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December 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



Board evaluation

Asking the right
questions

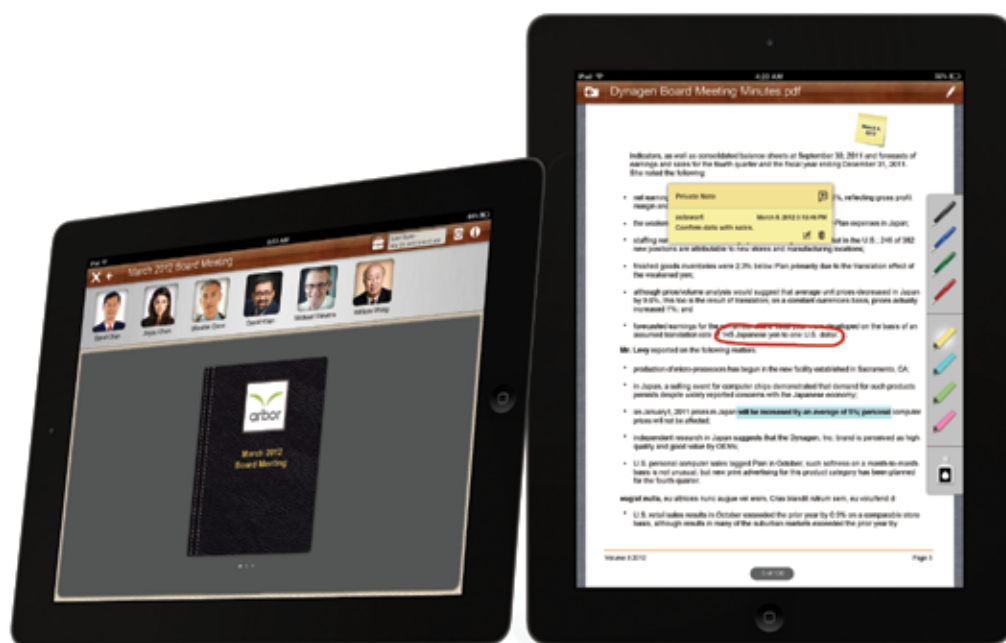
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China,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

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

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The Hong Kong Institute of Chartered Secretaries

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

Beijing Representative Office

Rm 15A04, 15A/F, Dacheng Tower, No 127 Xuanwumen West Street
 Xicheng District, Beijing, China, P.C.: 100031
 Tel: (86) 10 6641 9368 Fax: (86) 10 6641 9078 Email: bro@hkics.org.hk

Institute of Chartered Secretaries and Administrators

Chartered Secretaries Australia Ltd
 Level 10, 5 Hunter Street
 Sydney, NSW 2000
 Australia
 Tel: (61) 2 9223 5744
 Fax: (61) 2 9232 7174
 Email: info@CSAust.com
 Website: www.CSAust.com

The Institute of Chartered Secretaries & Administrators in Canada
 202-300 March Road,
 Ottawa, ON, Canada K2K 2E2
 Tel: (1) 613 595 1151
 Fax: (1) 613 595 1155

The Malaysian Institute of Chartered Secretaries and Administrators
 No. 57 The Boulevard, Mid Valley City, Lingkaran
 Syed Putra,
 59200 Kuala Lumpur, Malaysia
 Tel: (60) 3 2282 9276
 Fax: (60) 3 2282 9281

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

Committee chairmen 2012

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December 2012

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 email: enquiries@ninehillsmedia.com

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Contributors to this edition

Richard Lord
 Journalist
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 ICSA
Kenneth Ko
 Journalist
Timothy Loh
 Timothy Loh Solicitors
Ken Chan and Sardonna Wong
 City University of Hong Kong

Advertising sales enquiries

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

Ninehills Media Ltd

PO Box 9963
 General Post Office
 Hong Kong
 Tel: (852) 2982 0559
 Fax: (852) 3020 7442
 Internet: www.ninehillsmedia.com
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本刊专访中国内地的公司治理权威专家、东北财经大学校长李维安教授，谈论中国公司治理文化的未来发展方向。

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Board evaluation

Session five of this year's Corporate Governance Conference (CGC) focused on three difficult and sometimes contentious areas of board practice. These were, in ascending order of difficulty, the adoption of new board technology, mandatory director training and board evaluation. This month's journal takes on the last and the toughest of these issues.

You will notice that all three of these issues are relatively new and unfamiliar areas of board practice – is this then the main reason for their perceived difficulty? To a certain extent the answer is yes. The author of this month's second cover story (see pages 14–17), Simon Osborne *FCIS*, Chief Executive of the Institute of Chartered Secretaries and Administrators (ICSA), points out that directors in the UK were generally highly reluctant to engage in, and report on, a formal evaluation process and it took over a decade for attitudes to shift and the value of this process to be fully recognised.

One of the difficulties encountered in any discussion of the value of board evaluation is the number of misconceptions clouding the topic. Firstly, it is often assumed that very few Hong Kong boards are engaged in board evaluation. This is based on the fact that very few boards in Hong Kong report on their board evaluation process. However, as Kelvin Wong, Chairman, Hong Kong Institute of Directors, points out in this month's first cover story (see pages 8–13), you cannot assume that all boards engaged in board evaluation will report on the process.

Informal board evaluation is likely to be, and certainly should be, par for the course for boards in Hong Kong. However, Hong Kong is not the UK, US or Europe and many of the

companies listed here have a very different culture and make up compared to those elsewhere. While I have no doubt that in the long term external board evaluation will have a beneficial effect on the governance and performance of boards of Hong Kong listed issuers, we should not blindly follow the West. Before engaging an external evaluator, boards must balance the desire to improve performance with the cultural, political and indeed family issues that have considerable influence over some Hong Kong companies.

That said, boards certainly need to assess whether they are successfully performing their key roles of monitoring management and providing the company with strategic direction. The question is, how can boards best make this assessment? Should they adopt a formal board evaluation process? Should they go for an internally-managed process or hire an external consultant to make an independent assessment?

Another misconception about board evaluation is that the term refers to the full-service external evaluation where an evaluator comes in, interviews all the directors, sits in on board meetings and prepares a report on board performance which is then publicly disclosed. Even in jurisdictions where board evaluation has become common practice, this level of evaluation is rare. It may be recommended where a board knows it has a problem, or as a periodic addition to an in-house evaluation process, but it is certainly not the standard.

Currently in Hong Kong, board evaluation is a recommended best practice (RBP) in our Corporate Governance Code. This leaves it up to individual companies to work out their own preferred method of assessing board performance. This is, I think, entirely appropriate for our current level of familiarity with board evaluation. We should bear in mind that more than two-thirds of listed companies that responded to the Exchange's consultation on board evaluation opposed introducing the proposed RBP in the code. This, admittedly, was largely

due to the inclusion originally in the RBP of a recommendation for boards to assess individual directors' performance as well as that of the board as a whole and many listed companies supported the final RBP when this recommendation was dropped.

The RBP is a valuable addition to our Corporate Governance Code in that it puts the issue of board evaluation on the corporate radar in Hong Kong. As this month's edition of *CSj* points out, companies and their company secretaries need to ask the right questions about this relatively new area of board practice. Measuring board effectiveness is certainly not a straightforward business. Apart from anything else, it involves many intangible factors, such as the style of chairmanship, the relationship between directors and the balance of power on the board.

But the key message I carry away from this month's *CSj* is that boards do not need to be intimidated by board evaluation. The good news is that the guidance and the resources available to companies looking to adopt a formal board evaluation process for the first time are now a lot more developed. Moreover, the current regulatory approach to the issue in Hong Kong means that companies are free to devise an approach to board evaluation that is appropriate for their corporate culture and likely to gain directors' trust, a vital ingredient if board evaluation by third parties is to become the norm for Hong Kong listed issuers.

Finally, I would like to wish everyone a wonderful Christmas and a blessed and prosperous 2013.

Edith Shih *FCIS FCS(PE)*

评核董事会的表现

今年，公司治理研讨会的第五节，集中讨论三项较艰深、有时甚至具有争议性的董事会实务议题。按艰深程度由浅至深排序，分别是采用新的资讯科技、强制董事培训，以及评核董事会的表现。今期刊探讨最后也是最难的一项议题。

这三个范畴都是较新和较鲜为人知的董事会实务；也许这是令人觉得它们艰深的主要原因？某程度上是对的。为今期第二个封面故事（见第14至17页）执笔的特许秘书及行政人员公会（ICSA）总裁Simon Osborne FCIS指出，英国的董事一般极不愿意为董事会进行正式的评核，以及报告评核结果；经过十多年的时间，他们的态度才有所改变，开始完全明白评核工作的价值。

要讨论董事会评核工作的价值，有一定的困难，其中一个问题，是人们对这个议题有很多误解。首先，一般人往往假定很少香港公司评核董事会的表现；有这样的印象，是因为很少公司报告董事会评核程序。不过，正如香港董事学会主席黄天佑在今期第一个封面故事（见第8至13页）所指，我们不能假定所有进行董事会评核的公司，都会报告这项工作。

非正式的董事会评核工作，很有可能成为香港董事会的常规，而实际也应如此。不过，许多香港上市公司的文化和组成跟英国、美国或欧洲其他地方的上市公司有别。长远而言，我们深信聘用外间顾问评核董事会，对香港上市公司董事会的管治

和表现会有裨益，但我们不应盲目跟从西方的做法。在聘用外间评核人员之前，董事会须仔细考虑，衡量提升表现的意欲，以及文化、政治及家族等对一些香港公司有重大影响的因素。

话虽如此，董事会当然必须评估自己是否称职，能做好监察管理层、为公司订立策略方向的主要职能。问题是，何种评核工作的方式才算最好？是否应采用正式的评核程序？应内部自行评核，还是聘请外间顾问作独立评估？

有关评核董事会表现的另一项误解是，此工作是指由外间人员作全面评估，由评核人员与所有董事面谈，列席董事会，撰写有关董事会表现的报告，然后公开报告内容。实际上，即使在普遍实行董事会表现评核的国家，这种规模的评核工作也是比较罕有的。假如董事会知道其运作有问题，也许适宜作这样大规模的评核；又或在内部评估之余，间中也适宜由外间顾问作详尽评核；但肯定不必以大规模的评核作为标准做法。

目前，香港评核董事会的表现是《企业管治守则》内的建议最佳常规。这让个别公司有空间决定较适合自己的董事会评核方式。因应目前香港对董事会评核工作的认识程度，我相信这是完全适当的安排。我们应留意，港交所就评核董事会表现的工作进行谘询期间，回应的上市公司之中，超过三分之二反对在《守则》内加入这项建议最佳常规。当然，原有建议是让

董事会评核个别董事的表现，以及董事会的整体表现，这是建议遭强烈反对的重要原因；后来取消这项建议后，评核董事会表现的建议最佳常规获得许多上市公司支持。

在《企业管治守则》加入这项建议最佳常规，是很有价值的，让香港的公司治理人员正视评核董事会表现这议题。正如今期所指，对于这项相对较新的董事会实务，公司和公司秘书应提出适当的问题。评估董事会的效能，肯定不是易事，当中牵涉许多无形因素，例如主席的领导风格、董事之间的关系，以及董事会的权力均衡等。

今期刊要带出的主要讯息是，董事会不必被评核董事会表现的评核吓怕。好消息是，现在有更多指引和资源，协助有意开始采纳正式评核工作的公司。此外，在香港目前的监管方式下，公司可自由设计评核董事会的方式，配合各自的企业文化，并取得董事会信任。假如要使第三者评核董事会的做法成为香港上市公司的常规做法，取信于董事会是极重要的因素。

最后，祝大家圣诞快乐，新年进步。



施熙德



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Your invitation to The Hong Kong Institute of Chartered Secretaries' Annual Dinner 2013

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



For enquiries, please contact the Secretariat
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Ask the expert

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

Q: *As an international company our executives are based in offices around the world. We are considering moving to an online board portal, but there are differences of opinion. How can I, as the company secretary, demonstrate the advantages for board members in terms of access to information?*

A: I think the process should start with a simple question: 'Why buy a board portal in the first place?' In the past, the answer was for the convenience of a handful of tech-savvy directors, but today the goal is to go paperless because that's where boards realise the benefits.

With an online system, the distribution of materials is instantaneous. So not only will the board get access more quickly, you can also provide information more frequently, simply because it's far less work to do so. In the traditional cycle of board meetings – perhaps a meeting once every month or every quarter – there wasn't a great deal of communication in between meetings. But with a good online system, there is no reason to be restricted to those cycles. Typically, directors appreciate the regular update because it's not always easy to digest information in one large batch. This improves the foresight of the directors, which in turn can improve the quality and the speed of their decision-making. With that in mind, there are a few things to consider.

Firstly, it is important to recognise that while in the world at large all the talk is about going online, in the world of boards there's still a very strong need to go offline. In other words, directors work in both modes, and need to be able to

BOARDVantage

switch seamlessly. That means syncing technology, which is not easy technically, but without it directors will not have a good experience.

Secondly, in the world of boards it's all about who sees what and when they see it, so you have to make sure that you have that level of control embedded in the portal. That requires an ability to differentiate access between users, whether that pertains to what the chairman sees versus what an individual director sees, or what members of the governance committee see versus what those on the executive committee see. That means you have to look for a toolkit with a control matrix and content segregation capability.

Lastly, keep in mind that a board portal is not an end, but rather a beginning. For years the board portal was a one-way communication tool. The general counsel/ corporate secretary distributed materials to the director; the director retrieved it online but did not communicate back. Now portals are shifting to platforms with two-way interactive capability between the directors and the counsel/ secretary. That trend will only get stronger as more boards experience the value of technology.

Erin Ruck, BoardVantage
eruck@boardvantage.com
tel. +852 2293 2698
www.boardvantage.com

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 BoardVantage or our other experts, simply email CSj Editor Kieran Colvert at: kieran@ninehillsmmedia.com.

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

What

WHERE

Who

HOW

Why

Asking the right questions

Board evaluation and the company secretary

The first piece of advice for company secretaries embarking on a formal board evaluation process for the first time should probably be *don't panic*. The prospect of board evaluation is often quite daunting to the uninitiated, but perhaps for the wrong reasons. Company secretaries are uniquely well placed to engage with the board evaluation process since it calls for a close familiarity with board processes, the trust and confidence of the board, the chairman and the executive team, and the skill and perseverance to ensure that the right questions get asked. Does that sound like a job for you?

Would you feel comfortable about initiating a proposal to put board evaluation on the agenda of your board's next meeting? The Institute's Corporate Governance Conference 2012, held in October this year, indicated that most company secretaries in Hong Kong would be reluctant to do so. A conference poll revealed that only 16% of attendees thought that such a proposal would be welcomed by their board. The largest proportion (40%) felt that such a proposal would be rejected and a worrying 11% believed that company secretaries bold enough to propose board evaluation would be shown the door.

This nervousness surrounding the topic of board evaluation is somewhat strange, however, since most boards are already doing it. Kelvin Wong, Chairman of Hong Kong Institute of Directors and Deputy Managing Director of Cosco Pacific Ltd, points out that the fact that we don't hear about companies doing it in Hong Kong doesn't necessarily mean that it isn't taking place at all.

'You can only speculate that board evaluation is not a common practice in Hong Kong since only a few companies are public about what they evaluate – HKEx, China Light and Power and the MTR Corporation are some of the companies that maintain a very good practice regarding board evaluation. But with other companies, this doesn't necessarily imply that they are doing nothing, just that they don't feel they can communicate it.' Wong adds that his own company,

Cosco, has embraced board evaluation as part of its desire to be a pioneer in corporate governance and transparency. 'I would rather ask the question myself than someone else ask it,' he says.

The likelihood is that most boards in Hong Kong are engaged in some form of board evaluation, even if that does not amount to much more than the occasional discussion about how the board is performing or about how to

Highlights

- company secretaries are uniquely well placed to engage with the board evaluation process
- many of the questions that need to be answered in the board evaluation process are highly relevant to the company secretary's role in supporting the board
- in markets where formal board evaluation has become commonplace, the company secretary generally plays a key role assisting the chairman (or sometimes the senior independent director) in managing the process

improve board processes. The next step, ensuring that there is a formal process for evaluating the board's performance, is a very logical one and highly relevant to the company secretary. Many of the questions that need to be answered in the board evaluation process relate to the company secretary's role in supporting the board. Is the atmosphere at board meetings conducive to effective decision making? Is the board culture conducive to healthy, challenging debate? Is the board sufficiently diverse in terms of skills, professional background, gender, etc? Is there effective communication between the board and management?

In markets where formal board evaluation has become commonplace, the company secretary generally plays a key role assisting the chairman (or sometimes the senior independent director) in managing

the process. Typically this will involve devising the questionnaires, analysing the responses and compiling the results into a report. Phillip Baldwin, HKICS Chief Executive, points out that some of the independent organisations that conduct board evaluations overseas are 'set up by people who've been company secretaries and who know how to talk to boards and get the right answers.'

He adds that asking the right questions is absolutely critical to worthwhile and successful board evaluation, as are making answers non-attributable and, most importantly, expressing findings in the right way. 'It needs to be constructive criticism and should recommend ways of improving and performing more effectively, not just saying that people are rubbish. Identifying areas where you need an extra person to get that mix on the board right – that's where a board evaluator can come in. Usually no one thinks about something like that until something goes wrong.'

Given the close connection company secretaries have with the board evaluation process overseas, should they be driving the process in Hong Kong? Baldwin feels that adoption is not yet widespread enough for company secretaries to drive the process here: 'At the moment it's only just starting to come into Hong Kong, so it's too early for them to take ownership of it.'

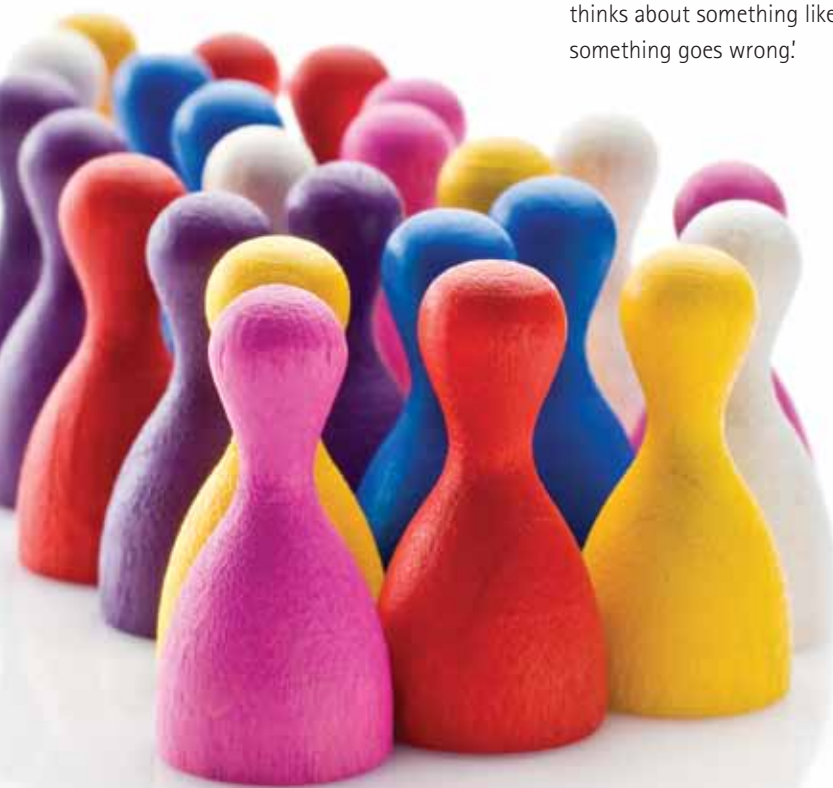
'This is not something that a company secretary could try to impose on the board,' adds Edith Shih, HKICS President and Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd, 'but the company secretary is a very good person to execute it if it's required.'

Board evaluation in Hong Kong

The need for formal board evaluations is now firmly on the radar in Hong Kong. In April this year, Hong Kong Exchanges and Clearing (HKEx) added a recommended best practice (RBP) to our Corporate Governance Code stating that 'the board should conduct a regular evaluation of its performance.'

“ Identifying areas where you need an extra person to get that mix on the board right – that's where a board evaluator can come in. Usually no one thinks about something like that until something goes wrong. ”

Phillip Baldwin, HKICS Chief Executive



The vast majority of Hong Kong companies, however, have not made the step from an informal board evaluation process to a formal one. 'Some companies are doing an excellent job, but Hong Kong is still lagging behind compared to our competitors from overseas: compared to Singapore, let alone the US and Europe,' says Kelvin Wong.

Edith Shih identifies three potential obstacles to the wider adoption of formal board evaluation.

1. **Cost.** This, she points out, will be a major concern for smaller companies. 'Cost is a big issue. We have a company in the UK which is listed on the AIM [the London Stock Exchange's international market for smaller growing companies]. I inquired about the cost but the rates were so high that I could not recommend it,' she says.
2. **Confidentiality.** This is a major concern for directors, she believes, because the information gathered for the evaluation will always be on record and potentially extremely sensitive if seen by someone outside the company.
3. **Credibility.** Regarding external evaluations, many directors simply don't believe that an outsider can have any useful insight that they haven't had themselves.

Other common objections to formal evaluation include the notion that it is unnecessary because the board's performance is reflected in other, more important, ways. 'A board will often say that their evaluation is there in the company's share price,' Phillip Baldwin

says. 'The problem is also looking at very senior people. They may resent it, or it may be difficult to quantify their performance. There could be a guy who doesn't speak for six months but then makes that one comment in a board meeting that saves the company millions of dollars.'

He adds that there's no point undertaking a board evaluation exercise if you don't intend to act on the findings. 'Is it creating value – is it going to make this board more efficient? You have to perform a cost-benefit analysis! This means the board, the chairman and the executive team have to believe that the process can benefit the board, whether by identifying relatively minor improvements to board processes (meeting agendas, format of board papers, etc), or more significant changes to the board's composition and culture.'

One potential problem, Baldwin says, is that the boards most likely to benefit from board evaluation are the very ones that are least likely to agree to it. 'The irony of it is that a competent board is going to be able to distance itself and form an objective opinion of its own performance. A lesser board might be very aware of its own issues and not want them highlighted. A lot of the changes in listing rules and governance codes of conduct aren't aimed at big companies who are already running good boards; they're aimed at the smaller, mid-sized companies that may for example have a company secretary doubling up as a CFO.'

Another reason for the relatively low uptake for formal board evaluation is the closely held nature of a lot of the city's companies. 'A lot of Hong Kong companies are family owned, with boards

made up of family members,' says Baldwin. 'It's going to be a very brave evaluator who says that the chairman's son isn't pulling his weight!' However, he adds that it isn't helpful to stereotype family-owned businesses as inevitably being driven only by loyalty to each other and he stresses the importance of assessing each case individually. 'You still have to look at the independence of board members. Brothers on the same board, for example, could actually be more independent because they don't care what their brother thinks!'

Supply and demand

The shortage of companies able to provide competent external board evaluation services in Hong Kong at the moment may also be hampering its wider adoption – a chicken-and-egg situation, given that the reason for there being so few of those companies is at least partly a lack of demand. As well as specialist board evaluation consultancies, board evaluation services are also provided around the world by companies with a background in coaching and psychology; strategy and change consultants; recruiters and headhunters; other professional service providers; consultancies with a corporate governance background; and professional bodies.

'The shortage of suppliers is an issue,' says Phillip Baldwin. 'You need someone independent to do it – having a headhunter do it creates an inherent conflict of interest and there's a lack of independent board evaluators here. There's definitely an opportunity for consultants to come in.'

External consultancy services are seen as the gold standard in board evaluation – they don't have an incentive to make



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Kelvin Wong, Chairman, Hong Kong Institute of Directors and
Deputy Managing Director, Cosco Pacific Ltd

recommendations that will protect or drive their own business as headhunters do. Kelvin Wong cautions, however, that external evaluation is not the only way; while internal evaluations may be seen by some as compromised and limited in their scope, he says that they have their place.

Edith Shih confirmed that, for her AIM listed company, in lieu of incurring the expense of engaging external evaluators, a well-designed questionnaire was deployed to elicit board members' views on their peers. 'There is good learning derived from the findings of such a questionnaire which the board shares and reviews.'

'Using external consultancy services is a widely adopted approach,' says Kelvin Wong, 'because it will give you independence and the board may lack the expertise to do it. But it's not the only way: at other companies it may be done internally by the chairman and the HR department, for example. The point is how the board and the chairman are going to use the results of their board evaluation. They may have some underlying agenda. So it's about building mutual trust and

understanding among board members as to the value of board evaluation. Using external consultants may unleash anxiety.'

The ripple effect

The recommended best practice (RBP) in Hong Kong's corporate governance code does not carry much weight. Currently it is a recommendation that the majority of companies in the city are choosing to ignore. To judge from the experience of other jurisdictions, however, regulatory requirements in this area are likely to escalate.

Formal board evaluation is becoming increasingly subject to regulation overseas in jurisdictions following the unitary board model. Jurisdictions following a two-tier board system, of course, have an inbuilt system for board evaluation since examining the efficiency and performance of the management board on a regular basis is one of the primary roles of the supervisory board.

Jurisdictions with code provisions on board evaluation include Canada, Singapore, Australia, the US, UK and

France. Some differences exist between these countries in terms of the degree to which board evaluation is required and the degree to which companies are required to disclose the evaluation.

It seems likely, however, that tougher regulation in Hong Kong on board evaluation will be fiercely contested by listed companies. While market practitioners and professional bodies were mostly in favour of the new RBP on board evaluation in Hong Kong's Corporate Governance Code, the majority of listed companies opposed it. HKEx originally proposed that the additional RBP would include a recommendation for individual directors' performance to be evaluated. This was widely opposed on the grounds that 'established corporate and cultural values would reduce individual performance evaluation to a mere box-ticking exercise,' the HKEx consultation conclusions stated. Many respondents said they would be happy to support the proposal if that requirement were removed – which it was.

'Family-owned firms don't want to point fingers at individual directors and it is

the same with state-owned enterprises,' says Kelvin Wong. 'Individual performance evaluation will break directors' motivation to participate. So you evaluate the performance of the board and of its various committees. It's an indirect approach, but it's not that indirect.'

Is there a danger that the new RBP will only encourage box-ticking compliance on board evaluation? Edith Shih argues that even box-ticking exercises can have value. 'The corporate governance scene has changed in Hong Kong; even the smallest changes used to be fiercely resisted. Even if it's just a box-ticking exercise, companies might internalise it and it might lead to improvements. It's better to have some degree of evaluation than to not have it at all.'

HKEx could, of course, force Hong Kong's public companies to adopt board evaluation if it upgraded the RBP to a listing rule, but, given the relatively small number of companies that have adopted the practice so far, that would be a very unpopular move. 'HKEx asked whether it should be made a code provision but the consensus was that people were not yet ready, so they made it an RBP,' says Wong. 'But it still has a ripple effect – for example, non-executive directors will urge companies to do it.'

And, says Shih, it's on the radar now, and it's up to companies to respond. 'The fact that it's an RBP means that it will grow into a code provision, and one day it will become a rule. My view is that it will take a few years! Nonetheless, board evaluation is coming, whether companies like it or not, and the time to prepare is now.'

Richard Lord
Journalist

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Board evaluation

The outside view

Some boards are still reluctant to commission an externally-facilitated board evaluation. Based on his substantial experience with ICSA Board Evaluation, Simon Osborne *FCIS*, Chief Executive of the Institute of Chartered Secretaries and Administrators (ICSA), points out that the external facilitator is there to help the board with its review exercise and, if conducted properly, an external evaluation elicits better information than an internally-devised questionnaire.

When the UK Combined Code on Corporate Governance adopted for the first time in 2003 a recommendation that boards should undertake a formal and rigorous evaluation of their own performance, and that of their committees and individual directors, the Institute of Chartered Secretaries and Administrators (ICSA) in London had already been offering this service commercially for a couple of years. It took some time for the business to build up owing principally to the natural conservatism of directors and reluctance to submit themselves to scrutiny, particularly by an external body.

The advent of a formal provision about board evaluation in the UK's 2003 Combined Code, which followed the 2002 review by the late Sir Derek Higgs into non-executive directors, prompted a number of organisations to offer board evaluation services. However, take up by listed companies was fairly slow and, for the most part, boards which chose to undertake an effectiveness evaluation did so as an internal exercise rather than engaging the services of a third-party provider. Nonetheless, a number of more innovative boards of directors, led by their even more innovative chairmen, engaged external providers of board evaluation services and slowly the business grew.

Up to and including 2011, ICSA Board Evaluation in London undertook between four and six evaluations each year. In one or two cases we were invited back the following year to do a repeat evaluation, which invariably demonstrated that the board in question had materially improved its performance as a result of adopting recommendations which we had made. Initially, however, there was still quite widespread resistance to using an external provider. Many companies preferred to use

an internally-devised questionnaire while others turned to a favoured search firm (or headhunter). Experience has convinced us, however, that our approach of interviewing each director in a confidential one-on-one structured conversation is a considerable improvement on these questionnaires. There are six reasons why we take this position.

1. The structured interview permits a director to seek an explanation if he or she is unsure about the question being asked by the evaluator.
2. An interview encourages him or her to be totally frank and open without committing views to paper (a good psychological point!).
3. The evaluator is able to ask follow-up questions when a director expresses dissatisfaction with an issue, or to probe if the evaluator feels that a response merits deeper discussion.
4. The whole evaluation process is personalised and tends to elicit better information.
5. Questionnaires are generally devised in-house and have a tendency to miss some of the key issues. Sometimes they get stale which can create a boredom factor.
6. We are not convinced the use of a questionnaire alone will satisfy the requirements of Main Principle B.6 of the 2010 UK Corporate Governance Code regarding rigour.

Thus we strongly favour a one-on-one interview with each director; actually it is a structured conversation. As anecdotal evidence in support of our approach, the

company secretary of a major company described our process as coming 'across very much as you facilitating the board's own review of itself rather than you conducting an external "evaluation". This approach works very well and avoids the needless fear and hostility public examinations bring'.

The ICSA approach

Obviously, before we start any assignment, we meet the chairman and company secretary to ascertain the chairman's agenda; essentially what the chairman hopes or expects to get out of the evaluation process. We meet separately with the company secretary to gain an understanding of the personalities involved and the key issues. Throughout the process we maintain close links with the company secretary whose role is key to the overall success of the assignment. Then, we conduct our confidential one-on-one interviews with each director.

Highlights

- an externally-facilitated board evaluation, if conducted properly, elicits better information than an internally-devised questionnaire
- directors tend to be more frank and open in one-on-one interviews and where they can trust the confidentiality of the process
- the external evaluator should be independent of the company – disclosure needs to be made where the evaluator has any connection with the company

We write up the notes of the interview which are then sent to the director confidentially (preferably to his or her home address) for correction and signing off. In compiling our draft report we draw extensively on what directors have told us in interview. However, we are punctilious in anonymising all the quotations which we use so as to ensure that no comment may be tied to an individual director. We believe profoundly that that level of confidentiality helps to assure the success of our process.

The use of search consultants or headhunters to undertake board evaluations is now less common in the UK, although we know of one major bank whose governance might have benefitted from being less wedded over a number of years to a single headhunter's approach to board evaluation. The death knell for headhunters providing these services more widely was sounded by Sir David Walker in his report *A review of corporate governance in UK banks and other financial industry entities* (26 November 2009).

Recommendation 12 in that report stated that 'the board should undertake a formal and rigorous evaluation of its performance, and that of committees of the board, with external facilitation of the process every second or third year. The evaluation statement should either be included as a dedicated section of the chairman's statement or as a separate section of the annual report, signed by the chairman. Where an external evaluator is used, this should be indicated in the statement, together with their name and a clear indication of any other business relationships with the company they may have and that the board is satisfied that any potential conflict given such

other business relationship has been appropriately managed'.

Sir David Walker's review prompted the UK's Financial Reporting Council to bring forward a review of the UK's Combined Code on Corporate Governance. Reflecting Recommendation 12 in Sir David's report, the 2010 edition of what is now known as the UK Corporate Governance Code provides in Main Principle B.6 that 'The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors'. It goes on to say in Code Provision B.6.2 that 'Evaluation of the board of FTSE 350 companies should be externally facilitated at least every three years. A statement should be made available of whether an external facilitator has any other connection with the company'. The new code applied to accounting periods beginning on or after 29 June 2010, so most UK listed companies were applying the code from sometime in 2011 onwards.

That marked a significant upturn in the expressions of interest which we received. Hitherto, most interest which converted into actual assignments had come from FTSE 100 companies, or larger companies in the FTSE 250. Particularly since early autumn 2011, the upturn in new assignments has grown so that ICSA Board Evaluation is becoming a growing business activity for the ICSA in London.

For the most part, companies embarking on an externally-facilitated evaluation for the first time prefer to confine the evaluation just to the board. That is understandable. It is much less challenging emotionally for a whole board to be evaluated. The boards of new clients have some understandable nervousness

about adopting a new way of evaluating their performance but, in our experience, they seem entirely content with the report and with the process which leads to its production. We do stress to our clients that one can have too much governance. That is not said to denigrate in any way the importance of good governance; quite the reverse. It is simply that one has to be proportionate. It is for that reason that we offer separate processes to evaluate the board, the main board committees and individual directors; the last being a much more challenging process requiring a degree of emotional intelligence on everyone's part.

Although we offer a 'deep dive' approach to the evaluation of board committees, we suggest, when we are working with a board for the first time, that we undertake a review of the key issues relating to board committees in a lighter touch way. The board can then leave the deep dive evaluation to a future year if they wish to re-engage us.

The evaluation which is rarely requested is the evaluation of individual directors. ICSA engaged the services of an organisational psychologist when devising its process, which has to be handled with sensitivity and care. Our approach involves a paper-based peer group review with each director assessing their performance and then assessing the performance of their board colleagues. This is a particularly useful method for identifying directors who do not perform as well as others (for a variety of reasons) and may feed helpfully into the review of board composition by the nomination committee. Most boards, however, seem to prefer an internal evaluation of individual director performance, relying on the chairman to undertake that review



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and to feedback to each director in a one-on-one discussion. That is fine, provided the chairman has the 'intestinal fortitude' for what may sometimes prove to be a challenging aspect of the role. As Sir Christopher Hogg, the immediate past chairman of the UK's Financial Reporting Council, has suggested, boardrooms should not necessarily be 'comfortable places'.

Reporting on the evaluation process

My final point concerns the rigour with which boards report on the board evaluation process in their annual reports. I suggest that there are five key points to which boards should try to adhere:

1. what has been reviewed (board, committees, directors) with an explanation if, say, only the board was being reviewed
2. who conducted the evaluation and an explanation of how any conflicts of interest were managed or disregarded
3. an outline of the nature of the process

4. an outline of key findings, lessons learned, and
5. follow up actions agreed by the board.

My experience over a number of years has been that whenever a company begins the account of its board evaluation process by asserting (and thus parroting the UK Corporate Governance Code) that the process has been 'formal and rigorous', I begin to lose the will to live! The unimaginative use of that phrase, perhaps to try to throw the reader off the scent, confirms to me that the board has likely preferred (again) to use an internally-driven questionnaire. In fact, the chief executive of one client remarked to us that the problem with his board's questionnaire was that, not only did he know the questions, he knew what answers he would be giving!

In making that last point, let me stress that we do not believe that an internally-driven evaluation process is inherently bad, or that an externally-provided service is inherently good. There are some genuinely rigorous internal processes;

and there are several quality providers among 'the opposition', though one hears very occasional reports of other providers' processes not having been well received. I expect that they pick up the odd murmur about our service! In our view, it is the sensibly blended use of both approaches which seem to offer a happy medium for many boards. There is certainly sufficient competition in the UK market for boards to use different providers whenever they determine to seek an external evaluation.

We believe that we have a high rate of satisfaction from our clients, but on rare occasions we find that boards are a little over sensitive to criticism. We regard this as something that goes with the territory; an external facilitator may raise an issue that one or two board members have been aware of but have been reluctant to speak about not to upset the status quo. However, as Stephen Hawking once said: 'The greatest enemy of knowledge is not ignorance, it is the illusion of knowledge'.

Simon Osborne FCIS

*Chief Executive, Institute of
Chartered Secretaries and
Administrators*

A portrait of a middle-aged man with dark hair and glasses, wearing a dark suit, white shirt, and a striped tie. He is standing against a textured, golden-brown background. The text is overlaid on the bottom left of the image.

Corporate governance in mainland China

Treading an unusual path

CSj talks to one of mainland China's most respected corporate governance experts, Professor Li Weian, President of Dongbei University of Finance and Economics, about what kind of corporate governance culture will emerge in mainland China in the years ahead

With the rapid pace of development of the Chinese economy, the increasing internationalisation of businesses and the growth in the number of companies listed overseas, improving corporate governance has become key to the effective operation of mainland enterprises. Professor Li Weian, President of Dongbei University of Finance and Economics, says that mainland China is improving fast in corporate governance, but must further enhance its governance philosophy in order to fare better under increasingly stringent market regulation.

Professor Li Weian is a leading researcher in enterprise management and corporate governance in mainland China. He has been the Dean of the Business School of Nankai University and Director of the Research Centre for Corporate Governance at Nankai University, and has deep insight into the governance challenges currently faced by enterprises. He has contributed significantly to raising the standard of corporate governance in mainland China. His research is remarkable in both depth and breadth, covering areas from governance of local companies to governance in multinational companies, and from governance structures to governance mechanisms.

According to Professor Li, the development of his research has followed economic and corporate developments in the PRC. Currently his focus is on what he sees as a paradigm shift of corporate governance, that is, the shift from executive-led to market-driven governance. Some countries and regions, including Hong Kong, are more advanced in corporate governance than the mainland, which has only been catching up in recent years. In general, the company law and the governance structure of legal entities in China combine the characteristics of different models, including those in Britain and the US as well as those in the European continent, giving rise to a unique system of its own. An example is the adoption of the supervisory board system under continental law as well as the concept of the independent director, in the hope of enhancing governance by combining the strengths of both worlds.

'There is the issue of duplication of functions here,' says Professor Li. 'The solution is to define the roles clearly. The board of

directors and the supervisory board must be distinct in their roles, they should not take charge of the same things. We suggest enhancing the role of the independent director in the board of directors in overseeing the soundness of the decisions of the board, while the supervisory board should focus more on compliance. Then their respective roles will be clear.

'Our concern now is not only the conflict between the two but also the independence of the monitoring role. It would be difficult for the supervisory board to exercise independent monitoring if it comprises internal staff only. We should move towards external supervision by a pluralistic board. In view of the existence of different interested parties and their interrelationship, it is of utmost importance to reduce conflicts and put in place checks and balances in the form of independent monitoring. Only by doing so will the company be able to implement its decisions effectively and enhance its values.'

Towards a new governance culture

Since 2001, Professor Li and his team have been publishing the Chinese corporate governance index. This helps assess the

Highlights

- the shift from executive-led to market-driven corporate governance represents a fundamental change in regulatory philosophy and will require a profound change of mindset if it is to be successful
- there is a need for a clear delineation of the roles of the supervisory board and of independent directors on management boards in mainland China – the former should focus on compliance while the latter should focus on overseeing the soundness of board decisions
- one hurdle to the professionalisation of board secretaries is that the board secretary position is often seen as a step to promotion rather than a profession you train for and stay in throughout your career



implementation of corporate governance principles in China and appraise corporate governance performance, contributing to the research into governance needs and to raising the standard of governance. He says that a new governance culture has emerged among PRC enterprises. In the past, they didn't take market rules as seriously. Now they are more aware of the importance of compliance and accountability.

'Corporate governance involves the practice of pluralism in governance and the harmonisation of different interested parties' diverse needs. The key is how to reach a consensus. Furthermore, governance is an ongoing process. There is the misconception among some companies that restructuring for listing is a one-off exercise involving the setting up of an office, and everything will be over after the restructuring. This is not right. We must bear in mind that corporate governance is there as long as the company is running. Business failures occur even in developed countries like the US, where financial market systems are mature. Look at the Enron incident in 2003 and the demise of Lehman Brothers in 2008, and you will realise the importance of corporate governance.'

Corporate governance is necessary in any organisation, he adds. It is relevant not only to companies but also to non-profit-making bodies, such as universities, hospitals and governments. Stock exchanges on the mainland are restructuring themselves



from a membership structure to a corporate structure and are even about to apply for listing, and the issue of governance is just as relevant here. State-owned enterprises restructured themselves and became listed, and a lot of private companies emerged. Many Chinese companies have listings in mainland China, Hong Kong and the US. Although there are problems in some companies, the governance standard has generally become much higher as compared with the situation before restructuring and listing.

Improving the quality of companies

Professor Li believes that the Chinese corporate governance index demonstrates that the corporate governance of Chinese companies has been improving continuously since 2001. The index dropped slightly after the financial crisis in 2009. In general, the process of restructuring and listing raises the governance standards of state-owned enterprises. Corporate governance in privately-owned companies has also been continuously improving, especially for companies on China's secondary and SME boards. These companies have in fact exceeded companies on the main board in terms of their corporate governance achievements. Why is that so? In general, the secondary and SME boards are relatively new and, in view of their risk level, they are subject to more stringent regulatory requirements. As a result, they tend to perform better in their compliance after becoming listed.



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In developing its corporate governance principles and practices, mainland China has drawn much on Hong Kong's experience. Professor Li agrees that the standard of corporate governance in Hong Kong is higher, but points out that the mainland is improving fast since it is refining its regulation and raising the standard of corporate practices. Although it is still some way behind Hong Kong, the gap is gradually narrowing.

'The history of corporate governance in the PRC is short. Many companies go public in the US, Hong Kong or other overseas markets, and complying with the listing rules of these markets is a big challenge. Some listed companies have got into trouble and replaced many members of their senior management. But this is less common in unlisted companies, so this raises the question of whether the governance of listed companies has deteriorated.'

Professor Li says that this impression is misguided. Listed companies have to comply with very stringent requirements, particularly on information disclosure and accountability while companies that have not gone public do not have to comply with these rules. With the tightening up of listing requirements, the corporate governance of mainland listed enterprises has improved, not deteriorated.

Professionalisation of board secretaries

Regarding the development of the corporate secretary (or

board secretary, as it is called on the mainland) profession, Professor Li says that the role of the board secretary in listed companies in China is generally taken up by managerial staff at, or above, the level of vice-president – higher than that of company secretaries in Hong Kong. Practically, corporate governance is achieved through the work of the board secretary. The board secretary is the spokesperson of the company and the gatekeeper of governance, standing at the forefront of governance. Often the board secretary has to convince the board and the chairman of the right way forward in compliance with rules and regulations, and has to maintain good communication with management, shareholders and regulatory authorities.

'The work of the board secretary is gaining attention on the mainland, but there isn't an organisation like the HKICS to coordinate and facilitate the operation of the profession and enhance training and professional development. I trust that this will gradually improve and board secretaries will perform their role better.'

'At present, the position of board secretary is largely seen as a step to promotion or to higher positions in other companies, it has not been developed into a position in which individuals can stay long. We should make the work of the board secretary more professional and enhance the professional recognition of the

board secretary position and we should also centralise training for board secretaries.'

Professor Li points out that the board secretary is a new position arising from the need for compliance with listing requirements. It is an unfamiliar profession in mainland China and many people still don't quite understand what the position involves. Further publicity and education is necessary and the development of the profession will take time. Already much greater importance is attached to the work of the board secretary and the position is now held by members of senior management. Going forward, Professor Li believes it will become more professional, it will no longer be a position that can be filled by anybody since the job is too complex to be carried out by someone who has simply passed an examination. Competent board secretaries must have diverse qualities, he adds. They should have expertise in compliance and law, good communication skills and sound financial knowledge. The fulfillment of the role of the board secretary is conducive to effective governance and enhancing governance standards.

The shift towards market-driven governance

One interesting trend in corporate regulation in mainland China in recent years has been the shift away from a top down approach to supervising companies. The creation of a national listed company association – the China Association for Public Companies (CAPCO) – in February this year was certainly a major development in mainland China's new quest to encourage more self-regulation within companies.

Professor Li supports the establishment of CAPCO. He believes that CAPCO provides a bridge between listed companies, regulatory authorities and the government, and will provide the market with examples of good practices. In his opinion, CAPCO can expedite the shift away from executive-led governance in the PRC market and enhance the quality of listed companies, promoting good corporate governance culture.

'On top of this, I think more should be done. The government is hesitant to liberalise the market, fearing that things will descend into chaos once control is relaxed. Therefore the establishment of a self-regulatory mechanism is highly significant. More should be done in this respect. As market reforms go on and the

capital and securities markets develop, and with intermediary bodies functioning, the executive-led characteristics of the market will subside.

'Talking about the general trend, executive-led governance will gradually give way to market-driven governance. But there may be fluctuations at times. During the global financial crisis, for example, the financial market was in turmoil, the US suffered from economic recession, European countries were in serious debt problems, but financial institutions in China held out. So some people became sceptical of systems that rely fully on market-driven regulation, and even found the executive interventionist policy of China desirable. In fact, PRC financial institutions survived the global financial crisis because risks had been contained by stricter internal and external governance requirements after they had restructured themselves and gone public. We can't say that this is a result of the interventionist policy.'

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Professor Li says that the executive-led governance model originally adopted in mainland China was largely centralised in nature. The current shift towards pluralistic

market-driven governance brings about great changes. As China develops, it has been moving away from a planned economy. Reforms have changed the old order of things. Companies going to list overseas have to comply with listing requirements, in other words, to interface with the international market. The shift from executive-led governance to market-driven governance involves a fundamental change in governance philosophy. It also means curtailing the powers of executive departments and affects vested interests. Great efforts have to be made in order for governance reform to be successful. Finally, corporate governance relies on the rule of law, or compliance with rules and regulations. We have to move from rule of man to rule of law, implement governance step by step, do things according to the law and regulations, and eliminate companies that do not do well.

Kenneth Ko

Journalist

Professor Li Weian was interviewed during the Hong Kong Institute of Chartered Secretaries' Corporate Governance Conference 2012, held on 5–6 October in the JW Marriott Hotel, Hong Kong.

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走一条不简单的路

随着中国经济快速的发展步伐，企业国际化进程势头强劲，在海外上市的公司数目与日俱增，改善公司治理已成为内地企业有效运作的一大关键。现任东北财经大学校长李维安教授指出，内地企业在公司治理上提升速度很快，但仍必须进一步强化治理理念，才能在日益严格的市场规则监管下做得更好。

李维安教授是研究内地企业集团管理和公司治理的代表者，历任南开大学商学院院长及南开大学公司治理研究中心主任，对当前企业面临的治理环境变化和挑战，有着真知灼见。他多年来在这方面的研究不遗余力，对提升内地公司管治的标准贡献极大。而且，研究内容既深且广，最初重点在于公司管治的理论，然后往实务转，从治理原则到治理政策，以至治理的评价。同时，研究在传统的公司治理基础上不断延伸，从国内治理到跨国治理，从治理结构到治理机制。

李维安教授说，研究总是跟随着内地经济和企业的发展，而当前的重点就是公司治理的转型，如何从行政型的公司治理往经济型转。就公司治理来说，一些国家和地区包括香港都走在内地前面，中国的治理改革这些年才慢慢的赶上来。一般来说，中国的《公司法》和法人治理结构，特色是把不同形式包括英美模式和大陆模式兼容并蓄，发展成自己独特的制度。就像内地采用了大陆法系的监事会制度，同时把独立董事制度吸收进来，想融合两者的优势来加强监督。

李维安教授说：「这里有一个功能重叠问题，解决的办法就是把分工分好。董事会和监事会的监督职能要明确清楚，不能都管同样的事。我们提倡董事会强化独立董事的角色，主要倾向于对董事会决策正确与否的监督，而监事会的监督更多于是否合规合法，这样就可以各司其职。」

「目前，我们担心的不仅是两者之间的摩擦，而且是监督的独立性问题。如果监事会都是由内部人组成的话，这很难发挥独立监督的作用，发展的方向是多元的外部监督。在公司管治



上，面对不同的利益体和利益关系，最重要的是通过独立性监督，互相制衡，减少摩擦，才能顺利推行公司决策，提升公司的价值。」

新的管治文化

从2001年起，李维安教授和其率领的团队一直在发布「中国公司治理指数」，该系统有利于检查中国公司治理准则的执行情况，为公司治理估价，进一步探究具体治理需要及改善治理水平。他指出，内地企业通过公司管治形成新的管治文化，由原来对市场游戏规则不太重视，不太遵从，到现在合规意识和问责意识都加强了。

「公司治理的理念，是管治体现多元化，把不同的利益体及不同的利益需求融合起来，关键是你怎么让大家达成共识。另外，治理是一个过程，有些企业误以为改制上市只是成立一个办公室，改制之后就完事了，这样做很不对。大家要明白，只要有公司运作，公司治理就存在。」

「即使像美国这样的发达国家，拥有成熟的金融市场体系，还是有公司出问题。像2003年的Enron事件，2008年雷曼兄弟(Lehman Brothers)倒闭，引发全球金融危机，大家就可以理解公司治理的重要性。」

李维安教授说，任何组织都需要治理。现在不光是公司搞治理，非营利组织包括大学、医院和政府也搞治理。就如内地的证券交易所也面临改制，要由原来的会员制发展成公司制甚至是上市公司，这里也有治理问题。从公司管治来说，国有企业通过改制上市，大量民营企业也发展起来，而众多内地企业在国内、香港及美国等地上市，虽然有一些企业出现问题，但总体上，与改制上市之前相比，治理水平都已提升了许多。

企业质素不断攀升

李维安教授说，「中国公司治理指数」对内地公司治理评价显示，从2001年开始基本上持续改善，只是2009年金融危机以后指数稍为下滑微调。一般国有企业改制上市，治理都更加规范，而民营企业的治理水平也不断提升，特别是新发展的创业板和中小企业板的公司在治理上更超越了主板的上市公司。为什么？总体上，创业板和中小板是新近开发的，考虑到风险问题，对它们的监管要求相对高一些，所以上市以后在合规方面表现好一些。

内地搞公司管治，有相当多的是借鉴香港的一些经验。李维安教授认为，香港的公司管治规格确是比较高的，不过，内地这些年来提升的速度很快，包括规则的完善、治理实施和其他方面水平的提高，虽然和香港还有一定的差距，但距离正慢慢地拉近。

「内地搞公司治理的时间尚短，而这么多企业到美国、香港或其他海外市场上市，要符合当地的上市规则要求，确是很大的考验。有人说，一些上市公司出了问题，换了那么多高级管理人员，不上市的公司反而没有这情况，就提出了这么一个问题，上市公司的治理是不是越搞越差？」

李维安教授指出，这些说法都错了，因为上市公司面对很严谨的要求，包括信息披露失真，都要问责，不上市的企业不需要遵守这些规则。所以，在越趋严谨的上市要求下，内地企业的管治并没有往下倒，而是往上提升。

内地董秘发展要专业化

谈到公司秘书即内地所称的董事会秘书这个专业的发展，他说，内地董秘一般在上市公司都是由副总以上职级的管理人才担任，地位一般比香港的为高。实际上，就是把公司治理通过他的工作落实，董秘是公司的发言人，也是治理的看门人，站在治理的第一线。董秘往往要说服董事会和董事长如何做到合规的要求，也要和管理层、股东以及监管部门维持良好沟通。

「董秘的工作在内地越来越受到重视，但缺少像香港特许秘书公会这样的组织，协调及促进行业的运作，提升有关学习、培训和专业发展，相信在这方面会逐渐完善，更好地发挥作用。」

「目前，董秘一职很大程度上被视为一个阶梯，干一段时间就被提拔或上别的公司去担当更高的职位，总体上还没有成为一种可以长期干的岗位。我们要让董秘的工作更专业化，进一步加强董秘专业认可地位，而培训工作也要统一起来。」

李维安教授说，由于董秘是伴随着上市合规要求而出现的新岗位，在内地仍算是颇陌生的行业，很多人还不很明白，需要进一步宣传教育。而董秘的发展需要一个过程，从开始不被重视，到重视其工作并由高管担任，再发展下去，将会更专业化，不是随便什么人都可以做，也不是说简单的考考试就可以胜任。要当一个称职的董秘，需要具备多方面的素质，不但要掌握合规和法律的技能，还要有沟通的技巧，也要懂得财务方面的知识。通过董秘的称职工作有利于提高和达到治理的有效性。

往经济型治理转

对于中国上市公司协会的成立，李维安教授深表赞同，形容协会是上市公司、监管部门和政府之间的桥梁，一方面加强与政府监管方面的服务，一方面可以促进上市公司自律约束，形成行业之间的良好行为。他说，这样一个组织，可以促进内地市场「去行政化」的发展进程，同时提高上市公司的质量，推广公司管治好的文化。

「在这个基础上，我觉得应该还要进一步落实。政府很多方面都不敢放，怕一放就乱，那么行业自律，自我约束机制的建立，当中的意义很大，应该在这个平台上再多做一点。随着市场化的改革，资本和证券市场的发展，类似中间组织作用的发挥，行政主导的角色就会大步退出。」

「总体趋势来说，行政型治理将会趋弱，经济型治理得以加强。但是，有时候或许会有反复，就以全球金融危机为例，金融市场翻天覆地，美国经济衰退，欧洲国家陷入严重债务问题，而中国金融机构挺过去了。于是，有些人对完全市场监管的制度产生怀疑，甚至反过来说中国的行政干预政策可取。其实，内地金融机构能够挺过全球金融危机，有赖改制上市后在更高要求的内外管治下，把风险控制下来，并不能说这是干预制度所致。」

李维安教授说，内地原来的行政型治理往往是一元化的，现在正往多元化的经济型治理转，带来了巨大的变化。中国的发展一路从计划经济走出来，改革把原有的框框打破了，现在众多企业到海外上市，要合规即与国际市场接轨，这要有一定的过程。从行政型治理往经济型治理走，其中涉及治理理念的根本改变，也意味着行政部门的权力要受到限制，当中涉及既得利益的改变，真的要加倍努力去干，才能使治理改革闯关成功。最后，公司管治要落实到法治，按规办事。就是从人治往法治走的路，要逐步把治理落到实处，凡事依法依规执行，把做得不好的公司淘汰。

高锦坚
(记者)



Regulatory crisis management

Preventing and handling a regulatory investigation

With the Securities and Futures Commission increasingly aggressive in enforcement, what should you do to best protect your company? Timothy Loh, Principal, Timothy Loh Solicitors, makes some practical recommendations on how to prepare for and handle regulatory investigations.

The past year has seen the Securities and Futures Commission (SFC) continue its increasingly aggressive and comprehensive approach to regulatory enforcement. The approach today is in stark contrast to the far more *laissez-faire* approach 15 years ago.

For companies listed on the Stock Exchange of Hong Kong (SEHK), the SFC has now begun to treat regulatory infractions as white collar crime, seeking criminal penalties on a regular basis. This past year the SFC secured its first criminal conviction against a director of a Hong Kong listed company for market manipulation (Li Jialin) and a criminal conviction against a director of a Hong Kong listed company for insider dealing (Simon Chui Wing Nin). The SFC similarly commenced criminal proceedings against a Hong Kong listed company and its director, alleging they made false or misleading stock exchange announcements (PME Group and Ivy Chan Shui Sheung) and successfully prosecuted a Hong Kong listed company and its former company secretary for providing false or misleading information to the SEHK (Asian Capital Resources and Andrew James Chandler).

Meanwhile, the SFC continued to pursue Hong Kong listed company directors for wrongdoing, to disqualify them from serving as directors and to require them to compensate the listed companies which they are alleged to have wronged as directors (James Li Nga Kuk and Li Won Hing of China Asean Resources). In one case (Styland Holdings and Kenneth Cheung Chi Shing and Yvonne Yeung Han Yi), the former chairman and a former director of a Hong Kong listed company were ordered to pay HK\$85 million in compensation to the listed company for

entering into transactions not in the best interest of the listed company.

At the same time, the SFC flexed its muscles in dealing with a listed company (Hontex International Holdings Company), securing a court order requiring the company to make a repurchase offer, valued at about HK\$1.03 billion, to investors who subscribed for its shares as a result of misleading statements in its prospectus.

Financial firms regulated by the SFC and the Hong Kong Monetary Authority (HKMA) fared no better. The new *modus operandi* of the SFC appears to be reprimand and fine and to require firms to compensate affected clients. In this regard, this past year saw Merrill Lynch reprimanded and fined HK\$3.5 million for failing to take adequate steps to properly handle client complaints. More significantly, under an agreement with the SFC, Merrill Lynch agreed to fully compensate clients affected,

with financial liability in this regard appearing to be in the range of HK\$56 million. Similarly, this past year, the SFC reprimanded Société Générale for disclosure failings in relation to OTC traded products and Société Générale agreed to reimburse affected customers, with total financial liability exceeding HK\$85 million.

At the same time, this past year saw one of the largest regulatory fines ever imposed – the SFC fined Mega Capital HK\$42 million for failings as a sponsor relating to insufficient due diligence and supervision.

Every regulatory investigation represents a potential corporate crisis. Handled poorly, an investigation may result in deep reputational damage, affecting how an institution is perceived for years to come and significant financial losses. Handled well, an institution can emerge intact, with flawed policies and procedures corrected and its reputation with its clients and employees none the worse.

Highlights

- determine in advance who will comprise the response team
- establish record keeping policies with an eye to determining what records may be beneficial to generate, how long to keep records and when to destroy records
- establish protocols for managing complaints and regulatory enquiries to ensure that these matters are escalated when appropriate to more senior personnel for consideration
- when a regulatory proceeding begins, launch an internal investigation of the facts and a careful assessment of the relevant laws and regulations
- establish a system under which periodic assessments are undertaken on a firm wide basis.

Preventing a regulatory crisis

Many regulatory investigations begin with complaints and many complaints begin with financial loss. Whenever business leadership is aware that stakeholders, be they shareholders or clients, are losing or may lose money, it should consider the need for an independent assessment of the process by which the firm or other stakeholders (for example key executives or relationship managers) stand to gain at the expense of shareholders or clients.

Regulatory crises are often the product of long-standing but highly profitable behaviour which is tolerated by business leadership, accompanied by rationalisations that 'everyone is doing it this way'. Without an independent assessment, it is too easy for management to fall into this trap and to gloss over conduct which, when examined critically and objectively, fails the regulatory standard.

Experience suggests that business leadership is best served with periodic assessments on a firm-wide basis. Behaviours over time can deviate so that even when a compliance policy was put in place at the time of inception of a product or service, the manner in which that policy is implemented and enforced may now differ markedly from what was originally contemplated. Furthermore, where a product or service is producing substantial revenue, an *ad hoc* assessment of the behaviours associated with the product or service is likely to trigger political resistance with the revenue producers resentful at being targeted for 'doing their jobs really well'.

Planning for crisis

Every regulatory proceeding is unique and there is no single response template.

However, there are predictable patterns in the way such proceedings unfold and advance planning gives business leadership more time to focus on the specific circumstances of the proceedings without having to worry about the nuts and bolts of responding. Examples of matters which can be very time consuming but can be planned in advance include:

Response team. Business leadership can and should determine in advance who will comprise the response team. Typically, the response team will include senior business leadership, legal counsel and public relations personnel. The choice of legal counsel to handle a regulatory investigation or enforcement action is a vitally important decision. Too often, it is a decision which is left to the last minute with the result that valuable time that could be spent giving careful and considered thought as to how to respond to a regulator is spent shopping for a law firm with securities litigation experience. In the case where the SFC shows up in the early morning with a warrant in hand to seize documents, the time to shop for a law firm is extremely limited.

Legal professional privilege. Business leadership can establish communication protocols to ensure that whenever legally possible, confidential communications within the organisation and, where applicable, fact finding conducted within the organisation are protected from disclosure on the basis of solicitor-client privilege or, possibly, litigation privilege.

Record keeping. Business leadership can and should establish record keeping policies with an eye to determining what records may be beneficial to generate, how long to keep records and when

to destroy records. Beyond ensuring mechanical compliance with statutory record keeping requirements, these policies will determine what evidence is available to the regulator and to the organisation to defend itself. It goes without saying that business leadership should ensure that it is able to access records in a timely fashion and that where storage devices and records are seized under a warrant, the organisation is able to continue to function.

At the same time, business leadership can and should establish escalation procedures. These procedures should establish protocols for managing complaints and regulatory enquiries to ensure that these matters are escalated when appropriate to more senior personnel for consideration and, if necessary, an external lawyer versed in securities litigation for independent assessment. History demonstrates that complaints and regulatory interactions are fertile ground for regulatory proceedings. It is not uncommon for an organisation to believe that it is safe because it is not a person specified to be under investigation. However, this is a mistake. A regulator may not begin with an organisation as a target of its enquiry but it certainly can end with that organisation being a target.

Along the same lines, escalation procedures should include protocols in which all staff are trained to notify business leadership of a regulatory investigation. Whilst SFC investigations are subject to statutory secrecy provisions, except where the SFC has requested complete secrecy, the SFC has given standing consent for recipients of investigation notices to disclose to their employer the fact that they have received an investigation notice, the

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It is critical to understand the facts in the context of the applicable laws or regulations. Such an understanding is a pre-requisite to dealing intelligently with the regulator.
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general nature of the matter and the date, time and place at which he or she is required to attend an interview with the investigator. The fact that an employee receives an investigation notice is cause for concern within an organisation as any wrongdoing by an employee may give rise to subsequent action against the organisation itself and potentially, the organisation's business leadership.

Getting the story right

When a regulatory proceeding begins, it is critical to understand the facts in the context of the applicable laws or regulations. Such an understanding is a pre-requisite to dealing intelligently with the regulator, ensuring truthful disclosure of information responsive to the regulator's concerns and controlled disclosure of information designed to highlight to the regulator information material to the pursuit of particular defences or pleas of mitigation.

The speed at which the key facts are assembled matters. First impressions count. The time to control the disclosure of facts begins with the initial enquiry, not with the receipt of a notice of disciplinary action, the laying of criminal charges

or the commencement otherwise of prosecution proceedings. Every interaction with the regulator is an opportunity to present the organisation's version of the facts and themes of defence or mitigation.

With surprising frequency, the key facts are not as initially thought. Only a proper investigation of the facts and a careful assessment of applicable laws and regulations will reveal the key facts. A lawyer experienced in regulatory defence and versed in the range of laws and regulations which may apply is best suited to investigate as he or she is uniquely qualified to determine which facts need to be elicited.

It is important to stay focused and address the immediate regulatory proceeding. After the immediate problem has been contained, consideration can be given to a broader scale compliance review.

Stopping bad practices

Immediately upon learning that a regulator alleges wrongdoing, business leadership should suspend any practices which are alleged to fall afoul of regulatory standards pending an independent assessment of those practices.

Dealing with employees

Business leadership should resist the urge to discipline employees immediately. Discipline should follow only after the key facts have been assembled, so as to avoid premature judgement of employees concerned.

Strong and premature discipline may alienate employees who possess important information and who might otherwise be helpful in the proceedings. Employee cooperation will be much more difficult to obtain after an employee has been judged harshly and perhaps unfairly. This may be so even if the employee whose cooperation is solicited is not the one who was disciplined. Employees who are disciplined and feel that they have been unfairly treated may point the finger at business leadership in respect of the matters under investigation.

Business leadership may also reach a decision as to whether they will fund separate and independent legal representation for employees who are asked to attend an interview with investigators. Generally, business leadership has an interest in what employees say in such interviews but, as a result of statutory secrecy provisions, are unable to arrange for the law firm representing the organisation to attend interviews of employees in their capacity as employees.

Timothy Loh

Principal, Timothy Loh Solicitors

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For more information, visit www.timothyloh.com. The author can be contacted at: tloh@timothyloh.com.

The 21st-century board

Recommendations on board effectiveness

The Institute's corporate governance paper competition is run biennially in tandem with the Institute's corporate governance conferences. This month, CSj publishes the second and final part of the winning paper in this year's competition which, like the conference itself, set itself the tough but crucial task of troubleshooting the 21st-century board.

In 2008, the UK Institute of Directors published *An effective board* which gives a highly useful definition of board effectiveness. 'An effective board has the following characteristics: it is efficient, allows a respectful conflict of ideas, is simple, is focused, is integrated and synergistic, has good outcomes, preserves community assets, and leads to enjoyment and personal reward for the individual board members.'

Reaching this ideal, however, is not always easy. Last month we highlighted some common weaknesses that undermine board effectiveness. In this second and final part of our article, we make practical recommendations on how to boost board effectiveness.

Independence and diversity

An independent board is an essential element for sound corporate governance. It is important to ensure that there are no actual or perceived conflicts of interest between the board members and management. This will help the board become more effective in supervising and, where necessary, challenging the activities of management. In addition, the board will be capable of assessing

the performance of managers with an objective perspective. Therefore, the majority of board members should be independent of both the management team and not have any commercial dealings with the company.

The first step to ensuring an independent board is to recruit a sufficient number of independent directors. According to the Hong Kong listing rules, the board of directors of a listed company should have at least three independent non-executive directors (INEDs). Genuine independence, however, is not merely a matter of the number of INEDs on the board – quality is more important than quantity when it comes to independence. One way companies can achieve quality independence is to ensure that there is a good diversity of perspectives on the board.

Diversity refers not just to gender and age; it also covers matters such as experience, ethnicity and the countries where people have worked. Diversifying the board leads to more thought-

provoking and rewarding discussions and ultimately to better decision-making. A great deal of research shows that non-diverse boards are in much greater danger of descending into 'groupthink' than boards with a good mix of perspectives. The following provides recommended directions for diversifying the board.

Professional diversity

For boards to be effective they need to recruit members from heterogeneous backgrounds.

Traditionally, boards tend to look for skills and expertise in areas such as finance, accounting, auditing, law and regulation, risk management and asset management. In the 21st century, boards will need to adopt a more diversified approach by recruiting members with experience in community relations, stakeholder engagement, environmental management, reputation management and communications.

- Boards with a diverse and broad knowledge base will be in a better position to look at the challenges the company faces from different perspectives. This diversity of perspectives can also overcome the biases of individual directors.
- Boards with directors from varied professional backgrounds will also have a more diverse social and professional network base, both inside and outside the entity's boundaries. A wide network base can be highly useful to companies and can help mitigate the information asymmetry problem (see 'information asymmetry' on page 29), since it can provide independent sources of information and prevent the board from becoming too reliant on management disclosures.

Ethnic/ national diversity

Globalisation has become a fact of modern life. Increasing economic integration with the global economy has meant that a business in Hong Kong is rarely simply doing business with Hong Kong people anymore. The business world is encouraging convergence.

Some major Hong Kong companies have a truly global strategic outlook. They serve worldwide markets with production facilities and added-value chains that are not regionally dependent and they raise finance from various international sources. Unfortunately, this is seldom reflected in the composition of their boards of directors. The proportion of 'foreign' directors (that is, not nationals of the home country) is typically very small. Therefore, one of our recommendations is to increase national diversity on the board. There are several benefits to be gained from this.

- *Gaining an international perspective.* Directors from different national backgrounds offer different cultural perspectives on the issues the board addresses. This helps the

Highlights

- recruiting a greater number of INEDs to Hong Kong boards will not necessarily improve their independence – quality is more important than quantity when it comes to independence
- ensuring the board has access to independent sources of information is crucial to avoid over-reliance on management disclosures
- the role of the board is to act in the best interests of the company's shareholders and stakeholders – it is not enough, therefore, to be solely focused on maximising profit

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Some major Hong Kong companies have a truly global strategic outlook... Unfortunately, this is seldom reflected in the composition of their boards of directors.
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board brainstorm for creative and innovative ideas.

- **Increasing the confidence of international investors.** If a significant number of shareholders are foreigners, this should be reflected in the composition of the board. This is especially important for companies cross-listed on major international stock exchanges. This adds to the global image of the company in the eyes of potential investors and employees.
- **Supporting international operations.** If a company is oriented towards international operations, the board needs to have directors who are well-experienced internationally and who can provide the relevant support.

Although foreign directors can bring good ideas to the boardroom, there might be some potential drawbacks to increasing

the national diversity of the board. In particular, there will be substantial costs involved in hiring foreign directors (especially if they are independent directors) from distant countries as it becomes more difficult and time-consuming to have onsite visits and board meetings. This discourages an independent director's incentives to gather information and closely monitor top management.

Gender diversity

Increasing female representation in the boardroom will be a trend for 21st-century boards. Many recent academic studies point out the advantages of women's involvement in the boardroom. Furthermore, governments and businesses all around the world are actively promoting gender diversity on corporate boards. Gender diversity on boards has three key dimensions:

1. **Improving performance.** Women bring different perspectives and

voices to boardroom debates. They often take their non-executive director roles more seriously and are better prepared for board meetings.

2. **Accessing the widest talent pool.** Women are becoming more highly educated, which implies that there is now a wider pool of highly-qualified talent that companies can choose from. In Europe, approximately six out of every 10 university graduates are women. In the UK, women represent almost half the labour force.
3. **Achieving better corporate governance.** The more gender-balanced boards are more likely to ensure better communication and focus on additional non-financial performance measures, such as: employee and customer satisfaction, sustainability, and corporate social responsibility. They are also more



likely to have new director induction programmes and close monitoring of board accountability and authority.

In some countries it is mandatory to include women in the boardroom. For instance, Spain passed a gender equality law in 2007 obliging public companies and IBEX-quoted firms with more than 250 employees to reach a minimum of 40% representation of women on boards by 2015. France passed a law in 2010 requiring French boards to have 20% female composition within three years and 40% by 2016.

In the context of this international trend towards tougher requirements on gender diversity, boards in Hong Kong need to show that they can learn from their international peers by recruiting more women directors. While these quotas for gender representation on boards overseas have brought about a marked change rapidly, the key issue is whether

companies see the intrinsic value of board diversity. Shareholders should also be more pro-active in promoting diverse boards.

Information asymmetry

We discussed in part one of this article the problem of the information asymmetry between non-executive directors on the board and management. We highlighted the dangers of non-executive directors relying too heavily on management disclosures without making any attempt to verify those disclosures independently. This can prove disastrous where management is filtering or even withholding relevant information regarding the entities' operations from the board.

David Nadler, in his article 'Building better boards' published in the *Harvard Business Review* (May 2004), shared his views on how the board can be kept in the dark. 'One is to provide them with too little information. The other, ironically, is to provide too much.'

These problems were addressed in the US, in the wake of the Enron, HealthSouth, WorldCom, Global Crossing and Adelphia scandals, by the passage of the Sarbanes-Oxley Act (SOX) in 2002. SOX attempts to legislate for better transparency and accuracy of information reaching the board, but the legislative route is just one of the possible solutions to reduce information asymmetry. We mention above, for example, the benefits of professional diversity in mitigating this problem. A broader network and knowledge base is the key for an effective board so that it is not the last group to hear of trouble when catastrophe strikes.

Social responsibility

The role of the board is to act in the best interests of the company's shareholders and stakeholders. It is not enough, therefore, to be solely focused on maximising profit. Companies should maximise their financial performance by strategically managing their economic,

Gender diversity in Hong Kong

According to the 2012 *Women on Boards* survey by Governance Metrics International (GMI), women make up just 9.4% of Hong Kong directors. About 40% of Hong Kong companies do not even have a single female director. Out of the 48 constituent companies of the Hang Seng Index (HSI), 20 do not have any women directors.

According to the *Women on Boards League Table 2012*, published by Community Business (www.communitybusiness.org), which analyses the representation of women on the boards of Hang Seng Index (HSI) companies, the top three companies for female board representation are all in the financial sector. In Hang Seng Bank Ltd, five of the 16 board members (31.3%) are women. Four of them hold non-executive directorships and one holds an executive directorship. Bank of China Ltd comes in second place, with four of its 15 board members (26.7%) being women, all of whom are non-executives. HSBC Holdings Plc is ranked third, with 23.5% female board directors. The four women on its board of 17 all hold non-executive director positions.

social, environmental and ethical performance. Incorporating sustainable business strategies into the company's outlook helps define its long-term value. Sustainable strategies include reputation management, cost control, competitive positioning and revenue opportunities. Sustainability can create business value by building reputation, enhancing employee morale and strengthening competitiveness. The board can provide supervision and accountability for corporate sustainability practices. The following methods can help to implement the sustainability concept:

- **Diversify directors' backgrounds.** Apart from achieving the advantages discussed above, a diversified board can also help in incorporating sustainable strategies. The board can include people who are experts in sustainability practices who can then share their experience with the other directors.
- **Start sustainability from the boardroom.** A board should create an atmosphere that is conducive for sustainability not only for top

management but also the entire company. Directors need to ensure that their organisation views corporate sustainability as more than just good corporate citizenship; it must be an integral component of its overall business strategy. In this process, the board plays an important role in setting up the right environment, which is the foundation for all other components of internal control, providing discipline and structure.

- **Improve education and training.** Development and training of directors can make the board become more effective. The board is primarily responsible for good governance practices and directors are always asked to contribute in terms of new areas of knowledge and skill sets. Continuous improvement of the individual director is becoming more and more important. Directors can attend training courses and seminars related to corporate sustainability, which can help individual board members gain insights into the current leading environmental

“ while many countries have set quotas for gender representation on boards and have brought about a marked change rapidly, the key issue is whether companies see the intrinsic value of board diversity ”

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”



issues, climate change and its impact, and the newest sustainability business model.

- **Establish a sustainability committee.** Companies can set up a specific sustainability committee or expand the role of existing committees to include sustainability. The committee should be responsible for overseeing the incorporation and effectiveness of sustainable business activities. It should also set targets and strategies, review the performance regarding these activities, and communicate this information with top management.

A company should not initiate sustainable activities with a financial motive. The board must understand the core value of sustainability and corporate social responsibility. It must ensure that a

company encourages social activities on a purely non-profitable basis and it should set up relevant policies in an ethical way and provide resources to give effect to these policies. The actual benefit from being socially responsible may not be directly evident to the company, but society as a whole certainly benefits.

Conclusion

Modern corporate boards face not only higher expectations from the public, but also increasing legal responsibilities. This article has shared some insights into the challenges for 21st-century boards and makes some recommendations to improve board effectiveness. Some of these recommendations include having more diversity on the board and setting a sustainable corporate strategy. Directors with a better network within and outside the company help to provide a better picture of the challenges the company

faces and help make the board more independent of management. Having access to independent sources of information is crucial to avoid over-reliance on management disclosures. All these factors can work together to improve the operation of corporate boards so that they can become more efficient and effective in the 21st century.

**Ken Chan Wai Kit and
Sardonna Wong Ka Yi**

*Department of Accountancy,
City University of Hong Kong*

The first part of this article was published in the November 2012 issue of CSj (see pages 36-38). Photos of this year's Corporate Governance Paper Competition and Presentation award ceremony can be found on the HKICS website at www.hkics.org.hk.

A review of seminars: October 2012

24 October 2012



Jason Sung, Polly Wong (Chair), Tim Mak, and Winnie Chung

From Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller of Dynamic Holdings Ltd, and chair of the seminar delivered by Tim Mak, Partner, Financial Services Regulatory, Hong Kong; Jason Sung, Partner, Corporate, Hong Kong; and Winnie Chung, Senior Associate, Litigation, Hong Kong; all of Herbert Smith Freehills, on 'Disclosure Obligations for Listed Companies and Officers.'

'Mr Tim Mak, Mr Jason Sung and Ms Winnie Chung jointly presented a well-thought-out and interactive seminar regarding the new statutory disclosure regime for listed companies and officers under the SFO Guidelines on Disclosure of Inside Information. They concisely elaborated the pith of 'inside information' and the crux of the key disclosure obligations. In addition they highlighted pragmatic enforcement cases and guidance on particular issues that facilitated the attendees' comprehension of officers' liability and management control under the new disclosure regime.'

30 October 2012



Susan Lo (Chair) and Mohan Datwani

From Susan Lo FCIS FCS, Director of Corporate Services, Head of the Learning & Development, Tricor Services Ltd, and chair of the seminar delivered by Mohan Datwani LLB PCLL LLM MBA, Director, Technical & Research, The Hong Kong Institute of Chartered Secretaries, on 'Inside Information & Insider Dealing – General Introduction, Parts XIII, XIV and XIVA of SFO.'

'Mohan more than demonstrated his enthusiasm and passion for the topic through this most lively and interactive presentation. The audience was left with no doubt about Mohan's in-depth knowledge of the subject matter. The introduction to the Securities & Futures Ordinance was particularly interesting and gave the audience the background knowledge to understand recent reforms. Thank you, Mohan!'

New membership re-election policy

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

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

We understand that members might have reluctantly chosen not to renew their membership due to sickness, unemployment, pregnancy, etc. This new

re-election policy aims to encourage lapsed members to rejoin the Institute. All applications are to be approved by the Membership Committee.

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

公司治理 从“形备”到“神至”



10月18-19日，香港特许秘书公会召开的上市公司企业规管高级研修班暨第二十七期联席成员强化持续专业发展讲座在京举办，会议的主题聚焦“公司治理与可持续发展”。从讲座各方信息来看，我国上市公司治理“形备神不至”的问题仍普遍存在，如何让公司治理成为公司所需，让公司治理从“形似”到“神至”，是上市公司、自律组织乃至监管机构都需要思索的问题。

来自监管一线、投行及各大机构、上市公司的代表均参与了发言。其中，证监会上市公司部代表从上市公司监管框架、信息披露监管、公司治理监管到并购重组监管等方面进行了全方位解读。

针对此次参会嘉宾最为关注的公司治理问题，证监会代表认为近年来境内上市公司的治理水平稳步提升，具体表现为公司治理的核心理念已被广泛认同，公司治理的组织架构基本确立，透明度、内部控制和合规管理水平明显增强。但上市公司治理“形备神不至”的问题仍普遍存在，距离成熟的现代企业制度的要求还有相当的差距。

2007年起，证监会对所有境内上市公司开展了为期三年的“加强上市公司治理”专项活动。经自查和排查，共发现需要整改事项10,795个；经过持续督

导，问题整改比例超过98%。剩余问题中，公司独立性问题占有很高比重。

证监会代表还透露，证监会针对下一步公司治理改革仍有五大要点，一是多维度破解“一股独大”的治理困境；二是优化独立董事制度与监事会制度；三是持续推动中介机构归位尽责；四是完善优胜劣汰的市场退出机制；五是继续加强上市公司综合监管体系建设。

中国上市公司协会公司治理部主任冯增炜先生则进一步细化了公司治理值得关注的领域，包括审计委员会、内审职能，以及企业风险管理与内部控制的有机结合。

冯增炜认为，审计委员会是公司报告流程中的一个重要部分。其主要职责是代表董事监督管理层实施的财务报告控制和流程的真实性，从而保护股东和其他利益相关人的利益。许多国家的新规章制度重申了审计委员会对财务报告的客观监督作用。而从内审的职能来看，内审的目标必须与公司的战略和目标一致。内审的功能、角色和职责应当清晰界定。

企业风险管理与内部控制则应关注完善现有体系，建立在过去工作的基础上，用更系统、更好的方法和工具来支持和完善企业风险的管理，必须有体系和方法做配套，使风险管理成为支持决策的工具。

此外，上市公司信息披露监管亦是监管要点。证监会代表透露，目前上市公司信息披露存在虚假陈述；隐瞒违规担保、关联交易；业绩预告严重偏差，误导投资者；披露不及时；披露涉嫌重大遗漏；故意延迟信息披露，甚至配合内幕交易等六大问题。下一步，证监会针对信息披露监管改革将完善信息披露基

础制度建设，继续加强监管联动机制并依法打击和防控内幕交易。

值得关注的是，座谈会在最后一个环节将与会嘉宾分成三个讨论小组共同探讨会议主题，并由中国中煤能源股份有限公司董秘周东洲、中国信达资产管理股份有限公司的代表以及广深铁路股份有限公司董秘郭向东代表三个小组总结发言。

参与讨论的嘉宾坦陈对公司治理的有着完全不同的观点，有公司代表表示，上市过程极其煎熬，亦需要付出高昂的代价，甚至为了合规达标损失效率。而按照规定引入独立董事常常是为了满足合规的要求，对公司的贡献度有限。

另有与会人士认为，虽然上市确实存在增加成本及损失效率问题，但聘请独立董事事实上更有利于公司业务发展——聘请行业专家将带来国际化的视野和先进的管理理念，对于民营企业长期发展极其有利，而在上市过程中，治理机制的优化亦为公司提升打下了长期的基础，将有助于有理想的企业成就百年老店。

尽管观点纷纭，但有嘉宾在总结时认为，不同类型的公司在被动面临公司治理时必然存在不一样的感触。但总体来看，不可否认好的公司治理将利于公司决策，而如何让公司治理成为公司所需，让公司治理从“形似”变成“神至”，这依然需要各市场主体探索，更是上市公司、自律组织乃至监管机构都需要思索的问题。

此外，还有部分嘉宾提出，对于公司治理，公司监事会应该发挥更大的作用。董秘这一职位面临责任大、话语权低、不受重视等难题，也希望香港特许秘书公会在不同场合为其呼吁，这亦将有利于促进上市公司治理。

Mandatory CPD

Mandatory CPD requirements

Members who qualified between 1 January 2005 and 31 July 2011 are 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 also now subject to the MCPD requirement and are reminded that they need to accumulate at least 15 MCPD or ECPD points for this CPD year starting from 1 August 2012.

Members who work in the corporate secretarial (CS) sector and/ or for trust and company service providers (TCSPs) have to obtain at least three points out of the 15 required points from the Institute's own ECPD activities.

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

Submission of declaration form

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

Exemption from mandatory CPD requirements

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

MCPD audit checking

The Institute has selected 129 members who qualified between 1 January 2005 and 31 July 2011 for audit checking for the CPD Year 2011/ 2012. The selected members have been requested to submit their MCPD records and relevant documentary evidence for audit checking by email (mcpd@hkics.org.hk) or by fax (2881 5755) on or before 23 November 2012.

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 mandatory requirement of 15 CPD hours every year. The Institute launched its MCPD programme in August last year and, from January 2012, its requirement for Chartered Secretaries to accumulate at least 15 CPD points each year has been backed up by a similar requirement in Hong Kong's listing rules.

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

Merry Christmas and Happy New Year!

The Council and secretariat would like to wish you a Merry Christmas and a Happy New Year! Please note that the secretariat will close on 21, 24 and 31 December at 1pm.

New Fellows

As per Council's direction to increase the number of Fellows who are leaders of the profession, a promotional campaign was launched early this year. A further 17 new Fellows were elected in October 2012:



Chan Yan Yan, Jenny FCIS FCS

Ms Chan is currently a Company Secretarial Manager of Hutchison Whampoa Ltd (HWL; stock code: 13). She oversees a team of professional and general staff to provide a full spectrum of corporate secretarial and compliance services for HWL and its group companies. She is also responsible for coordinating with regulatory bodies to ensure compliance with the relevant rules and regulations. Ms Chan graduated from Shue Yan University. She was the company secretary of a listed company prior to joining HWL.



Cheung Hak Yam, Tony FCIS FCS

Mr Cheung is currently a Company Secretarial Manager of Hutchison Whampoa Ltd (HWL; stock code: 13) with specific responsibilities in the group's Asian telecommunications and water businesses. He oversees a team of professional staff to provide a full spectrum of corporate secretarial and compliance services for the group companies. He is also responsible for coordinating with regulatory bodies to ensure compliance with the relevant rules and regulations. Prior to joining HWL, Mr Cheung worked as an assistant manager in KPMG. He holds a bachelor's degree in Accountancy from Hong Kong Polytechnic University.



Kam Mei Ha, Wendy FCIS FCS(PE)

Ms Kam is currently a Senior Manager of Corporate Services of Tricor Services Ltd. She has over 20 years of corporate secretarial experience, working with private and listed companies as well as offshore companies. Her expertise extends from corporate advisory and regulatory compliance, corporate restructuring, to liquidation/ dissolution of companies. Ms Kam is named company secretary to four Hong Kong listed companies, all of which she has been servicing since their IPOs in Hong Kong. Prior to joining Tricor in 2002, Ms Kam was a Manager of Company Secretarial Services at Ernst & Young and Tengis Ltd in Hong Kong. She graduated from City Polytechnic of Hong Kong.



Chan Wai Ling, Kitty FCIS FCS

Ms Chan is currently a Senior Manager of Corporate Services at Tricor Services Ltd. She has extensive experience in corporate secretarial practice, servicing clients of listed and private companies incorporated in Hong Kong and various offshore jurisdictions. Her expertise extends from corporate advisory and regulatory compliance, corporate restructuring, to dissolution of companies. Prior to joining Tricor in 2002, Ms Chan was a Manager of Corporate Secretarial Services at PricewaterhouseCoopers in Hong Kong. She holds a bachelor's degree (honours) in Accountancy from City University of Hong Kong and a bachelor's degree in Law from University of London.



Chow Tak Wing, Derek FCIS FCS

Mr Chow is currently the Group Financial Controller and Company Secretary of NWS Holdings Ltd (stock code: 659). He is responsible for the financial management, treasury and corporate governance functions of the Group. Mr Chow has over 20 years' experience in accounting and financial management and corporate governance. He holds an Executive MBA from Richard Ivey School of Business, University of Western Ontario, Canada. Mr Chow is a member of HKICPA and a Fellow of ACCA.



Lai Siu Kuen, Mavis FCIS FCS

Ms Lai is currently a Company Secretarial Manager of Hutchison Whampoa Ltd (stock code: 13). She leads a team of professional staff for overseeing the corporate secretarial and compliance affairs of companies within the group including Hutchison Harbour Ring Ltd (stock code: 715) and Hutchison Telecommunications (Australia) Ltd (ASX Code: HTA), a company listed on the Australian Securities Exchange. She is also responsible for coordinating with regulatory bodies to ensure compliance with relevant rules and regulations. Ms Lai graduated from Hong Kong Polytechnic University with a bachelor's degree in Accountancy.

New Fellows – continued



Lee Ka Fai, Allan FCIS FCS

Mr Lee is currently the Director of Allan Lee Professional Solutions Ltd which provides professional solutions in the area of people development, event management and writing services. Prior to establishing the company, he worked in multinational accounting firms and has more than 20 years' experience in auditing and training. Mr Lee is a member of HKICPA, CPA Australia and HKIHRM, a Fellow of ACCA and a registered corporate coach with Worldwide Association of Business Coaches. Mr Lee is a member of the Institute's Membership Committee.



Lee Mei Yi FCIS FCS

Ms Lee is a Senior Manager in the Corporate Services Department of Tricor Services Ltd. She has extensive experience in the corporate secretarial area, servicing Main Board and GEM listed companies (including H-share companies) on the Hong Kong Stock Exchange, other multinational and private companies, companies limited by guarantee and offshore companies. Expert in corporate governance and regulatory compliance, she is named company secretary to certain listed companies in Hong Kong. Prior to joining Tricor, Ms Lee was a Manager of Corporate Secretarial Services at Ernst & Young. She holds a bachelor's degree (honours) in Accountancy.



Ng Sui Fan, Cathy FCIS FCS

Ms Ng is currently a Vice-President of Genesis Capital Investment Ltd, which is headquartered in Beijing, China. She is responsible for the overall management and daily operations of the company's Hong Kong office and leads the full range of company secretarial, legal, compliance and corporate governance functions for the group. In addition, she provides an advisory role on the legal structure for various investment projects covering a wide spectrum of industries. Ms Ng holds a bachelor's degree from University of South Australia and a master's degree in Corporate Administration from City University of Hong Kong.



Lee Ka Yan, Audrey FCIS FCS

Ms Lee is currently the Assistant Company Secretary of Hutchison Whampoa Ltd (HWL; stock code: 13). She leads and executes a full spectrum of corporate secretarial functions of HWL and its group companies covering the group's six core businesses with specific responsibilities for the group's European telecommunications businesses, to ensure compliance with the relevant rules, regulations and corporate governance standards. She also supervises the administration and workflow of the corporate secretarial department. Ms Lee holds an honours diploma (distinction) in Company Secretaryship and Administration from Lingnan University and a master's degree in Business Administration from Heriot-Watt University.



Mok Kam Wan, Karen FCIS FCS

Ms Mok is currently a Senior Company Secretarial Manager of Hutchison Whampoa Ltd (stock code: 13). She oversees a team of professional staff to provide a full range of corporate secretarial and compliance services for the property and Asian telecommunications group of companies including Hutchison Telecommunications Hong Kong Holdings Ltd (stock code: 215). She is also responsible for coordinating with regulatory bodies to ensure compliance with the relevant rules and regulations. Ms Mok holds a bachelor's degree in Laws from University of London and a master's degree in Business Administration from Hong Kong Polytechnic University.



Ngai Kit Fong, Eva FCIS FCS(PE)

Ms Ngai is currently a Director of Corporate Services at Tricor Services Ltd, providing corporate and compliance services to private and listed companies, local and offshore. Expert in corporate governance and regulatory compliance, she is at present the named company secretary of two Hong Kong listed companies. Prior to joining Tricor in 2000, Ms Ngai was a manager of Deloitte Touche Tohmatsu in Hong Kong, providing both corporate and share registration services to their clients. She has over 20 years of experience in the corporate services field.



Pong Kam Keung, James Kenneth FCIS FCS

Mr Pong is currently the Head of the Central Prosecution Unit of the Environmental Protection Department, performing a key role in environmental prosecutions in Hong Kong. A multi-disciplinary professional, Mr Pong is a Fellow of the Hong Kong Institute of Surveyors, the Royal Institution of Chartered Surveyors, the Chartered Institute of Arbitrators and the Hong Kong Institute of Facility Management. He is also a member of the Royal Town Planning Institute and the Association of Building Engineers of UK, as well as an Authorised Person under the Buildings Ordinance, a Certified Tax Advisor and a Barrister.



Tam Chi Ming, George FCIS FCS

Mr Tam is currently the Chief Financial Officer and Company Secretary of Sinoref Holdings Ltd (stock code: 1020). He is responsible for overseeing financial management, company secretarial and investment relationships for the group. Mr Tam has more than 15 years' experience in auditing, financial management and corporate finance. Prior to joining Sinoref, he worked for KPMG Corporate Finance Ltd as Senior Manager responsible for executing merger and acquisition transactions. Mr Tam holds a master's degree in Business Administration from University of London. He is a Fellow of the HKICPA.



Tong Ah Hing, Paggie FCIS FCS

Ms Tong is currently the Company Secretary of Vitasoy International Holdings Ltd (stock code: 345). She is responsible for the secretarial functions of the Group and provides an advisory role on legal, corporate governance and regulatory compliance matters. She is also responsible for the intellectual property rights and insurance portfolio of the group and administration of the Employee Share Option Scheme. Ms Tong holds a master's degree in Laws (Chinese and Comparative Law) from City University of Hong Kong and a bachelor's degree in Law from University of London.



Wong Ka Yan, Annie FCIS FCS

Ms Wong is currently a Senior Company Secretarial Manager of Hutchison Whampoa Ltd (stock code: 13). She is responsible for overseeing a team of professional staff to provide a full spectrum of corporate secretarial and compliance services for the group's PRC business as well as Hutchison China MediTech Ltd (code: HCM), a company listed on the Alternative Investment Market in the UK. She coordinates with regulatory bodies to ensure compliance with the relevant rules, regulations and corporate governance standards. Ms Wong holds a diploma in Company Secretaryship and Administration (honours) from Lingnan University.



Yuen Wing Yan, Winnie FCIS FCS

Ms Yuen is currently a Senior Manager of Corporate Services at Tricor Services Ltd. She has over 20 years of corporate secretarial experience, servicing clients of listed and private companies incorporated in Hong Kong and various offshore jurisdictions. She is currently the named company secretary to two Hong Kong listed companies. Prior to joining Tricor in 2002, Ms Yuen was a Manager of Corporate Secretarial Services at Ernst & Young and Tengis Ltd in Hong Kong. She graduated from Lingnan University.

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
Kwong Yee Man <i>ACIS ACS</i>	Water Oasis Group Ltd (stock code: 1161)	3 October 2012
Xiao Yinglin <i>ACIS ACS</i>	Powerlong Real Estate Holdings Ltd (stock code: 1238)	4 October 2012
Chan King Chung <i>FCIS FCS</i>	Superb Summit International Timber Company Ltd (stock code: 1228)	9 October 2012
Yim Wai Yin, Lisa <i>FCIS FCS</i>	Li Ning Company Ltd (stock code: 2331)	15 October 2012
Chan Kwan Pak <i>ACIS ACS</i>	Bright Smart Securities & Commodities Group Ltd (stock code: 1428)	16 October 2012
Lee Pui Shan <i>ACIS ACS</i>	Sitoy Group Holdings Ltd (stock code: 1023)	7 December 2012

New Graduates

Chu Lai Wan
Koo Ki Wai, Kitty
Lau Nga Yin
Lee Chi Hang
Lung Man Yin
Ng Siu Ping
Poon Pak Lun
Ty Lai Ting
Wong Siu Wai
Wong Sze Man
Wong Yee Man
Yeung Wing Sze
Yung Yuen Man

Annual subscription 2012/ 2013

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

- The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). A HK\$100 coupon will be issued to Members or Graduates who settle payment by using the Chartered Secretaries American Express Card only. All coupons can be redeemed against the cost of all ECPD seminars, members' activities and the Annual Dinner held from 1 August 2012 to 31 July 2013 subject to availability. For details of the card benefits and application form, please refer to the Institute's website.
- Failure to pay the subscription on or before 31 January 2013 may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle a total of three years' subscriptions plus the re-election fee if they want to reinstate their membership.
- Please update the latest employment information by completing the 'Personal Data Update Form' and returning it to the Institute together with the remittance advice and cheque for payment of subscription (if paying by cheque) by using the return envelope.

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

Membership activities

Annual Dinner 2013

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

For details, please refer to the flyer on page 6, the Institute's website or contact the Membership section at 2881 6177.

Happy Friday for Chartered Secretaries

The latest Happy Friday was held on 23 November 2012 and gave participants a chance to learn from our Fellow members Mr Peter Greenwood and Ms Susie Cheung on 'Making the Best of your Career'. Details with photos will be reported in the next issue of CSj.

Members' networking: environment – visit to Mai Po

A visit to Mai Po was held on 27 October 2012 with over 50 participants attending. The event was highly successful as members enjoyed the finest birdwatching experience and remarkable views of the Inner Deep Bay while walking along a floating boardwalk in the middle of a magnificent mangrove forest.

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



At the boardwalk



Group photo at Mai Po



Birdwatching at Mai Po



Birdwatching at Towerhide



Members walking on the floating boardwalk



Enjoying traditional Chinese cuisine

Membership activities – continued

Guangzhou study tour

The Institute organised a two-day study tour to Guangzhou from 8 to 9 November 2012 with more than 40 participants. This year, in addition to corporate visits, the group met with a governmental body – the Hong Kong Economic and Trade Office in Guangdong (GDETO) of the Government of the Hong Kong Special Administrative Region. Senior managers of GDETO explained their role in promoting mutual trade and economic ties and cooperation between Hong Kong and Guangdong. HKICS General Manager Louisa Lau also took this opportunity to give a presentation on the role of Chartered Secretary. Both parties look forward to establish a closer collaborative relationship in promoting the Chartered Secretary profession in Hong Kong and mainland China.

The group also visited the Guangzhou Automobile Group Co Ltd and China Southern Airlines Company Ltd. The board secretaries of the two corporations, Lu Sa and Xie Bing, described their operations and discussed corporate governance issues and their latest developments respectively. Members treasured this opportunity to exchange views with the corporations and suggested that the visiting hours be extended for a more fruitful discussion.

Apart from corporate visits, the group enjoyed tailor-made sightseeing and local cuisine during the tour.

More photos taken on the study tour are available at the gallery section of the Institute's website.



Visiting Guangzhou Automobile Group Co Ltd



Sightseeing



Lu Sa, Executive Director and Secretary of the Board of Guangzhou Automobile Group Co Ltd (third from right) and senior managers sharing their listing experiences of the Group



Chu King Man, Director of GDETO (third from right) and three deputy directors, presenting on the role of the GDETO



Xie Bing, Company Secretary of China Southern Airlines Company Ltd, briefing attendees on the operation of China Southern Airlines Company Ltd

IQS information session

On 14 November 2012, the Institute held an IQS information session for members of the general public who are interested in pursuing the Chartered Secretary qualification. Sandy Yan ACIS ACS, Senior Corporate Secretarial Officer of Kerry Holdings Ltd, shared her experience on working in the company secretarial profession.



Candy Wong presenting a souvenir to Sandy Yan ACIS ACS

IQS examination postponement application

Policy on submitting examination postponement applications

Students should submit their examination postponement applications with supporting documents within three calendar weeks after the completion of the entire examination diet. For the December 2012 diet the closing date is therefore 28 December 2012.

New edition of the Company Secretary's Handbook

A new edition of the recommended reading *The Hong Kong Company Secretary's Handbook, Practice and Procedure*, (Cheng Po Wah, Sum Heung Suet, Anna and Yuen Kam Tim, Francis, 9th edition, Pearson, 2012), was released and is now available at the Academic & Professional Book Centre (A&P Book Centre). Please refer to the Institute's website for the order form.

Payment should be made directly to A&P Book Centre, and the order form and the payment confirmation faxed to 2774 6762.

For further enquiry, please contact Amy Cheng (A&P Book Centre) at 2774 3740

Policy reminder

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

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

Student Ambassadors Programme (SAP) – visits

The Institute organised the following visits for student ambassadors in October and November 2012:

1. Visit to TMF Hong Kong Ltd (30 October)
2. Visit to the Securities and Futures Commission (7 November)
3. Visit to Hongkong International Terminal (16 November)

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



At TMF Hong Kong Ltd



At Hongkong International Terminal



At the Securities and Futures Commission

Student Ambassadors Programme (SAP): recruitment of mentors

The SAP is an effective platform to introduce the Chartered Secretary profession to local undergraduates and members are invited to contribute as mentors to the student ambassadors. During the year, each mentor will be assigned an average of five mentees. Mentors can share their working experience, professional knowledge and give career guidance. The Institute also organises a few social events for mentors and mentees.

Institute members are welcome to participate as SAP mentors for the undergraduates. For further enquiries, please contact the Education & Examinations Section at 2881 6177 or student@hkics.org.hk.

Companies Ordinance subsidiary legislation

Last month the government launched the second phase of its public consultation on the subsidiary legislation which will set out the administrative, technical and procedural matters required for the implementation of the new Companies Ordinance. The first phase consultation on the new Companies Ordinance subsidiary legislation, launched on 28 September, closed on 9 November. The second phase seeks views on five pieces of subsidiary legislation.

1. ***Companies (Trading Disclosures) Regulation.*** This will provide for various requirements concerning the display of a company's name and the disclosure of a company's status.
2. ***Companies (Revision of Financial Statements and Reports) Regulation.*** This will adopt the general principle that the obligations and arrangements concerning reporting documents in the new Companies Ordinance should equally apply to any revised reporting documents, subject to necessary modification.
3. ***Companies (Disclosure of Information about Benefits of Directors) Regulation.*** This prescribes

the particulars to be disclosed in the notes to financial statements in respect of the various types of benefits and dealings of directors.

4. ***Companies (Residential Addresses and Identification Numbers) Regulation.*** This sets out the general arrangements for the protection of personal information, as well as the disclosure of personal information.
5. ***Companies (Unfair Prejudice Proceedings) Rules.*** These rules will help implement Section 727(1)(a) of the new Companies Ordinance which provides that, subject to the approval of the Legislative Council, the Chief Justice may make rules for regulating the conduct of unfair prejudice proceedings.

The second phase consultation will run until 14 December.

The consultation document can be downloaded from the Financial Services and the Treasury Bureau website (www.fstb.gov.hk/fstb). The full text of the new Companies Ordinance is available for viewing and downloading on the Companies Registry website (www.cr.gov.hk).

Trust law reform – consultation conclusions

Last month the government published its consultation conclusions on trust law reform following a two-month public consultation which ended in May this year. It is currently finalising its proposed amendments to the Trustee Ordinance (Cap 29) and the Perpetuities and Accumulations Ordinance (Cap 257) which it hopes to introduce into the Legislative Council in the 2012–2013 legislative session. The amendments seek to clarify trustees' duties and powers, better protect beneficiaries' interests and modernise the trust law. Among other measures, the reform package includes proposals to:

- introduce a statutory duty of care on trustees, and
- provide trustees with general powers to appoint agents, nominees and custodians, as well as to insure trust property against risks of loss.

The consultation conclusions are available at the Financial Services and the Treasury Bureau website (www.fstb.gov.hk/fstb).

Asia Women in Business Law Awards 2012

Susie Cheung, General Counsel and Company Secretary of the Hong Kong Mortgage Corporation Ltd, HKICS Council member and the Chairman of the Institute's Membership Committee, was awarded the 'Outstanding Achievement' prize at the Asia Women in Business Law Awards 2012 last month. The award was launched in 2011 by the Euromoney Legal Media Group to recognise the achievements of women in the legal sector across Asia, and to promote gender diversity and female-friendly work practices among law firms in the region. HKICS President Edith Shih, the recipient of last year's 'Asialaw In-House Award' delivered a keynote address at the award ceremony, which was held on 22 November at the Renaissance Harbourview Hotel in Hong Kong. Former Secretary of Justice, Elsie Leung Oi-sie, an honorary member of the HKICS, was awarded the Lifetime Achievement award.

Careers

To advertise your vacancy, contact Paul Davis:
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Our client is a midsize, professionally run real estate development company listed in Hong Kong. Management envisages that business would get considerably more active in the coming years and has decided to strengthen its company secretarial, legal and compliance as well as investor relations functions.

Company Secretary

The company secretarial duties are presently outsourced to a law firm. Our client is considering a number of options. Depending on the availability of suitably qualified candidates, the Company might:

1. Appoint an In-house Counsel to double up as Company Secretary, alternatively
2. Appoint a qualified & experienced Company Secretary or
3. Appoint an Assistant Company Secretary while continuing to outsource its company secretarial duties.

Head of Investor Relations

The Company also wishes to appoint a Head of Investor Relations with:

- The ability to strategically position the Company in its sector so that it gets the proper investor attention
- Seasoned IR professional skills and a track record of success
- A passion in following companies listed in Hong Kong
- Exposure to good IR practices with reputable companies
- Excellent relationships with regulators bankers, brokers, institutional investors, the financial media, professional services firms and other stake holders
- Familiarity with the rules and regulations governing listed companies in Hong Kong
- Fluency in English, Mandarin and Cantonese.

Interested parties please send your cv with a covering letter to K/F search consultant Mr. Xiao-Long Wang
E-mail: xiao-long.wang@kornferry.com Direct Line: 2971 2716
Korn/Ferry International <http://www.kornferryasia.com/>

Candidates not contacted within 3 weeks should assume their application is unsuccessful. Their application will be destroyed unless they request the information submitted be kept for other job opportunities.

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.

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

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