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December 2013

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



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Why it pays to
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CSIA update

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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 about 5,700 members and approximately 3,200 students.

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Contents

Cover Story

AML/ CTF compliance 06

The payment by HSBC of a US\$1.9 billion fine in December 2012 to settle a money-laundering and terrorist-financing charge by US authorities has been a high-profile reminder of the need to keep anti-money laundering and counter-terrorist financing compliance on your risk radar.

International Report

Thinking big 12

Since its creation in March 2010, the Corporate Secretaries International Association (CSIA) has not shied away from the tough challenges facing the global corporate secretarial profession. Perhaps the toughest of these challenges has been the attempt to establish globally-accepted principles of good governance for corporate secretaries; these were duly launched at a meeting in Kuala Lumpur in October this year.

Corporate Governance

Does more disclosure mean better governance? 18

The Institute's Corporate Governance Paper Competition is held annually to raise awareness of corporate governance issues among local undergraduates. This year's competition was held on the theme 'Corporate governance means more reports and disclosure?' This first part of the winning paper explores the relationship between corporate governance and disclosure.

In Focus

Competition Ordinance: guidance for company secretaries 24

The Competition Ordinance, which is likely to be implemented in 2015, will have significant compliance implications for company secretaries in Hong Kong. A new HKICS guidance note on the ordinance seeks to familiarise HKICS members with the main provisions of the ordinance and to make useful recommendations on compliance with the law.

Valuing intangibles and ESG performance 28

Few would dispute the importance of intangible factors such as a company's brand, its networks, its people and its capacity for innovation, but intangibles are, by definition, not easy to quantify. Josh Dowse, Principal, DowseCSP, introduces a new approach to measuring the value of a company's intangibles and the value of its efforts to strengthen them.

Viewpoint

Women and the world economy 34

A new International Monetary Fund (IMF) report finds that progress toward levelling the playing field for women in the workforce has stalled. Christine Lagarde, Managing Director of the IMF, outlines some of the many benefits of allowing women to develop their full labour market potential.

女性和世界经济 37

国际货币基金 (IMF) 的一份新报告指出，为女性缔造公平环境的进程陷入了停滞。让女性充分参与劳动市场的好处甚多，IMF总裁拉加德概述其中要点。



Merry Christmas!

The Council would like to thank members and students for their support over the year and wish you all a merry Christmas and a healthy and prosperous 2014!

HKICS News

President's Message 04

Institute News 38

Student News 45



AML/ CTF compliance

Company secretaries in Hong Kong have a lot on their plate at the moment – compliance with the revised Securities and Futures Ordinance and the new Companies Ordinance are, quite rightly, priority issues for us – but this month's journal will be sobering reading for anyone tempted to let his or her guard down in the area of anti-money laundering and counter-terrorist financing (AML/ CTF) compliance.

This month's cover story (see pages 6–11) makes it clear that AML/ CTF compliance failures can be very costly both for the company and the compliance professionals involved. Last December we witnessed a high-profile case when HSBC paid a US\$1.9 billion fine to settle a money-laundering and terrorist-financing charge by US authorities on a 'without admission of guilt' basis. While nearly two billion US dollars is clearly no small consideration even for a company with a capitalisation the size of HSBC's, the monetary costs pale in comparison to the reputational damage. HSBC is implementing further systems of controls and will no doubt emerge much stronger in defence of their reputation, but not everyone will be able to do so.

Just as relevant for readers of this journal is the reputational damage practitioners can suffer when failures of this nature occur. In many large companies, AML/

CTF compliance will be the responsibility of a dedicated officer, but as is made very clear in our updated edition of *The Essential Company Secretary* published last month, company secretaries are not excused from their overall responsibility for ensuring regulatory compliance and advising on good corporate governance standards where another officer is tasked with compliance in specific areas of the company's operation.

An AML/ CTF compliance failure can tarnish our reputation both as compliance professionals and corporate governance advisers, but in addition to these compelling reasons to pay attention to this area, I would like to add another which does not always get the attention it deserves. The economic success of Hong Kong depends very heavily on its reputation as one of the world's leading international financial centres; and the preservation of its image as a jurisdiction committed to upholding global AML/ CTF standards is an important component of preserving that reputation.

When the Financial Action Task Force (FATF) visited Hong Kong in 2008 to evaluate the AML/ CTF regime of the HKSAR, it identified a number of weaknesses in our defences. The government has subsequently been busy shoring up those defences and last year it brought in the first law in the HKSAR specifically targeted at combating money laundering and terrorist financing – the

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO).

This ordinance, as its name implies, is specifically targeted at financial institutions in Hong Kong but the government is also under pressure to ensure effective monitoring and supervision of 'designated non-financial businesses and professions' – a grouping in which company secretaries feature prominently. The exact form that this will take has yet to be worked out but it will certainly have significant implications for members of the HKICS – particularly those who work for corporate service providers.

This month's journal is thus a timely reminder not to let AML/ CTF compliance fall off our risk radar. Irrespective of who has direct responsibility for AML/ CTF compliance, company secretaries need to monitor the robustness of the appropriate internal controls and ensure that the board remains on top of the relevant compliance risks in this area. Our own personal reputation hangs on this, together with the reputation of the companies we work for, that of our profession and the city we call home.

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

Edith Shih FCIS FCS(PE)

打击洗钱及恐怖分子 资金筹集方面的合规工作

香港的公司秘书目前有很多事务需要兼顾。遵守经修订的《证券及期货条例》和新的《公司条例》固然是首要任务；但本刊今期郑重提醒大家，切勿在打击洗钱及恐怖分子融资活动方面的合规工作上松懈下来。

今期的封面故事（见第6至11页）清楚说明，若未能遵守有关打击洗钱及恐怖分子资金筹集的规定，公司和相关合规专业人员可能须付出很大代价。去年12月有一宗受广泛报道的案件：滙丰被美国当局指控违反打击洗钱及恐怖分子融资活动的规定，在并无认罪的基础上，须缴付19亿美元罚款。即使资本雄厚如滙丰，近20亿美元也是不小的代价；但比金钱上的损失更严重的是，事件已损害了滙丰的声誉。滙丰正加强实施管控措施，日后定必能更有力地维护名声；但这并非每个人都做得到。

对于本刊的读者来说，同样值得警惕的是，若未能遵守有关规定，从业员也可能声誉受损。在许多大公司里，遵守有关打击洗钱及恐怖分子筹集资金的规定，是一名专责人员的责任，但正如公会上月出版的《不可或缺的公司秘书》更新版中清楚指出，即使另有高级人员负责公司特定业务范围

的合规事宜，公司秘书也负有总体责任，须确保公司遵守法规，并就良好公司治理标准提供意见。

若未能遵守打击洗钱及恐怖分子资金筹集方面的规定，可能损害我们作为合规专业人员和公司治理顾问的声誉。除了这些有力的理由外，还有一个往往为人所忽略的理由，驱使我们注意这方面的工作。香港经济的成功，很大程度上有赖其国际金融中心的地位，而其维护打击洗钱及恐怖分子融资活动的国际标准的形象，必须继续保持，才可维持国际金融中心的声誉。

2008年，财务行动特别组织到香港评估特区政府打击洗钱及恐怖分子融资活动的措施时，发觉我们的防范工作存在弱点；其后政府已加强这些防范措施，去年通过香港第一条打击洗钱及恐怖分子融资活动的法例——《打击洗钱及恐怖分子资金筹集（金融机构）条例》。

顾名思义，这条例以香港的金融机构为对象，但政府亦有压力要确保有效监管「指定非金融企业及行业」，而公司秘书正好属于这个组别。具体的监管方式仍有待探讨，但肯定对公会

成员（尤其是为公司服务提供者工作的公司秘书）有重大影响。

今期的月刊及时提醒大家，切勿忘记遵守有关打击洗钱及恐怖分子融资活动的规定。不论由谁直接负责这方面的合规工作，公司秘书均须监察相关内部管控措施是否健全，确保董事会完全掌握这方面的合规风险。这是我们个人声誉之所系，也是我们任职的公司、特许秘书专业和我们身处的香港的声誉之所系。



施熙德



AML/ CTF compliance

Why it pays to pay attention

The payment by HSBC of a US\$1.9 billion fine in December 2012 to settle a money-laundering and terrorist-financing charge by US authorities has been a high-profile reminder of the need to keep anti-money laundering and counter-terrorist financing (AML/ CTF) compliance on your risk radar.



Anti-money laundering and counter-terrorist financing (AML/ CTF) compliance is a regular staple of the company secretarial CPD calendar, but it often takes a compliance failure to remind everyone involved – company secretaries, directors and senior managers included – what those seminars are really about.

In addition to the high-profile HSBC case, there has been a stream of news stories this year about corruption, embezzlement and money laundering – they seem to be common bedfellows. In August this year, Navin Kumar Aggarwal, an ex-partner with law firm K&L Gates, pleaded guilty to fraud and money laundering and was sentenced to 12 years imprisonment. In October this year, four people were charged with fraud and money laundering at Pearl Oriental Oil Ltd. In that same month, Yueshou Environmental Holdings former deputy chairman Kelly Cheng Kit-yin admitted a total of 11 counts

of conspiracy to defraud (including money laundering) in the District Court. In March this year, Lam Mei-ling, moved more than HK\$6.7 billion through nine Hong Kong banks over almost four years and was jailed for 10 years. This followed the jailing of mainlander Luo Juncheng, 22, in January for 10½ years for laundering HK\$13 billion.

It can happen to you

The priority given to AML/ CTF compliance by company secretaries has, at least historically, depended on the sector practitioners work in. For obvious reasons, those working in the financial sector have been subject to higher expectations from AML/ CTF regulators locally and globally.

On 1 April 2012, the Hong Kong government brought in the HKSAR's first law targetted at AML/ CTF compliance. Under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), financial institutions must reinforce their business conduct security, strengthen their compliance staff, and bolster their risk-based approach to customer due diligence and ongoing monitoring. They must have excellent record keeping, staff training and they must encourage suspicious transaction reporting.

Criminal convictions for non-compliance with AMLO provisions carry a maximum penalty of HK\$1million and seven years imprisonment, while any financial institution convicted of intent to defraud a relevant authority – including the Securities and Futures Commission (SFC), the Hong Kong Monetary Authority (HKMA), or the Customs and Excise Department – may be served a maximum penalty of a HK\$1 million fine and seven years' imprisonment.

Highlights

- AML/ CTF risk management has never been a concern solely for financial institutions; it applies to all companies in Hong Kong
- AML/ CTF controls need to be adopted and understood by everyone in an organisation
- now that the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance is in place, the next set of rules regarding AML/ CTF compliance is likely to target designated non-financial businesses and professions



“
**we trust the government will
 continue to strike a balance
 between compliance with global
 standards and the business interests
 of the community**
 ”

Suzanne Callister, Regional Commercial Director of
 Intertrust Hong Kong

In synchrony with the AMLO coming into effect, the SFC issued its *Guideline on Anti-Money Laundering and Counter-Terrorist Financing* for corporations, and the *Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities* which, as its title indicates, is targeted at associated entities. These guidelines aim to help companies and associated entities implement appropriate and effective policies, procedures and controls to comply with Hong Kong's AML/ CTF regulatory requirements.

However, AML/ CTF risk management has never been the sole concern of financial institutions; it applies to all companies in Hong Kong and, as Samantha Suen, Chief Executive of the HKICS, points out, it has been around for some time. 'This is not a new burden,' she says. 'Some years ago, corporate service providers were required to have "know your customer" [KYC] procedures in place.'

Indeed, in recent years the focus of AML/ CTF regulators has switched from financial institutions to designated non-financial businesses and professions (DNFBPs), which include lawyers, accountants and company secretaries working for trusts and company service providers (CSPs). Of high concern in Hong Kong has been the relative ease with which international agents (or residents) can open shell companies for the purposes of money laundering: small players could slip through the net to finance big crimes. Not that it is as simple as hanging out a shingle and watching illegal dollars flow in.

'Purchasing a shell company is only part of the process,' says Suzanne Callister, Regional Commercial Director of Intertrust Hong Kong. 'To operate the company one needs a bank account and often the involvement of a financial intermediary. With financial institutions (including banks and financial intermediaries) being regulated entities subject to the AMLO,

we believe that all of the prudent service providers incorporating companies in Hong Kong will conduct appropriate due diligence on the ultimate beneficial ownership and related parties.'

She notes, however, that some smaller players could feel the challenge of increased pressure as they may have limited resources to carry out duties in relation to AML. Ms Suen agrees: 'In well-established companies, stringent compliance and AML requirements will be in place and controlled in-house,' but she also notes that while smaller players should know the requirements, the ability and willingness of those companies to ensure compliance may be lacking.

Overall, AML has long been a focus in any company, small or big; financial or non-financial, says Ms Callister. 'The changing landscape is a consequence of regulation, starting from the financial institutions and moving towards the non-financial

institutions. From our perspective, there is no substantial change... though I do see compliance becoming even more key with increasing responsibility being placed onto corporate service providers and their role.'

The regulatory net is tightening

The AMLO was the Hong Kong government's response to a 2008 evaluation by the international Financial Action Task Force (FATF) which identified deficiencies in Hong Kong's AML/ CTF regime. These included:

- customer due diligence and record keeping requirements for financial institutions had no statutory backing
- financial regulatory authorities lacked supervisory and enforcement powers
- the absence of criminal or supervisory sanctions to deal with cases of non-compliance, and
- the absence of a regulatory regime for remittance agents and money changers.

When the FATF makes a recommendation or highlights an inadequacy in governmental policy, governments take notice. Both the AMLO and the SFC's AML/ CTF guidelines were designed to raise Hong Kong's score with the FATF and enrich its profile as an international business and financial centre.

'I believe that Hong Kong, as a jurisdiction, is also convinced of the advantages of being compliant,' says Ms Callister. 'The government has been deliberating on the best regulatory model for the non-financial professions. Currently, it

is still at the stage of building a capable approach by the way of education, rather than via a punitive approach. We trust the government will continue to strike a balance between compliance with global standards and the business interests of the community.'

For larger companies like Intertrust, self-policing the rigorous application of international standards are the benchmark of corporate service provision. 'We deliver training to the team, and our compliance people test the information provided to us all the time,' says Ms Callister. 'Our people are trained to review the story of the business over and over again. Our KYC goes beyond know your customer. It also includes customer's transactions and understanding the business rationale as well.'

Who should be responsible for AML compliance?

The SFC's *Guidelines on Anti-Money Laundering and Counter-Terrorist Financing* are intended to help licensed corporations create and implement effective AML/ CTF policies, procedures and controls, but who is actually doing the creating and implementing at the corporate level? Furthermore, who should?

Ms Suen suggests that the company secretary is well suited to ensure these policies and systems are put in place. 'I understand that some companies have a compliance officer in place and perhaps those companies charge the compliance officer with AML as well. Either way, whoever is tasked with AML, compliance should be the responsibility of someone very senior with the authority and experience to put such procedures into place.'

She adds that AML/ CTF controls need to be adopted and understood by everyone in an organisation. 'We should all work to lift compliance standards, and AML/ CTF at all levels of business. Good corporate governance and AML/ CTF standards should be drilled down through the ranks. For instance, in purchasing departments, suppliers should be reviewed and known – following the KYC or client due diligence [CDD] ethos. All levels of a company's people should understand why it is required and the advantage of good corporate governance standards. If you have only a few people who understand and apply the principles, it's useless. I think in general we should have more education on this aspect.'

Elisa Chan, Senior Manager, Compliance at Intertrust, believes that the role of AML compliance should rest with a compliance team, as a compliance officer should be independent of all business operations. She notes that her team has the constantly demanding task of "knowing your customers" and their transactions. 'We are responsible for conducting reviews on new clients for client acceptance, as well as conducting reviews on existing client entities on a regular basis and a transactional basis as determined by the risk-based approach for ongoing monitoring. We aim to ascertain the rationale of client structures, identify any irregularities and inconsistencies on documents and information provided by clients, and raise queries where appropriate. The level of risk rating of a client entity determines the frequency of the regular reviews conducted by us. For high-risk client entities, a regular review will be done annually; whereas for those client entities of medium risk and low risk, a review will be conducted every two and three years respectively. We may also

review associated legal documents to ensure compliance with the the relevant laws, rules and regulations,' she explains.

'We place compliance high on the agenda and include compliance training as part of our induction training for new employees with an annual refresher for all staff as part of our corporate culture. Not only do we have a group head of compliance, but

also a team of compliance professionals locally, attending to client acceptance and ongoing review and monitoring of client transactions,' says Ms Callister.

Ms Suen notes that a company secretary of a large corporation has numerous duties and responsibilities, and as a result, it would not be easy to take on AML as an additional burden. 'I believe that

segregating the role is possible, though I don't have a perfect answer for who should be in charge of AML.. Company secretaries are not excused from their overall responsibility for ensuring regulatory compliance and advising on good corporate governance standards. From the HKICS's point of view, we don't set AML/ CTF standards but we bring our members up to date on current standards,

Online AML/ CTF resources for company secretaries

HKICS AML/ CTF guidelines

The HKICS *Guidelines on Anti-Money Laundering and Counter-Terrorist Financing* are specifically targeted at the AML/ CTF challenges faced by company secretaries. The guidelines outline recommended procedures to ensure AML/ CTF compliance and outline the principles of customer due diligence; record keeping; the reporting of suspicious transactions; employee training; and cooperation with law enforcement officials.

The guidelines are available on the 'publications' section of the HKICS website: www.hkics.org.hk.

SFC AML/ CTF guidelines

The SFC's AML/ CTF guidelines are also a good source of information for company secretaries. The guidelines are intended to provide a general background on the subject of money laundering and terrorist financing and summarise the main provisions of AML/ CTF legislation in Hong Kong. Although failure to comply with any provisions of the guidelines would not itself make a person subject to judicial

or other proceedings, failure to comply would be admissible as evidence in proceedings initiated under the AMLO and the Securities and Future Ordinance (SFO); may reflect adversely on the fitness and properness of SFC-licensed corporations and licensed representatives; and may be deemed misconduct.

The guidelines are available under 'rulebook/ codes and guidelines' on the SFC website: www.sfc.hk.

The AMLO

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance is targeted at the AML/ CTF compliance measures adopted by financial institutions in Hong Kong.

The full text of AMLO is available on the Bilingual Laws Information System (BLIS) website: www.legislation.gov.hk/blis.

The JFIU website

The Joint Financial Intelligence Unit (JFIU) website offers general

information about how to identify potential money laundering or terrorist financing activities, how to identify suspicious transactions and how, and to whom, to file a suspicious transaction report.

The JFIU website address is: www.jfiu.gov.hk.

The FATF website

The Financial Action Task Force (FATF) reviews money laundering and terrorist financing techniques and counter-measures and promotes the adoption and implementation of appropriate measures globally. The FATF website is a useful source of information on AML/ CTF issues generally and, in particular, on FATF's 40 Recommendations. In February 2012, the FATF released 40 Recommendations on AML/ CTF to be applied on a global scale. The recommendations are to be applied to both financial institutions and designated non-financial businesses and professions.

The FATF website address is: www.fatf-gafi.org.

and we provide guidelines and update information to our members to allow them to carry on compliance or AML/ CTF functions – or help them delegate and set up procedures.'

Ms Callister points out that ultimately monitoring AML/ CTF compliance risk is the responsibility of the board. 'To enable company leaders in AML compliance to discharge their duties effectively, it would be most desirable for them to be independent of all operational and business functions with a sufficient level of seniority and authority, access to all records of the company and above all reporting to the management. In most jurisdictions, this role may be executed by a Compliance Officer, or Money Laundering Reporting Officer. Compliance will at least reach its goal when the management of the company supports it. Only then the quality standards can be respected and guaranteed.'

What is next?

Now that the AMLO is in place, the next set of rules regarding AML/ CTF compliance is likely to target DNFBSs, Ms Callister believes. 'We are fully committed to do what we have to do and comply with international standards – but we take it even further, as we also attend to our group standards, which take into account what happens across the world. We haven't seen a timeline on new regulations. We wish to be well prepared, so we are working with a global approach. We welcome increased regulation – it's good for Hong Kong to have a safe environment in which people can work.'

The question of who will be doing the regulating is also a question. In accordance with the AMLO, money service providers are under a licensing

and regulatory regime with the Customs & Excise Department as the competent authority. In addition, the Joint Financial Intelligence Unit (JFIU), jointly run by staff of the Hong Kong Police Force and the Hong Kong Customs & Excise Department, manages the suspicious transaction reports (STRs) regime for Hong Kong and receives, analyses and stores STRs for appropriate investigative units.

One possible option would be to make the HKICS a self-regulating organisation (SRO) to monitor AML/ CTF compliance among its members. This would be a challenge, Ms Suen points out, since the HKICS is not a statutory body. 'As a professional institute we do however regulate our own members,' she says. 'If members are in breach of our code of professional conduct, they will face disciplinary action by the Institute.'

The Hong Kong Institute of Certified Public Accountants (HKICPA) and The Law Society of Hong Kong have laws governing them. As for the HKICS, she would prefer a different route where – in the case of CSPs – a person at the senior management level should be a member of the HKICS and follow the Institute's lead in compliance and AML.

'We think that CSPs are very important in the industry and the business world. Because they help business owners set up companies, they are the people on the frontline. We believe that our HKICS members have the appropriate guidelines and training in corporate governance, AML, ethics and conduct, and so we believe our members are the best people to safeguard and be in charge of this area. Therefore, if there is an HKICS member in the CSPs senior management, this would help Hong Kong maintain its status as a

safe, premier business centre, and avoid potential money laundering,' Ms Suen says.

Ms Callister believes that, as the current regulator for CSPs, the Customs & Excise Department is up to the task – particularly if the government continues to hire specialists from the private sector who are familiar with the practical side of AML/ CTF compliance.

'We believe the Customs & Excise Department is well qualified to discharge its duties in its current regulatory role,' she says. 'It would certainly mature over time, and provided that the professional people of the right calibre and experience have been engaged by it or by any other authority designated with the duty to oversee a particular profession, we should have confidence in such a regulator.'

The Monetary Authority of Singapore went out into the industry and got training there, notes Ms Callister. 'They effectively used the industry to help support and train people in their roles and those ties have been kept very close. This is where the HKICS plays an important role in helping the government understand what is happening in a fast-moving industry,' she says.

'The Hong Kong government is very good at consulting the industry, and the SFC and other organisations have given them insight into the practical skills of dealing with the industry.'

**Gina Miller, Journalist, and
Kieran Colvert, Editor CSj**

The HKICS regularly holds seminars on AML/ CTF compliance. Readers can check the 'ECPD' section of the HKICS website (www.hkics.org.hk).



Thinking big

CSIA launches global governance principles for corporate secretaries

Since its creation in March 2010, the Corporate Secretaries International Association (CSIA) has not shied away from the tough challenges facing the global corporate secretarial profession. Perhaps the toughest of these challenges has been the attempt to establish globally-accepted principles of good governance for corporate secretaries; these were duly launched at a meeting in Kuala Lumpur in October this year.

There is huge diversity in the corporate secretarial profession at an international level, but the Corporate Secretaries International Association (CSIA) hopes to give the profession an international voice and presence. The CSIA, of which HKICS is a founder member, is an international federation of professional bodies that promotes best practices in corporate secretarial, corporate governance, and compliance services. In the three years since its launch, the CSIA has been working on three major initiatives:

1. lobbying at a national and international level to improve global governance standards and establishing globally-accepted principles of good governance for corporate secretaries
2. lobbying the World Trade Organisation (WTO) to include a new listing for 'Corporate Governance, Compliance and Secretarial Advisory Services' in the WTO's 'Trade in Services' business classification listings, and
3. developing a 'Corporate Secretaries Toolkit' for use in the training of corporate secretaries around the world.

At its third International Roundtable meeting in Kuala Lumpur, Malaysia, on 23 October 2013, the CSIA announced the first of these initiatives to be completed – its *CSIA Governance Principles for Corporate Secretaries*. The principles 'aim to guide corporate secretaries across all countries, jurisdictions and cultures on how they can influence the implementation of good governance in their organisations,' said Peter Turnbull *FGIA FCIS*, CSIA President.

Shared values?

Given the stark differences between corporate governance practices around the world, the attempt to encourage the adoption and application of good governance principles on a global basis was never going to be easy. The key distinction, however, is that the CSIA is not attempting to homogenise corporate governance practices globally. Clearly, the major differences in corporate ownership structures, legal traditions, regulatory infrastructures, etc, would make any such attempt futile.

The CSIA believes, however, that there are common global principles which can usefully guide corporate secretaries in their work wherever they happen to be. These are the core principles that should be present in any good governance framework, and the CSIA recognises that adjustments will need to be made for local needs and conditions.

The CSIA is not, of course, the first organisation to attempt to identify globally-accepted corporate governance principles. The OECD *Corporate Governance Principles*, the most widely known set of global governance principles, first came out in 1999. Since

then other institutions – such as the International Corporate Governance Network (ICGN) – have brought out their own sets of principles (see *ICGN Corporate Governance Principles* at: www.icgn.org).

What then can the CSIA add to this space? The CSIA does not intend to double up on the work of organisations like the OECD and ICGN, but it believes that there is value in devising a set of governance principles specifically targeted at corporate secretaries.

'Corporate secretaries have a pivotal role to play in implementing good governance in their organisation. Accordingly, the *CSIA Governance Principles for Corporate Secretaries* complement these existing guidelines by providing guidance to the corporate secretary so that they can encourage a good governance framework in their organisation,' the CSIA principles state.

The principles

The *CSIA Governance Principles for Corporate Secretaries* are:

- integrity
- accountability

Highlights

The *CSIA Governance Principles for Corporate Secretaries*:

- recommend an inclusive stakeholder approach to corporate accountability to enable sustainable and responsible businesses
- make it clear that transparency is not just about good PR – transparency applies equally to positive and negative information
- aim to distinguish the roles of the directors who govern an organisation and the executives who manage it

- stewardship
- transparency
- separation of board and management, and
- corporate responsibility to society and the environment.

To be applicable across different cultures, these principles are necessarily at a high level of abstraction but does that mean that they will not be of much practical use to corporate secretaries in their daily work? To facilitate this approach, the CSIA has added a commentary to the principles to aid their implementation at a practical level.

'CSIA is of the view that good governance does not need to be unduly complex or burdensome. Quite the contrary, good governance principles and processes should be practical in their application, cost-effective and most importantly, a business enabler, which facilitates the achievement of overall business strategy and not "governance for the sake of governance"; said Peter Turnbull.

Integrity

The CSIA emphasises that integrity, the first and most important principle in the list, is at the core of all governance structures and processes. It believes that diverse cultures will have a common understanding of the concept of integrity and the importance of acting with honesty, fairness, ethics and moral character.

On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- appropriate systems and processes, such as value frameworks or codes of

conduct, are put in place to act as a guide to behaviour

- the actions of the board and senior management reflect the espoused values of the organisation by ensuring adequate induction and training of directors and all staff, including senior managers, with a particular emphasis that high integrity in all corporate actions is a non-negotiable aspect of the organisation's values, and
- acting with integrity is a key performance indicator for senior management and other staff.

Accountability

This principle will clearly be subject to local conditions since different jurisdictions have different views about the extent of a company's accountability. Should a company be accountable only to its shareholders or also to a wider group of stakeholders? If the latter, which constituencies should be included – customers, employees, unions, the media, regulators, the local community, the general public?

The CSIA believes that judgements as to appropriate channels of accountability can only be made at the local level, but it contends that an 'inclusive stakeholder approach is the correct one to enable sustainable and responsible businesses'.

The CSIA points out that the ability to be accountable will require good listening and communication skills from corporate secretaries. They need to understand stakeholder expectations and they need to communicate to those stakeholders what the organisation is doing, why it is doing it, how it is doing it and what it has achieved.



On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- organisations engage with their members/ shareholders at least annually in a public forum, providing members/ shareholders with the opportunity to question the governing body on its decision making
- organisations establish communication channels whereby they can receive feedback from members/ shareholders and other stakeholders and that mechanisms are in place to review the effectiveness of the communication, and
- the board of directors or governing body conducts a performance review of itself annually and discloses to its members/ shareholders that such a process is in place.

Stewardship

There is a close connection between the goals of accountability and stewardship – the CSIA points out that both concepts require a longer-term view and vision. The CSIA principles define 'stewardship' as an ethic that embodies responsible planning

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**high integrity in
 all corporate actions
 is a non-negotiable
 aspect of the
 organisation’s values**
 ”

and management of resources with a long-term perspective.

In a legal sense, stewardship is seen as a fiduciary duty – companies need to display the appropriate care and skill in their management of their operations on behalf of members/ shareholders. The principles also emphasise that stewardship involves the sustainable performance of an organisation whilst operating within stakeholder expectations.

On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- the board has an annual calendar of important decisions, procedures for the effective flow of information from management to the board, formal agendas and minutes and effective follow-up mechanisms
- there is a periodic evaluation of the governing board's performance and also their development programmes, and that the governance function entails ensuring succession planning for key positions, and
- the organisation has in place internal controls to ensure that all decisions

benefit the organisation and its stakeholders and that conflicts of interest are registered, managed and minimised.

Transparency

The CSIA principles point out that transparency fosters trust in all relationships which is why it is so important. Moreover, transparency is not only an external concept in terms of information flows to stakeholders, it is also an internal concept where sufficiently detailed and open flows of information should be in place between the board, management and employees.

Perhaps the hardest lesson to learn, however, when it comes to transparency, is that it applies equally to positive and to negative information. The CSIA principles make it clear that transparency is not just about good PR – stakeholders need to know the bad news as much as they need to know about the good.

On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- all relevant and material information, be it to members or other stakeholders, is published in a timely, accurate and complete fashion
- such information is published in a form in which it can be easily understood by the target audience, and
- such information is released digitally at every opportunity to ensure that it is timely and readily available, but requests to receive hardcopy information are met, particularly any requests in relation to financial statements and annual reports.

Separation of board and management

The CSIA principles aim to distinguish the roles of the directors who govern

Background to the CSIA principles

The *CSIA Governance Principles for Corporate Secretaries* first took shape at the conference held by the CSIA and the Shanghai Stock Exchange (SSE) in Shanghai in September 2011. Conference delegates reached the conclusion that a consensus on the fundamental principles underlying good governance is both a necessity and a very real possibility. However, the conference also concluded that any such principles would need to be genuinely global and culturally inclusive.

The draft principles were identified at the Roundtable discussion convened on the second day of the Shanghai conference. The outcome of the Shanghai Roundtable was then put before a second Roundtable in New York in October 2012. The New York Roundtable led to a reorientation of the focus of the principles such that they reflect what corporate secretaries could implement, or recommend to be implemented, within their own organisation.

The CSIA/ SSE international Corporate Governance Conference held in Shanghai in September 2011 was reviewed in the November 2011 edition of this journal.

an organisation and the executives who manage it. This distinction is sometimes less clear where family and collective interests play a significant role in the affairs of companies and organisations. Nevertheless, the CSIA principles argue that a clear separation of the key oversight functions of the governing body from the operational management functions within an organisation is desirable. 'When these functions are properly separated it creates transparency and avoids confusion in the decision making and oversight process, providing clarity as to responsibilities,' the CSIA principles state.

Where, due to cultural and local factors, individuals combine the oversight and operational functions, the CSIA recommends that processes are put in place to clarify 'which hat the individual is wearing' to provide for accountability in decision making. It adds that any non-separation of these functions should be clearly communicated to stakeholders.

On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- the supervisory and oversight functions of the board or governing body are set out in a charter or similar document
- the board of directors or governing body sets out clear delegations of authority, both financial and non-financial, to clarify the business execution functions of management, and
- the governing body or board of directors has authority to appoint and terminate the chief executive officer or managing director.


Corporate responsibility to society and the environment

Just as with the principle of accountability above, there will inevitably be differences between jurisdictions on this issue but there has been rising expectations globally for companies to operate in a sustainable, ethical and responsible manner. The CSIA recognises that this is not necessarily a duty prescribed in a legal sense, but that companies do nevertheless have to earn their 'social licence' to operate. Apart from anything else, companies need to create sustainable value for their members/ shareholders.

Moreover, the CSIA principles point out that this clearly has implications for corporate reporting. 'Companies need to report not only on financial and commercial outcomes but on how the achievement of those outcomes may create social and environmental risks and how those risks are being managed to ensure the organisation is performing responsibly,' the CSIA principles state.

On a practical level the CSIA principles recommend that, among other things, corporate secretaries should ensure that:

- their organisation implements and monitors its active compliance with the spirit as well as the letter of the law, ethical standards, international norms and stakeholder expectations
- their organisation agrees on a set of corporate responsibility-related goals that are embedded in key performance indicators for senior management, and
- their organisation integrates sustainability and financial reporting so that members/ shareholders and

other stakeholders can assess the organisation's management of its material business risks. 

The 'CSIA Governance Principles for Corporate Secretaries' is the second publication issued by the CSIA. The first publication – 'Twenty Practical Steps to Better Corporate Governance' – is available on the CSIA website: www.csiorg.com.

April Chan, Past President and Council Member of the CSIA, together with Samantha Suen, HKICS Chief Executive, attended the CSIA International Roundtable meeting in Kuala Lumpur, Malaysia, on 23 October 2013.

About the CSIA

The Corporate Secretaries International Association (CSIA) is an international federation of professional bodies for corporate secretaries and governance professionals.

Full members

Australia; Bangladesh; Hong Kong; India; Kenya; Malaysia; Nigeria; Pakistan; Singapore; Southern Africa; United Kingdom; United States of America; and Zimbabwe.

Affiliate members

Canada; Indonesia; Mongolia; New Zealand; and Sri Lanka.

More information can be found on the CSIA website: www.csiorg.com.



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Does more disclosure mean better governance?

The Institute's Corporate Governance Paper Competition is held annually to raise awareness of corporate governance issues among local undergraduates. This year's competition was held on the theme 'Corporate governance means more reports and disclosure?' This first part of the winning paper explores the relationship between corporate governance and disclosure.

In the aftermath of the global financial crisis, it is widely recognised that more comprehensive reporting mechanisms and stringent disclosure requirements are key to abating the severity of the crisis. Although inadequate disclosure did not directly lead to the economic downturn, it did hinder governments from reacting to and resolving the ensuing crisis in a timely manner before the problems grew worse. The importance of disclosure should not be underestimated.

Good disclosure practices enable corporations to attract investments and maintain confidence in capital markets by providing stakeholders with access to more reliable and regular information for making decisions. Corporate governance scandals such as Enron and WorldCom have prompted companies to follow more stringent disclosure requirements. Despite the apparent benefits brought by disclosure, it is too early to draw the conclusion that more reports and disclosure equate to higher standards of corporate governance. Excessive disclosure could lead to unforeseen problems that might outweigh the benefits.

This study analyses the issues from a general perspective, with a focus on the regulations and rules in Hong Kong, though references are made as appropriate to other jurisdictions for more all-round comparisons. The main argument of this study is that disclosure and reports are necessary for, but not by themselves enough for, good corporate governance.

Disclosure in Hong Kong

Mandatory disclosure

The mandatory disclosure requirements in Hong Kong are stipulated by:

- the Companies Ordinance (currently

Cap 32, but Cap 622 from March 2014)

- Securities and Futures Ordinance (Cap 571)
- Securities (Disclosure of Interests) Ordinance (Cap 396), and
- the listing rules.

Having formalised mandatory disclosure requirements ensures the quality of materials published for the general public and cultivates effective enforcement practices among companies, but over-regulation and excessive government intervention might hinder the free operation of the market. In this respect, it is more desirable for companies to develop a self-disciplinary culture to voluntarily disclose information to investors as a supplement to mandatory disclosure.

Voluntary disclosure

Companies can provide information over and above the minimum statutory or regulatory requirements, but this is clearly a self-regulatory practice and there will be differences in the degree to which companies will adopt voluntary disclosure depending on their different managerial philosophies. Essentially, it provides companies the opportunity to describe and explain their investment potential to investors. Some of the most useful voluntary disclosures are the metrics used by companies in their operations management and business strategies. Since disclosure is voluntary, companies are not obliged to continue to make the disclosure in subsequent periods.

Both creditors and investors are able to benefit from informative voluntary disclosure. From the creditors' perspective,

voluntary disclosure can enhance credibility and forge bonds with investors so that they can access financial markets with narrower price changes between transactions. Investors, on the other hand, benefit from the reduced likelihood that companies will misuse or misallocate their capital.

Information intermediaries

Disclosure to the public can also be performed by information intermediaries, such as financial analysts, industry experts, and the financial press. They engage in information production to unravel any misuse or misallocation of company's resources by managers. However, the significance of information intermediations may gradually fade away as voluntary disclosure pre-empts analysts' ability to distribute private information to the general public.

Disclosure and corporate governance

Transparency is a crucial indicator of the level of corporate governance in a corporation or an economy as a whole. The core idea is to disclose material information which serves the purpose of

Highlights

- quality disclosure is an indispensable criterion to achieving good corporate governance
- companies should go beyond the minimum mandatory disclosure requirements
- a transparent company does not necessarily have sound corporate governance

understanding the company's strategic goals and affects stakeholders' interests.

According to the OECD *Corporate Governance Principles*, the 'corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company'. Hence,

the degree of disclosure is a kind of measurement of a company's corporate governance.

Indeed the *Walker Review*, Published in the UK in July 2009 in response to the global financial crisis, confirms that quality disclosure is an indispensable criterion to achieving good corporate governance. In order to monitor management, a sufficient degree of

disclosure is required for shareholders to spot potential problems with the management or with alleged transactions.

Nonetheless, a transparent company does not necessarily have sound corporate governance. Corporate governance is a broad concept encompassing a wide range of elements, such as equitable treatment of shareholders, roles of other stakeholders, responsibilities of the board, etc. Yet the

Meet the author

CSj interviews the author of the winning paper in this year's Corporate Governance Paper Competition – Tommy Lau, Bachelor of Business Administration and Law undergraduate, University of Hong Kong.

Congratulations on winning the HKICS Corporate Governance Paper Competition – how did you come to hear about the competition and why did you decide to take part?

'My school sent out an email about the competition and, although the topic was new to me, I was interested in it. Also I wanted to practice my writing skills and of course the prize money was attractive!'

The theme of this year's competition was 'Corporate governance means more reports and disclosure?' Do you think good corporate governance necessarily mean more disclosure?

'I think good disclosure is a component of good corporate governance. The global financial crisis demonstrated that corporate disclosure requirements were not stringent enough before the crisis, companies were able to find ways to limit their disclosures to the public which contributed to the crisis. But if you have good disclosure you don't automatically have good corporate governance since corporate governance is about many other things in addition to disclosure.

For example, a major component of corporate governance is the way the board of directors operates. The board is the head of the company so the behaviour of directors must be in good faith and honest and they need to ensure that the company

is heading in right direction. But the more research I did for this paper, the more I realised that corporate governance is actually about much more than the way a company is run. You need to look at the relationships between different stakeholders of the company and the way the company balances their interests.

In some cases this will be obvious, for example companies need to protect the interests of minority shareholders when planning corporate transactions. But it also goes further than this since companies need to consider the interests of other stakeholders such as employees and customers. There is a global trend for companies to focus more on being socially responsible and this means considering the interests of society as a whole rather than just the shareholders' profits.'

Do you think your generation takes these ideas of the social responsibility of companies and stakeholder inclusiveness more seriously?

'Yes. In my business course we cover corporate social responsibility and the need for companies to care about issues like environmental protection and income disparity for example. Companies cannot afford to be solely focused on profit. I think my generation has more knowledge about these issues and cares more about them than the older generation.'

Your paper highlights the many advantages of good disclosure and makes the point that companies should go beyond the statutory minimum mandatory disclosure – would you like to add any comments on that point?

success of corporate governance is still to a large extent affected by the degree of transparency in the company, measured by the availability of information concerning stakeholders' interests.

Benefits of disclosure

1. Macro perspective

Promotion of an efficient market.

Good disclosure practices have a positive influence on domestic and

global financial markets. Annual reports, prospectuses, news clippings, road shows, etc, are communication channels that enable investors to catch a glimpse of the company's ideology, operation, business prospects, financial strength, etc. In the absence of proper disclosure mechanisms, investors find it almost impossible to obtain useful investment clues and are more likely to make the wrong investment decisions.

The collapses of large banks and corporations such as Lehman Brothers, Merrill Lynch, American International Group (AIG) and Halifax Bank of Scotland (HBOS) during the financial crisis in 2008 are financial debacles that manifest inadequate regulatory efforts and poor conversations between the institutions and their investors.

For financial markets to function efficiently, the share price has to fully reflect the value

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The more research I did for this paper, the more I realised that corporate governance is actually about much more than the way a company is run. You need to look at the relationships between different stakeholders of the company and the way the company balances their interests.

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'I think it's important to remember that the mandatory disclosure requirements set out in law are only minimum requirements and there are many benefits if companies are willing to disclose more to stakeholders. The most obvious benefit is that this will boost investor confidence in the company – not only will it mean that investors have a better knowledge of the company but also a good record on disclosure will indicate a well-run company.'

Your paper also makes the point that companies should avoid too much disclosure?


'When I started my research for this paper I assumed that more disclosure can only be beneficial, but I came to recognise

that too much disclosure can be a disadvantage. Firstly, if you disclose too much it might be hard for investors to digest all the information – particularly where the disclosure relies on technical financial terms that will be hard to understand. Secondly, companies are understandably reluctant to let their competitors know too much about their business model.'

What are your career plans for the future – would you like to be involved in corporate governance work?

'I'm not sure yet what career I will choose, I am still looking at this. I would like to work in the legal field but I am also interested in working in business. I am interested in corporate governance – the issue of how companies are run and how they should be run is very important topic. But writing this paper has broadened my understanding of what corporate governance means. I understood it to be about the management of the company, and it is about that, but my research made it clear that there are many different aspects to this subject.'

One final question – do you think the HKICS Corporate Governance Paper Competition is a good way to promote the awareness of corporate governance among undergraduates in Hong Kong?

'Yes, I think it is. To write a paper on a corporate governance theme means you have to do a lot of research to understand the issues. Also, after writing the paper, you can compare your work with the other contestants' papers, so you can share ideas and understand how other people are thinking about the topic.' 



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the core idea is to disclose material information which serves the purpose of understanding the company’s strategic goals and affects stakeholders’ interests
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of the issuing company. The contemporary market takes at most a semi-efficient form since, in reality, private insider information always exists, preventing share prices from fully reflecting the value of the company. As more information becomes available to the public by means of disclosure, there is a tendency towards a strong and efficient market.

Having an efficient market provides a nourishing ground for investors to make informed investment decisions on securities such as stocks, bonds, debentures, etc, based on unbiased prices in reliance on publicly available information.

Protection of investors. Disclosure provides shareholders with information they need to exercise their rights and obligations, such as receiving dividends, voting for directors in shareholders’ meetings, subscriptions to new issues of securities on the same terms as the

insiders, etc. Investors can also assess the risks of investments and hedge the investments if necessary. Although having more disclosure does not guarantee that shareholders can fully understand the information, it does give them a choice to utilise the information in whatever way they prefer to protect their interests, for example, hiring an analyst to interpret the information before making investments.

Price stability. As the market price to a large extent reflects the true value of the company, it is more difficult for arbitrageurs to exploit profit opportunities and cause drastic price changes, thereby dampening price fluctuations and providing a more stable investment environment.

Liquidity. Enhanced information publication allows people to be less concerned about any differences between intrinsic value and market value. They are less likely to spend time worrying

about share prices and more likely to inject capital into the market. As a result, liquidity increases in an efficient market.

Avoidance of ‘betting’ behaviour. As mentioned above, arbitrageurs find it hard to make profits in a more efficient market. They therefore provide liquidity to investors who need financial securities for purposes other than ‘betting’.

2. Micro perspective

Increase in company value. Companies’ values are likely to improve where good disclosure practices are followed. Better disclosure encourages companies to pay more attention to their internal management and public image. Moreover, expanded disclosure, from the financial perspective, leads to an upward valuation of the companies’ stock due to a boost in investor confidence. As a result, the firm’s liquidity improves and it arouses the interests of more institutional and individual investors.

Enhanced monitoring abilities. The ability of shareholders and boards to monitor management is improved when more reports are circulated for disclosure purposes. In particular, expropriation of minority shareholders can be stopped since they get the chance to inspect the companies into which they are injecting capital. It is not uncommon to observe that in many listed companies the majority shareholders often take control of the management and sit on the boards. They can easily manipulate voting and pass resolutions in favour of their own interests, depriving minority shareholders of their rights. By allowing more transparency over corporate operations, shareholders possess more

information to help them make proper investment decisions, such as reducing the amount of their investment, or even withdrawing shares from the company, if they are concerned about or disapprove of company policies or practices. Shareholders can also resort to legal action in the case of illegitimate oppression.

Lower cost of capital. In financial markets, one party often does not know enough about the other party to make accurate decisions. This phenomenon creates the problems of adverse selection and moral hazard, and undermines the functionality of the financial market. Disclosure is intended to alleviate these problems, reducing the asymmetry of

information between those inside the firm and those outside it, and enhancing a firm's ability to raise capital at lower costs.

Tommy Lau

Undergraduate Bachelor of Business Administration and Law, University of Hong Kong

Look out for the second and final part of this article in next month's journal. This year's Corporate Governance Paper Competition Presentation Award was held on 26 October 2013. Photos of the event are available at the 'Gallery' section of the HKICS website: www.hkics.org.hk.



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Competition Ordinance: guidance for company secretaries

The Competition Ordinance, which is likely to be fully implemented in 2015, will have significant compliance implications for company secretaries in Hong Kong. A new HKICS guidance note on the ordinance seeks to familiarise HKICS members with the main provisions of the ordinance and to make useful recommendations on compliance with the law.

The Competition Ordinance (Cap 619) will provide a legal framework to curb anti-competitive conduct in Hong Kong. The Ordinance will apply to any entity that engages in economic activity and the consequences of any breaches of the law are potentially serious. If anti-competitive behaviour is admitted or proved, companies may be liable to substantial fines, structural orders including divestiture of parts of the business, and the regulation of their future business conduct and internal affairs.

Moreover, directors may face disqualification for up to five years where they have been personally involved with the offending conduct by directly approving it, or not taking reasonable steps to prevent its occurrence. Company secretaries, where they are officers of the company who are deemed to be accessories to the offending conduct, may also be liable.

While full implementation of the ordinance is probably not going to happen before mid-2015, company secretaries need to take immediate action to ensure that they and their boards fully appreciate how the new law will affect them.

When will the ordinance take effect?

The Competition Ordinance was passed by the Legislative Council in June 2012 but it is being implemented in phases. The provisions relating to the establishment of the Competition Commission, the statutory body responsible for investigating anti-competitive conduct, commenced on 18 January 2013. The provisions relating to the establishment of the Competition Tribunal, which will be in charge of hearing and adjudicating competition-

related cases, commenced on 1 August 2013. Implementation of the rest of the ordinance still awaits these two agencies becoming operational.

Anna Wu was appointed Chairperson of the Competition Commission in May 2013 along with key staff. The Commission is currently setting up its internal procedures, its financial and administrative systems and seeking to recruit senior officers, including the Chief Executive Officer. It is expected that staff members will be in place by the first or second quarter of 2014.

The President and Deputy President of the Competition Tribunal were appointed in July 2013. The judiciary is currently making the necessary arrangements to prepare for the full operation of the tribunal, including formulating the rules relating to its operation and proceedings.

What has changed?

While certain sectors of the Hong Kong economy are already subject to competition legislation, namely the telecommunications and broadcasting sectors, the Competition Ordinance is the first competition law to apply to the entire economy of Hong Kong.

Highlights

- company secretaries need to take immediate action to ensure that they and their boards fully appreciate how the new law will affect them
- directors may face disqualification for up to five years where they have been personally involved with offending conduct by directly approving it, or not taking reasonable steps to prevent its occurrence
- company secretaries, where they are officers of the company who are deemed to be accessories to the offending conduct, may also be liable

The Competition Ordinance creates two specific prohibitions:

1. the making or giving effect to anti-competitive agreements, concerted practices or the decisions of a trade association 'if the object or effect... is to prevent, restrict or distort competition in Hong Kong' – this is known as the First Conduct Rule.
2. 'an undertaking with substantial market power abusing such power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong' – this is known as the Second Conduct Rule.

Some of the key terms in these conduct rules, such as 'concerted practices' and 'a substantial degree of market power', are not precisely defined in the ordinance. The interpretation of these terms will depend on the judgement of the Competition Commission and the Competition Tribunal and that judgement may not be straightforward. The HKICS guidance note points out that assessing what constitutes 'substantial market power' will require a complex analysis of how the market for the particular product or service functions.



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HKICS members, where they serve as company secretaries, have a duty to ensure that boards and relevant officers are fully aware of the nature and effect of the Ordinance
 ”

For these reasons, the guidelines on the Competition Ordinance currently being prepared by the Competition Commission are eagerly awaited. No date has been set for their publication, but it seems likely that this will be by mid-2015 since the Competition Commission intends to consult both the Legislative Council and the public before issuing the guidelines.

Other potential problem areas relating to the ordinance identified by the HKICS guidance note are highlighted below.

- The ordinance's merger control provisions only apply to licencees under the Telecommunications Ordinance – why are they not applied to all sectors?
- Statutory bodies are exempted from the ordinance – will this distort the markets in which these bodies operate?
- The maximum financial penalties are limited to 10% of up to three years' Hong Kong turnover – will companies who derive most of their revenues in Hong Kong suffer the highest fines?


- The abandonment of stand-alone private actions by the government grants the Competition Commission a monopoly of initial enforcement – will the Competition Commission have adequate resources to investigate or take enforcement action in respect of every legitimate complaint of anti-competitive conduct?

Timely advice

The HKICS *Guidance Note on the Competition Law* points out that company secretaries need to prepare now for the implementation of the Competition Ordinance. It recommends that HKICS members should advise their boards and relevant officers of the main contents of the Competition Ordinance. 'HKICS members, where they serve as company secretaries, have a duty to ensure that boards and relevant officers are fully aware of the nature and effect of the ordinance,' the guidance note states.

In addition to this advisory function, the guidance note also points out that company secretaries will be involved in devising appropriate and effective compliance procedures to mitigate the substantial risks of material non-compliance with the ordinance. These procedures will need to be tailored to

each company, but the guidance note recommends a review of current and future business operations in the light of the new law. Companies may also consider carrying out a competition audit.

The HKICS *Guidance Note on the Competition Ordinance* will be available from the HKICS website (www.hkics.org.hk) later this month. It was written by Professor Mark Williams, Member, HKICS Technical Consultation Panel, and Executive Director, Asian Competition Forum, with the assistance of Mohan Datwani *FCIS FCS*, HKICS Director of Technical and Research. Further guidance will be provided by the Institute when the Competition Commission issues its guidelines on the Competition Ordinance. 

The Competition Commission intends to consult the public on its draft guidelines on the Competition Ordinance. It will also organise forums with relevant stakeholders, including small and medium enterprises (SMEs), to promote understanding of the Ordinance and assist them in gearing up for its full implementation. More information is available on the government's information services website: www.news.gov.hk.



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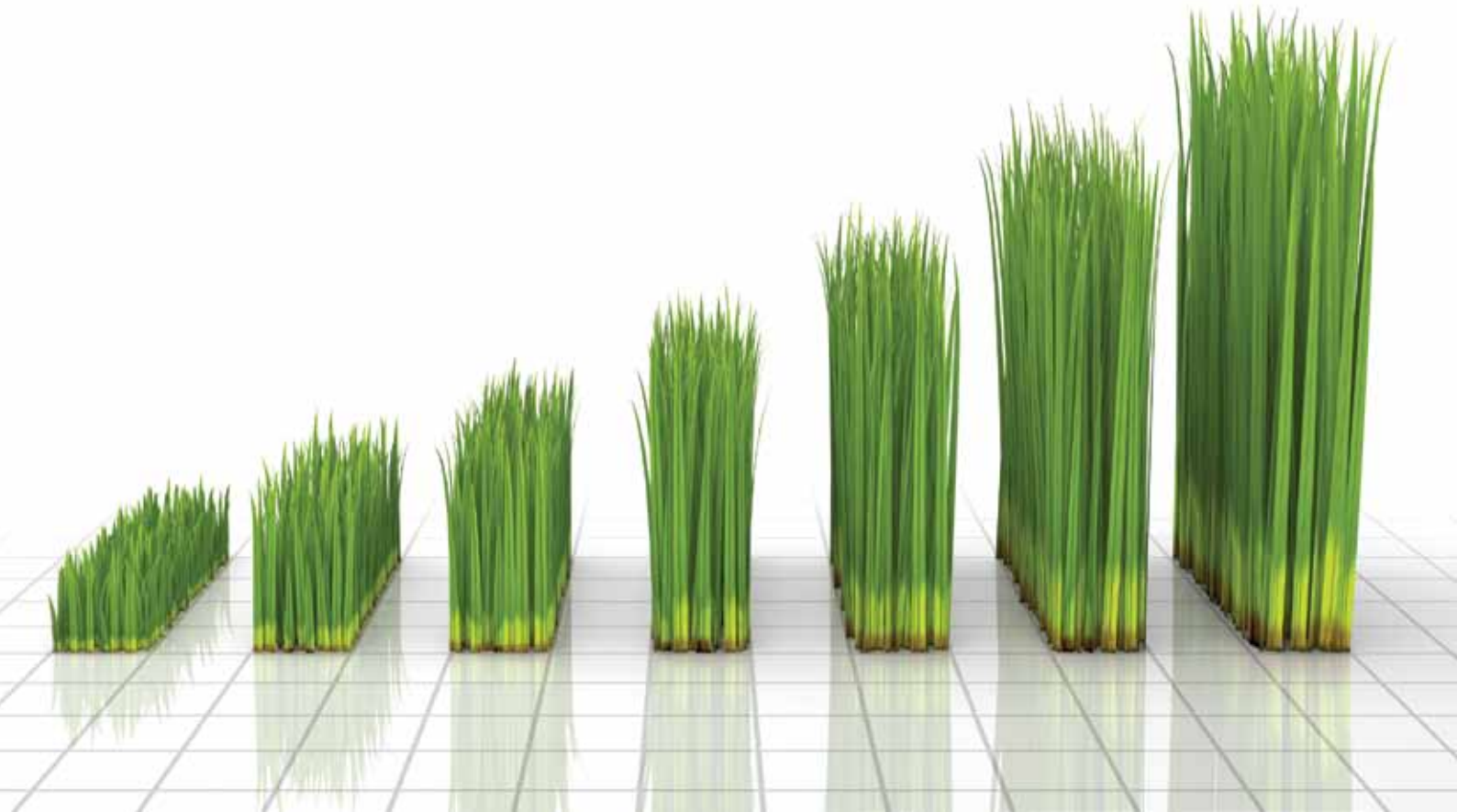
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Valuing intangibles and ESG performance

Few would dispute the importance of intangible factors such as a company's brand, its networks, its people and its capacity for innovation, but intangibles are, by definition, not easy to quantify. Josh Dowse, Principal, DowseCSP, introduces a new approach to measuring the value of a company's intangibles and the value of its efforts (including sustainability) to strengthen them.

Those who own and manage companies often throw metaphorical darts to work out how much their 'intangibles' are worth. It may be a valuable brand that they're eyeing, or the sublimely sweet relationships they've nurtured up and down the supply chain. There's an 'innovation culture' in the company that, hard as it is to define, is worth at least a swillion smackeroos: just think of the people who want to work for us, and the things that they can create!

It's an esoteric debate, though, which only bites when the company gets bought or sold. In the meantime, those running the company have to work out which intangibles to invest in, how much to invest in them, and how they should do so. Their options include investing in nebulous cultures, brands, reputations, relationships, environmental cred, community largesse, head office colour schemes. It's a tough ask, and one for which answers can't wait forever. The whole idea, surely, is not to wait until the company is next sold, but to build that value in time for the sale.

For those managers and owners looking to build intangible value, there needs to be a credible way of valuing their intangibles, and being able to track that value from year to year. What they can't measure, they can't manage.

Frustratingly, however, most of the current methodologies for valuing intangibles use what could politely be termed a 'top-down-what's-left?' approach. If listed, companies may have a known market value – often expressed as a multiple of earnings – and some tangible, saleable assets with an assessable market value. The gap, by definitional magic, is filled by 'the intangible'.

To properly identify, assess, value and manage their intangibles, companies need a 'bottom-up-what's-real' approach: one that is aligned with the management accounts of the company, and that identifies all of the actions and inactions that drive revenue and costs. Those that are interested in sustainability or environment, social and governance (ESG) performance may want to go one step further: to assess the contribution that sustainability or ESG may deliver to those intangibles, and hence to overall value.

This article introduces an approach that offers that guidance. We call the approach 'sustainability and intangibles valuation analysis', or SIVA for short. The article introduces the conceptual and practical underpinnings of SIVA, gives examples of how it works, and suggests some uses that can be made of SIVA.

A value driver tree approach

SIVA is in essence a comprehensive 'value driver tree' model of the firm's revenues and costs. Value driver trees are an acknowledged tool for understanding what drives operational and financial performance – they break down every branch of that performance into more and more sub-branches. Traditionally, however, the branches don't go beyond tangible, numeric components.

SIVA digs two levels deeper. It first identifies and quantifies the intangible factors that underpin immediate financial performance. It then identifies and quantifies the sustainability-related actions and metrics that influence those intangibles.

SIVA can then deliver sensitivity analyses to see how much a profit and loss (P&L) – and correlating net present value – changes

with the strength of these factors, which of the factors have the greatest impact, and how much a specific action or initiative will influence those factors. The process is transparent, so that management can discuss and agree on the factors, and the relative influence they have.

It is reasonably well accepted that the collective value of a firm's intangibles is quite high. A recent study by Ocean Tomo (*Intangible Asset Market Value Study*, 2010) suggests that, as our economies become more service-based, the average value of the non-physical assets has risen from 17% of a firm's value in 1975, to 68% in 1995, to 81% in 2009.

The four core intangible assets are: the firm's brand and relationships, and the productivity and innovation capacity of its people. These four deliver future financial performance, which is usually of more interest to investors than past performance. To understand how they drive value, we need to create a value driver tree.

Highlights

- sustainability and intangibles valuation analysis (SIVA) will help identify which are the biggest intangible drivers of value for the firm
- SIVA links profitability with intangible assets and sustainability, and strategies to bolster them
- SIVA will help identify those ESG issues that matter most to the firm

First cut at a conceptual 'tree'

The key to getting a shared view of the firm's value drivers is visibility. We're looking to capture connections and represent them in a way that people can see and discuss. So think big – butcher's paper may be out of favour but a big roll of it is just what's needed. Or a decent printing whiteboard. Or some decent mind-mapping software with a deft keyboard operator driving it and a big screen projection. You need to be able to drag things around, make mistakes and start over.

We need to build both revenue and cost trees, which are very different. Revenue trees will depend on whether the business can only achieve a share of a given market, or create its own market. If the business is doing both, you'll need different trees. At some point, though, a share of some market or wallet will be needed – consumers or other businesses aren't magic puddings and there'll be a limit on what they will spend on any product or service you're selling them.

Cost trees are a little bit more straightforward. The biggest conceptual differentiator is between investments the business is making in itself – 'quality spends' on people or physical assets or to improve products – and its spend on commodity supplies. As you push down the trees, keep in mind which costs are which, as that will determine how SIVA treats them.

The core intangible trees

If you push hard enough back through the branches of the tree, you will start to think about the very things that are not easy to quantify: the intangibles. A structured approach to these intangibles is what makes SIVA different to standard

financial driver trees. SIVA drills into four core and interrelated intangibles of the business: its brand, its networks, its people, and its capacity for innovation. One or more of them will hit every area of revenue and cost.

How you define these intangibles will be up to you, although there are good models to choose from. The quality and extent of the firm's relationships and networks are perhaps the simplest of the four core intangibles to break down into component factors. Others take more digging.

For brand quality and value, there are many models on offer globally, from SDR (www.sdr-consulting.com) to Interbrand (www.interbrand.com) and a thousand consultants in between. Dowse CSP uses a model that incorporates some Interbrand-style factors into a model derived from 'what customers are willing to pay for' in the telecommunications industry, which can apply to both consumer and business-to-business brands.

Not surprisingly, variations in the quality and productivity of a firm's people have the greatest impact on the SIVA results. We're talking here about the extent to which people in a firm have value-creating attributes, and the extent to which they can or will bring those attributes to bear. Again, various firms have their own models for how to measure that quality and productivity. Importantly, these factors include measures of employee wellbeing such as their physical and mental health, skills and experience, values and motivation, the physical and personal work environment and the stability and support of their family and wider community.

Figure 1 lays out a clear breakdown of those factors, with 'presenteeism'

being similar to employee engagement: the extent to which people are really operating at work, as opposed to playing solitaire.

Innovation capacity is drawn from an organisation's people, leadership, working environment and culture. The firm's sectoral, geographic and national settings will also be factors, but for our purposes they are 'givens'. Again, multiple models of innovation capacity are available.

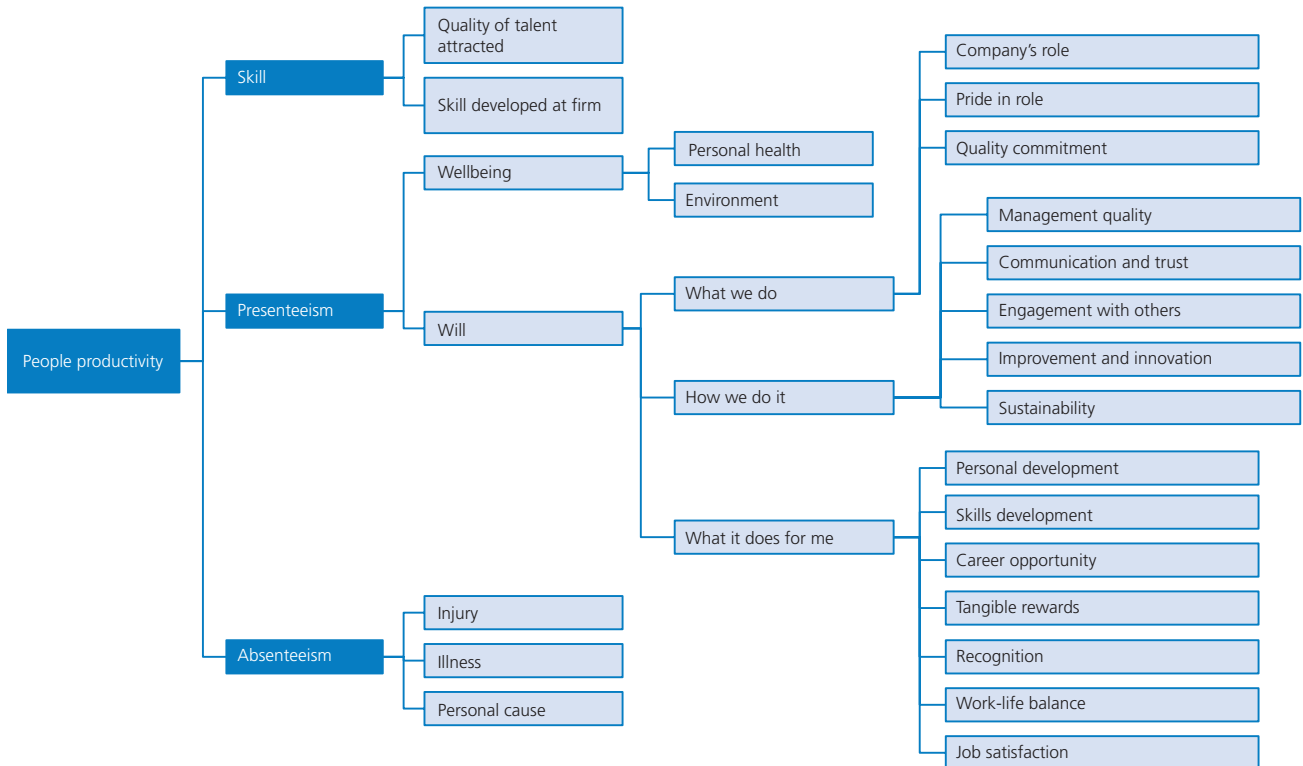
Finally, far into the leaves of the intangible factors lies the company's sustainability performance itself. It is trite to say that there are any number of environmental, social, economic and governance factors that contribute to that performance. Measuring and incorporating more than 1,000 potential indices is neither practical nor desirable. Performance measures are useful, and overall ratings from an ESG ratings agency may be incorporated.

But we are more interested in future than past performance. For that, we need to look just as closely at elements of the firm's future ESG direction – how well sustainability is integrated into the firm's thinking, how it manages ESG risks, who is responsible for it in the firm, whether environmental and social key performance indicators are integrated into performance management, what issues the company is taking on, who they are partnering with and how they are reporting it.

Converting the conceptual tree to a quantitative model

By this stage, you will have harnessed some expansive thinking from your team to create a thorough, though non-quantitative, conceptual model of how

Figure 1: DrinkCo and productivity factors (conceptual, incomplete)



your firm creates value. However, the whole point of the approach is to quantify each of the branches in some way, so that their overall impact on the P&L can be assessed. How?

The SIVA approach breaks the tree into three parts: see Figure 2. On the left are dollar values from full-year management accounts. On the right hand side are the more subjective factors, including the core intangible trees, that together drive revenue and costs. These can also be weighted and scored, and so quantified as scores rather than dollar values. In the middle is where the fun lies: a transition between an accounting-line dollar value, and scored and weighted intangible factors. Let's take each of the three parts in turn.

1. The management account breakdown

The left-hand side of the model is perhaps the easiest to get a grip on. The most direct route is to use the actual figures for revenue and costs in full-year management accounts, line by line, broken down into their components, to the last line of pure tangible numerics.

This may not, however, always align with your original conceptual tree, so there may need to be some give and take. If your conceptual tree gives you a clearer management view of what drives value, then that's an argument to realign your management accounts so that they better measure and support value creation for the firm. More likely, though, the thought of reclassifying costs is horrendous, and it's the conceptual tree which is realigned

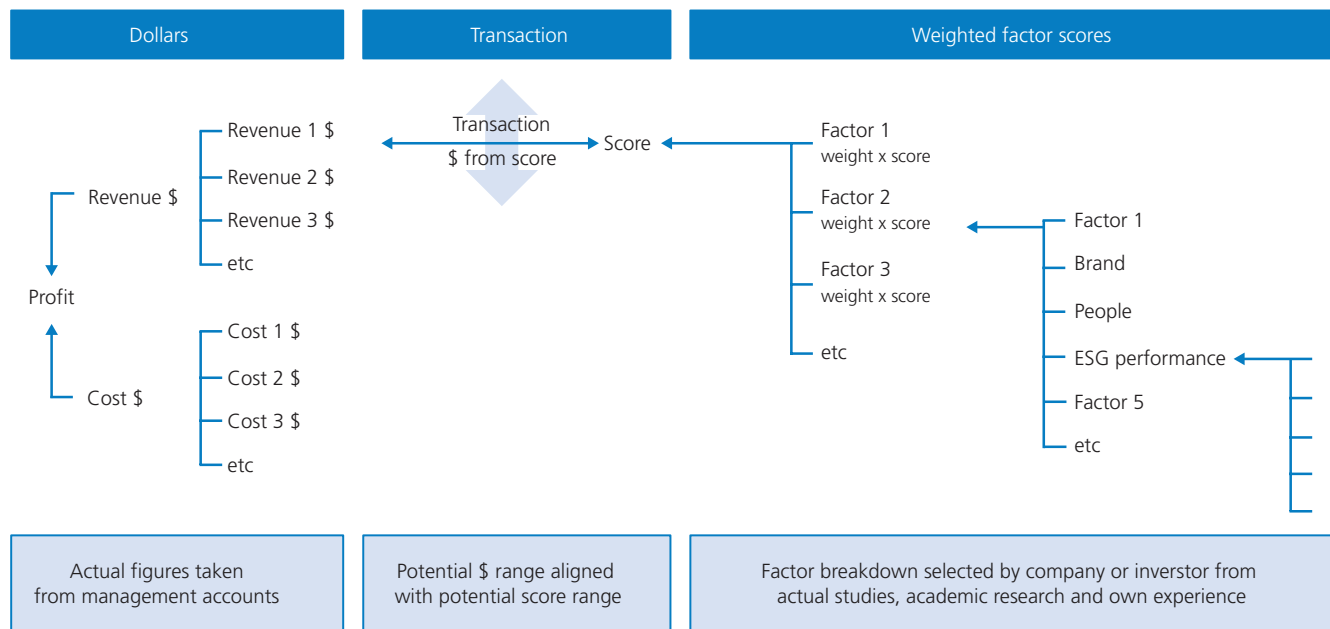
with the management accounts, more's the pity.

2. Weighing and testing the subjective factors

The subjective factors may be set out conceptually in the branches, but how do we turn them into numbers? The business has to decide how much weight to give each factor (its potential share of the outcome), and then how strong each factor really is. Together, those two dimensions will make up how much each factor contributes to the outcome.

For each of these dimensions, there are both academic sources and the business's own experience and knowledge to draw on. For example, a reliable study may suggest that the quality of customer

Figure 2: Three parts to a quantified value driver tree



service is determined by the quality of the people hired to give it, the quality of the training and leadership they're given, their motivation to deliver, the quality of the environment they work in and the systems they work with.

The study may even ascribe the weights of those factors, with the weights necessarily adding up to 100 per cent. There is only a very remote likelihood, however, of the study being in your industry, in your geography, with your technology. But it's a good start for discussion.

The business will know better what actually works for it. In some cases, it will actually know – it's looked at the evidence, run it through some regressions, and knows just how much those factors are influencing the results. In others, there will be no such evidence, but the responsible managers will have good feel for the levers that deliver for them.

It makes for a great discussion on what those factors are, how strong they are in the business, how strong they could reasonably be – and perhaps which of them should be better measured.

The next part of that discussion is to assess how strong the factors actually are in the firm. A scale of 1 to 10 is conceptually and mathematically easiest. In practice, most self-assessments (or third-party reviews), will score a firm's qualities at between 4 and 10 out of 10, so a generic average is typically a 7. Multiplying out the scores and weights for sub-factors (for example, quality of people, quality of training, employee engagement, quality of working environment), gives you a score for the overall factor (customer service).

3. The transition

A number of techniques can be used to translate what is actually a quality score

for identified factors into a financial outcome that the responsible manager would agree with, and that is objectively reasonable.

The first technique is to assess the firm's current transactions against the maximum cost or price that the market will bear for a particular good or service. For example, a firm supplying engineering equipment to oil and gas companies will know the price boundaries – the maximum price the market will bear – for most if not all of its inventory items, by drawing on industry data and the firm's own knowledge. There will usually be a gap between that price, and the price the firm currently charges. The current quality of its service is valued at its current price. If it wants a higher price, it will have to improve its value proposition, or negotiating skills, so that the price limit is reached when all of the contributing factors are as strong as they can be. Any further value from

the transaction will need to come from accompanying services, which will have another limit to what customers are prepared to pay, no matter the benefits.

A similar technique is to assess how much a line item of costs and revenues could conceivably change from year to year. Again, the current year's price and performance is known, and the maximum change would align with a perfect score for the factors. Aligning the two allows you to suggest a pro-rata financial change for any change in factor performance.

A third analysis is to assess how good a particular factor could logically be, how much it would cost to get it there, and what difference it would make to cost or revenue if that investment were made. To take a simple example, a routine task might be done to the same effect whether you paid for unskilled labour or for the finest engineering graduates. The quality of sound on an airline headset might be improved with a modest investment, but what difference would that make to a traveller's airline decision?

Working with SIVA

SIVA is a 'live' model of the firm's profitability, the value of its intangibles, and the value of its efforts (including sustainability) to strengthen those intangibles.

Though it is possible to build a 'black box' SIVA model, doing so would overlook the benefits of working through each branch with the managers responsible for its real operation – they will understand the factors best, and will in many cases appreciate the depth of analysis that SIVA offers. Many will also gain a better understanding of the impact of sustainability or people initiatives,

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those who own and manage companies often throw metaphorical darts to work out how much their ‘intangibles’ are worth
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how they might affect their own accountabilities, and how they link to long- and short-term value.

Once a model is in place, its uses are many. Most importantly, it becomes an agreed platform for systematic analysis within the firm and by its investors. If the firm is considering any soft or hard investment to improve productivity, innovation, brand or financial performance – and that will be most of them – SIVA will offer an objective and systematic view of its many impacts. If people have differing views on the value of that investment, they will have an existing, agreed platform to explore those differences.

For the sustainability head of the firm, SIVA is particularly useful to help determine how to get the most bang for their sustainability buck. It will help compare initiatives vying for a share of the sustainability budget. It will help identify which are the biggest intangible drivers of value for the firm, and therefore where to best target a sustainability strategy. Most importantly, it will make conversations on sustainability of direct significance for quarterly performance measures, and so very much more real than they may be now.

For the investor, SIVA would be integrated with the investor's own analytic model of the firm. It will help identify those ESG issues that matter most to the firm, and

help provide a sensitivity analysis for the firm's ESG performance, overall or on specific issues, as well as for its core intangibles.

From data to insight

ESG data is now relatively easy to come by. It is not immediately apparent what significance they all have. The links between ESG performance and the firm's operations, strategy and financial performance have long been listed in shopping-list, conceptual form. SIVA helps make those links transparent and concrete.

It is not a generalised model, but one that must be built for each firm. It assists in discussing ESG factors with operating managers and investors in a focused and numeric way, offering a shared understanding of how ESG factors relate to performance.

It's an understanding much in need.

Josh Dowse

Principal, DowseCSP

For further information, see www.dowse-csp.com.au.

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OUT
OF
WORK

Women and the world economy

A new International Monetary Fund (IMF) report finds that progress toward levelling the playing field for women in the workforce has stalled. Christine Lagarde, Managing Director of the IMF, outlines some of the many benefits of allowing women to develop their full labour market potential.

In many countries, public debate about gender equality focuses mainly on women's access to top positions and high-powered career opportunities. But the 'glass ceiling' is only a small part of the issue. The broader question is whether women have the same opportunities as men to participate in labour markets in the first place. In other words, are women empowered to contribute fully to global economic growth and prosperity?

Unfortunately, the International Monetary Fund's latest study by its staff, *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity*, shows that, despite some improvements, progress toward levelling the playing field for women has stalled. This is bad news for everyone, because it translates into lower economic growth – amounting to as much as 27% of per capita GDP in some countries.

Around the world, the number of women in the workforce remains far below that of men; only about half of working-age women are employed. Women account for most unpaid work, and when they are paid, they are overrepresented in the informal sector and among the poor. They continue to be paid less than men for the same jobs, even in OECD countries, where

the average gender wage gap is about 16%. And in many countries, distortions and discrimination in the labour market restrict women's chances of equal pay and rising to senior positions.

The potential gains from a larger female workforce are striking. In Egypt, for example, if the number of female workers were raised to the same level as that of men, the country's GDP could grow by 34%. In the United Arab Emirates, GDP would expand by 12%, in Japan by 9%, and in the US by 5%. According to a recent study based on data from the International Labour Organisation (*Empowering the Third Billion: Women and the World of Work in 2012*, by Booz & Company, available at: www.booz.com), of the 865 million women worldwide

who could contribute more fully to their economies, 812 million live in emerging and developing countries.

Raising women's labour-market participation rate boosts economic performance in a number of ways. For example, higher incomes for women lead to higher household spending on educating girls – a key prerequisite for faster long-term growth. Employment of women on an equal basis with men provides companies with a larger talent pool, potentially increasing creativity, innovation, and productivity. And, in advanced countries, a larger female labour force can help to counteract the impact of a shrinking workforce and mitigate the costs of an aging population.

Highlights

- employment of women on an equal basis with men provides companies with a larger talent pool, potentially increasing creativity, innovation, and productivity
- a larger female labour force can help to counteract the impact of a shrinking workforce and mitigate the costs of an aging population
- women benefit when flexible work arrangements are introduced and the barriers between part-time and full-time work contracts are lowered

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we urge policymakers
to take action and
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So what underlies the persistence of gaping inequality and stalled progress? Legal, regulatory, and social discrimination against women in many countries still prevents them from seeking paid work in the formal sector. As a result, women dominate the informal economy, where jobs are often transient and earnings are low. In addition, tax systems and social-welfare programmes in many countries are designed in ways that discourage women from working.

Against this background, government tax and spending policies, as well as labour-market regulation, should be reformed to help boost female employment. For example, taxing individual rather than family income – which in many economies imposes a higher marginal tax on the second earner in households – would encourage women to seek employment. Linking social-welfare benefits to participation in the workforce, training, or active labour-market programmes also can help, as can affordable, high-quality childcare and greater opportunities for

paternity and maternity leave. In Brazil, for example, the share of women in the workforce has risen sharply over the past 20 years, from about 45% to almost 60%, owing in part to family-friendly policies.

These are just a few examples; far more can be done. Women benefit when flexible work arrangements are introduced and the barriers between part-time and full-time work contracts are lowered, as the Netherlands has successfully done. In developing countries, accessible water and better transportation systems in rural areas can help women manage their time better. Establishing and upholding equal property and inheritance rights can increase women's access to credit and other productive resources, and creating greater awareness of legal rights in general will help reduce discrimination.

Some of these steps have been taken in recent years, but it is time to jumpstart the process. We urge policymakers to take action and implement policies aimed at removing the obstacles that block

women's participation in the workforce. We at the IMF will do our part by enhancing our analysis of the economic effects of gender inequality and working with our member countries to enable women to contribute fully to global economic growth and prosperity.

Especially now, with the growth outlook uncertain in much of the world, policies that encourage more women to enter the workforce certainly can help. Women are ready, willing, and able. Take my word for it.

Christine Lagarde
*Managing Director, International
Monetary Fund*

‘Women, Work, and the Economy: Macroeconomic Gains from Gender Equity’ was published in September 2013 and is available on the IMF website: www.imf.org.

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女性和世界经济

国际货币基金 (IMF) 的一份新报告指出，为女性缔造公平环境的进程陷入了停滞。让女性充分参与劳动市场的好处甚多，IMF总裁拉加德概述其中要点。

在许多国家，性别平等的公共争论主要集中在女性获得顶级职位和权重职业机会的问题上。但“玻璃天花板”只是这一问题的一小部分。更大的问题是女性一开始是否和男性拥有一样的机会参与劳动力市场。换句话说：女性是否有充分机会贡献全球经济增长和繁荣？

不幸的是，IMF的最新研究《女性、工作和经济》(Women, Work, and the Economy) 表明，尽管有所进步，但为女性缔造公平环境的进程陷入了停滞。这对于所有人来说都是坏消息，因为这意味着经济增长更低——在一些国家，人均GDP受拖累程度高达27%。

放眼全球，职业女性的数量仍然远低于职业男性；只有大约一半的工作适龄女性得到了雇用。女性从事了大部分无薪工作，即使拿得到薪水，也大多是在非正式部门工作，薪水低的可怜。她们与男性仍然同工不同酬，即使在经合组织国家也是如此（性别收入差距为16%左右）。在许多国家，劳动力市场的扭曲

摘要

- 女性获得和男性一样的平等就业机会能扩大公司的人才库，有助增加创造力、创新力和生产率
- 更多女性劳动力能够有助于抵消劳动力人数下降的影响，减轻人口老化的负担
- 引入弹性工作安排、降低兼职和全职工作合同的壁垒，可使女性得益

和歧视限制了女性获得平等薪酬和擢升高级职位的机会。

让更多女性工作的潜在好处是巨大的。比如，在埃及，如果女性员工的数量提高到与男性一样多，那么GDP将能增加34%。在阿联酋，GDP可以扩大12%，日本可以增加9%，美国可以增加5%。一份基于国际劳工组织数据的最新研究表明，全世界有8.65亿女性可以为经济做出更充分的贡献，其中8.12亿在新兴和发展中国家。

提高女性的劳动力市场参与率能从多方面提高经济表现。比如，女性收入的提高能增加家庭对女孩教育的支出——这是提高长期增长率的关键先决条件。女性获得和男性一样的平等就业机会能扩大公司的人才库，有助增加创造力、创新力和生产率。此外，在发达国家，更多女性劳动力能够有助于抵消劳动力人数下降的影响，减轻人口老化的负担。

那么，是什么造成了不平等性的持续和进步的停滞？许多国家不利于女性的法律、规则和社会歧视仍在阻止她们在正式部门寻找带薪工作。结果，女性主要集中在地下经济中，工作不稳定，收入很低。此外，许多国家的税收制度和社会福利计划的设计也不利于女性参加工作。

针对这一背景，政府税收和支出政策以及劳动力市场监管应该进行改革以提升女性就业。比如，向个人而不是家庭课税——在许多经济体，向家庭课税导致家庭第二份收入的边际税率更高——能鼓励女性寻找工作。将社会

福利和劳动力参与挂钩、提供培训、积极推行劳动力市场计划、提供廉价而高质量的儿童照顾服务以及更多的待产假和产假，也有助鼓励女性就业。比如，在巴西，女性工作者比例在过去20年中显著上升，从约45%增加到近60%，部分原因就在于家庭友好型政策。

这些只是一些例子；可以做的事还有很多。引入弹性工作安排、降低兼职和全职工作合同的壁垒（荷兰在这方面取得了成功），可使女性得益。在发展中国家，农村地区供水和交通系统的改善也有助于女性更好地管理时间。确立并维持平等的财产所有权和遗产继承权，可让女性更易获得信贷和其他生产性资源，而提高一般法律权利意识有助于减少歧视。

这些政策中，有几项近年来已经实施，但我们必须加快进程。我们敦促决策者采取行动实施政策，以消除阻挡女性参与劳动力大军的壁垒。IMF将做好对性别不平等的经济影响的分析，并与成员国合作让女性能够为经济增长和繁荣做出充分贡献。

特别是在世界大部分地区增长前景不明的现在，鼓励更多女性参与劳动力大军的政策必然会有所助益。女性已经做好了准备，她们有能力也有意愿。请相信我的话。

克里斯汀·拉加德 (Christine Lagarde)
IMF总裁

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www.project-syndicate.org

Seminars: October – November 2013

9 October 2013

The new Companies Ordinance (Cap 622) – an overview



Mohan Datwani FCIS FCS, LLB LLM, MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS (seminar chair), presenting a souvenir to the speakers: Professor Ted Tyler, Deputy Principal Government Counsel, Department of Justice; and Stefan Lo, Senior Government Counsel, Department of Justice.

15 October 2013

Hong Kong's new competition law: prohibitions, process and penalties: what the company secretary needs to know (re-run)



Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Past President of HKICS (seminar chair), presenting a souvenir to the speaker, Professor Mark Williams, Executive Director, Asian Competition Forum.

16 October 2013

SFC enforcement cases – a year in review (for year 2012/ 2013)



Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd (seminar chair), presenting a souvenir to the speaker, Mohan Datwani, FCIS FCS, LLB LLM, MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS.

23 October 2013

The new data privacy ordinance



Roger LC Leung FCIS FCS, LLM, MBA, FCMA, FCPA, FHKIoD, MHKIHrm, INED of Casablanca Group Ltd (seminar chair), presenting a souvenir to the speakers: Michelle Chan, Partner, Technology, Media and Telecommunications (TMT), Hong Kong, Herbert Smith Freehills; and Clarice Yue, Senior Associate, TMT/ Corporate, Hong Kong, Herbert Smith Freehills.

25 October 2013

Corporate governance – from compliance to excellence



Susan Lo FCIS FCS(PE), Director, Corporate Services, Tricor Services Ltd (seminar chair), presenting a souvenir to the speaker, Patrick Rozario, Director and Head of Risk Advisory Services, BDO Ltd.

28 October 2013

Tax disputes & risk control in China



Alberta Sie FCIS FCS(PE), Company Secretary, EFA Secretarial Ltd (seminar chair), presenting a souvenir to the speaker, Daniel Hui, Tax Partner, KPMG.

21 October 2013

The governance of corporate acquisitions (joint seminar with HKICPA and The Law Society of Hong Kong)



Professor CK Low FCIS FCS, CUHK Business School (seminar chair), presenting a souvenir to the speakers: Professor Marco Becht, Professor of Finance and Economics at Université, Libre de Bruxelles and Executive Director of the European Corporate Governance Institute; and Stephen Mok, Partner, Eversheds LLP.

30 October 2013

Hong Kong takeovers



Mohan Datwani FCIS FCS, LLB LLM, MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS (seminar chair), presenting a souvenir to the speakers: Conrad Chan, Partner, and Ignatius Seu, Senior Associate, King & Wood Mallesons.

4 November 2013

Directors of listed companies – duties and liabilities



Mohan Datwani FCIS FCS, LLB LLM, MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS (seminar chair), presenting a souvenir to the speaker, Julianne Doe, Partner, Brandt Chan & Partners.

Fellows-only benefits

Fellows are leaders of the Chartered Secretarial profession. These highly qualified and respected role models are crucial in maintaining the growth of the Institute and the profession.

As per Council's direction, the promotional campaign to increase the number of Fellows continues. Act now and enjoy a special rate for the Fellowship election fee of HK\$1,000 and the exclusive Fellowship benefits below:

- complimentary attendance at two Institute events – the annual convocation and annual dinner – following your Fellowship election
- eligibility to attend Fellows-only events
- priority enrolment for Institute events with seat guarantee (registration at least 10 working days prior to the event required), and
- speaker or Chairperson invitations at ECPD seminars (extra CPD points are awarded for these roles).

Application requirements:

- at least one year of Associateship
- at least eight years' relevant work experience, and
- engagement in company secretary, assistant company secretary or senior executive positions for at least three of the past 10 years.

For enquiries, please contact Jaymee Chan or Cherry Chan at the Membership section at 2881 6177 or member@hkics.org.hk.

New Graduates

Congratulations to the following 16 new Graduates:

Au Hau Yi, Cleo
 Chan Ka Kei
 Cheung Wai Shuen
 Ho Kam Hung
 Ho Kin Yi
 Kwong Suk Fan, Fanny
 Lam Yin Sheung, Maria
 Law Yee Ting
 Leung Kai Fung
 Li Pik Yin
 Li Sze Man
 Ng Kong Yin
 Tse Ching Wah
 Tso Ping Cheong, Brian
 Wong Pui Ki, Becky
 Wong Siu Ping

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
Mok Ming Wai <i>FCIS FCS</i>	Sunac China Holdings Ltd (stock code: 1918)	9 October 2013
Foo Man Yee, Carina <i>ACIS ACS(PE)</i>	SinoCom Software Group Ltd (stock code: 299)	10 October 2013
Chui Lee Lee <i>ACIS ACS</i>	Sun Innovation Holdings Ltd (stock code: 547)	11 October 2013
Kwok Siu Man <i>FCIS FCS</i>	Guangdong Yueyun Transportation Company Ltd (stock code: 3399)	15 October 2013
Chan Yuen Mei <i>ACIS ACS</i>	MelcoLot Ltd (stock code: 8198)	18 October 2013

New Associates

Congratulations to the following 54 new Associates:

Au Hoi Ying	Fong Sin Yee	Leung Pui Ying, Polly	Tang Chung Yan, Suzanne
Au Pui Yee	Fu Wing Yiu	Leung Shuk Ying	Tsang Yee Wah
Chak Ka Ying, Phyllis	Ho Nga Lun	Leung Wai Bong	Tse Cheuk Kei
Chan Cheong Yu, Brian	Ho Yuen Shan	Li Ho Yan	Tse Shuk In
Chan Nga Lai	Kho Polien	Lo Suk On	Tse Yu Yan
Chan Pui Ling	Kung Yui Yan, Claudia	Mak Wai Yin, Alice	Tsui Sum Yi
Chan Suk Wai	Lam Kong Ken	Mok Hiu Fai	Wong Ching Lun
Chan Wai Fong	Lam Nga	Ng Po Lin	Wong Ka Mun
Chan Yin Man, Mingsy	Lam Sze Man	Ngai Lai Kwan	Wong Wing Kai, Tommy
Cheung Kin Chuen	Lam Wing Yu, Myra	Shiu Kam Mi, Phoebe	Wong Yi Tak, Jessica
Cheung Ngai Yuen	Lee Ki Wai	Shum King Ki	Yim Dan Ling
Chong Wai Kei	Lee Kin	Sin Lai Sheung	Ying Wai Lam, Ashly
Chow Man Heung	Leung Kit Wai	So Hiu Tung, Miranda	
Chu Kin Fung	Leung Lam	Szeto Kar Yee, Cynthia	

New Fellows

The Institute would like to take this opportunity to congratulate the following Fellows elected in October 2013.



Lai Mei Fong *FCIS FCS*

Ms Lai is currently the Company Secretary of Matrix Holdings Ltd. She is responsible for the secretarial functions of the Group and provides an advisory role on regulatory compliance and corporate governance for the Group. Ms Lai

possesses extensive experience in the field of corporate secretarial, legal and corporate governance and holds a master's degree in Business Administration from The University of Strathclyde, UK.



Lee Chun Ho, Ernest *FCIS FCS*

Mr Lee is currently a Partner of the Professional Practice Department of Ernst & Young, China. He has over 20 years' experience in auditing and providing technical advice on accounting and auditing-related matters in the Asia-

Pacific area. Mr Lee is the Chairman of the Task Force for the Review of Membership Admission Criteria, and a member of the Professional Development Committee of the HKICS. He also serves on the Financial Reporting Standards Committee of the Hong Kong Institute of Certified Public Accountants (HKICPA), and the Financial Reporting Advisory Panel of the Stock Exchange of Hong Kong.



Paul Andrew Stafford *FCIS FCS*

Mr Stafford is currently the Corporation Secretary of The Hongkong and Shanghai Banking Corporation Ltd (HSBC) and Regional Company Secretary for HSBC, Asia-Pacific. He is responsible for leading the team of about 60 company

secretaries that support boards and directors throughout the Asia-Pacific region. He is also responsible for HSBC Holdings plc's primary listing on the Stock Exchange of Hong Kong. Mr Stafford joined HSBC in London in 1997 and moved to Hong Kong in 2010. He holds a bachelor's degree in Modern History from the University of Liverpool and is an Associate member of the Chartered Institute of Bankers. Mr Stafford is a member of the HKICS Company Secretaries Panel and also the Technical Consultation Panel.



Tse Kam Fai, Patrick *FCIS FCS*

Mr Tse is currently the Director and Founder of Uni-1 Corporate Services Ltd which provides professional solutions in the area of regulatory compliance, corporate governance and corporate secretarial services to a wide range

of corporations. Prior to the establishment of Uni-1, he was company secretary of a listed group. Mr Tse has more than 20 years' extensive experience in handling listed company secretarial and compliance-related matters including different kinds of corporate restructuring, fund raising exercises and de-mergers. Mr Tse is also the company secretary of several listed companies in Hong Kong. Mr Tse is a member of the Hong Kong Institute of Directors.



James Wong *FCIS FCS*

Mr Wong heads up the North Asia business of Computershare, a global shareholder services company and he is currently the Chief Executive Officer of Computershare Hong Kong Investor Services Ltd, the largest provider of

share registration and other related shareholder services in Hong Kong. Mr Wong is a member of the Hang Seng Index Advisory Committee, member of the Disciplinary Subcommittee of the Treasury Markets Association and Vice-Chairman of the Hong Kong Federation of Share Registrars. Prior to joining Computershare, he was HSBC's senior executive in charge of securities services business in Hong Kong and China. Mr Wong is also a Certified Public Accountant, with over 25 years of extensive experience in corporate and retail banking businesses.

Other new Fellows include:

Chan Yuen Ying, Stella *FCIS FCS*

Chu Yin Yin, Georgiana *FCIS FCS*, Company Secretary and Executive Director, China Water Industry Group Ltd

Li Siu Fung *FCIS FCS*, Partner, Hau, Lau, Li & Yeung Solicitors

Ng Sau Kuen, Joyce *FCIS FCS*, General Manager – Company Secretarial, Li & Fung (Trading) Ltd

Tang Yuk Bo *FCIS FCS*, Company Secretary, Founder Holdings Ltd

ECPD

What should you know about the MCPD requirements?

All members who qualified between 1 January 2000 and 31 July 2013 are required to accumulate at least 15 mandatory continuing professional development (MCPD) or enhanced continuing professional development (ECPD) points every year. Members should complete the MCPD Form I - Declaration Form and submit it to the secretariat by fax (2881 5755), or by email (mcpd@hkics.org.hk) by the applicable deadline - see table below for details.

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 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), nevertheless they must obtain 15 MCPD points from suitable providers.

Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Submission deadline
1 January 2000 - 31 July 2013	15	31 July 2014	15 August 2014
1 January 1995 - 31 December 1999	15	31 July 2016	15 August 2016

ECPD seminar enrolment

Thanks to members' support of the Institute's ECPD activities, the demand for seats at ECPD seminars has significantly increased. In order to achieve a fair enrolment procedure, the Institute's first-come-first-served policy and the practice of allowing seat reservation only upon receipt of payment have to be strictly applied.

Membership card

Your membership card confirms your identity as a member of the Institute. The Institute will gradually implement the use of a scanning device to record attendance at the ECPD programme and other activities from 1 January 2014. Members are reminded to always bring their membership cards with them when attending seminars, events and enjoying membership benefits.

Annual subscription 2013/ 2014

Members and Graduates are reminded to settle their annual subscription for the financial year 2013/ 2014. Members should note:

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (payable to 'HKICS'). For details of the card benefits and application form, please refer to the Institute's website.
2. Failure to pay the subscription on or before 31 January 2014 may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle the outstanding subscription fees plus the re-election fee if they want to reinstate their membership.
3. Please update your latest employment information by completing the 'Personal Data Update Form' and returning it to the Institute together with the membership renewal notice and cheque for payment of subscription (if paying by cheque) by using the return envelope.

Members and Graduates who have not received the Membership Renewal Notice for the financial year 2013/ 2014, please contact the Membership section at 2881 6177 or member@hkics.org.hk.

Corporate Secretaries International Association (CSIA) Roundtable

CSIA held its third international Roundtable, themed 'the Pivotal Role of the Corporate Secretary', on 23 October 2013 in Kuala Lumpur, Malaysia. Institute representatives April Chan *FCIS FCS(PE)*, Past President, and Samantha Suen *FCIS FCS*, Chief Executive, attended the Roundtable.

During the event, CSIA released its second governance publication, the Governance *Principles for Corporate Secretaries*. This aims to guide corporate secretaries across all countries, jurisdictions and cultures on how they can influence the implementation of good governance in their organisations in a practical manner.

The publication, which is reviewed on pages 12–16 of this month's journal, is available on the CSIA website: www.csiaorg.com.



At the Roundtable



April Chan speaking at the Roundtable

New Companies Ordinance seminar series

To assist members in their preparation for the implementation of the new Companies Ordinance, which will take effect on 3 March 2014, the Institute has organised a series of seminars on the new law:

Date	Topic
16 December 2013	Conflict of interest/ fair dealing by directors under the new Companies Ordinance and beyond
14 January 2014	Directors duties and obligations under the new Companies Ordinance and beyond
16 January 2014	Share buy-back under the new Companies Ordinance

The Institute is planning further seminars on related topics of relevance to company secretaries. Stay tuned to the Institute's seminar updates via emails and *CSj*.

Annual Dinner 2014

The Institute's Annual Dinner 2014 will be held on 7 January 2014 at the JW Marriot Hong Kong. Sir CK Chow, Chairman, Hong Kong Exchanges and Clearing Ltd, will be the guest of honour at the event. For details, please refer to the flyer on page 17, or contact the Membership section at 2881 6177.

Stay connected with HKICS on social media

Social media offers a popular channel to engage with our key stakeholders, including members, students and potential students. HKICS has rejuvenated its Facebook Fan's Page and Twitter feed to enhance communication with our stakeholders. Events and photos are just a click away.

Please join and like our Facebook Fan's Page at www.facebook.com/HKICS to receive our latest updates. You can also follow us on Twitter at www.twitter.com/HKICS.

Membership activities

'Grooming for Leadership' series – practical tips on preparing for board meetings and writing board minutes

The Institute's 'Grooming for Leadership' series was launched in June this year. Targetting our new Associates, it offers members the chance to learn practical tips from experts on different work-oriented topics to help with their career advancement.

This workshop – 'Preparing for board meetings and writing board minutes' – was held on 30 October 2013 with over 80 attendees. The seminar content was useful and our experts shared practical tips on preparing board meetings and writing board minutes, as well as English grammar. Over 80% of participants rated this a good workshop.

Susie Cheung *FCIS FCS(PE)*, HKICS Council Member and Membership Committee Chairman, General Counsel and Company Secretary of The Hong Kong Mortgage Corporation Ltd, highlighted the role of the company secretary in ensuring effective board meetings; Edmund Fu *ACIS ACS*, HKICS Membership Committee Member, Principal Consultant, A-World Consulting Ltd and former Deputy Director, Finance & Business Support, CLP Power (Hong Kong), gave a practical and concise guide to English grammar.

Ascent Partners and Lippo Group were the sponsors of this event. More photos taken at the workshop are available at the gallery section on the Institute's website.



Dr Eva Chan FCIS FCS(PE), Council Member and Membership Committee Vice-Chairman, giving her opening remarks



Edmund Fu at the workshop



Susie Cheung at the workshop



Members exchanging views after the presentation

Members' networking – visit to Hong Kong Global Geopark, Sai Kung Volcanic Rock Region

This Global Geopark visit was held on 23 November 2013. Participants enjoyed the extraordinary landscape and views in Sai Kung Volcanic Rock Region and enhanced their geological knowledge led by the qualified Geopark guides. Details with photos will be reported in the next issue of *CSj*.

Zhuhai one-day study tour

This one-day tailor-made study tour offered participants visits to Shenhua Guohua Wind Energy (a wind farm project developed by China Shenhua) and Zhuhai Municipal Administration for Industry and Commerce. Held on 29 November 2013, the tour also included tasty local cuisine and sightseeing. Details with photos will be reported in the next issue of *CSj*.

IQS information session

The Institute held an IQS information session on 18 November 2013 for members of the general public who are interested in pursuing the Chartered Secretarial profession. Teresa Chow *ACIS/ACS*, Assistant Company Secretary of KWG Property Holding Ltd, shared her work experience in the profession with the attendees.



Teresa Chow sharing her experience

IQS Examination (December 2013) – deadline for submitting application for examination postponement

Students can submit their examination postponement applications with supporting documents within three calendar weeks after the completion of the December 2013 examination diet – that is, on or before 27 December 2013.

Student Ambassadors Programme (SAP) – visits

For student ambassadors to get familiar with the company secretarial field, the Institute organised the following visits:

1. KCS Hong Kong Ltd (30 October 2013), and
2. Hong Kong Ethics Development Centre, ICAC (22 November 2013).

The Institute would like to thank these two organisations for their generous support.



At KCS Hong Kong Ltd



At Hong Kong Ethics Development Centre, ICAC

Professional seminar at Hong Kong Shue Yan University

The Institute organised a professional seminar on 11 November 2013 at Hong Kong Shue Yan University. Dr Brian Lo *FCIS/FCS*, Vice-President and Company Secretary, APT Satellite Holdings Ltd, delivered a talk on 'Corporate Governance and Corporate Risk' to over 180 BBA students.



Dr Brian Lo receiving a souvenir from Dr Lubanski Lam of Hong Kong Shue Yan University

Corporate Governance Paper Competition and Presentation Award 2013

To promote good corporate governance awareness among local undergraduates, the Institute has been running its 'Corporate Governance Paper Competition and Presentation Award' since 2006. This year's topic was 'Corporate governance means more reports and disclosure?' and the competition was completed successfully on 26 October 2013. The Institute is pleased to announce the winners as follows:

Paper Competition

Champion

Tommy Lau
Faculty of Business and Economics
The University of Hong Kong



The champion of the Paper Competition

1st Runner-up

Emily Chen and Janice So
Faculty of Business and Economics
The University of Hong Kong



The best presenter of the Paper Presentation

2nd Runner-up

Alice Chan
School of Accountancy
The Chinese University of Hong Kong



The 1st runner-up of the Paper Competition

Paper Presentation

Best Presenter Award

Sharon Tam (Faculty of Law) and
Kiko Wan (Faculty of Arts)
The University of Hong Kong



The 1st runner-up of the Paper Presentation

1st Runner-up

Emily Chen and Janice So
Faculty of Business and Economics
The University of Hong Kong



The 2nd runner-up of the Paper Competition

2nd Runner-up

Louise Lam (Faculty of Social Science),
Afra Li (Faculty of Business and Economics)
and Sophia So (Faculty of Law)
The University of Hong Kong



The 2nd runner-up of the Paper Presentation

The Institute would like to thank the following individuals and organisations for their contribution to the Corporate Governance Paper Competition and Presentation Award 2013 (names in alphabetical order):

Reviewers

- Dr Derek Chan, Associate Professor in Accounting (Area Co-ordinator), Faculty of Business & Economics, The University of Hong Kong
- Dr Yuanto Kusnadi, Assistant Professor, Department of Accountancy, City University of Hong Kong (until June 2013)
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, The Chinese University of Hong Kong
- Dr Mark Ng, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Mr Clement Shum, Associate Professor, Department of Accountancy, Lingnan University
- Professor Mark Williams, Professor, School of Accounting and Finance, The Hong Kong Polytechnic University
- Dr Davy Wu, Senior Lecturer, Department of Accounting & Law, Hong Kong Baptist University
- Dr Susana Yuen, Associate Professor, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong

Papers Panel Judges

- Richard Leung *FCIS FCS, FCPA*, Barrister-at-Law, Des Voeux Chambers and HKICS Past President
- Dr Brian Lo *FCIS FCS*, Vice President & Company Secretary, APT Satellite Holdings Ltd
- Grace Wong *FCIS FCS*, Company Secretary and Deputy General Manager, Investor Relations, China Mobile Ltd

Papers Presentation Judges

- Mohan Datwani *FCIS FCS*, Director, Technical and Research, HKICS
- Patrick Sung *FCIS FCS*, Executive Director and Chief Financial Officer, Guangnan (Holdings) Ltd
- Jerry Tong *FCIS FCS*, Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd

Working Group

- Nelson Chiu *ACIS ACS*, Financial Controller, Best Miracle International Ltd
- Winnie Li *ACIS ACS*, Director, CWCC

See pages 18–23 of this month's journal for the winning paper in this year's Corporate Governance Paper Competition, along with an interview with its author – Tommy Lau, Undergraduate, Bachelor of Business Administration and Law, The University of Hong Kong.

International Qualifying Scheme (IQS): Hong Kong Corporate Law study pack

In order to facilitate students in preparing for the IQS examination, the Institute has developed a study pack for the subject of Hong Kong Corporate Law. This study pack is mandatory for students who will enrol for the Hong Kong Corporate Law examination (effective from December 2013 examination).

Key features of the study pack are:

- updated version of the study outline
- case study examination technique using IRAC method
- sample case study questions
- recommended study timetable
- list of relevant past-paper questions and answers in each chapter, and
- relevant case laws in each chapter.

Academic Advisory Panel luncheon

The Institute held an Academic Advisory Panel luncheon on 4 November 2013 at Club Lusitano with representatives from local universities. Alberta Sie *FCIS FCS(PE)* and Polly Wong *FCIS FCS(PE)*, Chairman and Member of Education Committee respectively, were the hosts. They updated attendees on the latest developments of the HKICS. A video highlighting the Corporate Governance Paper Presentation Competition 2013 was broadcast during the luncheon.

Attending academics included:

- Dr Derek Chan, Associate Professor in Accounting (Area Co-ordinator), Faculty of Business and Economics, The University of Hong Kong
- Dr Peter Lau, Associate Professor, Department of Accountancy and Law, Hong Kong Baptist University
- Dr Samuel Chan, Associate Professor, School of Accounting and Finance, The Hong Kong Polytechnic University
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, The Chinese University of Hong Kong
- Dr Andy Chiu, Head, Department of Law and Business, Hong Kong Shue Yan University
- Clement Shum, Associate Professor, Department of Accountancy, Lingnan University
- Dr Lubanski Lam, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Dr Susana Yuen *ACIS ACS*, Assistant Professor, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong



The Academic Advisory Panel

Visit to United International College, Zuhai

Alberta Sie *FCIS FCS (PE)*, Education Committee Chairman; Bernard Wu *FCIS FCS*, Education Committee Member; together with Louisa Lau *FCIS FCS(PE)* and Candy Wong from the HKICS secretariat, visited the United International College (UIC) in Zhuhai on 15 November 2013. The delegation visited the UIC training centre at the Hengqing Financial Industry Service Base. Discussions were held with Professor Stella Cho, Dean of Division of Business, UIC, on further collaboration between the UIC and the Institute. Alberta Sie delivered a talk on the 'Role of company secretaries' to over 70 students.



(From left) Dr Kenneth Ho, Assistant Professor and Programme Coordinator of Finance, UIC; Bernard Wu; Professor Stella Cho; Alberta Sie and Louisa Lau

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- Initial Public Offerings & Share Registration
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