCIS FCS	Professor Judy Tsui FCIS FCS Dr Kelvin Wong Paul Chow GBS, SBS, JP <i>Chairman, Hong Kong Cyberport Management Company Ltd</i> Shalini Mahtani MBE <i>Founder and Board Director, Community Business</i>
4.50 pm	Closing address by Panel Chairman	Peter Greenwood FCIS FCS
5.00 pm- 7.00 pm	Cocktail reception	The Lounge, lobby Level

Day 2 (October 6)

8.30 am	Breakfast	Ballroom, Level 3
9.10 am	Keynote address: Corporate governance of listed companies in China and the role of the China Association for Public Companies	Dr An Qingsong <i>Secretary-General, China Association for Public Companies</i>
9:30 am	Session four: <i>join the board – you must be mad?</i> The pain versus the gain.	
	Eliminating the pain? Accountabilities and liabilities.	Robert Cleaver <i>Partner, Linklaters</i> Professor Low Chee Keong <i>Associate Professor in Corporate Law, School of Accountancy, Chinese University of Hong Kong</i>
	Maximising the gains? Effectiveness and contributions.	Keith Stephenson <i>Partner, Risk and Controls Solutions, PwC</i>
10.45 am	Panel discussion and Q&A Panel Chairman: Peter Greenwood FCIS FCS	Robert Cleaver Professor Low Chee Keong Dr Moses MC Cheng GBS, OBE, JP <i>Honorary President and Founder Chairman, Hong Kong Institute of Directors</i> Jim Woods <i>Asia Pacific Leader, Risk and Controls Solutions, PwC</i>
11.15 am	Networking break	
11.30 am	Session five: <i>the shape of boards to come.</i>	
	Booting up the board – the role of technology	Mark Peters FCIS <i>Head of Secretariat, Balfour Beatty PLC</i>
	Beefing up the board – the role of training	Dr Grant Kirkpatrick <i>Former Deputy Head of Division, Corporate Affairs, OECD</i>
	Beating up the board – the role of board evaluation	Simon Osborne FCIS <i>Chief Executive, Institute of Chartered Secretaries and Administrators</i>
12.30 pm	Panel discussion and Q&A Panel Chairman: Peter Greenwood FCIS FCS	Mark Peters FCIS Dr Grant Kirkpatrick Simon Osborne
1.15 pm- 1.30 pm	Closing address by Panel Chairman	Peter Greenwood FCIS FCS

Note: information correct at the time of going to print, please refer to the conference website (www.cgc2012.org.hk) for the latest details.

Speakers' corner

The speaker line-up for the Institute's Corporate Governance Conference 2012 brings together a wide range of perspectives and expertise to ensure an in-depth and lively exchange of views

Keynote speakers



Sir CK Chow
Chairman, Hong Kong Exchanges and Clearing Ltd

Sir CK Chow is a non-official member of the Executive Council of the Hong Kong Special Administrative Region of the People's Republic of China.

Sir Chow is also an independent non-executive director of AIA Group and Anglo American PLC, Chairman of the Hong Kong General Chamber of Commerce and Steward of the Hong Kong Jockey Club. He serves as a member of the Commission on Strategic Development of the Central Policy Unit and of the Standing Committee of the Shenzhen Municipal Committee of the Chinese People's Political Consultative Conference.



Dr An Qingsong
Secretary-General, China Association for Public Companies

Since joining the China Securities Regulatory Commission (CSRC) in 1995, Dr An has worked as Deputy Director, Director and Deputy Director-General of the Department of Listed Company Supervision, and Deputy Head of the Office of the CSRC Leading Group for Nontradable-Share Reform. Before joining the CSRC, Dr An served as Board Secretary to Beijing Tianqiao Department Company Ltd.

Speakers and panellists (in alphabetical order, left to right)



April Chan *FCIS FCS(PE)*
Company Secretary, CLP Holdings Ltd

Mrs Chan is the first elected President of the Corporate Secretaries International Association (CSIA), representing over 100,000 governance professionals across the globe.

She is also a member of the Citizens Advisory Committee on Community Relations of the Independent Commission Against Corruption in Hong Kong and a Director of the Hong Kong Coalition of Professional Services. Mrs Chan is the Immediate Past President of the Hong Kong Institute of Chartered Secretaries and the Chairman of its Technical Consultation Panel.



Dr Moses MC Cheng *GBS, OBE, JP*
Founding Chairman, Hong Kong Institute of Directors

Dr Cheng is the Senior Partner of Messrs PC Woo & Co, one of the longest-established firms of solicitors in Hong Kong. He also serves as an independent non-executive director of a number of companies whose shares are listed on the Stock Exchange of Hong Kong and Singapore. He is the founder Chairman of the Hong Kong Institute of Directors of which he is now the Honorary President. Currently, Dr Cheng is also the Chairman of the Education Commission.



Paul Chow *GBS, SBS, JP*
Chairman, Hong Kong Cyberport
Management Company Ltd

Mr Chow retired as the Chief Executive and Director of Hong Kong Exchanges and Clearing Ltd in mid-January 2010. Prior to this, he was the Chief Executive

of HSBC Asset Management, Asia Pacific (ex-Japan) Region, Chief Executive of the Stock Exchange of Hong Kong, and Chief Executive of the Hong Kong Securities Clearing Company Ltd. After retirement, Mr Chow has continued to engage in a number of business and community activities.



Robert Cleaver
Partner, Linklaters

Mr Cleaver is a Partner in the corporate department at Linklaters specialising in mergers and acquisitions and equity offerings. His clients include Jardines, HSBC, Glencore, Axa and many of the major international investment banks. Mr Cleaver has advised on a number of high-profile and transformational transactions for these clients.



Professor Merritt B Fox
Michael E Patterson Professor of Law,
NASDAQ Professor for the Law and
Economics of Capital Markets, Columbia
Law School, Columbia University

Professor Fox is a graduate of Yale College and of Yale Law School and

earned a PhD in economics from Yale University. His academic interests are in the areas of corporate and securities law, law and economics, and international securities regulation and comparative corporate law. Professor Fox previously practiced law with the New York City firm of Cleary, Gottlieb, Steen & Hamilton.



Peter Greenwood *FCIS FCS*
Group Executive Director – Strategy,
CLP Holdings Ltd

Mr Greenwood is a Fellow of the Institute of Chartered Secretaries and Administrators in the UK and The Hong Kong Institute of Chartered Secretaries.

Before joining the CLP Group in 1995, he was a solicitor with leading corporate law firms in London, Hamburg, Hong Kong and Paris. Mr Greenwood is a solicitor in England and Wales and in Hong Kong, as well as being qualified as an avocat in France.



Charles Grieve
Senior Director, Corporate Finance,
Securities and Futures Commission,
Hong Kong

Mr Grieve is responsible for policy matters relating to listed companies including corporate governance at

the SFC, has been closely involved with the new legislation on inside information and is responsible for liaising with the Stock Exchange of Hong Kong regarding changes to the listing rules. He represents the SFC at the International Organisation of Securities Regulators on the auditing and accounting committee and the corporate governance task force. Mr Grieve also represents Hong Kong at the OECD Asian Corporate Governance Roundtables.

Further information on the conference programme and speaker line-up can be found online at: www.cgc2012.org.hk.



Gordon Jones FCIS FCS
Author & former Registrar of Companies, Hong Kong

Mr Jones joined the administrative grade of the Hong Kong government in October 1973. In 1993, he was appointed the Registrar of Companies

and played a key role in the modernisation of the Companies Registry's operations, and company law and corporate governance reform, including initiating the rewrite of the Companies Ordinance in 2006. He retired from the civil service in May 2008 and was awarded the Bronze Bauhinia Star later that year. His book *Corporate Governance and Compliance in Hong Kong* was published in March 2012. He is an Honorary Fellow of Lingnan University, the Hong Kong Institute of Directors and the Hong Kong Securities Institute and a Fellow of the Institute of Chartered Secretaries and Administrators in the UK and The Hong Kong Institute of Chartered Secretaries.



Dr Grant Kirkpatrick
Economist, corporate governance consultant, and former Deputy Head, Corporate Affairs Division, Organisation for Economic Co-operation

Dr Kirkpatrick joined the OECD in 2003 and was responsible for the

revision of the OECD Principles of Corporate Governance in 2004. He has been a member of the Basel Committee's working group preparing the guidance on corporate governance matters for both banks and bank supervisors. Dr Kirkpatrick has also published three papers on the role of corporate governance in the financial crisis. He has also overseen the OECD's corporate governance work in Asia.



Professor Li Weian
President, Dongbei University of Finance and Economics (DUFE)

In addition to his role at DUFE, Professor Li is the director of the research centre for corporate governance at Nankai University and

the Chief Editor of the NanKai Business Review. He presided over the formulation of the Chinese corporate governance index (CCGI-NK), the Chinese corporate governance principles, Chinese corporate governance stock index and Chinese corporate governance appraisal systems. Professor Li has recently received the Award of Outstanding Contribution in Chinese Enterprise Management, the highest such award conferred in China.



Liu Tingan FCIS FCS
Deputy Chairman and President, China Life Insurance (Overseas) Company Ltd

Mr Liu is a member of the Insurance Advisory Committee of the Hong Kong government; executive director of the Hong Kong Chinese Enterprises

Association; a councilor of the Life Insurance Council of the Hong Kong Federation of Insurers; and a member of the Hong Kong – Taiwan Business Co-operation Committee of the Hong Kong Trade Development Council. Mr Liu received the award of 'Director of the Year' from the Hong Kong Institute of Directors in 2009. He was previously the Board Secretary General of China Life Insurance Company Ltd, the company's spokesman, and the general manager of Investment Centre of former China Life Insurance Company. Mr Liu is a member of the Listing Committee, Hong Kong Exchanges and Clearing Ltd.

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Professor Low Chee Keong
Associate Professor in Corporate Law, School of Accountancy, Chinese University of Hong Kong

Professor Low's research in issues pertaining to corporate governance and the regulatory framework of capital markets has published in journals in Australasia, Europe and the US. He is supported by private sector grants from CLP Group, Ernst Et Young, Eversheds LLP, Noble Group and Tricor Services. An Advocate and Solicitor of the High Court of Malaya, Professor Low is a member of both the Financial Reporting Review Panel and the Securities and Futures Appeals Tribunal in Hong Kong. He has previously been a member of the Listing Committee of the Stock Exchange of Hong Kong and also served on the board of directors of the Asian Institute of Finance in Malaysia.



Shalini Mahtani MBE
Founder and Board Director, Community Business

With a background in accounting and banking, Ms Mahtani has authored works and advised many companies on corporate social responsibility in Asia, diversity and inclusion, work-life balance and corporate community investment. In 2008, she was awarded an MBE in the UK for services to corporate social responsibility in Hong Kong. Ms Mahtani was further recognised by the World Economic Forum as a Global Young Leader in 2009 and with the title of 'Woman of Influence: Master in Charity, Arts or Culture' by the American Chamber of Commerce in 2011.



Ben Mathews FCIS
Company Secretary and Global Head of Secretarial Services, Rio Tinto PLC

Prior to joining Rio Tinto plc as company secretary in 2007, Mr Mathews spent five years with BG Group PLC as company secretary. He has previously worked for National Grid PLC, British American Tobacco plc and PricewaterhouseCoopers LLP. Mr Mathews is a Fellow of the Institute of Chartered Secretaries and Administrators in the UK.



Anthony Muh FHKSI
Chairman, Hong Kong Securities and Investment Institute, and Principal, HRL Morrison and Co

Mr Muh is an investment professional with more than 24 years' experience in both the traditional and the alternative investment management industry. He previously headed the Asia Pacific investments of Alliance Trust PLC and spent over a decade with Citigroup Global Asset Management as Asia-Pacific Chief Investment Officer and Regional Head of Investment. The current Chairman of Hong Kong Securities Institute and a past Chairman and a Fellow of Institute of Finance Professionals New Zealand Inc (INFINZ), Mr Muh is currently a council member of the Asian Corporate Governance Association and an Asia Advisory Board member of Euromoney Institutional Investor PLC.



Simon Osborne FCIS
Chief Executive, Institute of Chartered Secretaries and Administrators

Mr Osborne qualified first as a solicitor in 1973 and until 2003 his career was in the British railway industry in roles such as general counsel, company

secretary and main board executive director. Before taking up his current role, he was a freelance governance consultant and acted as the Joint Head of ICSA Board Evaluation, working successfully with companies, UK regulators and other organisations. Mr Osborne is immediate past chairman of ICSA's Company Secretaries Forum, which comprises mainly company secretaries from FTSE 100 companies. He is a member of ICGN.



Mark Peters FCIS
Head of Secretariat, Balfour Beatty PLC

Mr Peters joined Balfour Beatty PLC in 2008 as Head of Secretariat. His priority has been to establish a first-class company secretarial service at Group level and also to provide a

proactive service to the divisions and operating companies on company law and corporate governance matters. He also heads the Group community engagement programme and is one of the founding trustees of the Balfour Beatty Charitable Trust. Prior to joining Balfour Beatty, he held senior company secretarial and commercial appointments in BAE Systems, Guinness, Diageo and Xansa, the IT and BPO outsourcing company. He is a Fellow of the ICSA and a member of its Company Secretaries Forum.



Dr YRK Reddy
Founder Trustee & Head, Academy of Corporate Governance

With his work spanning over 32 countries, Dr Reddy is an international speaker and advisor in corporate governance policy and

capacity building. He has held roles as a member of high-level international committees on corporate governance, including for the Commonwealth; a long standing resource person for Global Corporate Governance Forum; columnist and author; and independent director. He was a speaker at the international conference of the Corporate Secretaries International Association in Shanghai in 2011.



Edith Shih FCIS FCS(PE)
President, The Hong Kong Institute of Chartered Secretaries

Ms Shih is the Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd overseeing all legal, regulatory and corporate

secretarial affairs of the group. She is qualified to practise law in Hong Kong, England and Wales and Victoria, Australia and is a Fellow of both the Institute of Chartered Secretaries and Administrators in the UK and the Hong Kong Institute of Chartered Secretaries. Ms Shih is also a member of the Standing Committee of Companies Law Reform, the Council of Hong Kong Institute of Certified Public Accountants and the General Management Committee of the Hong Kong Management Association, and from 2009 to 2012 was a member of the Listing Committee of the Hong Kong Stock Exchange Ltd.



Keith Stephenson

Partner, Risk and Controls Solutions, PricewaterhouseCoopers

Mr Stephenson is a member of the PricewaterhouseCoopers (PwC) global leadership team that runs its governance, risk and compliance practice and for the last five years he has also been running PwC's consulting practice in Singapore. Prior to this, Mr Stephenson worked in Hong Kong as Head of Internal Audit for Jardine Matheson. He has recently relocated back to Hong Kong where he now runs PwC's governance and internal audit practices in both Hong Kong and mainland China. He is a qualified accountant and for five years he also ran a pan-European business planning group for PwC.



Professor Judy Tsui

Vice-President (International and Executive Education), Polytechnic University, Hong Kong and Independent Non-Executive Director, CLP Holdings Ltd

Professor Tsui is Chair Professor of Accounting of the Hong Kong Polytechnic University, an Honorary Professor of the University of Warwick in the UK and has been appointed Visiting Scholar of the Sloan School of Management of the Massachusetts Institute of Technology in the US. Appointed by the Hong Kong government, she is a member of the University Grants Committee and the Research Grants Council. Professor Tsui has recently been appointed as a member of the Nominating Committee of the International Federation of Accountants (IFAC).



Dr Kelvin Wong

Executive Director and Deputy Managing Director, COSCO Pacific Ltd

In addition to his role with COSCO Pacific Ltd, Dr Wong is also an independent non-executive director of five listed companies in Hong Kong. He is the Chairman of the Hong Kong Institute of Directors, a member of the Main Board and GEM Listing Committee of the Stock Exchange of Hong Kong Ltd and a member of the Standing Committee on Company Law Reform.



Jim Woods

Asia Pacific Leader, Risk and Controls Solutions, PwC

Mr Woods has over 22 years' experience with PwC in London and Bangkok, the last 17 in Hong Kong serving clients across the Asia Pacific region. Today he leads the Risk & Controls advisory practice in China where services span technology, internal audit & controls, regulatory compliance, and sustainability. He is also the Asia Pacific leader for PwC's Risk and Controls business overall. Mr Woods has extensive experience in financial audit, corporate governance, accounting, and M&A services. He is currently the global relationship partner responsible for PwC's services to several multinational corporations.

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Through our Annual Report, online Sustainability Report and the CLP website, we give you a coherent and integrated picture of CLP and demonstrate our ability to create value now and in the future.



www.clpgroup.com

True purpose trumps false trading



Hong Kong's Court of Final Appeal (CFA) has allowed the appeals of two traders, quashing their convictions for creating a false or misleading appearance of active trading contrary to the market misconduct provisions of the Securities and Futures Ordinance (SFO), and setting aside their sentences. This case brings welcome clarity as to what constitutes a successful defence: it was not the purpose of the traders to create a false or misleading appearance.

Two day traders were trading derivative warrants in 2004–2005, buying and selling with each other and usually exiting at the end of the day. The profit made on each trade was small but such profits were possible because the warrant issuer, in common with other warrant issuers in Hong Kong at that time, offered a commission rebate scheme. Commission rebate schemes were banned in September 2006, the reason being that they had the potential to attract investors seeking to generate commission rebates rather than using derivative warrants as a form of investment.

The scheme allowed the warrant issuer to pay the traders a commission rebate per trade, and this rebate was higher than the brokerage fee for the trade. Simply, the traders could, and did, generate risk-free profit from trading, taking the difference between the rebates and the brokerage costs as their profit.

By trading frequently, the small profits made on each trade resulted in a significant amount over time. The trades also generated volume in the market, for example, on one of the days investigated, the traders did 74 trades representing 76% of the total market turnover.

The traders were charged with false trading, that is, the creation of a false or misleading appearance of active trading

in securities contrary to section 295(1) of the Securities and Futures Ordinance (SFO) – section 295(1) provides the general prohibition, section 295(6) makes it an offence. The trades described are usually quoted as examples of 'matched orders'; under the SFO section 295(5) this activity is presumed to be false trading. 'Wash sales', where the trading does not result in change of beneficial ownership, are also subject to this same presumption.

There was no dispute that:

- the traders conducted these activities to obtain the commission rebates, and
- the result of these activities was in fact the creation of a false or misleading appearance of active trading in the warrants.

The CFA decision

The Court of Final Appeal (CFA) held that, in the case of matched orders, there is a defence if there is an absence of a purpose to create a false or misleading appearance. This is so, even though the traders were reckless as to whether their trading caused a false or misleading appearance.

Useful guidance from the CFA

The CFA examined section 295 in depth and its judgment provides many observations that will be useful guidance for the financial services industry and market players.

A defence is available for wash sales and matched orders

The Court held that wash sales and matched orders will be regarded as false trading offences, unless there is an innocent explanation, that is, by showing

Highlights

- this case provides useful guidance on the interpretation of section 295 of the Securities and Futures Ordinance
- the CFA held that, in the case of matched orders, there is a defence if there is an absence of a purpose to create a false or misleading appearance
- the burden of proving absence of purpose falls on the defendants



“
**this case brings welcome
 clarity as to what constitutes a
 successful defence: it was not the
 purpose of the traders to create a
 false or misleading appearance**
 ”

that the purpose of the trading was not, or did not include, the purpose of creating a false or misleading appearance. The burden of proving this, on the balance of probabilities, fell on the traders.

The Court also provided other possible examples of innocent explanations, such as rearrangements of corporate structures or family relationships or fiscal structures.

Determining the purpose for the activity is key

The Court observed (there was no dispute on this point) that the traders' conduct

gave rise to a false and misleading appearance of active trading, but it concluded that their purpose was not or did not include the purpose of creating a false or misleading appearance of active trading: they engaged in their trading to earn the commission rebates that were on offer. Although the traders did not give evidence – a 'Statement of Admitted Facts' had been produced at trial – the Court inferred this from their conduct and the market conditions in which they acted, on the assumption that they were doing so in pursuit of their economic interests.

'Looking at the matter objectively,' Justice Litton NPJ said, 'there was of course an appearance of active trading, and in one sense an illusion of liquidity, on the days the appellants performed their operation. It was the result of such operation – the inevitable result. It was not the purpose of the operation.'

Use experts in the right way

Section 295 refers to three states of mind: intention, recklessness and purpose. The Court commented that none of the three expert witnesses called had expertise to express an opinion about somebody's state of mind, albeit they were experts on the market conditions and practices.

'The function of the experts was to put forward facts and matters concerning the derivative-warrant market from which the court may draw an inference concerning the defendants' subjective intention and purpose. Full stop. Here the experts appear to have strayed well beyond their field of expertise,' Justice Litton NPJ said.

'However, the witnesses in the present case went further than that. They gave their opinions about the purpose or purposes with which the appellants acted,' Justice Gleeson NPJ respectively said.

The statements by the expert witnesses about the traders' purpose were held to be inadmissible.

Meet the author

Jill Wong specialises in financial services and corporate regulatory and compliance issues. She was previously Deputy General Counsel at the Hong Kong Monetary Authority and has also worked in leading international law firms in Hong Kong. Before joining King&Wood Mallesons, she was head of the Asia-Pacific Regulatory Advisory Group, Legal and Compliance, at a major international bank. Jill is admitted in Hong Kong and England & Wales, and was named as a Leading Individual in Chambers Asia Pacific 2012.

Jill Wong

Counsel, Hong Kong, King&Wood Mallesons

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

中國公司行政 單元課程 Corporate Administration in PRC

MS 42-081-19 (21)

<http://hkuspace.hku.hk>

本課程單元旨在幫助學員掌握中國內地之公司行政管理職責所需具備的知識和主要技能，使學員具備向董事會和領導層提供行政管理最佳實踐方面建議的能力，並且確保符合外部監管和內部流程的規定。

課程大綱

- 分董事會秘書的職能和職責、角色和地位
- 董事會秘書規範履職的知識結構和資訊
- 人力資源管理
- 社會保險法
- 行政公文寫作
- 危機公關與公共關係處理

課程時間表

課程為期一個月

授課時間：4堂，每堂6小時，共24小時

上課時間：逢週六上課一堂，下午(2:00-5:00) 及晚上(6:00-9:00)

授課日期：11月3日，11月10日，11月17日，11月24日

授課地點：港島區其中一所教學中心


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- 11年教學經歷，主講社會保障、人力資源管理、公司法、勞動合同法等課程
- 曾受聘於中國移動、中國電信、夏新公司等企業，為中國移動和中國電信的營業經理、夏新公司新員工進行培訓

學費 港幣3,500元

課程查詢

 2867 8481(黃小姐) | 2867 8407 (鍾小姐)

 prcprogramme@hkuspace.hku.hk

每個單元課程出席率達75%或以上之香港特許秘書公會會員，可以獲得18個ECPD學分，但有關實際可帶往下一年度之ECPD學分詳情，請個別與公會聯絡。

電話：28816177； 電郵：ecpd@hkics.org.hk

A review of seminars: August – September 2012

13 August 2012



Eva Chan (Chair) and Raymond Yuen

From Eva Chan FCIS FCS(PE), Head of Investor Relations, CC Land Holdings Ltd and Chairman of Hong Kong Investor Relations Association, and chair of the seminar delivered by Raymond Yuen, CFA, FCPA, MHKSI, on 'Investor relations – points analysts look for, tips and taboos.'

'This seminar was well organised and was very informative. Mr Yuen gave a lot of practical examples to explain the issues to which investor relations officers should pay attention. The audience actively participated in the Q&A session indicating a strong interest in the investor relations topic.'

14 August 2012



Davy Lee (Chair) and Francis Rowlands

From Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group, and chair of the seminar delivered by Francis Rowlands FCMA MCIM AMIMI AAE, Executive President, Dragon-IBP Asia LED Training Programmes and Immediate Past Chairman, Global Markets Committee, CIMA, on 'Managing business process re-engineering in real-time commerce.'

'This is a very useful topic of particular interest to senior executives. The seminar was very informative and practical.'

16 August 2012



Lila Fong (Chair) and Andrew J Dale

From Lila Fong FCIS FCS(PE), and chair of the seminar delivered by Andrew J Dale, Partner, Commercial Litigation (Hong Kong Office), Orrick, Herrington & Sutcliffe LLP, on 'Bribery and corruption – paying the price.'

'In addition to highlighting the Prevention of Bribery Ordinance and the liability of organisations for failing to prevent bribery, Mr Dale identified 'red flags' that company secretaries should be aware of in order to help their employer in setting up adequate procedures to prevent malpractices from arising. Mr Dale's presentation was excellent and his knowledge on this subject was solid. This seminar served to remind company secretaries that they have an important role to play in this area, for the benefit of their companies and stakeholders.'

23 August 2012



YT Soon (Chair) and Annie Lau

*From YT Soon FCIS FCS, Director, Tricor Services Ltd, and chair of the seminar delivered by Annie Lau, Director - Tax Services, Deloitte Touche Tohmatsu, on **'Update on PRC corporate tax – focus on practice and cases.'***

'Annie is a very experienced practitioner in this field and she gave a precise, informative and comprehensive update on the mainland's corporate tax laws. The audience was given a practical understanding of the topic through examination of the features, implementation, implications, applications and development of various tax rules in China with reference to many examples and cases.'

6 September 2012



Eric Chan (Chair) and Paul Westover

*From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Paul Westover, Partner, Stephenson Harwood, on **'Cross border mergers and acquisitions.'***

'Paul used simple words to explain complicated concepts helping the audience to more easily understand the subject. Even though the seminar overran for some time, many attendees stayed after the end to personally consult with Paul.'

7 September 2012



Ivan Kuan, Gloria Ma (Chair), Nicholas Blackmore and Ethan Tay

*From Gloria Ma FCIS FCS(PE), Director - Corporate Secretarial, KCS Hong Kong Ltd, and chair of the seminar delivered by Ivan Kuan, Executive Director, Willis Hong Kong Ltd, Nicholas Blackmore, Solicitor, Kennedys, and Ethan Tay, Assistant Vice President, Chartis Insurance Hong Kong Ltd on **'An overview of the recent changes to the Hong Kong Personal Data (Privacy) Ordinance: the implications for companies' operational risks and suggested solutions.'***

'Mr Blackmore presented a thorough and comprehensive update of the Personal Data (Privacy) (Amendment) Ordinance 2012 while Mr Kuan drew the attendees' attention to cyber/ data risks. Mr Tay shared on risk transfer solution and various cyber risk insurance protection cases.'

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 qualified between 1 January 2005 and 31 July 2012 and 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).

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

Chan Sin Man
 Chu Lai On, Julia
 Chung Ching Han, Janice
 Fok Lai Yan
 Hui Po Shuen
 Law Ho Yee
 Lee Nga Cheung
 Lok Ming Kee
 Lui Kit Yin
 Tse Chor Yuk, Gloria
 Tsui Ka Yan
 Wat Wai Kwong
 Wong Pou Hong
 Wu Mei Lee
 Yeung Bik Shan
 Yeung Yun Ching, Candy
 Yu Chiu Ying, Cherin

New Associates

Chan Lai Yi
 Chan Mei Hing
 Chau Wing Sze, Cecilia
 Cheng Tak On
 Choi So Ngan
 Ho Choi Ha
 Lau Hoi Ling
 Lau Siu Yee, Jessica
 Lau Wing Kai, Anthony
 Leung Man Ling
 Li Yat Fai
 Lo Man Wai
 Lok Man Tsit
 Ng Ka Yan, Candy
 Ng Chui Shan
 Park Ji Eun
 Sin Man Yan
 Siu Yin Fai, Christine
 Wong Ka Wai
 Wong Po Yan
 Wong Wai Hung
 Yeung May Foon
 Yu Ching Lan

New Fellows



Lam Kwai Ming *FCIS FCS(PE)*

Ms Lam is currently a director of Excellent Corporate Services Ltd, which has a subsidiary in Shenzhen, China. She leads a team of over 20 professional and general staff and is responsible for the overall management of Hong Kong and China offices overseeing daily operations. Ms Lam spearheads business development and is responsible for the profit and loss of the Group. She holds a master's degree in Law from City University of Hong Kong and a master's degree in Corporate Finance from Hong Kong Polytechnic University.



Leung Sau Fung, Fanny *FCIS FCS*

Ms Leung is currently the Company Secretary of Sino Biopharmaceutical Ltd (stock code: 1177) and the Vice-President of the Group having joined in 1992 and previously served in various other roles. Ms Leung is in charge of the company secretarial functions for the Group and is responsible for the legal, compliance and corporate governance tasks, in addition to being involved in projects and contracts negotiation. Ms Leung graduated from Lingnan University in 1989 and held roles with other listed companies before joining the Group.



Tsue Sik Yu, May *FCIS FCS*

Ms Tsue is currently the Joint Company Secretary of CNOOC Ltd (stock code: 883), Manager of the Accounting and Administration Department and Company Secretary of CNOOC Insurance Ltd. She holds a master's degree in Corporate Governance from Hong Kong Polytechnic University. Ms Tsue is a Fellow, Certified Risk Trainer and also the Vice-President – Finance, of the Institute of Crisis and Risk Management. She is an Associate of CPA Australia and an Honorable Advisor of the Academy of Professional Certification Ltd. Ms Tsue became a member of the Institute's Company Secretaries Panel this year.



Lau Po Lai, Polly *FCIS FCS*

Ms Lau is currently the Regulatory Affairs Director and Global Regulatory Support in France Telecom. In conjunction with all the entities concerned and in compliance with the government authorities' guidelines, she contributes to develop the group's regulatory position at a global level. Ms Lau determines the global policies, training and awareness programmes, monitoring legislation and external compliance initiatives and provides an advisory role on legislation or regulation. She holds a master's degree in Business Administration from University of Leicester and is the member of Asia-Pacific Carriers' Coalition, the Society of Hong Kong External Telecommunications Services Providers Ltd and International Association of Privacy Professionals.



So Shu Fai *FCIS FCS*

Dr So is currently the Chief Executive Officer and an Executive Director of SJM Holdings Ltd (stock code: 880). He is responsible for the execution of the company's strategy and the overall management of the company's business. With over 35 years of experience in the casino business, he is also an executive director of Tonic Industries Holdings Ltd (stock code: 978) and an independent non-executive director of SHK Hong Kong Industries Ltd (stock code: 666). Dr So holds a bachelor's degree from University of Hong Kong and a doctoral degree in Management Studies from IMC/ Southern Cross University.



Yan Ha Hung, Loucia *FCIS FCS(PE)*

Ms Yan joined ITC Properties Group Ltd (ITCP Group; Stock Code: 199) in 2005 and is currently the General Manager (Corporate Services) and Company Secretary of ITCP Group and a director of its various subsidiaries. In these roles she leads the full range of company secretarial and legal functions of the Group. Prior to joining the Group, she worked as a named company secretary for several listed companies. After finishing her undergraduate study in business, Ms Yan has pursued further legal and business management studies.

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
Lo Oi Lan, Ellen ACIS ACS	China Eco-Farming Ltd	10 August 2012
Lau Shuk Yin, Connie ACIS ACS	Far East Global Group Ltd (stock code: 830)	15 August 2012
Chan Shiu Kwong, Stephen FCIS FCS	Neptune Group Ltd (stock code: 70)	27 August 2012
Soon Yuk Tai FCIS FCS	China XLX Fertiliser Ltd (stock code: 1866)	1 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 on re-election application procedures, please refer to the Institute's website or contact the Membership section at 2881 6177.

Institute reprimands Jeffrey Au Chun Fai GradICSA

The Institute's Disciplinary Tribunal recently considered a complaint brought against ICSA Graduate Jeffrey Au Chun Fai.

In August 2011 the Institute's Investigation Group learned that Mr Au, also a practising member of the Hong Kong Institute of Certified Public Accountants, had been disciplined by the HKICPA for professional misconduct which included confirming in writing compliance with the HKICPA's Corporate Practices (Registration) Rules when such was not in fact the case.

Following referral to the Disciplinary Tribunal, Mr Au queried why he should be subject to the Institute's disciplinary process, claiming never to have received any graduateship certificate from the Institute and declined to file any submissions or attend any hearing.

The Disciplinary Tribunal noted and accepted evidence that Mr Au had personally collected his graduateship certificate from the Institute's office and determined that the misleading nature of Mr Au's declaration to the HKICPA, along with his subsequent attempt to mislead the Institute in the course of disciplinary proceedings, amounted to violation of the integrity element of the 'fit and proper' requirements of the Institute's professional standard.

The Disciplinary Tribunal resolved that Mr Au be reprimanded with publicity to be given in the Institute's journal.

John Brewer
Chairman, Disciplinary Tribunal

Note: the period in which Mr Au was entitled to appeal the Disciplinary Tribunal's decision expired on 19 August 2012

Membership application deadlines

Members and Graduates are encouraged to advance their membership status once they have obtained sufficient relevant working experience. Fellowship and Associateship applications will be approved by 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.



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廣州交流團 (Guangzhou Study Tour)
2012 年 11 月 8 日至 9 日 (星期四至五)

獨家安排精彩行程:

- ☞ 參觀內地企業及政府機關
- ☞ 暢遊著名景點
- ☞ 品嚐特色美食

報名及查詢

請即致電 2881 6177 聯絡會籍服務部
或瀏覽公會網頁: www.hkics.org.hk

參觀內地企業及政府機關

廣州汽車集團股份有限公司: 豐田汽車生產廠

(Visit to Guangzhou Automobile Group Co., Ltd.: Toyota)

- ☞ 中國汽車行業內, 首間國有汽車集團引入民營企業機制
- ☞ 由產品製造至相關服務, 具有獨立完整的產、供、銷及研發體制
- ☞ 廣汽豐田的兩條生產綫年產量達 36 萬輛車
- ☞ 了解整體上市的案例及兩地上市之公司治理



中國南方航空股份有限公司: 飛行控制中心

(Visit to China Southern Air Holding Company: Flight Control Center)

- ☞ 國務院資委直接管理的三大骨幹航空集團之一
- ☞ 中國運輸飛機最多、航綫網絡最發達、年客運量最大的航空公司, 運營總資產達 1500 多億元人民幣
- ☞ 2011 年運輸量位列亞洲第一、全球第三, 已連續 33 年居國內各航空公司之首
- ☞ 了解在三地上市對公司治理與內控等制度的設立與執行



香港特別行政區政府駐粵經濟貿易辦事處

(Visit to the Hong Kong Economic and Trade Office in Guangdong)

- ☞ 致力促進粵港兩地的經濟及貿易聯繫及加強合作, 支援香港企業
- ☞ 讓會員加深了解在五省營商的最新法規及商貿政策; 以及香港特區政府對在內地港商的支援

著名景點

- 參觀西關大屋及廣州荔枝灣涌
- 暢遊廣東"小天壇"之稱的廣東圓玄道觀
- 夜遊花城廣場, 遠觀廣州新電視塔

特色美食

- 花都特色宴
- 泮塘五秀滋味宴
- 順德十二道菜



強制持續專業發展學時: 3.5
MCPD Points: 3.5

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Membership activities

Convocation 2012

The Institute's annual Convocation was successfully held on 15 August 2012 with Mr Anthony Rogers *FCIS FCS*, Former Chairman, Standing Committee on Company Law Reform and Former Vice-President, Court of Appeal, as our Guest of Honour. Over 60 newly elected Fellows, Associates and Graduates from the financial year 2011/ 2012 joined and celebrated their achievements.

Mr Rogers presented certificates to the newly elected Fellows. Associates received their certificates from HKICS President Edith Shih, Vice-president Polly Wong, as well as Council Member & Membership Committee Chairman Susie Cheung. Dr Maurice Ngai, Vice-president, presented certificates to the Graduates.

Other Council members attended the event, including April Chan, Jack Chow, Eddie Liou, Paul Moyes, Natalia Seng, Alberta Sie and Ivan Tam. Past President Neil McNamara and Membership Committee members including Elly Chan, Eric Chan and Gloria Ma also took part.

A Convocation news supplement was published in the Hong Kong Economic Times (*香港经济日报*) on the same day. More photos taken at the event are available at the gallery section of the Institute's website.



Guangzhou study tour

The Institute will organise a two-day study tour to Guangzhou on 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.

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

Happy Friday for Chartered Secretaries

To enhance opportunities for Members and Graduates to exchange views and share information and news on practical and interesting topics in a relaxed environment, the Institute has launched a new series called 'Happy Friday for Chartered Secretaries'. The inaugural gathering with chilled wine, drinks and snacks was held on 24 August 2012 with over 70 Members and Graduates attending.

Participants heard from Dr Albert Lung *FCIS FCS* about what constitutes a good annual report and also the latest developments in corporate governance disclosure.

More photos taken at the event are available at the gallery section on the Institute's website.



Dr Albert Lung sharing his views on annual reports



At the event



(Second row, from right to left) Dr Eva Chan, Membership Committee Vice-Chairman, Susie Cheung, Council Member and Membership Committee Chairman and Edith Shih, HKICS President, greeting members



(Second from left) Louisa Lau, General Manager and Company Secretary, HKICS, meeting with members



At the event



At the event

Members' networking: environment – visit to Mai Po

Members are invited to join this visit and experience the 'mangrove boardwalk' (红树林浮桥之旅) at Mai Po scheduled for 27 Oct 2012. You can enjoy the finest birdwatching experience and remarkable views of Inner Deep Bay while walking along the floating boardwalk in the middle of the magnificent mangrove forest.

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

Tips from the top

Subject Prize winners from the June 2012 IQS examination share their study experiences and tips for success with students of the Institute

Li Wing Man, Eunice,
Subject Prize winner – Hong Kong
Financial Accounting

Ms Li works as a company secretarial assistant for a local investment company. Although she studied science subjects as an undergraduate, she finds that business knowledge is indispensable for working in Hong Kong.

'Getting the Chartered Secretary qualification is one way to ensure a bright professional future. It can be difficult, however, to keep yourself motivated to study on a daily basis and I found that taking an interest in what was happening around the world helped keep me refreshed and enlivened the knowledge I gained from my reading. My desire to do well in the IQS examinations helped drive me to work harder and ultimately to achieve success.'

Ching Yuen Pak
Subject Prize winner – Corporate
Governance

Ms Ching graduated from the University of Hong Kong with a BBA in Accounting & Finance. She is currently working in an accounting firm.

'I understand the importance for companies to ensure that they are complying with all regulations and corporate governance procedures. I am interested to further explore these areas, and in particular how corporate governance regulations differ across jurisdictions.'

The main difficulties that I encountered in my preparation stemmed from my lack of experience in commercial organisations. There were also a lot of materials that I needed to digest and memorise before applying them in the examination. To overcome such difficulties, I paid attention to business developments and sought out related articles. I found CSj a particularly useful tool and reference point that students and members can use to keep themselves updated.

To prepare for the exam, I reviewed past papers at least two or three times in order to fully understand the topics and analyse the key points. I also referred to the examiner's report to evaluate the mistakes that have been commonly made by previous students.

By sitting the IQS examinations, I have become more familiar with the listing rules, corporate governance and the responsibilities of a company secretary. I am happy that being a member of the HKICS allows me wider choices in my career.'

Tam Man Sang
Subject Prize winner – Corporate
Governance

Mr Tam holds an MBA and professional qualifications in the accounting, banking, finance, and insurance fields. He is currently working in the area of risk management and corporate development.

'In order to better prepare for the IQS examination, I took the HKU SPACE exam preparatory course. This was quite useful as the tutor summarised all the prescribed study materials and printed out most of the requisite reference reading for us. I also reviewed the past exam papers as they provided us with practical insight into what the exam is likely to look like and also the key themes and subject areas most likely to be covered.'

During the examination, I found that it is important to plan your time and to carefully read the instructions on the question paper first. After this, break the questions into parts,

jot down the main points and use that as a framework for your answer. This will ensure that your answers are relevant, clear and concise. Legible and tidy handwriting is always favourable too!

I think that the IQS exam, with its combination of theory and practice, is well structured not only to give students the necessary business knowledge and understanding of regulatory environment, but also to develop our technical skills and abilities to formulate advice and make professional judgements.'

Ho Yiu Fei

Subject Prize winner – Corporate Administration

Mr Ho graduated from the Chinese University of Hong Kong, where he majored in accounting. He is now working in the field of accounting and finance.

'The Chartered Secretary qualification is highly regarded and widely recognised and so provides me with improved career development opportunities. I found the topics covered in corporate administration to be practical and closely linked to daily life. For example, knowledge of employment law and the MPF allowed me to learn more about how to become a successful corporate administrator.

Students must be aware that just memorising and regurgitating the facts will not be enough to get a good result. A deeper understanding of concepts and their application is required to successfully demonstrate knowledge when answering the questions. It is important to analyse the questions before answering and think about how to link the corresponding ordinance and concept. Having a realistic and practical schedule is also important in order to manage your study time so that it will not adversely affect your personal life.'

Gu Wenyuan

Subject Prize winner – Corporate Administration

Mr Gu graduated with a Bachelor of Laws from Shanghai Institute of Foreign Trade, with a major in international economic law. He is currently working as a senior compliance manager for Fosun International Ltd.

'My knowledge coming into the examination did not cover corporate finance so the concepts covered in this subject were totally new to me. I therefore researched extensively online to obtain more explanations and examples of some of the more abstract theories. I am also grateful to friends that had majored in finance who were able to assist me when needed.

However, it was not an easy task to master these subjects and with my study undertaken at weekends and holidays I was forced to sacrifice both sleep and leisure time. My effort was rewarded though and I found great joy when I was able to put newly understood theories into practice.

Pursuing the Chartered Secretary qualification not only strengthened my understanding of corporate governance, but more importantly equipped me with useful practical knowledge and widened my horizons.'

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

New Students Orientation

A New Students Orientation was held on 19 September 2012. During the session students got to know important facts about the examination, exemptions and student support services. There was also a book counter displaying useful IQS study materials.

The subject prize winners from the June 2012 examination were invited to join the orientation and received their certificates from Alberta Sie *FCIS FCS(PE)*, the Education Committee Chairman. Two subject prize winners (Corporate Governance), Tam Man Sang and Ching Yuen Pak, shared their experience and advice in preparing for the IQS examination with participants.



Alberta Sie and the awardees



Experience sharing by Tam Man Sang and Ching Yuen Pak

Study outline update – Hong Kong Taxation

An updated version (update of Chapter 14) of the Hong Kong Taxation study outline is available at HK\$300 each. Students who have purchased the study outline previously can get a free update.

Please contact the Education and Examination Section at 2881 6177.

Visit from the Association for Research & Development of Corporate Organisation, Taiwan (TCOA)

The representatives from the Association for Research & Development of Corporate Organisation, Taiwan (TCOA), visited the Institute on 31 August 2012 to explore opportunities for collaboration. TCOA delegates included Professor Allen Hu (National Taipei University of Technology), Professor Louis Chen (TCOA) and Ms Chen Yen Chu (TCOA).



Representatives of TCOA and the secretariat staff

Collaborative Course Agreement (CCA) Students Orientations

The Institute gave a briefing to CCA students about the Institute as well as the registration requirement policies at City University of Hong Kong and The Hong Kong Polytechnic University on 31 August and 8 September respectively.



At City University of Hong Kong



At The Hong Kong Polytechnic University

Student Ambassadors Programme (SAP) 2012 – Tea Reception

Mentors and mentees were invited to attend this Tea Reception, a SAP kick-off event, which was held on 15 September 2012. Alberta Sie *FCIS FCS (PE)*, the Institute's Education Committee Chairman, presented a token of appreciation to mentors and certificates to mentees.



At the Tea Reception



Sharing by Jackie Leung and Sindy Au

Jackie Leung, Graduate of the Institute, and student ambassador Sindy Au shared their experience in joining the programme. Annis Au (University of Hong Kong) was the Master of Ceremony of the event.



Group photo of mentors



Group photo of mentees

The Institute would like to thank the following members (in alphabetical order) for contributing their valuable time as mentors of the programme:

Angel Chan *ACIS ACS*
 Chan Bing Kuen, Eric *ACIS ACS*
 Chan Chun Hung, Eric *FCIS FCS (PE)*
 Elly Chan *FCIS FCS*
 Cavan Cheung *ACIS ACS*
 Edmond Chiu *ACIS ACS*
 Nelson Chiu *ACIS ACS*
 Sherman Chong *FCIS FCS*
 Ho Tak Wing *HKICS/ICSA Graduate*
 Eddy Ko *ACIS ACS*
 Wellman Kwan *FCIS FCS*

Ricky Lai *ACIS ACS*
 Louisa Lau *FCIS FCS (PE)*
 Alan Lee *ACIS ACS*
 Simon Lee *ACIS ACS*
 Anna Leung *ACIS ACS*
 Eddie Liou *FCIS FCS (PE)*
 Kitty Liu *ACIS ACS*
 Edmond Pang *FCIS FCS*
 Edith Shih *FCIS FCS(PE)*
 Patrick Sung *FCIS FCS*
 Maggie Sy *ACIS ACS*
 Wilson Toe *ACIS ACS*

Jerry Tong *ACIS ACS*
 Lindsay Wong *ACIS ACS*
 Michael Wong *ACIS ACS*
 Bernard Wu *FCIS FCS (PE)*
 Rebecca Yu *FCIS FCS*

The Institute also welcomes the following new mentors (2012–2013):

Douglas Chanson *ACIS ACS*
 Timothy Lam *ACIS ACS*

Upcoming activity

International Qualifying Scheme (IQS) information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute will share her experience on how the acquisition of the Chartered Secretarial qualification has affected her career prospect.

Members and students are encouraged to recommend this event to friends and colleagues who may be interested to learn more about the IQS. For details, please contact the secretariat at 2881 6177.

Date:	14 November 2012 (Wednesday)
Time:	19:00 – 20:30
Venue:	The Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Enrolment deadline:	7 November 2012 (Wednesday) Reservation is on a first-come-first-served basis. Participants will receive an email confirmation.
Speaker:	Sandy Yan ACIS ACS Senior Company Secretarial Officer, Kerry Trading Co Ltd



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HKEx publishes consultation paper on board diversity

Hong Kong Exchanges and Clearing Ltd (HKEx) published a consultation paper last month on proposed changes to the Corporate Governance Code concerning board diversity.

Statistics show that women hold 10.3% of the total directorships on Hong Kong listed issuers' boards. 40% (612 out of 1,518) of issuers do not have a female director, and 37% (564 out of 1,518) have one female director, on their boards. The majority of directors on Hong Kong listed issuers' boards are between the ages of 41 and 60 (67% or 7,075 out of 10,601). The average age of male directors is 53.7, while that of female directors is 49.1. 23% of directors are over 60 years of age and 10% are under 40.

This lack of diversity is not unique to Hong Kong and is recognised as a world-wide issue. Globally, many governments and exchanges are promoting board diversity either through legislation, regulation (including introducing 'comply or explain' provisions in their corporate governance codes) or voluntary efforts.

The rationale

'Board diversity has become an increasingly important issue globally and the debate in favour of diversity tends to focus on fairness, equality and corporate performance amongst other things. However, our principal objective of the proposed amendments is to enhance the effectiveness of the board and corporate governance. This consultation paper is part of our ongoing initiative to promote the development of higher corporate governance standards by encouraging transparency about the board and its

processes,' said Mark Dickens, HKEx's Head of Listing.

The consultation points out that diversity in the boardroom can promote better decision-making. In particular, a board may be vulnerable to groupthink when its members are homogenous. Moreover, a low representation of certain sectors of society (such as women and ethnic minorities) on companies' boards may demonstrate a failure to utilise the talent pool. A potential drawback of board diversity, however, is that there may be more conflict, less group cohesiveness and limited communication between subgroups.

The consultation adds that reporting on diversity policies may facilitate greater transparency and accountability by providing investors with information on corporate culture and governance practices that may enable them to make more informed voting and investment decisions.

Proposed measures

HKEx does not believe it would be appropriate to impose quotas on issuers' boards. The consultation gives three reasons for this:

1. Consideration of diversity should not be restricted to gender. Diversity of perspectives can be achieved by a broad spectrum of characteristics and attributes such as age, cultural, educational and professional background, amongst others.
2. A quota system may encourage the appointment of family members or recruiting 'token women'.

These 'trophy directors' may lack independence or may be at risk of being spread too thinly to provide adequate oversight. 'It may be argued that, as with other forms of affirmative action, selecting board members on the basis of gender or other specific characteristics is precisely the kind of stereotyping that society should be seeking to eliminate,' the consultation states.

3. Measures relating to board diversity would be new to Hong Kong's regulatory regime. Issuers should be given time and flexibility to work out their own approach. A 'comply or explain' regime would give issuers that flexibility.

Under the HKEx proposals set out in the consultation paper, the Code's Principle for 'Board Composition' will be revised to include 'diversity of perspectives'. This is so that when the issuer reviews its board composition, in addition to examining whether it has a balance of skills, experience and independence, it should also consider the benefits of diversity. The proposals include a new Code Provision (subject to 'comply or explain') stating that the nomination committee (or the board) should have a policy concerning diversity in the boardroom, and should disclose the policy or a summary of the policy in the corporate governance report.

There will be a new note under the Code Provision to clarify what is meant by diversity. Diversity will be defined broadly and HKEx does not propose to prescribe the criteria for considering diversity. 'We believe diversity of perspectives can be achieved through consideration

of a number of factors, including but not limited to gender, age, cultural/ educational background, or professional experience. Each issuer should take into account factors based on its business model and needs, form its own policy, and disclose the rationale for the factors used,' the consultation states.

It is also proposed that if the issuer has a policy concerning diversity, it should disclose any measurable objectives that it

has set for implementing the policy, and progress on achieving the objectives.

The Consultation Paper can be downloaded from the HKEx website (www.hkex.com.hk). The deadline for replies is 9 November 2012.

The Institute is preparing a report in conjunction with CLP which aims to build a diversity profile of Hong Kong boards. The report highlights research data on board

diversity in Hong Kong during the period of 2007 to 2011 among the HSI constituent companies in terms of gender, age, length of service, classification of directorships and professional qualifications and areas of experience.

Consultation conclusions on ESG reporting

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEx), has published consultation conclusions on its *Environmental, Social and Governance Reporting Guide*.

On 9 December 2011, the Exchange published a consultation paper to seek comments on its proposed ESG Guide for companies listed in Hong Kong. The ESG Guide is divided into four areas:

1. workplace quality
2. environmental protection
3. operating practices, and
4. community involvement.

Each of the areas is divided into three sections: aspects, general disclosure recommendations and key performance indicators. The consultation period ended on 9 April 2012.

The Exchange received 106 submissions from institutional investors, listed

companies, business associations, market practitioners and professional bodies, non-governmental/ non-profit organisations, individuals and companies that are not listed.

Respondents welcomed the proposed introduction of the ESG Guide. The Exchange has decided to implement the Guide, which will be appended to listing rules, subject to amendments based on respondents' comments. The Guide will be a recommended practice. It will apply to issuers with financial years ending after 31 December 2012. Subject to further consultation, the Exchange plans to raise the obligation level of some recommended disclosures in the Guide to 'comply or explain' by 2015. In the meantime, the Exchange may hold dialogue events with listed companies and relevant stakeholders as and when appropriate to discuss their views on the Guide.

'We note the growing importance of ESG performance and reporting globally. This

trend will affect how issuers do business and report. We consider that companies listed on the Exchange should be aware of these developments,' said Mark Dickens, HKEx's Head of Listing. 'We hope the Guide will help issuers start reporting and serve as a first step towards adopting international practices. We encourage issuers to follow international guidelines.'

The consultation paper and consultation conclusions are available on the HKEx website (www.hkex.com.hk) along with copies of respondents' submissions.

The Exchange has published a 'Frequently Asked Questions' (FAQs) section on its website which sets out useful resources related to the ESG Guide to help issuers start reporting. The FAQs can be downloaded from the 'Rules & Regulations/ Rules and Guidance on Listing Matters/ Interpretation' section of the HKEx website.



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

Visit to Mai Po

To enhance members' networking, your Institute has organised various networking events since May in three areas -Environment, Personal Development and IT.

Come and join this visit to experience "Mangrove Boardwalk" (紅樹林浮橋之旅) at Mai Po. You can enjoy the finest birdwatching experience and remarkable view of the Inner Deep Bay while walking along the floating boardwalk in the middle of the magnificent mangrove forest. Traditional Chinese cuisine at Tai Wing Wah Restaurant in Yuen Long has been arranged after the visit.

Details	Programme
Date : 27 October 2012 (Saturday)	Time:
Time : 9.30 a.m. -3.30 p.m.	8.30 a.m. Assemble at Kowloon Tong MTR
Fee : HK\$200 for Member/Graduate HK\$230 for Non-member	9.30 a.m. Visit to Mai Po, including:
Language : Trilingual tour in Cantonese, English and Mandarin (as appropriate)	- Birdwatching at Towerhide
	- Visit to Education Centre
	- Mangrove Boardwalk
	1.30 p.m. Lunch Networking at Yuen Long (大榮華酒樓)
	3.30 p.m. Arrive at Kowloon Tong MTR

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

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



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