

CSj

September 2012

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Cut and Paste?

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of legislative
borrowing

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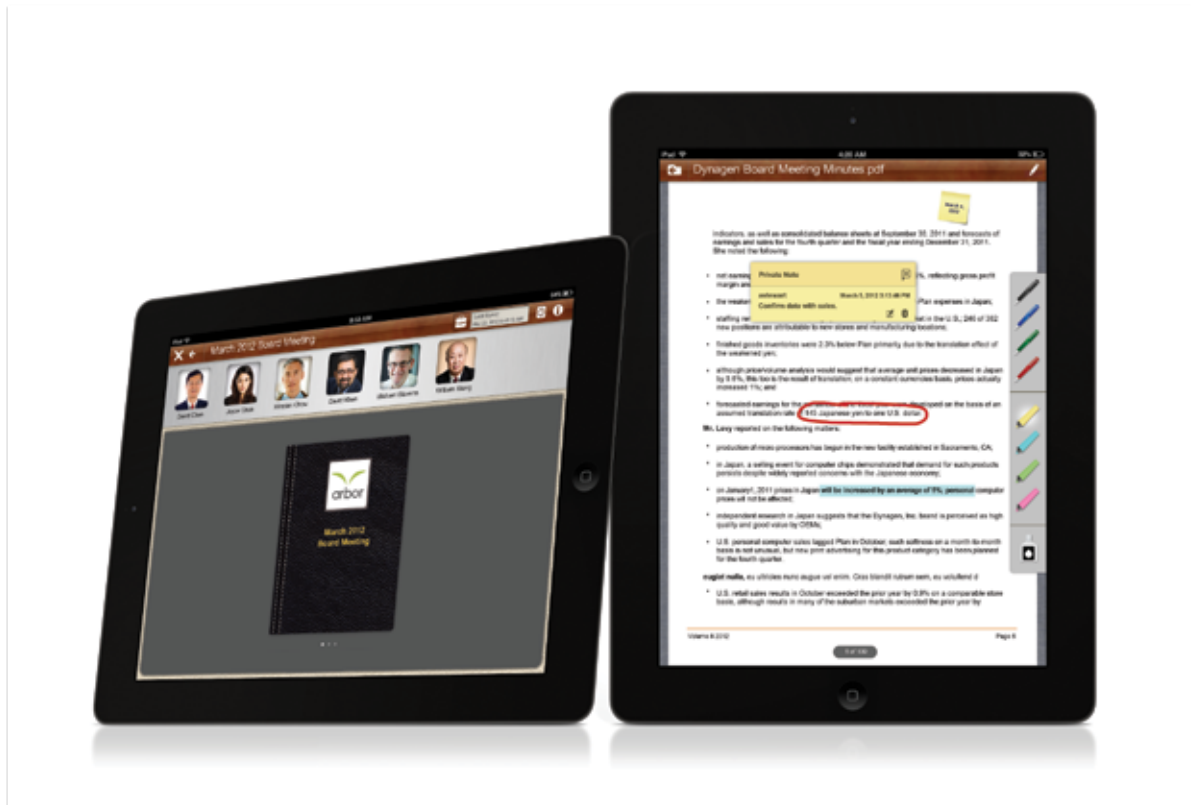
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, 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 5,500 members and approximately 3,200 students.

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Membership statistics update

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

Students: 3,260
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September 2012

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

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Circulation: 9,100

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

To subscribe call: +852 2982 0559 or

email: enquiries@ninehillsmedia.com

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 ISSN 1023-4128

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Andrew Sheng, President of the Fung Global Institute, is one of Asia's most respected commentators on global finance and corporate governance. As guest speaker at the HKICS' latest Members' Luncheon event, he delivered a passionate defence of better corporate culture and value systems reinforced by appropriate and timely regulatory interventions.

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The stock exchange has proposed new measures that seek to facilitate real-time disclosure in Hong Kong. The Institute, which has been lobbying for the abolition of the current prohibition of the publication of price-sensitive announcements during share trading hours, seeks your views.

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Your technical questions answered.





Interesting times

CGC 2012, Companies Ordinance and real-time disclosure

The Institute's eighth biennial corporate governance conference (CGC) will be held on 5 and 6 October 2012. Its theme, 'The 21st-century board – thoughts and trends of corporate governance', is both timely and thought provoking. This edition of CSj previews the event (see pages 20–22) and gives members an overview of what to expect. If you have not signed up to attend, I suggest you do so very soon as there are just a few seats remaining. More information on the CGC 2012 is available on the conference website: www.cgc2012.org.hk.

This year's line-up of speakers is of the highest order, drawing on expertise from the US, UK, Australia, India, mainland China and Hong Kong, thus providing a most impressive international mix of practitioners, regulators and academics, which gives the CGC its uniqueness, relevance and usefulness.

This year we are honoured to have two keynote speakers. The first is Sir CK Chow, Chairman of Hong Kong Exchanges and Clearing Ltd (HKEx), who will kick off events on Friday morning, while on Saturday we will be treated to an address by Dr An Qingsong, Secretary-General, China Association for Public Companies. I would like to thank them both on behalf of the Institute for their participation.

As we know, the Companies Ordinance 2012 has been gazetted having been passed by the Legislative Council on 12 July 2012. Launched in 2006, the extensive rewrite of the Companies Ordinance has significant implications

for directors and company secretaries of Hong Kong listed issuers, as well as those working with private companies. I am sure that this will add some extra spice to the questions during the conference.

In this edition a number of areas of interest in the new Companies Ordinance for company secretaries are examined (see pages 16–19), ranging from personal liability (especially for those of us who act in the role of company secretary) to organisation of general meetings. I urge all members to become acquainted with these and especially the issues concerning personal liability as well as the liabilities of other officers of the company and that of directors.

The new Companies Ordinance is expected to come into force in 2014 since its enactment awaits the passage of subsidiary legislation, so we have time to prepare. The Institute will ensure that adequate training and information in the form of continuing professional development (CPD) seminars and workshops, as well as relevant publications, are available. As ever, we welcome suggestions and feedback from members in terms of the type of information, training and/ or publications you would like the Institute to provide.

The other article I urge all members to read and take action on looks at the current HKEx consultation on real-time disclosure (see pages 26–29). The Institute has been very active in highlighting the need for Hong Kong to facilitate the real-time disclosure of price-sensitive

information and, in the interests of the market, to keep suspension to the absolute minimum, which was recognised in the HKEx consultation paper. As things currently stand, main board listing rule 2.07C(4) prohibits the publication of company announcements during trading hours, with limited exceptions. Thus, during share trading hours, Hong Kong listed issuers are often prevented from making real-time disclosures for a number of hours. While a waiver has been granted for some dual-listed companies, the situation is clearly unsatisfactory. The proposed solution of a short halt in the trading of shares of issuers making announcements via the HKEx website is an interim solution, however the article does ask some interesting and pertinent questions that members should give serious consideration to, especially those of us who work for listed issuers.

The HKEx consultation paper on trading halts is available on the HKEx website (www.hkex.com.hk) and the deadline for responses is 8 October 2012. You can send your comments to HKEx directly, or via the Institute: ask@hkics.org.hk.

Edith Shih FCIS FCS(PE)

变化在即

公司治理研讨会2012、《公司条例》及即时披露

公会两年一度的公司治理研讨会今年踏入第八届，订于2012年10月5至6日举行，主题为「21世纪的董事会——公司治理的观念与趋势」。这个主题相当合时，而且引人深思。今期预告研讨会的内容（见第20至22页），并提供讨论项目的概览。研讨会现在仅余极少量名额，尚未报名的会员，请从速登记。公司治理研讨会2012的详情，可于研讨会网页浏览：www.cgc2012.org.hk。

今届研讨会的讲者阵容强盛，有来自美国、英国、澳洲、印度、中国内地和香港的从业员、监管机构人员和学者，具备国际视野，使研讨会更显独特，内容切合实际，为出席人士带来实用的观点与知识。

今年我们很荣幸邀请到两位主题发言者。第一位是香港交易及结算有限公司（港交所）主席周松岗爵士，他将于星期五早上发言，为研讨会揭开序幕；星期六则有中国上市公司协会秘书长安青松博士发言。承蒙两位应允参与盛事，我谨代表公会向他们致谢。

2012年《公司条例》于2012年7月12日获立法会通过，其后已在宪报刊登。大规模重写《公司条例》的工作在2006年展

开；这次重写对香港上市公司和私人公司的董事和公司秘书有重大影响，预料新条例内容亦会是研讨会期间提出的热门问题。

今期的专题文章（见第16至19页）讨论新《公司条例》中公司秘书感兴趣的多个议题，由个人法律责任（特别是公司秘书的法律责任）以至如何安排股东大会等均有讨论，内容广泛。我促请所有会员熟习这些课题，特别是有关个人法律责任，以及公司其他高级人员和董事法律责任的规定。

由于附属法例仍有待通过，新《公司条例》预料将于2014年生效，因此我们仍有时间准备。公会将透过举行持续专业发展讲座和工作坊，以及编制相关刊物，为会员提供充足的培训和资料。一如既往，我们欢迎会员就公会提供的资料、培训及 / 或刊物的内容提出意见及回应。

另一篇值得留意文章，内容关乎即时披露的建议（见第26至29页）。港交所现正就有关建议进行咨询；请会员细阅文章内容，并采取行动。公会一直积极提出，香港有需要建立渠道，方便上市公司即时披露股价敏感资料，并应尽

量减少停牌，以符合市场利益。这些需要，在港交所的咨询文件中都得到确认。目前主板上市规则第2.07C(4)条规定，除少数例外情况外，上市公司不得在股份交易时间内刊发公告。因此，在股份交易时间内，香港的上市公司往往有数小时不能即时披露资料；纵使同时在两地上市的公司可获豁免，这情况显然并不理想。咨询文件建议上市公司经港交所网站刊发公告时短暂停牌，这是个短期的解决方案；文章提出一些有趣而一针见血的问题，会员应予认真思考，尤其是在上市公司工作的会员，更应深思。

港交所关于短暂停牌的咨询文件，可于港交所网站 (www.hkex.com.hk) 浏览，咨询期于2012年10月8日届满。会员可直接向港交所提出意见，或经公会提交，电邮地址为ask@hkics.org.hk。



施熙德

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The Hong Kong Institute of Chartered Secretaries Prize 2012

Call for Nominations

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

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

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

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

The nomination deadline is Saturday, 29 September 2012. Please visit www.hkics.org.hk or contact the Secretariat at 28816177 for more details.

Ask the expert

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

Q: *What are Hong Kong Depositary Receipts and how are they different to normal listed securities?*

A: Hong Kong Depositary Receipts (HDRs) are securities that are listed and traded on the Stock Exchange of Hong Kong. HDRs offer an alternative mechanism for foreign companies not able to list directly in Hong Kong due to restrictions in their home country or because of incompatibilities between their home and their listing jurisdictions' legal systems. Vale SA (Brazil) was the first company to list HDRs in December 2010. They have been followed by SBI Holdings (Japan) in April 2011 and Coach, Inc (USA) in December 2011.

HDR holders can become shareholders by converting their HDRs into shares in the home market; likewise, shareholders in the home market may convert their shares into HDRs in Hong Kong. The depositary agent for the HDRs facilitates the issuance and cancellation of HDRs.

HDRs are equivalent to share listings from the perspectives of listing, trading, clearing and settlement, under the current regulatory framework. However, they're different to listed shares in several ways.

Firstly, a HDR is a 'wrapper' of underlying shares in the issuer's home market. It can represent a fraction of a share, a single share or multiple shares. The depositary bank holds the shares through the local custodian, and issues HDRs in Hong Kong based on those shares. In effect, the HDR evidences holders' ownership of interests and rights in those shares of the company under a Deposit Agreement.

A company listing through the HDR process has to comply with the same general requirements as a share listing, although in practice, waivers on certain corporate communication requirements can be granted by the stock exchange. Holders of HDRs are entitled to dividends like a normal shareholder (if the

Computershare

issuer announces dividend distribution), although the dividend proceeds are actually net of the applicable

depository fees: the depositary bank receives a dividend in local currency in the home market before converting it into Hong Kong or US dollars at the issuer's discretion for distribution to the HDR holders.

For shareholders' meetings, HDR holders are not typically entitled to physically attend the meetings in the home market, but they can submit their voting intentions to the HDR registrar for delivery to the depositary bank. The custodian will cast the votes on behalf of HDR holders at the meetings.

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Your chance to ask the expert...

The challenges company secretaries face in their work tend to be much broader in scope than those faced by other professionals. Their remit goes from technical areas of corporate administration up to providing high-level corporate governance advice to the board. While this certainly adds to the variety of company secretarial work it does mean that practitioners need to be competent in a wide range of fields.

CSj's 'Ask the Expert' column is designed with this in mind, providing you with the opportunity to ask our

experts questions specific to the challenges you are facing.

To ask a question from Computershare or our other experts, simply email CSj Editor Kieran Colvert at: kieran@ninehillsmedia.com.

If you would like information about how your company can join our expert panel then please contact Paul Davis at: paul@ninehillsmedia.com, or telephone: +852 2982 0559.



Borrower beware

The unwritten rules of legislative copying

Drafting a law is a complex and costly business so the temptation to borrow, lock stock and barrel, from overseas precedents is great. The principle here, however, should be 'borrower beware' because the history of the diffusion of law is littered with failed legal transplants. This month, *CSj* looks at the advantages and hazards of legislative borrowing.

The first thing on the agenda when a jurisdiction is seeking to devise, or indeed revise, a piece of legislation or regulation is a 'comparative study' – research into overseas precedents for the law in question. If another jurisdiction just happens to have spent US\$20 million on revising an equivalent piece of primary legislation, it makes every sense to take a look at what they've come up with before you embark on a similar exercise. What happens next, however, is the interesting bit.

The simplest next step of course is for the home jurisdiction to help itself to all, or relevant parts, of the overseas law. This is the 'cut and paste' school of legislative drafting. It is not hard to see its appeal. There is no copyright in statutes so overseas legislation is open plunder, and it certainly comes cheaper (both in terms of time and money) than a full legislative review. Just to put that in context, back in 2005 the government estimated that the current Companies Ordinance rewrite exercise in Hong Kong would incur an annual recurrent expenditure of over HK\$20 million (the process has already been ongoing for six years), plus a non-recurrent expenditure of about \$19 million

to \$22 million for engaging external consultants.

External consultants, a dedicated team of staff to administer the project, public consultations – it all adds up. On the other hand, a tactical application of the 'cut and paste' method appears to offer, with the click of your paste button, a ready-to-enact, professionally-produced new law for minimal outlay. Sounds perfect? There is of course a catch, because effective legislation is a much more chimerical creature than you might expect. The 'text' of the law is easily

copied, but what makes it effective is not so easily acquired.

Advice from an experienced borrower

Hong Kong knows a thing or two about legislative borrowing. This has a lot to do with the accident of history which meant that, in 1842, this huddle of fishing villages in the Pearl river estuary suddenly acquired a very alien and unfamiliar legal system – wholesale. As is well known, the British administration imported British laws to administer the fledgling colony of Hong Kong. First came the Application of English Law Ordinance in 1843. The

Highlights

- comparative studies are standard practice for any well-designed legislative drafting or reform process, but the wholesale borrowing of overseas legislation has its hazards
- laws do not operate in a vacuum, differences between the lending and the borrowing jurisdictions can very easily render the borrowed law ineffective
- law enforcement is just as important as law drafting, so a key ingredient of success is the effectiveness of the legislative 'infrastructure' in place in the borrowing jurisdiction

“one does not start anything from scratch and we all stand on the shoulders of those who have gone before us”

Anthony Rogers, Former Chairman of the Standing Committee on Company Law Reform



first Companies Ordinance was enacted in 1865, and, like most of the other laws imported from Britain, it was copied almost word for word from a British prototype – in this case the UK's 1862 Companies Act.

'This method of legislating has been called legislative imperialism or legislative xeroxing,' says Ted Tyler, Deputy Principal Government Counsel at Hong Kong Department of Justice, and Senior Assistant Law Officer Commercial III (Companies Ordinance Rewrite). 'Local conditions and business vehicles, for example in Hong Kong the ancient form of Chinese limited partnership, were ignored for the benefit of the imperial masters. English company law was, like the Westminster political system, the civil service, cricket and afternoon tea, considered to be one of the blessings that the mother country brought to the benighted colonies.'

It might seem strange that a decade into the 21st century, Hong Kong's

company law still so closely resembles that of the UK, but the slow process whereby Hong Kong has been developing a company law to meet the needs of the more than half a million local and overseas companies registered here is highly revealing of the dangers and opportunities of legislative copying.

Anthony Rogers, Former Chairman of the Standing Committee on Company Law Reform (SCCLR), has been closely involved in this process. He emphasises that there is nothing necessarily wrong with borrowing from overseas. 'One does not start anything from scratch and we all stand on the shoulders of those who have gone before us. Whatever one does in the way of reform, one has to take notice of what others have done,' he says.

Nevertheless, he adds, caution is needed. 'The starting point has to be the system one has at present. One also has to take into account the particular economic and legal environment. Those are different in each country. Although company law

is statute-based and the company is a creature of statute, jurisprudence has evolved and different jurisdictions have different concepts. For example in Hong Kong, drawing upon UK law, directors of a company owe fiduciary duties to the company. In other jurisdictions the directors of a company owe fiduciary duties to the shareholders. In many respects that is a subtle distinction, nevertheless it is a point that has to be taken into consideration. If fundamental changes are to be made the matter has to be carefully considered and all the implications evaluated.'

As Mr Rogers points out, laws do not operate in a vacuum. Any would-be borrower therefore needs to have a thorough knowledge of:

1. the culture and environment from which they wish to borrow, and
2. the local culture and environment into which the legislation will be imported.

Based on this knowledge, he or she would then need to assess whether the legislation in question has any chance of becoming successfully 'localised'.

1. Think before you copy

Where you borrow your legislation from is perhaps the first issue that needs to be considered. Legal historians trace two dominant lineages in the diffusion of law globally – the common and the civil law families – and there are many differences, some subtle some fundamental, between these two lineages which need to be considered. The common law family, for example, puts more reliance on judicial interpretation, while the civil law tends to be more rule-based. Common law



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“ whether those laws are effective or not in their adoptive homes depends less on the wording of the legislation than on the legislative ‘infrastructure’ in place in the borrowing jurisdiction ”

systems tend to concentrate power in a unitary board, whereas civil law systems tend to rely on a two-tier board system where a supervisory board monitors the board of directors.

As we have seen, Hong Kong inherited its company law from the UK. Mainland China's company law has been influenced by both common and civil law traditions but it is certainly closer to the civil than the common law ethos. For example, it embraces both the supervisory board and the concept of co-determination whereby the board needs to take into account the interests of employees when making its decisions.

These differences clearly pose many challenges to attempts to harmonise the regulatory regimes in Hong Kong and mainland China. Ted Tyler reveals that the Companies Bill Team, during its early research for the current Companies Ordinance rewrite exercise, did look at PRC Company Law. ‘The view was taken that the Chinese legislation was in typical civil law jurisdiction style, which was not appropriate for the new Companies Ordinance’, he says.

A similar snag derailed the very thorough but largely ignored consultancy study of the Companies Ordinance carried out by Ermanno Pascutto and Cally Jordan in 1990s (see ‘The hazards of legislative borrowing: a case study’ on page 13). The SCCLR rejected many of the consultants’ recommendations that were based on the US Model Business Corporation Act on the basis that they were not suited to the Hong Kong environment.

Does this mean that Hong Kong is ‘stuck’ with a clone of UK company law? Respondents to this article answered a hearty ‘no’. In fact, the hazards of borrowing US legislation highlighted by the SCCLR in its review of the 1997 Consultancy Report also have implications for Hong Kong’s continued reliance on UK companies legislation. The UK, like the US, has far more diversely-held companies than in Hong Kong. The UK, like the US, also mandates far more publicly available information about companies’ financial performance.

2. Think before you paste

If a thorough examination of the ‘lending’ jurisdiction’s culture and environment

is needed before you help yourself to any of that overseas legislation on your wish list, just as important is a thorough examination of your own jurisdiction’s culture and environment.

As mentioned above, the written text is not what makes a particular piece of legislation work. The US Model Business Corporation Act and the UK’s Companies Act have been widely copied around the world, but whether those laws are effective or not in their adoptive homes depends less on the wording of the legislation than on the legislative ‘infrastructure’ in place in the borrowing jurisdiction. Does that jurisdiction have effective regulatory and legislative bodies, for example? Does it have independent and commercially literate courts? Does it have a free and active media? Law enforcement is just as important as law drafting. What is the point of having a beautifully crafted law imported from overseas when you are incapable of enforcing it locally?

Gordon Jones, Hong Kong’s former Registrar of Companies, pointed out in a recent HKICS ‘Fellows Sharing’ event that

The hazards of legislative borrowing: a case study

In 1994, the Hong Kong government launched a comprehensive review of Hong Kong's company law by commissioning a consultancy study of the Companies Ordinance. The consultants, Ermanno Pascutto and Cally Jordan, duly delivered their *Consultancy Report of the Review of the Hong Kong Companies Ordinance* in March 1997.

The Consultancy Report suggested that Hong Kong's Companies Ordinance was out of touch with the needs of the business community in Hong Kong. What Hong Kong needed to do was to make a break from the British tradition and, like many other former commonwealth countries such as Australia and New Zealand, it should reform its companies legislation with an emphasis on business facilitation and deregulation.

While the consultants were certainly advocating moving away from UK law, they were not arguing that Hong Kong should reinvent the wheel. There was a much better, and as it happens just as copied, model out there ripe for plunder – the US Model Business Corporation Act (MBCA). The consultants suggested that the Revised MBCA (it was first published in 1950 and revised in 1984), together with the Canada Business Corporations Act (CBCA), would be better suited to a major international financial centre like Hong Kong.

Some of the consultants' recommendations – for example, single director companies – have since been adopted. The majority, however, were rejected (the SCCLR accepted only 35 of the 112 consultants' recommendations). In its review of the Consultancy Report, the SCCLR concluded that one of the benefits of the report is that it highlights the issues involved in borrowing laws and legal ideas from overseas. As mentioned in the main article, one key issue is whether the overseas law or idea has any chance of adapting to the legal culture and environment into which it is being imported.

The business environment in the US contrasts in many ways to that in Hong Kong. One obvious difference is that far more US companies are diversely held. Thus, the recommendation of the Consultancy Report that directors'

interested transactions be made subject to majority shareholders' approval overlooks the fact that in Hong Kong interested directors are most likely to be controlling shareholders. The proposal was therefore rejected.

'A foreign rule, be it decisional or statutory, must be examined in the context of its legal and regulatory system,' the SCCLR pointed out in its *Report on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance* (February 2000). Thus, while some of the deregulatory innovations of the MBCA work fine in North America their transplant to Hong Kong could prove disastrous.

The consultants recommended, for example, making audits voluntary for private companies. A respondent to the SCCLR's consultation on the Consultancy Report pointed out that in the US there is a lot more publicly available information about companies' financial performance which compensates for the relatively lax companies legislation. In Hong Kong, without access to such information the audit serves an important function, particularly for creditors.

The lesson, therefore, is that local adaptation is key. The SCCLR pointed out in its review of the Consultancy Report that – 'being an international community, Hong Kong has been fully cognisant of the value of comparative studies. There is hardly a policy paper or reform proposal that does not refer to different solutions adopted in different jurisdictions.' However, the review also says that 'as an experienced borrower of foreign models, Hong Kong is also aware of the need to be cautious in such exercises.'

The 'Consultancy Report on the Review of the Hong Kong Companies Ordinance' (March 1997) and the 'Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance' (February 2000) are available on the Companies Registry website (www.cr.gov.hk). See 'Standing Committee on Company Law Reform/consultation papers and reports'.

a good capital market infrastructure is what underpins Hong Kong's success as an international financial centre. He also warned that this infrastructure cannot be taken for granted and must be strenuously defended. After all, it cannot be 'borrowed' overnight like a piece of legislation.

Where are we heading?

For over a century, revisions to the UK's Companies Act have been followed, after a few years delay, by corresponding revisions to Hong Kong's Companies Ordinance. This happened throughout the 20th century and the current revision of the Companies Ordinance has followed the same formula. The launch of the current rewrite in 2006 was in fact timed to give Hong Kong the opportunity to review the UK White Bill that led to the Companies Act of 2006.

In the context of Hong Kong's current status as an SAR within the PRC, not to mention current global geopolitical trends, we can expect Hong Kong's companies legislation to forge an increasingly divergent and independent path. In fact, Anthony Rogers points out, with each successive rewrite Hong Kong's Companies Ordinance has incrementally diverged with UK legislation.

'The UK has been subject to various requirements of European law,' he says. 'So, increasingly, differences have emerged. It is true to say that Hong Kong's company law has hitherto remained closer to the [UK] 1948 Act, if not earlier legislation. Now that the process of rewriting the Companies Ordinance is coming to an end, it is inevitable that more differences will emerge.'


It is hard to say at this stage where this path will lead us, but there are two clear trends to look out for:

1. the harmonisation of Hong Kong and PRC company law, and
2. the diffusion of global norms.

There appear to be limits on how far both of these trends will influence Hong Kong. We have seen, for example, a number of fundamental differences in the civil law-influenced company law in mainland China and the common law-influenced company law in Hong Kong. The global convergence of corporate governance standards might seem to be in a stronger position to influence the direction of company law reform in Hong Kong. The increase in cross-border listings and the globalisation of financial markets, together with the increasing influence of institutional investors, all point to a closer convergence of governance standards around the globe. Moreover, major advances have already been made in this respect over the last decade. Look, for example, at the way the International Accounting Standards Committee (IASC) has pioneered international accounting standards, or the way the International Organisation of Securities Commissions (IOSCO) has pioneered the harmonisation of securities regulation.

Anthony Rogers is cautious, however, about how far this process can go. 'Certain aspects of securities law are more likely to be harmonised,' he says, 'but again the diversity of the needs of different countries makes it unlikely that there can be a common code in respect of securities. Furthermore, the legal systems of different countries would make it difficult for there to be total uniformity.'

He adds that the endeavour to harmonise the regulation of insolvency globally has met with similar hurdles. 'I have had some dealing with efforts to harmonise cross-border insolvency rules. That can be achieved to a certain extent, but insolvency rules differ from country to country. In the US, for example, they differ from State to State. The best one can hope for is a degree of harmonisation coupled with a mechanism for cross-border cooperation, but even that meets grave practical problems.'

The unsavoury spectacle of world leaders failing to forge a consensus of action on the serious environmental challenges facing us at the moment does not encourage too much optimism about how quickly we are likely to see global governance standards gaining worldwide acceptance. National political interests have a well-known habit of getting in the way of international co-operation. 

A review of Hong Kong's new Companies Ordinance follows on pages 16–19.

For more information on the early history of Hong Kong's company law and business environment, see the 'Division of Duties and Responsibilities Between the Company Secretary and Directors in Hong Kong' (April 2001), by Phillip Lawton and Ted Tyler, available on the HKICS website under 'Publications/Research Papers'. The latest update to that research 'The significance of the company secretary in Hong Kong's listed companies' is also available on the HKICS website.



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*all sessions are subject to availability of speakers and venue

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The new Companies Ordinance

Getting a head-start

This month *CSj* gives company secretaries a head-start in preparing for the new Companies Ordinance, gazetted last month, by highlighting the key areas where the new ordinance will impact company secretarial work in Hong Kong.

Implementation of the new Companies Ordinance came a step closer last month with the publication of the law's finalised text on 10 August. This is not the end of the process, of course, enactment of the ordinance still awaits the passage of subsidiary legislation over the next year and is not expected until 2014.

The publication of the finalised ordinance, however, is a good opportunity for company secretaries to get a head-start in their preparations for

the changes that the new ordinance will bring to their work – and changes there are aplenty. This article highlights the provisions of the new ordinance that will impact company secretarial practice and those affecting company secretaries as officers of the company.

Changes affecting company secretarial practice

Board support and advice

The new ordinance includes several provisions designed to strengthen the

accountability of directors which will impact company secretaries' board support and advisory functions. For example, directors' duties of care, skill and diligence will be codified in the statute. While codification does not substantially change the expectations of directors' duties of care, skill and diligence, it is designed to provide better guidance to directors.

There was some controversy over whether directors' duties of care, skill and diligence

should be subject to a 'subjective' in addition to an 'objective' test. The government opted for both subjective and objective tests. The ordinance states that a director will be required to exercise the care, skill and diligence that would be exercised by a reasonably diligent person with:

- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (the objective test), and
- the general knowledge, skill and experience that the director has (the subjective test).

Directors' fiduciary duties remain uncodified and will continue to be defined by case law.

Other areas relating to directors which will impact company secretaries' board support and advisory roles include:

- an expanded requirement for seeking shareholders' approval to cover directors' employment contracts which exceed three years
- tougher restrictions on companies making loans to directors (the restriction now covers a wider category of entities and individuals connected with the director)
- restrictions on the ability of a company to ratify an act or omission of a director which amounts to negligence, default, breach of duty or breach of trust (a company may ratify such conduct if disinterested members pass an ordinary resolution to this effect), and

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the business review must include information relating to environmental and employee matters that have a significant effect on the company

”

- restrictions on the appointment of corporate directors (companies will need to ensure at least one director is a natural person).

Corporate reporting

There has been much interest among company secretaries in Hong Kong regarding the corporate reporting measures introduced by the new Companies Ordinance. This has mainly focused on the requirement for public companies and 'larger' private companies and guarantee companies to prepare a more comprehensive directors' report which includes an analytical and forward-looking 'business review'. The business review must include information relating to environmental and employee matters that have a significant effect on the company.

However, the ordinance also includes new provisions designed to facilitate 'small private companies' to prepare simplified financial and directors' reports. The following companies or groups can qualify for simplified reporting:

- A small private company or a small private group which satisfies two of the three conditions:
 - I. total annual revenue of not more than HK\$100 million
 - II. total assets of not more than HK\$100 million net, and
 - III. no more than 100 employees.
- A large private company or a large private group which satisfies two of the three conditions:

Highlights

- the new Companies Ordinance will have a significant impact on company secretarial practice in Hong Kong and will have implications for company secretaries' liabilities as officers of the company
- public companies, together with 'larger' private companies and guarantee companies, will be required to include in their annual reports an analytical and forward-looking 'business review'
- directors' duties of care, skill and diligence will be codified including both subjective and objective tests

Farewell Cap 32?

The new Companies Ordinance is not an 'amendment' ordinance. The reform process that began in 2000 when the Standing Committee on Company Law Reform (SCCLR) launched its Corporate Governance Review led to several 'amendment' ordinances in the years preceding the launch of the current Companies Ordinance rewrite exercise in 2006. The point was reached, however, where these piecemeal amendments were no longer enough – what was needed was a comprehensive rewrite.

The new Companies Ordinance does not just amend the old Companies Ordinance (cap 32) – it replaces it. The old ordinance will not cease to exist, however. It will be renamed the Companies (Winding Up and Miscellaneous Provisions) Ordinance and will become the repository for the two major areas excluded from new ordinance – the prospectus regime and the winding-up and insolvency provisions.

The future does not look good, however, for Cap 32. The Securities and Futures Commission plans to move the provisions relevant to the prospectus regime into the Securities and Futures Ordinance, and the government has said the winding-up and insolvency provisions will be subject to a separate corporate solvency and recovery law review exercise.

- I. total annual revenue of not more than HK\$200 million
- II. total assets of not more than HK\$200 million, and
- III. no more than 100 employees.

However, in addition to the size criteria above, the company or group also has to get the approval of members holding at least 75% of the voting rights and no objecting member.

- A single private company (not being a member of a corporate group) with all of its members' agreement in writing.

Some companies, including banking and insurance companies, cannot benefit from the above exemptions.

AGM management

The new ordinance contains several provisions that will significantly alter the requirements for annual general meetings (AGMs). One of the primary goals of the Companies Ordinance rewrite exercise was to reduce, where possible, companies' compliance burden. This is evident in a number of provisions relating to the AGM, for example enabling companies to:

- dispense with AGMs by unanimous shareholders' consent, and
- hold general meetings at more than one location using electronic technology.

The new ordinance also brings greater clarity to the procedures necessary for passing written resolutions. Apart from the removal of directors and auditors, matters that require approval by a members' resolution in general meeting

could be approved by a written resolution (that is, removing the necessity for a meeting) under the old Companies Ordinance, but there were no statutory rules regarding the necessary procedures. The new ordinance now contains rules for proposing, passing and recording a written resolution. A written resolution requires agreement in writing by all eligible members of a company. Directors and members holding no less than 2.5% of the total voting rights of all members may propose a resolution to be passed as a written resolution.

Company administration

The new ordinance introduces a number of reforms which will impact company secretaries' administrative functions. The concept of 'par value' for shares, for example, will be abolished. Under the old Companies Ordinance (Cap 32), the 'par' or 'nominal' value of a share was the minimum price at which the share could be issued. Upon the commencement of the new Companies Ordinance, there will be a mandatory migration to no par for all companies with a share capital. The existing share capital amount will be amalgamated with the share premium account and capital redemption reserve. There will be deeming provisions to ensure that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par.

The concept of the Memorandum of Association will also be abolished. This means that companies will be able to incorporate with the relevant incorporation form and a copy of the Articles of Association – there will be no need for a Memorandum. Existing memoranda will be deemed to be Articles of Association.

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the ordinance lowers the
threshold for prosecuting
an officer of the company for
a breach of various administrative
requirements
”



The new ordinance also introduces a number of reforms aimed at easing restrictions on share capital transactions. For example, all types of companies will be able to purchase their own shares out of capital, subject to a solvency test. Under the old Companies Ordinance this right was reserved for private companies.

The new ordinance also introduces an alternative court-free procedure for reducing capital based on a solvency test. It will also permit all types of companies (whether listed or unlisted) to provide financial assistance to another party for the purpose of acquiring the company's own shares or the shares of its holding company, subject to a solvency test. Under the current Companies Ordinance, subject to certain specified exceptions, there is a broad prohibition on the giving of financial assistance to purchase the company's own shares.


Changes relating to officers of the company

Several provisions of the new ordinance will have implications for company secretaries as officers of the company. Some of these will have a relatively minor impact. For example, company secretaries and directors will be able to

state the company's registered office (or another correspondence address) as their personal addresses in the register held by the Companies Registry or the company, rather than their home addresses.

Other provisions, however, may affect company secretaries' personal liability. For example, the ordinance lowers the threshold for prosecuting an officer of the company for a breach of various administrative requirements, such as a failure to file returns and documents on time with the Companies Registry. Under the old Companies Ordinance, an officer was liable for an offence only if he/ she 'knowingly and wilfully authorises or permits the default'. The new ordinance introduces the concept of a 'responsible person' who will be liable if he/ she 'authorises or permits or participates in' such breaches. The intention is not to prosecute for negligence, but the removal of 'knowingly and wilfully' significantly lowers the proof threshold.

The ordinance also empowers auditors to require a wider range of persons, including the officers of a company's Hong Kong subsidiary undertakings, and any person holding or accountable for the company or its subsidiary undertakings'

accounting records, to provide information or explanation reasonably required for the performance of the auditor's duties. The offence for failure to provide the information or explanation is extended to cover officers of the company and the wider range of persons. 

The Companies Ordinance rewrite exercise was launched in 2006. Following five rounds of public consultations, the exercise produced the Companies Bill which was introduced into the Legislative Council in January 2011. The Bills Committee completed its scrutiny of the Bill in June 2012. On 12 July 2012, the Companies Bill was passed by the Legislative Council and the finalised text has now been published in the government Gazette. The new Companies Ordinance is expected to be implemented in 2014.

More information is available on the websites of the Financial Services and the Treasury Bureau (www.fstb.gov.hk/fstb) and the Companies Registry (www.cr.gov.hk).

Conference preview

Is the institution of the board of directors, which emanates from the 17th century, fit for purpose in today's dynamic and complex business environment? A prominent line-up of speakers at the Institute's eighth biennial corporate governance conference, will address this question and provide insights into the challenges facing the 21st-century board.

Companies around the world, despite all their differences in culture, political institutions, and business traditions, are governed by boards of directors. True enough, there are many varieties of boards – two-tier, single-tier, employee-elected or solely shareholder-elected boards – but they are all recognisably the same institution.

Why is this so? Are there better ways to govern companies? Where did this institution come from? What measures are needed to ensure that the board operates effectively? These are just some of the questions that will be addressed by the Institute's eighth biennial corporate governance conference which will be held 5–6 October. This month's *CSj* gives you a preview of the key themes to be discussed and the all-important speaker line-up.

Dialogue over monologue

In keeping with previous years' corporate governance conferences, this year's forum has been designed to maximise the interaction between attendees, the speakers and panellists. For this reason, speaker presentations will be kept to a

maximum of 20 minutes and each session will end with an extended panel discussion taking questions from the audience.

The liveliness of the open discussions that have been generated in previous forums is one of the great strengths of the Institute's corporate governance conferences. Regular attendees of these conferences will be glad to hear that Peter Greenwood, Group Executive Director, Strategy, CLP Holdings Ltd, and April Chan, the Institute's Immediate Past President, will be chairing the panel sessions this year. They can be relied upon to ensure that the Q&A sessions produce a lively exchange of views; that tough questions are posed to the speakers and panellists; that no evasions are permitted; and that the proceedings are well oiled with the lubricant of good humour.

The conference venue will also be equipped with an interactive voting system for attendees to vote on the key questions raised by the conference. This was an innovation of the 2010 conference and was highly popular with attendees. Instant polling enables the audience to

engage with the proceedings more than is usually the case with forums of this kind and the poll results provide vital feedback for the Institute.

Key themes

17th-century board – 21st-century businesses?

The first session of the conference will look at the board as we have inherited it from its 17th-century origins and ask whether it is still functional today. Clearly, a breakdown on the scale of the global financial crisis indicates a failure of companies' governing bodies to ensure effective strategic direction and risk management – what can we learn from this debacle about how to improve the board's effectiveness?

This session will also look at the Chinese board structure, especially the functions of the supervisory board, and at the experience of companies dually listed in Hong Kong and mainland China – how do they reconcile the different board practices in these two places? This first session will also discuss other board structures, such as hybrid board models.





The roles of the key players

The global financial crisis also focused renewed attention on the various roles on the board and the second session of the conference will look at ways to improve the effectiveness of the roles of the chairman, directors and the company secretary.

The role of the chairman. The chairman clearly has a fundamental leadership role, but the conference will be asking what makes an effective chairman? What personal qualities are required and what principles should be established for the chairman to follow?

The role of directors. Improving the effectiveness of directors has been a long-standing issue for regulators and market participants. The stock exchange's recent changes to the Corporate Governance Code and associated listing rules in Hong Kong focused on ensuring that directors take an active interest in issuers' affairs and give companies appropriate time commitments. There are, of course, numerous other issues to be discussed – does the board have the right balance

of independent non-executive directors (INEDs) and executive directors? Are INEDs genuinely independent? Are board committees effective?

The role of the company secretary.

Company secretaries play a vital role in supporting boards of directors, both practically in terms of their administrative role in ensuring the board meets regularly, but also strategically in terms of the role the company secretary plays in advising the board on corporate governance matters. This role was given recognition in Hong Kong earlier this year when the stock exchange amended the Corporate

Governance Code to highlight the role that the company secretary should play in board support and ensuring compliance with corporate governance best practices. The conference's second session will discuss the company secretary role. Who should the company secretary report to? What qualifications are needed for the role? What differences characterise this role internationally?

Board diversity

The issue of board diversity has risen dramatically up the corporate and regulatory agenda in recent years. The third session of the conference will look at the benefits of better board diversity and the many issues it raises – for example, do quotas work? How can companies ensure a better diversity of board candidates through their director recruitment process?

The HKICS is working on a research report on this topic this year. 'China Light and Power has kindly agreed to sponsor this year's research into board diversity', says Mohan Datwani, the Institute's Technical and Research Director. 'The aim is to consider the report card of Hang Seng index constituents in terms of gender diversity. The HKICS is glad to collaborate with CLP as the topic of diversity is one that we propound. The Exchange, in its

Highlights

- this year's corporate governance conference has been designed to maximise the interaction between attendees, speakers and panellists
- the conference venue will be equipped with an interactive voting system for attendees to vote on key issues
- the forum will address the key themes related to board effectiveness, including the lessons of the recent global financial crisis and the role company secretaries should play in board support

recent soft consultation on the topic, has also indicated that the market would be consulted on the topic of whether there should be a code provision in the Corporate Governance Code requiring listed issuers to address whether they have adopted broad-based principles for diversity.'

Speaker line-up

Speakers are listed in alphabetical order. Full biographies of the speakers, together with the panellists and session chairmen are available on the conference website: www.cgc2012.org.hk.

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

Ronnie Chan
Chairman, Hang Lung Group Ltd and
Hang Lung Properties Ltd

Robert Cleaver
Partner, Linklaters

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

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

Dr Grant Kirkpatrick
Head, Corporate Affairs Division,
The Organisation for Economic Co-
operation and Development

Professor Li Weian
President and Deputy Party
Secretary, Dongbei University of
Finance and Economics, PRC

Join the board – you must be mad?

Companies will only get quality boards if they can recruit quality directors, but in the context of the rising accountabilities and liabilities of directors in recent years, what incentives, or perhaps more importantly, what disincentives are there

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

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

Ben Mathews
Company Secretary, Rio Tinto PLC

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

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


Professor Judy Tsui
Vice-President (International
and Executive Education),
Polytechnic University,
Hong Kong

Dr Kelvin Wong
Executive Director and Deputy
Managing Director, COSCO
Pacific Ltd

for people to join boards? The fourth session of the conference will look at these issues. Should, for example, INEDs be subject to higher standards if they are members of the audit committee as some recent disciplinary actions in Hong Kong seem to indicate? Have we lost sight of the concept of the collective responsibility of board members?

What is the future of the board of directors?

The last session of the conference will look at the future of the board of directors. Despite the prevalence of this governance structure around the world, there is no reason why companies need to be run in this way. As companies become ever larger and more complex, will the board of directors be cast aside in favour of some other governance structure?

This session will also look at the role of technology, director training and the role of board evaluation. Board evaluation is still relatively uncommon in Hong Kong – are Hong Kong boards missing out on this opportunity to assess performance and make necessary adjustments to survive in an increasingly complex and challenging economic environment? How frequent should evaluations be? Should there be an independent or external evaluation periodically? 

The Hong Kong Institute of Chartered Secretaries' eighth biennial Corporate Governance Conference will be held on 5–6 October 2012 at the JW Marriott Hotel Hong Kong.

For conference inquiries, please visit the conference website at www.cgc2012.org.hk.



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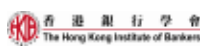
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A crisis of values?

Andrew Sheng, President of the Fung Global Institute and Chief Adviser to the China Banking Regulatory Commission, is one of Asia's most respected commentators on global finance and corporate governance. As guest speaker at the HKICS' latest Members' Luncheon event, he delivered a passionate defence of better corporate culture and value systems reinforced by appropriate and timely regulatory interventions.

Andrew Sheng is much in demand as a speaker on global financial reform and corporate governance. It is not hard to see why. He brings to the subject a wealth of knowledge of global markets – based on his experience on both sides of the regulatory fence internationally – but he also takes a no-nonsense approach to exposing the problems that can lead to the kind of crisis we saw emerge in 2007/ 2008.

He was therefore the ideal speaker to discuss 'post-crisis thinking on corporate governance' at the HKICS Members' Luncheon held on 18 July 2012 at the Foreign Correspondents Club. He started by asking whether we have learned any lessons from the financial crisis. Fortunately we have learned at least one, he suggested – namely that our faith in market discipline was misplaced.

'Markets are not efficient and stable on their own because clearly the system can be gamed,' he said. He cited various examples of how easily companies have been able to skirt the regulations designed to keep markets fair, open and stable. For example, the practice of hiding debts in

offshore 'special purpose vehicles' so that the company's accounts look healthy. He also cited the recent scandal at Barclays bank which was found to be manipulating the London Inter-bank Offering Rate (Libor).

There is some evidence, however, that regulators have started to take a tougher stance where companies overstep the line. Mr Sheng pointed to the response of the UK regulators to the Barclays scandal as evidence that we may be experiencing a 'sea change' in regulation. As the scandal unfolded, the Bank of England took the unprecedented step of telling Barclays that

its CEO Bob Diamond had to go. 'It used to be thought that is a decision for the market not the regulator,' Mr Sheng said, 'this suggests that regulators are now taking a more active stance.'

Systemic risks

That, however, was the end of the good news. Mr Sheng went on to describe how the 'systemic risks' highlighted by the financial crisis are still largely unaddressed. He focused on two of these – over-concentration and over-complexity. The former has been very high on the media agenda since the crisis.

Highlights

- one lesson we have learned from the global financial crisis is that markets are not efficient and stable on their own
- the systemic risks highlighted by the financial crisis, including the over-concentration and over-complexity of large multinational banks, are still largely unaddressed
- tougher enforcement actions are needed – in particular actions which impose personal accountability on managers
- company secretaries are ideally placed to advocate better corporate culture and value systems within companies





“
it is really about
changing company
culture since you
can't put everything
into the rules
”

Major multinational banks in particular have become 'too big to fail' which has resulted in serious moral hazard problems. 'When you get to the point where there is industry capture, regulatory capture and intellectual capture, you essentially don't have any regulation at all', said Mr Sheng.

He focused his attention, however, on the latter problem – over-complexity – which has not been so much discussed. As multinational companies have become ever larger and more complex, he suggested, they have become essentially unmanageable. 'Can you expect an independent non-executive director of a multinational bank operating in 180 countries, subject to a minimum of four regulators in each country, to really understand the compliance risks?' he asked.

He cited the debacle in May this year when JPMorgan Chase announced trading losses of US\$2 billion as a result of trading losses in credit default swaps. This was just another reminder that even the best risk managers cannot totally comprehend the risks they are facing – what hope then for managers and directors who do not

have an intimate knowledge of how the derivatives markets work?

Some suggested solutions

Finally, Mr Sheng turned to a discussion of possible solutions to the problems highlighted by the crisis. Firstly, he discussed the need to enhance regulatory enforcement. 'There has been a general complaint of not enough tough enforcement action – no significant heads on pikes – although this is changing,' he said. In particular, financial settlements may not be enough, while they are good for speedy results they are often borne by shareholders and there is little or no personal accountability by management.

He added, however, that there is a limit to how far legislation and enforcement can really improve governance practices on the ground. 'It is really about changing company culture,' he said, 'since you can't put everything into the rules.' Indeed, he pointed out that trying to put everything into the rules quickly renders those rules unintelligible. Over the last decade, financial regulation has become a lot more complex – 'subject to the interpretation of section one, sub-section

(e) of appendix three...' he quipped – to the point where it is largely unintelligible to non-specialists.

Moreover, even where you are able to draft intelligible rules and guidance for market participants, they can still be abused in practice. 'It is the corporate culture and value systems that are critical, reinforced by appropriate and timely regulatory interventions,' he said.

This is where, Mr Sheng concluded, the HKICS and its members have an important role to play. Company secretaries are ideally placed to be advocates of sound corporate social responsibility and corporate governance in companies. He urged the HKICS members in the audience to point out to their boards that, in the emerging business environment, directors will increasingly have to answer personally for any bad corporate governance and bad ethical practices they have been party to. 'Tell them, "if we don't get this right, you'll be the one sitting in front of the tribunal when the issue becomes public,"' he said. [CSj](#)

Andrew Sheng is the President of the Fung Global Institute (www.fungglobalinstitute.org) and Chief Adviser to the China Banking Regulatory Commission. He delivered his presentation 'post-crisis thinking on corporate governance' at the HKICS Member's Luncheon held on 18 July 2012 at the Foreign Correspondents Club.

More photos of this event are available in the Institute News section of this journal. Please refer to the HKICS website (www.hkics.org.hk) for news about similar events in the future.

Real-time disclosure

Is Hong Kong ready?

The Securities and Futures (Amendment) Ordinance, enacted earlier this year, requires listed companies to disclose price-sensitive information 'as soon as reasonably practicable' to the public. One rather significant 'practical' impediment to speedy disclosure, however, is listing rule 2.07C(4) which prohibits the publication of company announcements, with limited exceptions, during share trading hours. The HKICS seeks your views on how to facilitate real-time disclosure in Hong Kong.



Regulators in Hong Kong have made very clear their desire for Hong Kong listed companies to move towards the 'continuous disclosure' of price-sensitive information (PSI). Hence the enactment of a statutory requirement earlier this year for a listed company to disclose any 'inside information' to the public 'as soon as reasonably practicable' after such information has come to its knowledge.

This would seem to bring Hong Kong in line with global trends. In all of the major jurisdictions around the world, listed companies are expected to notify the market on a continuous basis of any information that is likely to have a material effect on the price or value of their securities. In most cases that means on or near real-time disclosure of PSI. In Hong Kong, however, companies are often prevented from making real-time disclosures for several hours because main board listing rule 2.07C(4) prohibits the publication of company announcements, with limited exceptions, during share trading hours.

Publish and be damned

This problem is not new. Back in September 2007, Standard Chartered found itself in a compliance dilemma which has become increasingly common for companies with dual listings in Hong Kong and overseas. Its disclosure obligations in the UK required it to release PSI as soon as possible. Its disclosure obligations in both Hong Kong and the UK required it to ensure the information was released simultaneously to all of its shareholders.

These two obligations came into a head on collision due to listing rule 2.07C(4) which prevented it from publishing the information to its Hong Kong investors during Hong Kong's share trading hours.

In the circumstances the only way out of this dilemma for Standard Chartered was to apply for a waiver from rule 2.07C(4). This waiver was granted and has since been granted to the five other companies dually listed in Hong Kong and the London Stock Exchange (LSE) – HSBC Holdings, Standard Chartered, Prudential, Glencore International and Kazakhmys – but Hong Kong Exchanges and Clearing (the Exchange), along with the Institute and other market participants, has been eager to find a more permanent solution to the problems arising from this rule.

The HKICS has been lobbying the Exchange for some time on the issue of real-time disclosure and the problems associated with listing rule 2.07C(4). Apart from the compliance dilemma highlighted above, the Institute's main concern is that rule 2.07C(4) requires listed companies to hold back information until one of the permitted publication windows (that is, before trading hours, during lunch time and after trading closes). This is an impediment to real-time disclosure and increases the potential liabilities of listed issuers since there is always the danger that the information may leak.

While the company can request a suspension of trading in its shares to avoid this problem, the Exchange may or may not allow such a suspension as listed issuers are supposed to be responsible for maintaining the confidence of the information. Moreover a suspension to trading causes significant disruption to the market.

A proposed solution

Many of the Institute's arguments have been accepted by the Exchange for some time. The Exchange is aware that Hong Kong lags behind international best practice on real-time disclosure – it is one of the only developed jurisdictions that does not allow PSI announcements throughout the day. But the devil, as they say, has been in the detail. The Exchange has been reluctant to permit PSI announcements during trading hours because they want to ensure that investors have time to absorb and react to the information provided.

As far back as March 2002, the Exchange consulted the market on allowing listed companies to publish announcements during trading hours. This was the

Highlights

- Hong Kong is one of the only developed jurisdictions that does not allow PSI announcements throughout the day
- the prohibition against company announcements during share trading hours has led to a major compliance dilemma for Hong Kong company secretaries, particularly those working for companies with dual listings overseas
- the stock exchange proposes to permit listed companies to publish PSI announcements on its website during share trading hours provided there is a short halt in the trading their shares

consultation which paved the way for listed companies to publish their announcements on the Exchange's website and abolish paid advertisements. A majority of the respondents supported the release of PSI announcements during trading hours. Until this year, however, the Exchange maintained the status quo due to its own and market concerns that permitting PSI announcements during trading hours would leave investors, particularly retail investors, with very little time to react to these announcements.

The Exchange's solution to this conundrum came in July this year with the publication of a consultation paper proposing to permit listed companies to publish PSI announcements on the HKExnews website during share trading hours provided there is a short halt in trading of the company's shares to enable investors to digest the contents of the announcement.

'Given today's technology, the status of Hong Kong as an international financial centre and the increasing globalisation of share trading, there is a clear need for the dissemination of listed issuers' announcements to be more timely and for the duration of any break in trading to be kept as short as possible,' says Mark Dickens, HKEx's Head of Listing.

The Institute broadly supports publication of price sensitive announcements during trading hours and in the interest of the market, keep suspension to the absolute minimum, but is eager to solicit the views of HKICS members on the issues raised.

Are 'trading halts' the answer?

Permitting the publication of PSI announcements during trading hours will solve many of the problems highlighted above. The Exchange is now consulting

on a short trading halt of a minimum of 30 minutes but up to two days on application of the issuer. Under the current arrangements, a suspension in trading means that trading can only be resumed, at the earliest, in the next trading session following publication of the announcement.

The intent is that this system would allow PSI to be disseminated and assessed by the market in a much more timely manner, and price discovery would occur as soon as possible after all material information relevant to a security's value has been released.

However, are trading halts the best solution available? Should Hong Kong adopt a model for the publication of PSI announcements without any halt in trading, as is the current practice in the UK? The Exchange points out that the investor demographic in the UK is different from that in Hong Kong, and it fears that such a system may put retail investors at a disadvantage. The release of real-time information means that investors need to access information quickly. While the technology to alert investors to any PSI announcements already exists and is widely available in Hong Kong (for example investors can subscribe to 'e-alerts' both from specific listed issuers and the HKExnews website), not all retail investors have signed up for them. The Exchange believes that trading halts will give investors more notice that an announcement has been made and more time to evaluate the information.

How will the new arrangements work in practice?

In principle the trading halt system may seem to be quite straightforward – trading is halted, the issuer publishes its announcement, trading resumes – but

there are, inevitably, a number of practical issues which need to be considered.

What should be the minimum trading halt period? The Exchange proposes to halt trading for at least 30 minutes after the PSI announcement is published. To facilitate price discovery, the Exchange also proposes a 10-minute single-price auction for the relevant shares and structured products upon the lifting of the trading halt. It adds that there should be at least 20 minutes of continuous trading after the auction, this would mean that the latest trading resumption would have to be at least 30 minutes before the end of the trading day (that is 3:30pm on a normal trading day). The Exchange further proposes that any trading resumption will take place on the quarter hour or the half hour.

What should be the maximum trading halt period? Sometimes the trading resumption may be delayed while the company gathers information, so the issue arises of when a trading halt should be considered a suspension? The Exchange proposes to consider any trading halt that continues for two days as a suspension.

Where should the PSI announcement be made? Companies will be required to make their PSI announcements on the HKExnews website. The Exchange proposes to provide information on those securities subject to a trading halt on a separate information page of its HKExnews website. 'We will disseminate the required information (for example, time of trading halt imposed, time of lifting of trading halt, etc) in a separate information page on the HKExnews website as soon as we receive the same from issuers to ensure timely access by market users,' the consultation states.

Should existing orders be purged?

The Exchange proposes to purge all outstanding orders, including orders for the company's shares and any related structured products, in the securities and derivatives markets at the time of the trading halt. The Exchange's trading system has already been enhanced to handle the suspension and resumption of an underlying stock and its related derivative products simultaneously. In the derivatives market there would not be a mid-session auction (described above) for stock options/ stock futures. Trading of related stock options and stock futures will resume upon the completion of the mid-session auction for the underlying shares.

Should companies be able to request a trading halt for results announcements? Results announcements can currently only be published outside trading hours. The Institute has raised with the Exchange its concern that the lunch time publication window (which

is the most common timeslot adopted by issuers for the publication of results and which this year was shortened to 30 minutes) may not provide sufficient time for companies to publish their results announcements. The Exchange's consultation proposes that results announcements should continue to be published outside trading hours as far as possible, but it adds that it may grant a trading halt for the publication of results announcements during trading hours where justified.

Should the existing arrangement for non-PSI announcements remain unchanged? HKEx proposes that the existing arrangement for non-PSI announcements to be published outside trading hours should remain unchanged.

Should the waivers currently in place continue to apply? As mentioned above, five companies with dual UK and Hong Kong listings have waivers to publish

PSI announcements without a trading halt – should these waivers survive the introduction of the new rules?

How much lead time is needed to prepare for the implementation of trading halts? The Exchange's consultation paper seeks views on whether three or six months would be sufficient lead time for the market to prepare for the new arrangements.

The HKEx consultation paper on trading halts is available on the HKEx website (www.hkex.com.hk). The deadline for responses is 8 October 2012.

Many thanks to April Chan, Technical Consultation Panel chairman and Immediate Past President of the Institute, together with Mohan Datwani, the Institute's Technical and Research Director, for their help in preparing this article.

Make a difference

With the Exchange's new consultation on implementing trading halts it looks like we might finally be seeing the end of Hong Kong's prohibition against PSI announcements during trading hours. This prohibition has been a major headache for Hong Kong company secretaries, particularly those working for companies with dual listings overseas.

The Institute became first became involved in this issue when many members voiced concerns about the problems associated with listing rule 2.07C(4). The issue was subsequently taken up by the Institute's Technical Consultation Panel (TCP) and Institute representatives have repeatedly highlighted the need for Hong Kong to facilitate real-time disclosure of PSI with the Exchange.

The Institute can therefore take some credit for the new proposed reforms – in fact the Exchange's consultation

paper acknowledges the Institute's contribution to this debate. This demonstrates the value of member involvement in the issues relevant to company secretarial practice in Hong Kong, and the Institute is keen to engage HKICS members in this and other topical debates. If you have any views on the questions raised by this article, you can get in touch with:

- HKICS Technical & Research Director Mohan Datwani by email: mohan@hkics.org.hk; or by phone: +(852) 2881 6177, or
- CSj Editor Kieran Colvert by email: kieran@ninehillsmmedia.com; or by phone: +(852) 2982 0559.

In addition, your comments and views on topical issues are always welcome on the Institute's blog: www.governancemaze.org.

A reminder

Consistent with the objectives of The Hong Kong Institute of Chartered Secretaries, this communication is a reminder of some of the salient responsibilities and attributes of a company secretary of a private company incorporated in Hong Kong

1. Residency qualification

If you wish to serve as a Company Secretary of a private company in Hong Kong, you must be a Hong Kong resident aged 18 or above, or a Hong Kong incorporated company, or an overseas incorporated company registered in Hong Kong as a non-Hong Kong company.

2. Status and eligibility

The Company Secretary is an officer of the company. The law states that one may not serve as the Company Secretary of a company if one is also the sole director. This cannot be circumvented by using another company of which one is also the sole director to act as the Company Secretary. In short a sole director and the Company Secretary cannot be one and the same.

3. Roles and responsibilities

As an officer of a company, you have roles and responsibilities. Even if you use a company to be Company Secretary, ultimately, you and others in your company could be held responsible for your actions, omissions and decisions. If you act contrary to, or omit to act in accordance with, your

roles and responsibilities, you could be subject to daily default fines and other consequences.

4. Advisory and compliance

You are an adviser to the directors. As such, you need to remind your directors frequently of their duty to comply with the requirements under applicable laws and regulations. These include, among others, the Companies Ordinance, Business Registration Ordinance and the Inland Revenue Ordinance.

5. Administration and record updating

You are an administrator and need to keep proper statutory books and records. You must continuously update them accurately. These books and records include minute books, statutory registers, common seals and books of accounts. You may need to retain them for seven years or more.

6. Record keeping and inspection

You need to keep the company records at the registered office or another place in Hong Kong, of which you should advise the public via appropriate filings at the Companies Registry. During office hours, anyone can come to you and ask to inspect and take copies of the registers of members, directors and secretary, by paying a reasonable fee.

7. Corporate filings

You need to make periodic filings. These include annual returns, information of and about directors and officers, any increase of authorised or paid-up capital and reporting of the passing of ordinary and special resolutions. There are deadlines for the submission of such filings of which you should be aware.

8. Audit and tax filings

You need to remind your directors to prepare the financial statements





incorporation, a company would continue in existence and there are continual obligations until the company is properly wound-up.

The Hong Kong Institute of Chartered Secretaries, July 2012

This reminder is available on the HKICS website (www.hkics.org.hk) see 'Publications/ Reminder to Company Secretaries of private companies incorporated in Hong Kong from the Hong Kong Institute of Chartered Secretaries'

This reminder is not intended to be exhaustive and does not constitute legal advice. You should seek appropriate advice from professionals as you require.

The Hong Kong Institute of Chartered Secretaries (HKICS) is a professional body which represents the Chartered Secretary profession in Hong Kong. It has over 5,500 members and 3,200 students, and promotes the study and practice of company, corporate and board secretaryship, as well as good corporate governance. Our members are sought after by employers for their qualifications and all-round training, including the qualification to serve as company secretaries for listed issuers. Our qualification is internationally recognised and transferrable, subject to requirements.

Please visit our website at www.hkics.org.hk for membership information and further resources published by us.

of the company, have them audited and approved annually at the annual general meeting of the company. These statements then have to be filed with the tax return of the company with the Inland Revenue Department for all business, whether within or outside Hong Kong.

9. Reporting and caution

You should know that there are increasing obligations, including reporting obligations, relating to anti-money laundering and counter-terrorist financing. Do not inadvertently become caught up in such matters through being a Company Secretary of a company, or lending your address to a company.

10. Due diligence

Whether you are a corporate service provider or a private person, you should only take on the roles and responsibilities of a Company Secretary after careful and due diligence. You need to know the

business activities of the company and its shareholders and directors and be continually updated on such information. Do not simply lend your address as the registered office of a company or incorporate a company for a client without having conducted due diligence on the client's background.

11. Continuation plan

Where the sole director is also the sole shareholder of a company, you should advise the sole director/ shareholder to adopt a continuation plan through the appointment of a reserve director, whose particulars must be filed with the Companies Registry.

12. Good corporate governance

For good corporate governance, as Company Secretary, you should familiarise yourself with in-house rules and management issues, where appropriate. You should also note that after

A review of seminars: July – August 2012

5 July 2012



Melissa Fung, Susie Cheung (Chair) and Chan Yat Man

From Susie Cheung FCIS FCS(PE), General Counsel & Company Secretary, the Hong Kong Mortgage Corporation Ltd, and chair of the seminar delivered by Chan Yat Man, Principal of Deloitte Touche Tohmatsu, and Melissa Fung, Associate Director of Deloitte Touche Tohmatsu, on 'Revised Corporate Governance Code and associated listing rules amendments':

'The talk given by Mr Chan and Ms Fung contained a lot of practical and helpful information on the latest amendments made to the Corporate Governance Code and the listing rules. The talk also provided a useful synopsis of what a listed company will need to do to comply with the amendments. The section "Governance, Risk and Compliance Programme" was of particular interest since it provided a step-by-step analysis of how to develop and implement strategic and tactical road maps for corporate risks to be identified through automation and process consolidation with a view to better managing such risks.'

24 July 2012



Katherine Cheng (Chair) and Wilfred Wu

From Katherine Cheng FCIS FCS, Deputy Managing Director, MB Lee & Co, Certified Public Accountants Ltd, and chair of the seminar delivered by Wilfred Wu, Principal, Specialist advisory services, BDO, on 'Shareholder disputes (re-run)':

'Shareholder disputes is a challenging topic. Wilfred Wu delivered a comprehensive and yet interesting seminar in the area. We learned from the seminar the various tactics and techniques in handling shareholder disputes. Our gratitude to Mr Wu.'

26 July 2012



Lila Fong (Chair) and Philip Tso

From Lila Fong FCIS FCS(PE), Fellow of HKICS and ICSA, and chair of the seminar delivered by Philip Tso, Director of Investment Services (Hong Kong), Towers Watson, on 'MPF – Can it be better? (re-run)':

'This was a well-received seminar thanks to the presenter's up-to-date knowledge and experience about the subject as well as his down-to-earth presentation style.'

30 July 2012



Richard Leung (Chair) and Sherman Yan

From Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Former President of HKICS, and chair of the seminar delivered by Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyers, on **'Disclosure of price-sensitive information: proposed statutory codification and its implications on insider dealing.'**

'Mr Yan demonstrated his expertise in this topic. He led the audience through the requirements about the latest price-sensitive information and insider dealing regime. He then quoted many interesting examples to help the audience fully understand how to comply with the same. The presentation was excellent and well received with lots of interesting and practical questions discussed.'

31 July 2012



Edith Shih (Chair) and Richard Leung

From Edith Shih FCIS FCS(PE), Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd, and chair of the seminar delivered by Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Former President of HKICS, on **'Understanding a scheme of arrangement under the statutory provisions of the Companies Ordinance and its practical uses, sanctioning procedures and judicial considerations.'**

'Richard is knowledgeable on the topic and was able to provide a practical perspective as to the application of the scheme for creditors as well as winding up and privatisation scenarios.'

1 August 2012



Eddie Liou (Chair) and Conrad Chan

From Eddie Liou FCIS FCS(PE), Director, TMF Hong Kong Ltd, and chair of the seminar delivered by Conrad Chan, Partner, King & Wood Mallesons, on **'Company Acquisition.'**

'Conrad delivered a well-organised and informative seminar on company acquisition. His presentation highlighted the essential features of company acquisition and through the use of case studies and practical examples, attendees gained a deep understanding of the areas covered.'

A review of seminars: July – August 2012 (continued)

3 August 2012



Susan Lo (Chair) and Brian Lo

From Susan Lo FCIS FCS(PE), Director – Corporate Services, Tricor Services Ltd, and chair of the seminar delivered by Brian Lo, DBA MBA MScIT MPA FCIS FCS HKPA CEng MIET, Vice-President and Company Secretary, APT Satellite Holdings Ltd, on 'Avoiding insider dealing – from theory to practice (re-run).'

'Brian did a very good job in this re-run seminar. He first of all shared seven real-life cases of insider dealing and gave a thorough review of the transactions concerned from both statutory and academic perspectives. He then walked the audience through the price-sensitive information disclosure rules and provided several useful tips. Attendees were all happy to take home a variety of pertinent advice.'

New Graduates

Congratulations to our 50 new Graduates! The Institute is pleased to announce that 46 students successfully completed the HKICS International Qualifying Scheme at the June 2012 examination:

Au Yeung Ho Yin	Gu Wen Yuan	Lam Lai Kuen, Katrina	Ng Man Wai	Tsui Wan Chau
Chan Ching Ching	Ip Wing Sze	Lau Chi Hung	Ng Wing Sze	Wong Chi Yan
Chan Nga Kam, Monica	Jiang Wei Yi	Lau Wing Kwok	Shiu Kam Mi, Phoebe	Wong Fai Kit
Cheung Chun Pun	Ko Tsz San	Lee Hiu Ning	Sze Chun Ting	Yip Wing Hang
Cheung Hin Man	Koo Ka Hei	Leung Ching Yan	Tang Chi Ching	Yiu Sau Wa
Ching Yuen Pak	Kwok Ka Ho	Leung Kei Pui	Tang Tsz Hang	Yuen Siu Wai Ivan
Chow Pui Ki	Lai Chi Wai	Leung Man Yi	Tsang Kai Yi	
Chung Chi Ho	Lai Po Sing	Leung Wai Tong	Tsang Sui Ying	
Fan Bui Sai	Lam Ka Kie	Li Shuk Wa	Tsoi Wing Kei, Michael	
Fu William	Lam Kam Hung	Ng Ka Tai	Tsoi Yin Hing	

In addition, four students graduated via the Collaborative Courses organised by the Hong Kong Polytechnic University, City University of Hong Kong and the Open University of Hong Kong:

Lai Siu Ling	Siu Yun Ying
Lau Shuk Fan	Yeung Hiu Ho

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
Wong Sau Mei ACIS ACS	MIE Holdings Corporation Ltd (stock code: 1555)	3 July 2012
Yuen Wing Yan, Winnie ACIS ACS	China First Chemical Holdings Ltd (stock code: 2121)	3 July 2012
Wong Wing Cheong FCIS FCS	Siberian Mining Group Company Ltd (stock code: 1142)	30 July 2012

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 (mcpsd@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 new Hong Kong Exchanges and Clearing (HKEx) requirements can be found in the consultation conclusions to the 'Review of the Corporate Governance Code and Associated Listing Rules' on the HKEx website (www.hkex.com.hk). To learn more about Institute's ECPD Programme, please visit the Institute website (www.hkics.org.hk).

Fee structure 2012/ 2013

The Council has approved the following fee structure for the financial year 2012/2013 starting from 1 August 2012. Please note that the subscription fees for 2012/2013 has remained unchanged from 2011/2012. Members and Graduates should have received the remittance advice in August 2012.

Members/ Graduates

Items	Amount (HK\$)
Annual subscription (note 1)	
Fellows	2,460
Associates	2,050
Graduates (holding the status for more than 10 years, that is on or before 1 August 2002)	2,460
Graduates (holding the status for less than 10 years, that is after 1 August 2002)	1,750
Retired rate (note 2)	500
Election fee	
Fellows (note 3)	1,000
Associates	1,850
Graduate advancement fee	1,750
Re-election fee	
Fellows	3,000
Associates	2,500
Graduates	2,000
Other fees	
Membership card replacement	55
Certificate replacement	110

Note 1: A HK\$100 coupon will be given to members who settle payment on or before 31 October 2012. A further HK\$100 coupon will be issued to members who settle payment by using the Chartered Secretaries American Express Card only. Coupons can be redeemed against the cost of ECPD seminars, members' activities and the Annual Dinner held between 1 August 2012 and 31 July 2013 subject to availability. To apply for your card, please contact the secretariat.

Note 2: Members are eligible to apply for the retired rate if they fulfill the following categories:

- are not be less than 55 years of age and have been a paid up member of the Institute for at least 25 years; however members who have reached the age of 60 may be exempted from the 25-year membership requirement at the discretion of the Membership Committee;
- are retired from employment and not contributing to the Mandatory Provident Fund Scheme;

Applications should be submitted for approval to the HKICS Membership Committee, the decision of which is final.

Note 3: The special Fellows Election Fee of \$1,000 has been continued for 2012/13.

Special rate for Fellowship election

Our Fellows are the leaders of the corporate secretarial profession, and are crucial in maintaining the growth of the Institute. Fellows are:

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

To encourage highly-qualified Associates to join our league of Fellows, the Institute will continue to offer a special rate for the Fellowship election fee at HK\$1,000 for 2012/13. All applications will be considered by Membership Committee on a regular basis.

For further details on admission requirements, please refer to the Institute's website or contact the Membership section at 2881 6177.

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.

Membership application deadlines

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

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

Submission deadlines	Approval dates
Saturday 8 September 2012	Tuesday 9 October 2012
Saturday 24 November 2012	Mid-December 2012

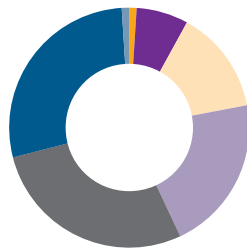
Members' remuneration survey

The Institute conducted a survey on membership services and members' remuneration in May 2012. A total of 700 responses were collected, including 100 from Fellows and 600 from Associates. The responses received are valuable in planning future membership services and activities. The Institute thanks members for their support and participation in the survey.

Section 1: General analysis of the background of respondents

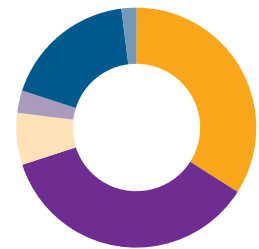
Years of working experience

Less than 4 years	1%
4 to 7 years	7%
8 to 12 years	14%
13 to 18 years	21%
19 to 25 years	28%
Over 25 years	28%
No answer	1%



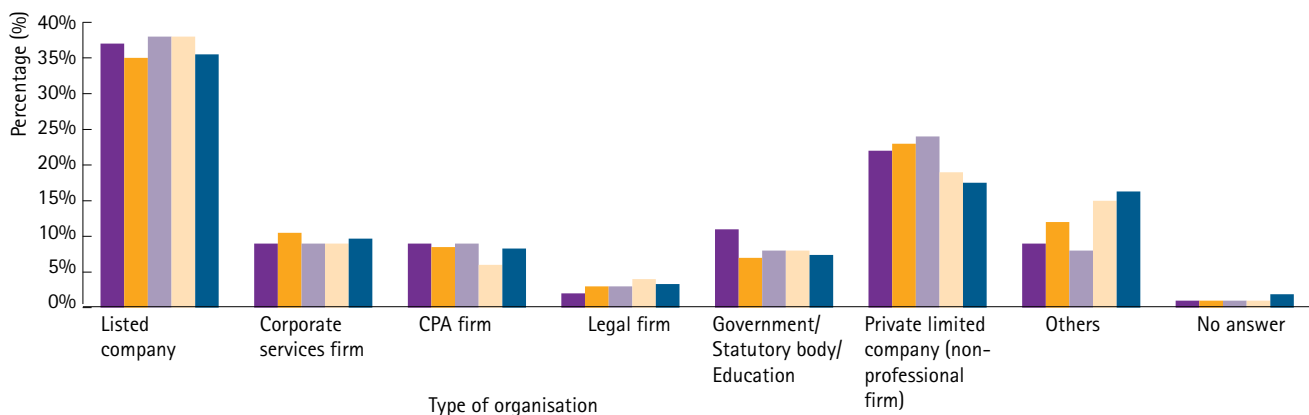
Areas of job activity

Managerial	34%
Company Secretarial	36%
Accountancy	7%
Administrative	3%
Others	28%
No answer	2%



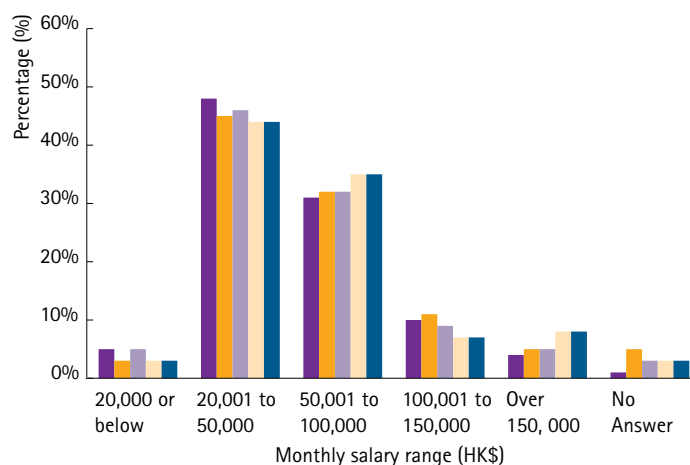
Comparison of employment organisation type from 2007/2008 to 2011/2012

	2007/08	2008/9	2009/10	2010/11	2011/12
Listed company	37%	35%	38%	38%	36%
Corporate services firm	9%	11%	9%	9%	10%
CPA firm	9%	8%	9%	6%	8%
Legal firm	2%	3%	3%	4%	3%
Government/Statutory body/Education	11%	7%	8%	8%	7%
Private limited company (non-professional firm)	22%	23%	24%	19%	18%
Others	9%	12%	8%	15%	16%
No answer	1%	1%	1%	1%	2%



Comparison of the distribution of monthly salary range from 2007/2008 to 2011/2012

HK\$	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012
20,000 or below	5%	3%	5%	3%	3%
20,001 to 50,000	48%	45%	46%	44%	44%
50,001 to 100,000	31%	32%	32%	35%	35%
100,001 to 150,000	10%	11%	9%	7%	7%
Over 150,000	4%	5%	5%	8%	8%
No answer	1%	5%	3%	3%	3%

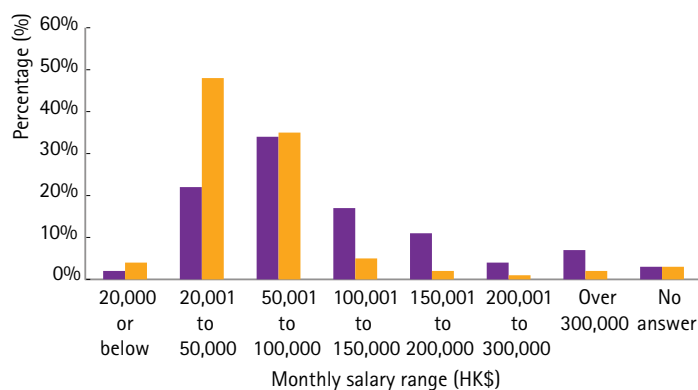


Remarks: The salary ranges of previous years have been slightly adjusted for the purposes of comparison.

Section 2: Analysis of the remuneration for Fellows vs Associates

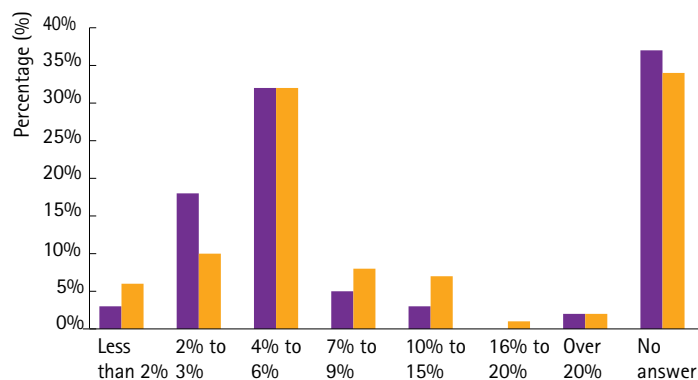
Monthly salary range

HK\$	Fellows	Associates
20,000 or below	2%	4%
20,001 to 50,000	22%	48%
50,001 to 100,000	34%	35%
100,001 to 150,000	17%	5%
150,001 to 200,000	11%	2%
200,001 to 300,000	4%	1%
Over 300,000	7%	2%
No answer	3%	3%



Actual salary increment in 2012

HK\$	Fellows	Associates
Less than 2%	3%	6%
2% to 3%	18%	10%
4% to 6%	32%	32%
7% to 9%	5%	8%
10% to 15%	3%	7%
16% to 20%	0%	1%
Over 20%	2%	2%
No answer	37%	34%



Members' remuneration survey

Bonus received in 2012

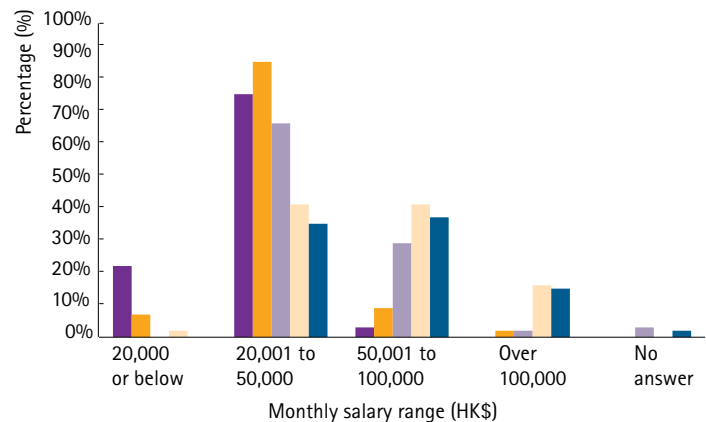
Number of month(s) of monthly salary	Fellows	Associates
less than 1	2%	4%
1 to 2	24%	29%
2 to 3	14%	18%
3 to 5	14%	12%
Over 5	12%	8%
No answer	34%	29%



Section 3: Analysis of the remuneration of respondents working in the company secretarial field

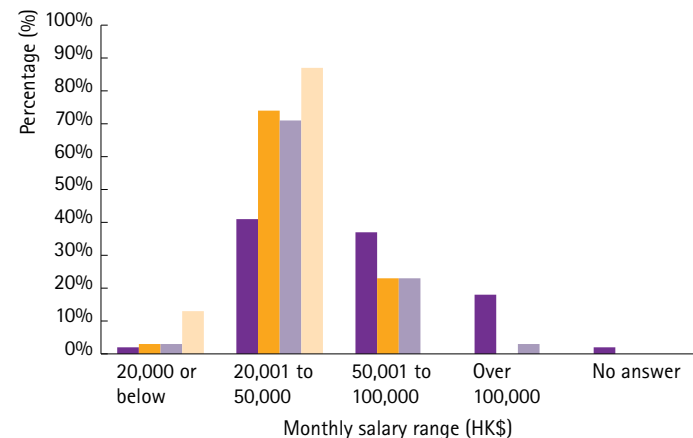
The relationship between working experience and salary range

HK\$	less than 8 years	8 to 12 years	13 to 18 years	19 to 25 years	Over 25 years
20,000 or below	22%	7%	0%	2%	0%
20,001 to 50,000	75%	82%	66%	41%	35%
50,001 to 100,000	3%	9%	29%	41%	37%
Over 100,000	0%	2%	2%	16%	26%
No answer	0%	0%	3%	0%	2%



The relationship between position and monthly salary range

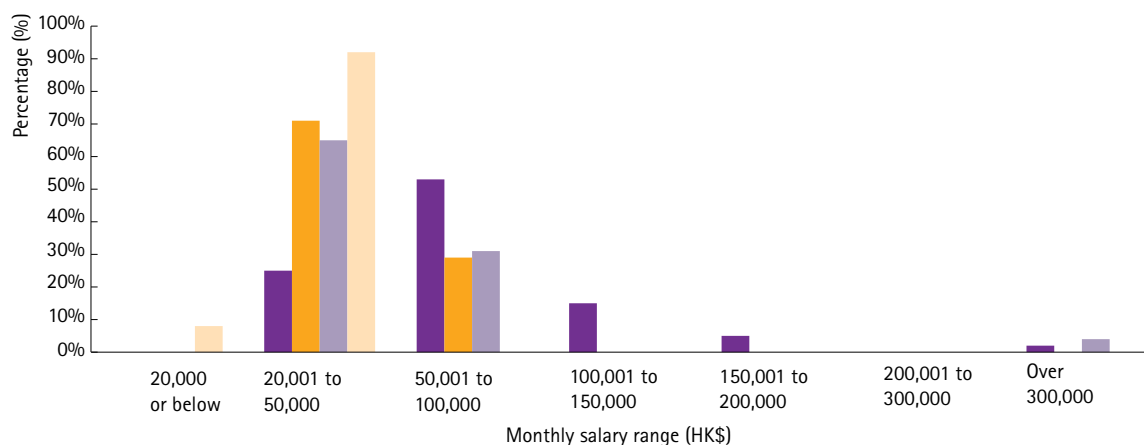
HK\$	Company Secretary	Company Secretarial Manager	Assistant Company Secretary	Senior/Company Secretarial Officer/Assistant
20,000 or below	2%	3%	3%	13%
20,001 to 50,000	41%	74%	71%	87%
50,001 to 100,000	37%	23%	23%	0%
Over 100,000	18%	0%	3%	0%
No answer	2%	0%	3%	0%



Section 4: Analysis of the remuneration of respondents who are company secretaries in listed companies

Monthly salary range of company secretaries in listed companies

HK\$	Company Secretary	Company Secretarial Manager	Assistant Company Secretary	Senior Company Secretarial Officer/Company Secretarial Officer/Assistant
20,000 or below	0%	0%	0%	8%
20,001 to 50,000	25%	71%	65%	92%
50,001 to 100,000	53%	29%	31%	0%
100,001 to 150,000	15%	0%	0%	0%
150,001 to 200,000	5%	0%	3%	0%
200,001 to 300,000	0%	0%	0%	0%
Over 300,000	2%	0%	4%	0%



The 26th Affiliated Persons (AP) ECPD seminars in Kunming

The 26th Affiliated Persons (AP) ECPD seminars were held on 18 and 19 July 2012 in Kunming on the theme 'M&A and Financing'. Over 100 participants attended, of which 54 were from H-share companies, 12 from A-share companies, and nine from Red Chip companies and other professionals. Liu Guangxi, Director, Finance Office of the People's Government

of Yunnan Province, and Cai Manli, Deputy Director, M&A Supervision and Administration Division II, China Securities Regulatory Commission (CSRC), were the keynote speakers.

A dinner gathering was held after the seminars on 18 July for networking and mingling with the participants.

The Institute would like to express its sincere thanks to the seminars' associate organiser, Shinewing CPA Ltd and sponsor, Equity Financial Press Ltd for supporting and sponsoring the AP ECPD seminar and the dinner gathering.

A review of Cai Manli's presentation will be published in the next edition of CSj.

Membership activities

Fellows-only event: PICASSO – Masterpieces from Musée National Picasso, Paris

Fellows, leaders of the Institute, are crucial in facilitating the continued development of our Institute and the Chartered Secretary profession. As part of its exclusive benefits for Fellows, the Institute has launched a new series called 'Fellows-only Events'.

A guided tour of the exhibition 'PICASSO – Masterpieces from Musée National Picasso, Paris' was organised on 20 July 2012 at Hong Kong Heritage Museum. Over 30 Fellows and their companions enjoyed the exhibition with French art students acting as docents explaining the different master

pieces capturing different phases of Picasso's life. A networking drinks section was arranged after the guided tour.

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



(fourth from left) Susie Cheung, Council Member and Membership Committee Chairman, at the exhibition



Photo taken with docents from France



At the networking section

Corporate Secretaries International Association presents its
2nd International Corporate Governance Roundtable

Can there be Universal Corporate Governance Principles?

17 October 2012, 10:00am to 1:00pm
Deloitte Conference Center, 1633 Broadway, New York, NY

Roundtable Highlights: East meets West — convergence or divergence?
Leading international governance experts

To register for the Roundtable download the registration form from www.csiorg.com and fax to +1 212 681 2005

Who should attend?

- Corporate Secretaries
- Board Secretaries
- Compliance Professionals
- Chief Executive Officers
- Corporate Governance Professionals
- Managing Directors
- Chief Financial Officers
- Chief Operating Officers
- Directors

Corporate Secretaries International Association (CSIA), a Geneva-registered global organisation, is dedicated to developing and growing the study and practice of secretaryship to improve professional standards, the quality of governance practice and to improve organisational performance. Its vision is to be 'The Global Voice of Corporate Secretaries and Governance Professionals'.

CSIA Supporting Organisation:



Members' Luncheon

A Members' Luncheon was held on 18 July 2012 at the Foreign Correspondents' Club. We were honoured to have Andrew Sheng, President, Fung Global Institute and Chief Adviser, China Banking Regulatory Commission, as the guest speaker to present on the topic **'Post-crisis thinking on corporate governance'**. More than 50 Members attended and enjoyed this valuable opportunity to share his perspectives on how good corporate governance can be inculcated in the light of the recent global financial crisis.

Mr Sheng's presentation at this Members' Luncheon is reviewed on pages 24-25 of this month's journal. More photos taken at the event are available at the gallery section on the Institute's website.



At the Luncheon



(From right to left) Andrew Sheng, Susie Cheung, Council Member and Membership Committee Chairman, and Cherry Chan, Director, Membership



Edith Shih, HKICS President, presenting a souvenir to Andrew Sheng



Natalia Seng, Council Member (first from left) greeting members at the Luncheon



(from left to right) Paul Moyes, Council Member, Phillip Baldwin, Chief Executive and Kieran Colvert, CSj Editor

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 45, the Institute's website or contact the Membership section at 2881 6177.

Happy Friday for Chartered Secretaries

The Institute has launched a new series of events called 'Happy Friday'. This aims to enhance opportunities for members and graduates to exchange views and share information and news on practical and interesting topics in a relaxed environment. In short, a warm, friendly and informal members' 'after-work' gathering on Fridays.

The inaugural gathering was held on 24 August 2012 and gave participants a chance to exchange views and share information and news on what constitutes a good annual report and the latest developments in corporate governance disclosure in a relaxed environment.

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

Examination results (June 2012)

Release of examination results

The examination results were posted to candidates on 8 August 2012. Any students who have not yet received their results slip, please contact the Education and Examinations section at 2881 6177. Please note, examination results will not be disclosed via phone or by email.

Pass rate

Subjects	Pass rate
Part One	
Strategic and Operations Management	41%
Hong Kong Corporate Law	17%
Hong Kong Taxation	32%
Hong Kong Financial Accounting	28%
Part Two	
Corporate Governance	28%
Corporate Administration	37%
Corporate Secretaryship	41%
Corporate Financial Management	26%

Subject prize winners

The Institute is pleased to announce that the following students were awarded subject prizes. They achieved the distinction grade for the respective subjects at the June 2012 examination.

Subject	Candidate name
Corporate Administration	Gu Wenyan Ho Yiu Fei Lai Ka Yan
Corporate Governance	Ching Yuen Pak Lam Yi Ching Tam Man Sang
Hong Kong Financial Accounting	Li Wing Man

Merit certificate awardees

The Institute is pleased to announce that the following students were awarded Merit Certificates. They achieved the merit grade for the respective subjects at the June 2012 examination.

Subjects	Candidate names
Corporate Administration	Chan Po Yu Lai Ka Wai, Marco Lam Yee Wan, Yvonne Law Wing Hee Lee Yin Yee Leung Pui Ling Leung Pui Ying Leung Tsz Wing Lo Wing Han Ma Ka Ki Mak Wai Yin, Alice Ng Ka Chun Wong Choi Lai Wong Lai Kam Wong Yik Ka Yu Man Kit
Corporate Governance	Chow Kin Wing Leung Pui Ying, Polly Wong Wing Kai, Tommy
Corporate Secretaryship	Cheung Hin Man Ho Sze Man Jiang Weiyi Lam On Lei Lau Chi Hung Lee Hoi Man Sham Suk Ying Tang Chi Ching Wong Suk Han, Kitty Yeung Lee
Hong Kong Corporate Law	Leung Yi Ngai
Hong Kong Financial Accounting	Ho Choi Ting
Hong Kong Taxation	Fung Siu Ling Lam Kei Chun
Strategic and Operations Management	Leung Cheuk Hang

香港特許秘書公會
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 (TBC)
MCPD Points: 3 (TBC)

註:

1. 團費: 會員/畢業學員: 港幣 1,450 元; 非會員: 港幣 1,600 元
已包括中港旅遊專車、隨團膳食及住宿廣州建國酒店(或同等)、香港及國內導遊小費、香港旅遊業議會印花基金、十萬元平安保險。
2. 香港特許秘書公會保留隨時更改、調動或取消活動之權利。如有任何爭議, 本會之決定為最終。
3. 以上圖片轉載自互聯網。

請與會員分享!



IQS examinations (December 2012) enrollment

The examination enrollment is open from 1 to 29 September 2012. The examination entry form is available for download at the Institute's website.

Entries must be received by the Secretariat either by hand before **1:00pm on 29 September 2012** or by post with a post-mark on or before 29 September 2012. Late applications will not be accepted under any circumstances. To avoid postal errors or delays, candidates are recommended to submit the applications in person or by registered mail. No change can be made to the subject(s) and examination centre after the examination application has been submitted.

Important notice – December 2012 examination diet

The scope of the December 2012 examination diet, and onwards, will include the **Corporate Governance Code and Associated Listing Rules** amendments issued by Hong Kong Exchanges and Clearing Ltd in October 2011.

IQS examination timetable (December 2012)

The December 2012 examination enrollment will begin from 1 to 29 September 2012. Students can download the examination entry form from the Institute's website in mid-August.

	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

HKICS examination technique workshops (December 2012)

These three-hour workshops organised for eight subjects aim to improve the examination technique of students. The first one will be held on 20 October 2012. The fee is HK\$400 per person. Students can download the enrolment form at the Institute's website.

'PRC Corporation Practices' – HKU SPACE programme series

Financial Accounting in PRC (中国财务会计)

Date: 6 Oct, 13 Oct, 20 Oct and 27 Oct
(Four Saturdays in October 2012)

Time: 2:00–5:00pm (afternoon) and 6:00–9:00pm (evening)

Venue: HKU SPACE teaching centre on Hong Kong Island

Fee: HK\$3,500

Corporate Administration in PRC (中国公司行政)

Date: 3 Nov, 10 Nov, 17 Nov and 24 Nov (Four Saturdays in November 2012)

Time: 2:00–5:00pm (afternoon) and 6:00–9:00pm (evening)

Venue: HKU SPACE teaching center on Hong Kong Island

Fee: HK\$3,500

The Institute's ECPD points will be awarded to participants who have attained at least 75% of attendance. Participants should contact the Institute for details of ECPD points to be carried forward to next year.

For inquiries, please contact Ms Wong (Tel: 2867 8481), or Ms Chung (Tel: 2867 8407) of HKU SPACE. Please refer to the flyer at the Institute's website for details.

Careers

To advertise your vacancy, contact Paul Davis:
Tel: +852 2982 0559
Email: paul@ninehillsmmedia.com



To cope with our continuous growth, we are looking for energetic candidate(s) to join us as:

Assistant Manager, Company Secretarial (Ref: KYI-AMC)

- Qualified professional with ICSA/HKICS membership
- At least 8 years' related experience, some of which gained from listed companies at managerial / supervisory level
- Affluent with listed and compliance rules and regulations, with in-depth knowledge of the Listing Rules, the Companies Ordinance and relevant provisions of the Securities and Futures Ordinance respecting disclosure of interests
- Sound leadership, excellent interpersonal skills and abilities to take challenges
- Excellent command of both spoken and written English and Chinese

We will offer attractive compensation package to the right candidate. Please send application enclosing resume stating career and salary history to **The Senior Manager, Human Resources Department, Cheung Kong (Holdings) Limited, 7/F Cheung Kong Center, 2 Queen's Road Central, Hong Kong** or by email to hr@ckh.com.hk (in Word format). Please quote the reference of the position you apply for in all correspondence.

We are an equal opportunity employer and welcome applications from all qualified candidates. Personal data collected will be treated in strictest confidence and handled confidentially by authorized personnel for recruitment-related purposes within the Cheung Kong Group. Applicants not hearing from us within six weeks from the date of advertisement may consider their applications unsuccessful.

CSj is the **only publication** dedicated to corporate governance in Hong Kong.

Each issue is distributed to over **8,500** members of HKICS, and read by approximately **20,000** individuals.

CSj is the most effective way to source your future **Corporate Secretarial** colleagues.

To advertise your vacancy in the Careers section, please contact Paul Davis: paul@ninehillsmmedia.com

ninehillsmmedia

Careers

To advertise your vacancy, contact Paul Davis:
Tel: +852 2982 0559
Email: paul@ninehillsmidia.com



Founded in 1901 as China Light and Power Company Limited in Hong Kong, CLP Group has grown from a Hong Kong-based power utility into a leading investor and operator in the Asia Pacific Region's electricity market. Its portfolio comprises over 60 generation assets of gas, coal, nuclear and renewable energy, distribution and transmission assets and retail operations. The CLP Group is owned by CLP Holdings, a company listed on the Stock Exchange of Hong Kong.

CLP is listed in the Global Dow – a 150-stock index of the world's leading blue-chips, the Dow Jones Sustainability Asia Pacific Index (DJSI Asia Pacific), and the Dow Jones Sustainability Asia Pacific 40 Index (DJSI Asia Pacific 40).

CLP Holdings Limited Group Corporate Secretarial Company Secretarial Professional [Ref. CS]

Our Corporate Profile:

The CLP Group includes a vertically integrated electricity business in Hong Kong as well as investments in energy markets in the Chinese mainland and the Asia-Pacific region. Our vision is to be a leading investor-operator in the Asia Pacific electricity power sector building on our longstanding corporate culture of integrity, fair dealing and sound financial management. Maintaining a good, solid and sensible framework of corporate governance has been and remains one of CLP's top priorities.

The Team Profile:

Corporate Secretarial is a team of professional staff supporting the Company Secretary who is responsible to the Board for ensuring that Board procedures are followed and that applicable laws and regulations are complied with. The team is accountable for timely and quality secretarial services to Shareholders and to CLP Group of Companies. The team also contributes to CLP's reputation for excellence in corporate governance through continuous enhancement of our corporate governance principles and practices in light of the experience, regulatory requirements and international developments.

The Position Profile:

- Support the Corporate Secretarial team in providing a full range of professional and timely company secretarial services in English and /or Chinese to CLP Group of Companies;
- Research into the changing statutory and listing requirements and development of international corporate governance practices with a view to reviewing their implications for CLP and making recommendations for changes in CLP's practices;
- Actively participate in the organisation of the Company's Annual General Meeting as well as in the production of Company Reports and documentation to shareholders;
- Monitor the performance of the Share Registrars in order to ensure satisfactory shares registration services and prompt responses to shareholders' enquiries; and
- Co-ordinate with overseas counterparts to ensure smooth implementation of corporate governance and secretarial practices.

Requirements:

- University degree and Associate Member of The Hong Kong Institute of Chartered Secretaries or The Institute of Chartered Secretaries and Administrators or their equivalent.
- At least 5 years of relevant experience in sizable organisations or professional firms.
- Professional know-how in company secretarial practice with a clear understanding of the requirements of the Companies Ordinance and the Listing Rules.
- Self-motivated, detail-minded, good communication skill.
- Strong in English and Chinese languages.

Please apply by email to ghr@clp.com.hk with a covering letter and detailed resume stating present & expected salaries, contact telephone numbers on or before 30 September 2012.

Important: To facilitate our easy tracking please use a unique file name for all attachments and your email subject box in this format:
CLPH_CS_Last Name_First Name_Other Names (if applicable)

Applicants not invited for interview within 6 weeks from the closing date may assume their applications unsuccessful.

Information provided will be for recruitment purpose within the CLP Group and only short-listed candidates will be contacted. We comply with all applicable laws and regulations of HKSAR in handling applications.

For further information on our Company, please visit our website: www.clpgroup.com



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