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to ethical
compliance

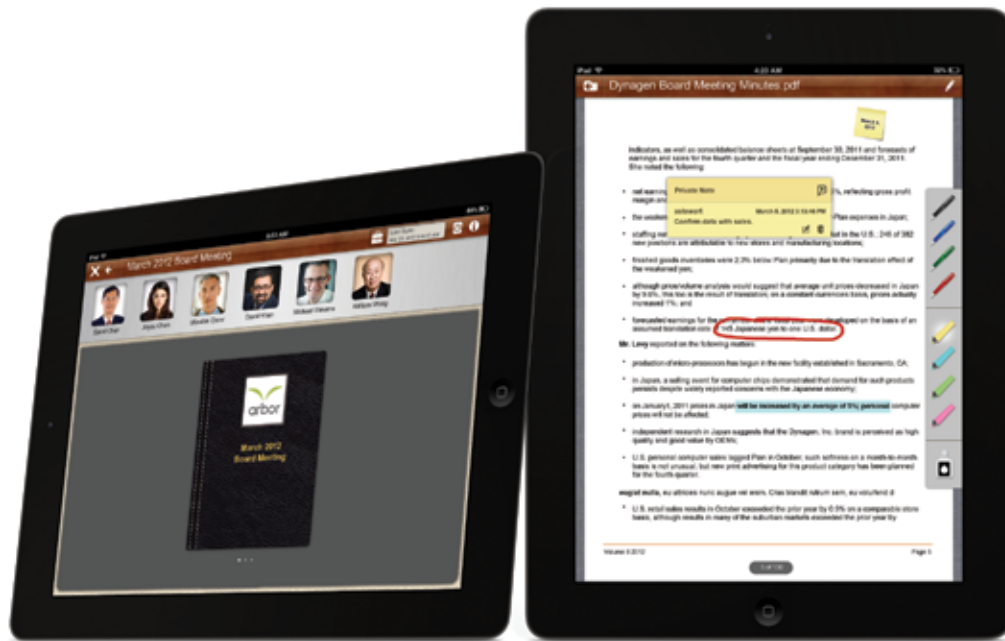
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China,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

The HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994, and today has more than 5,700 members and approximately 3,200 students.

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As of 18 January 2013, the Institute's membership statistics were as follows:

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The Hong Kong Institute of Chartered Secretaries

(Incorporated with limited liability)

3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong

Tel: (852) 2881 6177

Fax: (852) 2881 5050

Email: ask@hkics.org.hk (general)

member@hkics.org.hk (member)

ecpd@hkics.org.hk (Professional Development)

student@hkics.org.hk (student)

Website: www.hkics.org.hk

Beijing Representative Office

Rm 15A04, 15A/F, Dacheng Tower, No 127 Xuanwumen West Street

Xicheng District, Beijing, China, P.C.: 100031

Tel: (86) 10 6641 9368

Fax: (86) 10 6641 9078

Email: bro@hkics.org.hk

Institute of Chartered Secretaries and Administrators

Chartered Secretaries Australia Ltd

Level 10, 5 Hunter Street

Sydney, NSW 2000

Australia

Tel: (61) 2 9223 5744

Fax: (61) 2 9232 7174

Email: info@CSAust.com

Website: www.CSAust.com

The Institute of Chartered Secretaries & Administrators in Canada

202-300 March Road

Ottawa, ON, Canada K2K 2E2

Tel: (1) 613 595 1151

Fax: (1) 613 595 1155

The Malaysian Institute of Chartered Secretaries and Administrators

No. 57 The Boulevard, Mid Valley City, Lingkaran

Syed Putra,

59200 Kuala Lumpur, Malaysia

Tel: (60) 3 2282 9276

Fax: (60) 3 2282 9281

Chartered Secretaries New Zealand Inc

PO Box 444

Shortland Street

Auckland 1015

New Zealand

Tel: (64) 9 377 0130

Fax: (64) 9 366 3979

Committee chairmen

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email: enquiries@ninehillsmedia.com

Editorial Committee

Ken Chan

Paul Davis

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Credits

Kieran Colvert

Editor

Pearl Tong

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Harry Harrison

Illustrator (cover)

Contributors to this edition

Jeffrey M Kaplan

Kaplan & Walker LLP

Gordon Jones

Author

Ethics Development Centre

ICAC

Peter Greenwood

CLP Holdings

Susie Cheung

HKMC

James Chapman

Foley & Lardner LLP

Advertising sales enquiries

Paul Davis

Commercial Director

Ninehills Media

Tel: (852) 2982 0559

Email: paul@ninehillsmedia.com

Ninehills Media Ltd

PO Box 9963

General Post Office

Hong Kong

Tel: (852) 2982 0559

Fax: (852) 3020 7442

Internet: www.ninehillsmedia.com

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中国市场相当吸引，商机处处，然而要在中国成功经营，并非易事。Foley & Lardner LLP 合伙人James Chapman则表示，从前人的成功和失败经验学习，可以省回数以百万元计的成本，取得丰厚成果。他提出几项主要的最佳经营方式，帮助企业踏上成功之路。

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Looking ahead

I was deeply honoured to be re-elected president of our Institute at the Council meeting following the Institute's AGM on 28 December 2012. Moreover, I would like to extend a warm welcome to returning, re-elected and new Council members for the coming year. As you know, 2012 proved to be a rather difficult year due to the discovery of the misappropriation of Institute funds in the previous years and the need for urgent steps to be taken to strengthen our internal controls and procedures. Rest assured that Council and the Secretariat have been working tirelessly on this issue and will continue to do so.

In terms of our plans for the year ahead, we shall continue to focus on further developing our Institute's standing on three fronts, namely Hong Kong, mainland China and in the international arena. This will be the subject of Council's annual strategy meeting which will be held early this month. I shall report on the determination of the meeting in a future President's Message.

In the meantime, I would like to turn to the subject of this month's journal – ethics. Ethics used to be regarded as purely a matter of personal conscience which begins and ends with the moral choices of officers and employees. While there is a great deal to be said for emphasising personal responsibility when it comes to ethical behaviour – particularly since it is not possible to legislate for good ethics – nevertheless, this month's cover story (see pages 8–12) points out that relying solely on good intentions is a relatively ineffective strategy.

Fortunately, the field of ethical compliance has come a long way over the last decade,

and compliance professionals, including company secretaries, now have many more tools at their disposal to help devise and promote ethical compliance programmes. The cover story, authored by Jeffrey M Kaplan, Partner, Kaplan & Walker LLP, applies the findings of the relatively new field of 'behavioural ethics' to the work of compliance professionals. Behavioural research has led to new approaches to economics, finance, marketing and more recently to corporate governance, by studying the effects of various social, cognitive and emotional factors on decision making. The research indicates that people are much more influenced in their decision making by personal biases, emotional factors and social norms than they might like to admit.

This will probably not come as too much of a surprise to readers of this journal – company secretaries have a good deal of experience and expertise in the factors influencing the board's decisions – but Kaplan's article looks at the implications of behavioural research into ethical decisions. Here too, the research indicates that the picture is a lot more complicated than we might assume – our ethical decisions are not solely determined by our personal ethical standards. For example, the article highlights a number of situations where otherwise 'honest' individuals are more likely to let their guard down and become involved in malpractice. These include the management of conflicts of interest; dealings with third parties such as suppliers, agents and joint-venture partners; insider dealing; government contracting and tax matters. Kaplan recommends that companies enhance their internal controls and staff training in these high-risk areas.

Ethical compliance is also the subject of this month's corporate governance article (see pages 14–19) by the ICAC Ethics Development Centre. The article highlights a number of cases handled by the ICAC where company directors failed to maintain personal integrity and ethics, and makes a number of best practice recommendations to enhance ethical compliance. Once again, I think the message is very clear that while ethical behaviour is the personal responsibility of all company officers and employees, companies are not helpless in the face of ethical risks. An effective ethical compliance programme, strong internal controls and the establishment of a good ethical culture in the organisation can go a long way towards mitigating ethical risks.

Our Institute recognises the importance of instilling a strong sense of ethical behaviour in our members and society as a whole. In addition to arranging seminars on this topic, we are holding preliminary discussions with certain educational establishments and the media with a view to cooperating on projects to publicise and educate in this area.

Finally, I would like to take this opportunity to wish all members, graduates and students a happy, healthy and prosperous Year of the Snake.

A handwritten signature in black ink, appearing to read 'Edith Shih'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Edith Shih FCIS FCS(PE)

来年展望

2012年12月28日公会周年会员大会后的理事会会议中，我获重选为公会会长，深感荣幸。我亦谨此欢迎获重选和新当选的理事会成员，期待来年与他们合作愉快。正如大家所知，2012年是颇为困难的一年，我们发现会内公款在过往几年遭盗用，需要即时采取措施加强内部管控和程序。理事会和秘书处一直为此努力不懈，并将继续积极处理，会员可以放心。

来年的计划方面，我们将三管齐下，继续集中于香港、中国内地和国际层面提升公会的地位。这将会是本月初理事会年度策略会议的主题。有关会议的决定，我日后将在本栏报告。

现在让我介绍今期的主题——道德操守。道德操守一向被视为是纯粹的个人良心问题，是高级人员和雇员所作的道义抉择，仅此而已。谈到道德行为，个人责任固然十分重要，尤其是考虑到良好的道德是不可能透过立法促成；不过，今期的封面专题（见第8至12页）指出，单靠良好意愿，相对上是不太有效的策略。

幸好在过去十年，道德合规这范畴有长足的发展，现在有更多工具辅助公司秘书等合规专业人员设计和推广道德合规计划。今期的封面故事由Kaplan & Walker LLP 合伙人Jeffrey M Kaplan执笔，把「行为道

德」这较新范畴的研究成果应用到合规专业人员的工作上。行为研究探讨多项社会、认知和情绪方面的因素对决策过程的影响，为经济、财务、市务推广，以至近期的公司治理等学科带来新的研究方法。研究结果显示，人们在决策过程中受个人偏见、情绪因素和社会规范影响的程度，远比他们愿意承认的程度要大。

本刊读者对于这项发现大概不会感到意外，公司秘书对于影响董事会决定的因素有丰富的经验和知识；可是Kaplan的文章也探索道德研究对决策行为的一些启示。研究显示实际情况比我们想像中复杂得多：我们的道德决定，并不只取决于个人道德标准。例如文章指出，在某些情况下，一向「诚实」的人会较容易松懈下来，参与不当行为。这些情况包括管理利益冲突；与供应商、代理及合作伙伴等第三者往来；内幕交易；政府外判；以及税务事宜。Kaplan建议公司就这些高风险范畴加强内部管控和员工培训。

道德合规也是本月有关公司治理的文章（见第14至19页）的主题。文章由廉政公署道德发展中心供稿，当中列举廉政公署处理的多宗涉及公司董事未能保持个人诚信和道德的个案，并提出多项最佳做法，以加强道德合规。从这篇文章，我们又再清楚看到，虽然道德行为是所有公司高级

人员和雇员的个人责任，但公司在面对道德风险时并非完全无助；推行有效的道德合规计划、加强内部管控、在机构内建立良好的道德操守文化，可大大降低道德风险。

公会深明加强会员和社会人士的道德意识的重要性。除了安排讲座外，我们亦正与教育机构和传媒机构初步讨论，以期合作推行道德行为的宣传和教育工作。

蛇年将至，谨祝全体会员、毕业学员和注册学员新年快乐，身体健康，万事胜意。



施熙德

A bird's eye view

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

- regulatory compliance
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- internal controls



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Ask the Expert

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

Q: *My board is concerned about data privacy and security – will an online platform increase or decrease these risks?*

A: One argument often wheeled out against the transition to a board portal is that security will be compromised. The idea, however, that asking directors to carry around cumbersome printed documents is somehow more secure than carrying around a password-protected tablet with encrypted data simply does not stand up to scrutiny. Most readers of this journal will certainly have encountered the situation where sensitive printed board papers have been left in a taxi cab, an airline lounge or in the seat-back pocket of an aircraft. Some may even have the uncomfortable memory of such papers having been left by company secretarial staff in the output tray of a fax machine exposed to the prying eyes of anyone passing by.

That said, board portal security is a discipline which requires constant vigilance, a strong commitment to process and deep technical expertise. Our viewpoint is that the range of threats to confidential online communication is broad and that a good portal should protect against all of them. We also believe that the environment is rapidly evolving, which necessitates a commensurately evolving architecture. This evolution needs to happen at the structural level. 'Bolt-on' security is counterproductive and should be avoided. We categorise platform threats in four classes: external hacks, internal breaches, discoverability and human error.

External threats include industrial espionage, social engineering, and intrusion by non-state actors in various forms. A good portal needs to deploy proven techniques such as full-strength encryption, multi-factor authentication, certificates, perimeter defence and secure site hosting to address them.

The second class of threats emanates from the inside. Internal breaches may come from disgruntled employees or

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others. While it's true that much of the information that is communicated internally is not confidential, the unique sensitivity of board content dramatically raises the requirement for protection, whether protecting against threats from the outside or from the inside.

For a typical director, discoverability is the number one concern relative to electronic board communications. We deploy two strategies to address this threat: non-proliferation of content so that only a single copy of any document exists, and central administrative control. These two responses permit the company secretary or general counsel to enforce the organisation's retention policy independent from the actions of the users.

The fourth threat is inadvertent – human error. As we all know, email and other common forms of digital communication are prone to over sharing. But that approach backfires in board communication. Whether through segregation of content, granularity of permissions or hard restrictions on content distribution, the system is hardened so that common mistakes are no longer a concern.

While platform security sufficed in a 'pre-tablet' world, the model has to be expanded to account for the risks introduced by the mobility of tablet devices. Fundamentally, tablet use requires the extension of the board portal's security umbrella to the device itself.

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

Your chance to ask the expert...

CSj's 'Ask the Expert' column provides you with the opportunity to ask our experts questions specific to the challenges you are facing. To ask a question of our experts, simply email CSj Editor Kieran Colvert at: kieran@ninehillsmmedia.com. Please note that the identity and contact details of questioners will be kept confidential. If you would like information about how your company can join our expert panel then please contact Paul Davis at: paul@ninehillsmmedia.com, or telephone: +852 2982 0559.

Behavioural ethics

Don't rely
solely on good
intentions



The business ethics debate is still hampered by our abiding fascination with the story of the goodies and the baddies, the heroes and the villains. The real picture, of course, is a little more complicated. In this article, Jeffrey M Kaplan, Partner, Kaplan & Walker LLP, looks at how a better awareness of the psychological factors influencing our ethical choices can help companies improve the effectiveness of their compliance and ethics programmes.

The governing models of business ethics – at least in the West – are based in large measure on two schools of philosophy: utilitarianism (sometimes called consequentialism), which is derived initially from the work of Jeremy Bentham and John Stuart Mill; and deontology (sometimes called the rights-and-duties school), which begins with the writings of Immanuel Kant. Both offer criteria for individuals to use in making ethics-related decisions, and assume that such decisions will be made rationally, with wrongdoing typically seen as the product of a deliberate choice.

But both schools are increasingly criticised for being based on a view of human nature that is at odds with an emerging understanding of how people actually make decisions – which is often anything but rational, at least in the traditional sense. That critique is the foundation of a field of study known as ‘behavioural economics’, which examines the effects of various social, cognitive and emotional factors on economic decision making. In experiment after experiment, behaviourist researchers have shown the limits of traditional notions of rationality. Behavioural economics has recently entered the mainstream of business thinking – it is now being used to a substantial degree, among other things, in the realms of finance and marketing. Indeed, it was the basis of the 2002 award of the Nobel Prize in economics to

Professor Daniel Kahneman of Princeton, a pioneer in the field.

Behavioural ethics is the application of behavioural economics ideas and information to the realm of ethics. The implications of behavioural ethics indeed extend across a whole spectrum of contexts – from the personal decisions we make in our private lives to public policy determinations that could affect us all.

My interest is in what could be considered the middle part of this spectrum – the ethical issues in business organisations. In this article, I explore aspects of behavioural ethics that seem to have the most practical applications to the work of corporate governance and compliance professionals – and particularly to the operation of compliance programmes.

Implications for conflicts of interest

Conflicts of Interest (COIs) present significant risks in virtually every organisation of any size and in many should be a point of significant compliance focus. COIs have also been the subject of particular interest to several behavioural ethicists who have shown that disclosing COIs may not have the mitigating effect you might expect. Firstly, those who disclose conflicts may feel that they are therefore released from the moral restraint that the conflict should impose on them. Secondly, those to whom a COI has been disclosed may feel the need to accept the conflict out of concern that they would otherwise be suggesting immorality on the part of the conflicted party.

These surprising findings suggest a range of compliance measures companies

Highlights

- recognising the behavioural and psychological factors influencing ethical choices can help companies improve the effectiveness of compliance and ethics programmes
- high risk areas for ethical compliance include where individuals are acting indirectly through a third party or where the potential victims of an ethical decision are ‘invisible’
- disclosure of a conflict of interest does not always have the mitigating effect it is assumed to have



“ individuals often need help to stay on the right side of the various law and ethics lines – compliance programmes can provide that help ”

is otherwise known just anecdotally or intuitively may be useful to compliance professionals in getting the company to devote extra attention to a risk area.

The same can be said for a behaviourist experiment showing that individuals with depleted resources tend to have greater risks of engaging in unethical conduct. When faced with this knowledge it may be difficult for management or a board to ignore a recommendation to either reduce pressure or focus extra compliance and ethics mitigation efforts on parts of an organisation where employees are subject to greater-than-ordinary stress.

A more counterintuitive finding in this field concerns what might be called the risk of good intentions. Several behaviourist studies have shown that being cognisant of one's ethical failings actually increases the likelihood of subsequently doing good, and that the converse is true as well. Examples of this phenomenon are that acts promoting gender equality 'licence' discriminatory ones, being reminded of one's humanitarian traits causes reductions in charitable donations, and purchasing 'green' products licenses unenvironmental behaviour. While unsettling, these findings suggest a need for compliance programmes to pay extra attention to risks that could arise from particularly virtuous-feeling activities.

Implications for training and communications

Providing training and other communications constitutes much of the day-to-day work of compliance professionals and such training/communications are the principal interface that most employees have with a company's compliance programme. The

should consider, such as:

- educating those involved about the generally under-appreciated dangers of COIs
- ensuring that decisions about COI waivers and COI management are made by those who are independent and possess relevant expertise (for example a compliance and ethics officer, not a line manager)
- having a sufficiently rigorous COI management process, and
- auditing the process and report on the audits to senior management and maybe the board of directors.

Implications for compliance risk assessment

A number of behavioural ethics experiments shed light on circumstances that tend to create compliance risk, including those already mentioned. There are also many others.

For instance, one experiment showed that acting indirectly – that is through a third party – can blind individuals to ethically problematic behaviour more than direct action does. This suggests that

companies should recognise the limits of what could be called 'inner controls' – meaning personal moral restraints – in their dealings with third parties. So, as a matter of risk assessment, an organisation may have to make up the difference with enhanced compliance measures (internal controls) in dealings with suppliers, agents, distributors, joint-venture partners and others.

Another experiment showed that it is easier to disregard the interests of unknown individuals in making an ethical decision than those of known ones. This finding could help explain the relative ease with which so many individuals engage in offences where the victims are not identifiable, such as insider dealing, government contracting or tax fraud. Here, too, as a matter of risk assessment, an organisation may have to make up the difference left by weak 'inner controls' with enhanced compliance measures.

Of course, as is true of a number of behaviourist findings, this insight is not a complete surprise. Indeed, Ben Franklin once said, 'There is no kind of dishonesty into which otherwise good people more easily and more frequently fall than that of defrauding the government.' Still, being able to prove with real data what

relevance of behavioural ethics to these key parts of a programme is two-fold.

First, there is the issue of how to train and communicate. Currently much compliance training is considered ineffective, in that it takes up a lot of employee time and other company resources but provides relatively little in the way of risk reduction.

However, behavioural ethics suggests that there is a way to pay less and get more in this key compliance programme area.

Specifically, one of the most striking experiments in the behavioural ethics field shows that being asked to read an honour code shortly before being presented with the opportunity and motivation to cheat significantly decreases the incidence of such cheating. That so much mitigation can be achieved with relatively little effort is encouraging because there are many ways in which this 'just-in-time' approach could be applied to reduce significant compliance risks. Such possibilities include the following risk areas and timing strategies:

- **anti-corruption** – right before interactions with government officials and third-party intermediaries
- **competition law** – right before meetings with competitors (for example at trade association events)
- **insider dealing** – during key transactions, before preparing earnings reports, and
- **protection of confidential information** – when receiving such information from third parties pursuant to a non-disclosure agreement.

Note that some of these just-in-time communications are deployed already, but not nearly enough given the significant impact they can have. For the compliance professional this behavioural ethics insight points the way to much 'low hanging fruit' in terms of programme enhancement.

Secondly, behavioural ethics can help inform the content of compliance training and communications. There are indeed a great many possibilities in this regard and I mention here only a few.

- **Provide training on the danger of 'slippery slopes'.** That is, one important behaviourist finding of relevance to compliance programmes – including but not limited to training – is that people are more likely to accept unethical behaviour engaged in both by others and also themselves when such behaviour occurs as part of process of a gradual ethical decay, rather than appearing abruptly. Compliance training should expressly identify these dangers so that employees can be alert to them.
- **Provide training on the particular need for senior managers to have heightened ethical awareness.** Yet another behaviourist finding is that individuals in positions of power are not only more likely to condemn cheating in others, but also more likely to engage in cheating themselves than others. Of course, the notion that power corrupts is hardly news (and Lord Acton's famous dictum on that point – 'power corrupts; absolute power corrupts absolutely' – is 125 years old). But being able to show the extent of the risk with hard data may be useful in persuading managers

to exercise extra vigilance when it comes to their own conduct.

Implications for supervisory accountability

Another noteworthy finding of relevance to managers concerns 'motivated blindness'. As described by Max Bazerman of Harvard, another one of the long-time leaders in the field: 'We often fail to notice others' unethical behaviour if it's in our interest not to notice. This failure of oversight ...is unconscious and common'.

Behavioural economics and behavioural ethics resources

- A Appiah, *Experiments in Ethics* (Harvard 2008)
- D Ariely, *The (Honest) Truth About Dishonesty* (Harper 2012); and *Predictably Irrational* (HarperCollins 2009)
- M Bazerman & A Tenbrunsel, *Blind Spots* (Princeton 2011)
- J Haidt, *The Righteous Mind* (Pantheon 2012)
- D Kahneman, *Thinking Fast and Slow* (Farrar, Straus & Giroux 2011)
- R Thaler & C Sunstein, *Nudge* (Penguin 2009)
- *Ethics Unwrapped* – a website maintained by the McCombs School of Business at the University of Texas at Austin (<http://ethicsunwrapped.utexas.edu>), which has, among other things, a series of short behavioural ethics videos that can be used for teaching.



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there is no kind of dishonesty into
which otherwise good people more
easily and more frequently fall than
that of defrauding the government
”

Benjamin Franklin (1706-1790)
US politician, writer, diplomat and scientist

From a compliance perspective, this danger of 'motivated blindness' underscores the importance of meeting the expectations of the 'Sentencing Guidelines for Organisations' – the leading compliance programme standard in the US and one which has influenced official standards throughout the world – that organisations should impose discipline on employees not only for engaging in wrongful conduct but 'for failing to take reasonable steps to prevent or detect' wrongdoing by others. While this compliance standard has existed for more than two decades, relatively few companies pay attention to its dictates to a meaningful degree – and some do not do so at all.

More specifically, companies should consider taking the following compliance measures, among others:

- build the notion of supervisory accountability into policies, for example in the managers' duties section of a code of conduct
- speak forcefully on the issue in training and other communications for managers
- train company investigators on the notion of managerial accountability

and address it in the materials they use in investigations so that they are required to consider it in all inquiries if a manager's being 'asleep at the switch' led to the violation in question

- publicise (in an appropriate way) that managers have in fact been disciplined for supervisory lapses, and
- have auditors take these requirements into account in their audits of investigative and disciplinary records.

A new approach

Finally, while many of the uses of behavioural ethics in compliance programmes concerns individual programme components – those discussed above and others – the most important use, to my mind, is on a more basic level. That is, in a general way behavioural ethics findings can help business leaders fully appreciate the need for strong compliance programmes.

I do not suggest that most business leaders are hostile or even indifferent to such programmes. But, like the great majority of people who still harbour a hyper-rational view of ethics, they often think that good intentions are largely

enough to ensure ethical conduct in the workplace, and fail to see the extent to which expertise, resources and effort are needed for success in this area – as is the case in more traditional areas of business management.

The overarching point of behavioural ethics is that many, indeed most, individuals are not either wholly good or wholly bad. Such individuals often need help in staying on the right side of the various law and ethics lines. And compliance programmes – if they are treated with the same desire to achieve results that animates other business initiatives – can provide that help.

Jeffrey M Kaplan

Partner, Kaplan & Walker LLP

Jeffrey Kaplan has practiced compliance programme law for more than 20 years, and is an adjunct professor of business ethics at New York University's Stern School of Business. Links to, and more information about, the various studies discussed in this article can be found on the author's blog: www.conflictinterestblog.com, under Interests/ Moral hazard and bias.

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Public governance

The governance of not-for-profit entities, public bodies and indeed the government itself is just as important as the governance of corporations, but receives far less attention. In a two-part article starting this month, Gordon Jones *FCIS FCS*, author and Hong Kong's former Registrar of Companies, tests the governance of these organisations against the same principles and standards applied to the commercial sector – the results are somewhat sobering.

Public and private sector governance are closely interrelated. Corporate governance does not and cannot exist in a vacuum as companies, by definition, operate in society and both influence and are influenced by their host societies. Accountability and transparency are essential preconditions of good corporate governance in any country. However, these will be heavily influenced by the cultural, economic, environmental, legal, political, social and bureaucratic structures in place which, inevitably, tend to provide the template for the manner in which the private sector organises its affairs.

In this context, the role played by a country's government is of particular importance as governments are expected to provide leadership and set an example. If a country's political system and public sector organisations lack accountability and transparency, it will be correspondingly more difficult, if not impossible, to expect commercial entities to be accountable and transparent. Equally, governments must ensure good governance standards in the public sector if they are to advocate better corporate governance standards in the private sector without being accused of having double standards.

Governments must have in place adequate legal and regulatory systems to ensure corporate governance takes place within certain established parameters so that, if and when there are abuses and defaults, it is possible for remedial action to be taken. This, in turn, presupposes the existence of a strong, independent judiciary; properly drafted and administered laws; a supporting legal infrastructure of lawyers; a clean, effective and efficient civil service and regulators; and the absence

of corruption. The existence of a free and independent press and electronic media are also very important elements as these will ensure that corporate abuses, if and when they occur, run the high risk of being reported rather than being swept under the carpet by corporate vested interests. While it is theoretically possible for a company to have good corporate governance without the existence of these macro-factors, it would be far more difficult as the political and societal norms would tend to militate against it.

Public governance in Hong Kong

In its broadest definition, public governance covers all areas of government activity, including the operation of the civil service. However, for the purposes of this article, the discussion of public sector governance will focus on those parts of the public sector outside the civil service with particular reference to: appointments to and the operation of the Executive Council (ExCo), appointments of political officials in the government and appointments to advisory committees

and public bodies. The second and final part of this article, to be published in next month's *CSj*, will look at the governance of not-for-profit entities and public bodies.

Appointments to the Executive Council

Under Article 54 of the Basic Law, 'the Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive (CE) in policy making.' Article 55 stipulates that the members of ExCo shall be appointed by the CE 'from among the principal officials of the executive authorities, members of the Legislative Council and public figures.' The appointment and removal of members is the CE's prerogative and their term shall not extend beyond the expiry of the term of the CE who has appointed them. These requirements are what would be expected of the government's principal policy-making body where it is necessary for the CE to have a very high degree of discretion as to who he wishes to appoint to his cabinet to advise him on the governance of Hong Kong.

Highlights

- if a country's political system and public sector organisations lack accountability and transparency, it will be correspondingly more difficult, if not impossible, to expect commercial entities to be accountable and transparent
- ensuring that public officials are accountable to the public is particularly important given the democratic deficit in the government of Hong Kong, but to date the government's accountability system has failed to achieve that goal
- the government should significantly widen the pool of potential appointees to the boards of advisory committees and public bodies, and make such appointments more transparent



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From the governance angle, it is critically important for all members of ExCo to behave with complete integrity regarding conflicts of interest given their critically important role in policy making. In this respect, there is no definition of what constitutes a 'conflict of interest' although the ExCo Guidelines state that, where a conflict of interest exists, the CE can tell a member to excuse himself or herself from the meeting. In addition, all ExCo members have to complete a 'Declaration of Registrable Interests'.

The issue of 'registrable interests' received a considerable amount of publicity in 2010 and 2011 due to the failure by Lau Wong-fat not to declare all his interests in New Territories land and property which, after continual drip-feeding of information, eventually totalled 724 plots of land. Although there were widespread calls for Lau's resignation (as he would have been required to in virtually any other jurisdiction), a subsequent LegCo enquiry ruled against taking any action to punish Lau apart from referring complaints against him to ExCo for its own consideration. Among the factors in reaching this decision were the alleged

ambiguities in the current system regarding the declaration of interests by ExCo members and the absence of any evidence showing that Lau had deliberately concealed the information.

Subsequent to the Lau case, the Declaration of Registrable Interests was revised on 12 July 2012. Prior to these revisions, all members had to declare changes to any items of interest declared, within 14 days of their occurrence. This requirement has now been revised to put it beyond doubt that new interests acquired, not just changes to interests already declared, will have to be notified. For land and property outside Hong Kong, such changes should be notified within 28 days of their occurrence so as to provide a more reasonable time for ExCo members to make the notifications. In addition, all declarations of interests are downloaded to the ExCo website for public inspection.

The issue raised by Lau's failure to declare his property interests is not just one of whether or not he complied with the details of the rules and the possible use or misuse of privileged information (which would, in any case, be subject

to investigation by the appropriate authorities). As pointed out by an editorial in the *South China Morning Post* ('Public deserves a little more credit from Lau', *SCMP*, 13 October 2010), the Code for Officials under the Political Appointment System states that the CE may be required to take measures against both actual and perceived conflicts of interest. The first article under the chapter 'Prevention of Conflict of Interest' states that: 'politically appointed officials shall avoid putting themselves in a position where they might arouse any suspicion of dishonesty, unfairness or conflict of interest'. Although Lau was not reappointed to ExCo on 1 July 2012, it is essential that, in the future, any lapses of behaviour by members are handled appropriately and not glossed over.

Appointment of political officials

The Principal Officials Accountability System (POAS), or 'ministerial system', was introduced by the then CE, Tung Chee-hwa, on 1 July 2002 to try to make the civil service more accountable in the aftermath of various high-profile cases involving the conduct of senior civil servants. Under the previous bureaucratic structure inherited from the British colonial government all the top positions in the government were held by career civil servants, almost invariably drawn from the elite Administrative Service. These officials were politically neutral and governed Hong Kong in a dispassionate, objective manner to the best of their abilities. However, quite irrespective of their administrative and political abilities and individual popularity, they were not elected and had no popular mandate. They exercised power but were not 'accountable' for any failings in their exercise of power. Although the Legislative Council (LegCo) could

summon them to enquiry sessions and, if deemed necessary, pass motions of no-confidence, this did not, and could not, lead to dismissal or disciplinary action. Furthermore, with the exception of the three principal officials (the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice), they were not members of ExCo.

Under the accountability system, principal officials would serve no longer than the Chief Executive who appointed them. Under the system, the CE would appoint the three principal officials and the directors of the 11 (subsequently expanded to 12) government bureaux, also known as 'Secretaries'. After the introduction of the POAS, the CE also appoints all principal officials to ExCo which has become a *de facto* cabinet, bearing collective responsibility for all policy decisions. A number of full-time non-official members have been retained as 'ministers-without-portfolio', with the aim of achieving policy coherence and co-ordination within the government. However, with the influx of officials and non-officials to represent 'pro-government' political parties on LegCo, the current ExCo, since 1 July 2012, now comprises 31 members. This makes it a very large and possibly unwieldy body which is not necessarily conducive to in-depth discussion and coherent policy making.

In theory, the POAS is aimed at raising the accountability of the civil service, so the political appointees are responsible for all their job aspects and will step down if they fall short of expectations. However, the reality is very different. Since the implementation of the accountability system, only three principal officials have resigned from their positions, and this was as a result of public pressure, not because they were required to

resign by the CE. The functioning of the accountability system was put to the test in the aftermath of the 'Harbour Fest' programme to re-launch Hong Kong after SARS in June 2003 which resulted in cost over-runs. However, rather than accountability for this being accepted by one of the principal officials involved, Mike Rowse, the then Director-General of Invest Hong Kong, the government agency which organised HarbourFest, was held responsible. Rowse had to endure civil service disciplinary hearings and ended up taking the Hong Kong government to court in a judicial review case which he won.

A further 'development' of the POAS took place in 2008 under Tung Chee-hwa's successor, Donald Tsang. Two new posts, Deputy Directors of Bureaus and Assistants to Directors (these are also known as 'Under Secretaries' and 'Political Assistants'), were added to the political appointment system thereby creating a three-layer political system. In most bureaux, each Director of Bureau is assisted by the two new appointees who constitute the political team while the civil servants in the bureau carry out the administrative and executive tasks of the government. As in the case of the heads of bureaux, the occupants of these two new posts can also be drawn from within or outside the civil service, and appointees may be with or without a political background.

To date, the track record of the POAS has been less than satisfactory as may be seen from the following:

- The ministerial system is aimed to strengthen accountability and nurture political leaders by opening up the top positions in the

government to outsiders. However, the hard reality is that civil servants have tended to remain the core of the team.

- As some of the appointees from outside the civil service lack any obvious administrative, professional and political ability to discharge their public duties effectively and efficiently, they face significant problems of winning public credibility and respect. The mediocre performance of some appointees to date has further undermined their image.
- The system for making appointments to these political posts lacks transparency (by comparison, in the US, the Senate holds confirmation hearings to determine whether or not to approve an individual appointed by the executive branch).
- No political appointees have been required to resign since the inception of the accountability system in July 2002 (over 10 years ago), although there have been a number of high profile government scandals and mistakes which, in most other jurisdictions, would have seen the immediate departure of the politicians responsible.
- There have been a quite unprecedented number of very high-profile cases in 2012 under which an ex-CE and two ex-Chief Secretaries are currently subject to investigations by the ICAC and/or the Buildings Authority which may or may not lead to criminal prosecutions. For example, on 13 July 2012, an ex-CS, Rafael Hui, was

charged by the ICAC with misconduct in public office.

The cumulative effect of these factors undermines the public's confidence in not only the accountability system but also the government as a whole which is very detrimental to the governance of Hong Kong. Furthermore, there is also a consequential very adverse impact on civil service morale which further undermines the quality of public sector governance.

Appointments to advisory committees and statutory bodies

Small pool of appointees and lack of transparency

Significant governance issues are also raised by the government's system of appointments to the various statutory and advisory bodies which play such an important role in the governance of Hong Kong. In some ways, this is not dissimilar to the appointments of independent non-executive directors to the boards of public companies.

At the heart of the problem is the fact that the government seems to consistently appoint candidates from a very small pool of talent, with little transparency in the selection process, to these statutory bodies and advisory boards. To an outsider, it seems that, in many cases, the government only wants to appoint people who are its 'political supporters' with the same mindset and attitudes, while dissenting and alternative views tend not to be heard. As a consequence, it is not surprising that the government is considered to be out-of-touch with community attitudes and feelings, and many of its policies have, increasingly, led to public criticism and demonstrations. In turn, this undermines the credibility of public governance.

This trend is of particular concern given the democratic deficit in the government of Hong Kong where the government lacks a popular mandate or direct accountability to the people but can still appoint candidates to nearly 6,000 non-official posts on these bodies in addition to more than 100 district councillors. In his policy address in 2004, the then CE, Tung Chee-hwa, seemed to recognise these issues by ordering a review of the various advisory and statutory bodies in order to bring in more talent from different backgrounds to ensure broader representation. Furthermore, during the first contested CE election his successor, Donald Tsang, also pledged that his government would 'represent all social strata and (be) one that strives to balance the interests of all'.

Despite such public commitments, investigative reporting by the *South China Morning Post* has indicated that, superficially at least, having regard to recent appointments to statutory boards, these pledges have a long way to go. For example, an *SCMP* report in August 2010 revealed that of the 641 members of the election committee who nominated Tsang for the post of CE, 343 occupied seats on various statutory bodies, particularly those which have considerable power such as the Airport Authority, the Tourism Board and the West Kowloon Cultural District Authority (see 'Appointments that call for greater accountability', *SCMP*, 6 August 2010). Furthermore, more than a fifth of the medals awarded since 2007, such as Bauhinia Stars, had gone to those 641 committee members.

By comparison, only 49 of the 132 election committee members who nominated Alan Leong Kah-kit – Donald Tsang's opponent in the 2008 CE election

– subsequently gained seats on various statutory bodies and were awarded only five medals. As the Post's editorial noted somewhat tersely: 'These figures will only invite criticism that the government prefers to keep its distance from its critics and to reward its supporters in a manner that weakens the quality of governance.'

The issue of independence

Issues regarding the government's appointment system to public bodies also surfaced in the context of the Hong Kong Institute of Certified Public Accountants (HKICPA) Best Corporate Governance Disclosure Awards for 2009. According to Paul Winkelmann, the then President of the HKICPA, some public sector and non-profit organisations could do more on the corporate governance sections of their annual reports. As a result of the overall poor standards in this sector, there was only one award in the Public Sector category of the awards, namely to the Airport Authority. He also commented that there was insufficient indication as to how many directors in public bodies appointed by the CE were actually selected. According to the judges report: 'It remains unclear how independence is judged in relation to board members in the public sector. Clearer criteria are needed to distinguish between non-executive and independent non-executive board members' (see 'Only two win top award for corporate governance', *SCMP*, 24 November 2009).

The six-year rule

Furthermore, in order to secure the infusion of new blood into the governing boards of statutory bodies to ensure that the governance of these bodies does not stagnate, it is essential to have a periodic turn-over of the membership of these boards. In view



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of this, the government has introduced the very sensible 'six year' rule – non-officials should not be recommended to serve on more than six advisory and statutory bodies at any one time nor to sit on the same body for more than six years. However, despite this, as of last year, according to an *SCMP* report, 167 members of statutory boards had held such positions for over six years, which represents a clear and blatant breach by the government of its own guidelines. The *SCMP* noted: 'the (current) lack of transparency in the appointment process makes it difficult to convince the public that there are no other qualified candidates for these posts.'

Influence of property developers

A further very disquieting development has been the increasing influence of Hong Kong's powerful property developers on statutory bodies and advisory committees in Hong Kong. This is of particular concern as the issue of

continually increasing and unaffordable property prices is one of the biggest social issues currently facing Hong Kong, with the division between the propertied and non-propertied classes becoming more and more glaring. According to an *SCMP* report (see 'Property giants' influence grows', *SCMP*, 12 April 2010) the directors of six major property companies had been given 54 seats on various advisory and statutory bodies as at the end of March 2010, compared with just 16 in 1998 and 38 in 2007.

While the number of seats occupied by the directors of property companies only accounts for about 1% of the total, the majority of these seats are on the boards of major and influential statutory bodies with substantial statutory power and resources, such as the Airport Authority, the Hospital Authority, the Mandatory Provident Fund Schemes Authority and the West Kowloon Cultural District Authority. Furthermore, six property

company directors including the vice-chairman of Sun Hung Kai Properties (Thomas Kwok Ping-kwong) and the deputy chairman of Cheung Kong Holdings (Victor Li Tzar-kuoi) serve on the Commission of Strategic Development which advises the CE on Hong Kong's long-term development. Such a predominance of the interests of one particular sector on the boards of major statutory bodies does not bode well for either the governance of these bodies or the overall governance of Hong Kong.

Gordon Jones FCIS FCS

Author and former Registrar of Companies, Hong Kong

Gordon Jones' new book, 'Corporate Governance and Compliance in Hong Kong' (LexisNexis 2012) is currently available in bookshops. Look out for the second and final part of this article in next month's CSj.

Corporate governance: a director's duty

Ultimately the board is responsible for maintaining a company's corporate governance standards, but a number of cases handled by Hong Kong's Independent Commission Against Corruption (ICAC) indicate that some directors in Hong Kong need to be reminded of this fact

It takes 20 years to build a reputation and five minutes to ruin it. If you think about that you'll do things differently.' Warren Buffet's well known adage serves as useful advice for directors in Hong Kong. Some recent cases handled by the ICAC and enforcement cases handled by the Securities and Futures Commission (SFC) highlight the failure of company directors to maintain personal integrity and ethics and properly discharge their duties. It is important to bear in mind that these corporate governance failures do not just affect the directors and the companies concerned, they can seriously affect the reputation of the market as a whole.

Reputational risk

The Hong Kong stock market is the envy of financial centres around the world as the number and size of public listings of largely mainland Chinese companies and other foreign companies has soared in recent years. According to Hong Kong

Exchanges and Clearing Ltd (HKEx), Hong Kong has finished in the top five stock markets globally in terms of IPO funds raised for 10 straight years, a distinction only shared with the New York Stock Exchange. Hong Kong also finished first in the World Economic Forum's Financial Development Index 2011, the first time an Asian city has topped the rankings.

Moreover, the future for the Hong Kong exchange looks bright. It is fast becoming the leading financing market for world mineral and exploration companies and a major base for hedge funds. Hong Kong is also the first offshore yuan business centre to launch investment products denominated and cleared in the Chinese currency, the renminbi. It is also the first and largest market outside mainland China for Renminbi bonds, otherwise known as dim-sum bonds.

Hong Kong's reputation as a premier global financial centre, however, depends upon investor confidence in corporate

governance standards. 'An effective corporate governance system is essentially a set of mechanisms that cultivate and maintain the trust between capitalists [the capital providers] and entrepreneurs, without which the capitalists will walk away and there won't be a thriving capital market, let alone a global financial centre,' says Professor Wayne Yu, who specialises in corporate governance issues at the Graduate School of Business at Hong Kong Polytechnic University.

Recent cases of corporate governance failings among directors handled by the ICAC have shown that the courts in Hong Kong recognise this. They have condemned such failures as tarnishing the image of Hong Kong as an international financial centre and have tended to impose harsh sentences to maintain a level playing field in the market.

Moreover, as Dr Caryle Tsui, the Chief Executive Officer of the Hong Kong Institute of Directors (HKIoD), points





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out, the Hong Kong economy is still comprised of a large number of non-listed companies and small and medium-sized enterprises which could become listed one day. It is important that the message on corporate governance reaches these enterprises too. 'They should be taught about corporate governance, to prepare them for future expansion', says Dr Tsui.

Corporate governance culture

Good corporate governance is not just about having the right policies and procedures in place, it is also about having these embedded into the culture of the organisation from the top down. This is where directors come into the picture.

The Corporate Governance Review 2011, published by the auditing firm BDO, found that compliance with disclosures in corporate governance reports on how internal controls and risk management had been conducted fell short of expectations in the 232 major Hong

Kong listed companies in the Hang Seng Composite Index in 2011.

'Our study revealed more listed companies failed to fully comply with the related regulations especially in respect of providing disclosures on their practices,' said the BDO study, the sixth consecutive review of the corporate

governance practices of Hang Seng Composite Index companies. The findings are based on 40 survey questions using information disclosed in the annual reports of the companies.

Moreover, in the CLSA *Corporate Governance Watch 2010*, Hong Kong slid back to second place after having dethroned Singapore for the first time in 2007. 'The quality of continuous disclosure of material events has been found wanting,' the report said. The disclosure of material events, of course, has every relevance to the conduct of company directors and understandably is a major concern for regulators.

Hence it is no coincidence that in a review of the listing rules and the Corporate Governance Code undertaken by HKEx and published in its Consultation Conclusions in October 2011, the resulting new Corporate Governance Code was substantially expanded. The amendments, most of which took effect on 1 April 2012, include additional clarification of the duties of directors and their ultimate responsibility to the company.

Highlights

To avoid corporate governance and ethical failures, the ICAC recommends:

- the audit committee should generate a list of specific questions addressing these risks to go through with the management
- a board should have a good mix of directors to ensure a balanced diversity of relevant experience and knowledge
- the duties of the chairman and chief executive officer should be segregated
- strengthen internal controls
- look out for warning signs in corporate performance and other indicators.

These amendments also stress the importance of company directors discharging their duties and the disciplinary actions HKEx may exercise if they fail to do so. HKEx also encourages directors to refer to the Companies Registry's and HKIoD's guidance on directors' duties which provide useful and practical guidance to directors.

Insider dealing

The non-executive director of a Hong Kong listed firm was recently sentenced to five months imprisonment, suspended for two years and fined HK\$50,000 after being found guilty of pocketing a gain of HK\$80,000 from insider dealing on privileged information.

The director bought 4,000 shares the same day after he heard from the company CEO at a board meeting about a deal whereby a substantial shareholder would offload its shares and a general offer by another party for all shares in the company that would value the shares 25 percent above the prevailing market price.

The defendant pleaded not guilty at the trial. He claimed to be intoxicated and to have forgotten his role as an independent non-executive director, but maintained that he had no intent to profit from his trading when he bought the shares. The judge rejected all his claims and convicted the defendant of insider dealing.

Source: *Securities and Futures Commission*

Three ICAC cases

Directorships are not personal wealth-generating schemes for anyone fortunate enough to be invited onto a board. This should, of course, be a statement of the obvious, but a number of cases handled by the ICAC nevertheless indicate that some directors need to be reminded of this fact.

Company directors are expected to serve as the leaders of their companies. They are expected to practice ethical leadership, implement and maintain strong governance practices and uphold their personal integrity, especially when they, in their specific role and function, encounter challenges and risks associated with corruption, fraud, malpractice or other unethical behaviour which could, almost overnight, erode any business success and tarnish the hard-earned reputation of the company in the long run.

The three ICAC cases highlighted below demonstrate the consequences of unethical practices, including: embezzlement and misappropriation of corporate funds; accepting or offering advantages; fabricating documents; conspiracy to exaggerate company's performance; misuse of insider information and conflicts of interest.

Case 1. Three people, including a former executive director of a listed company, were jailed for their respective roles in a scam involving corruption and insider dealing in relation to the purchase of shares. The former executive director and the co-defendants used the funds of an investment company to buy 15 million shares of a listed company. The profit from the resulting rise in the share price of the company was then shared amongst the defendants.

Case 2. The former chairman of a listed company was charged by the ICAC and eventually sentenced to three years' imprisonment for embezzlement and fraud to the tune of HK\$63 million. This case also involved several other senior executives who collaborated in the fraud. They published a large number of false statements, including in the company's annual report, to cover their tracks and hide the misappropriation of corporate funds. The former chairman, who was subsequently disqualified from being a company director for eight years, pleaded guilty to six charges, including three charges of conspiracy to defraud, one of conspiracy to steal, one of theft and one of dealing with the proceeds of an indictable offence.

Case 3. Two former executives of a listed company were charged by the ICAC and sentenced to four years' imprisonment for their conspiracy to defraud the company and its subsidiaries through bogus agreements. The former chairman and the former executive director dishonestly engaged, without the knowledge of the board, two contractors to sign three consultancy agreements worth HK\$12 million with a subsidiary of the listed company. In reality, the contractors, under the control of the two former executives, never offered any consultancy services at all.

In these three cases, the directors placed their personal interests ahead of those of the company and its shareholders. Hong Kong's non-statutory *Guidelines on Directors' Duties* (available on the website of the Companies Registry), spell out clearly that directors must never allow their personal interests to conflict with those of the companies and they must not use their position as a director to gain

“ directorships are not personal wealth- generating schemes for anyone fortunate enough to be invited onto a board ”

any advantage for themselves. Avoiding conflicts of interest is also a requirement of the listing rules.

The directors were also guilty of other violations, including breaches of the Codes on Takeovers and Mergers and Share Repurchases administered by the SFC and the Prevention of Bribery Ordinance (POBO). Under the POBO, the maximum penalty for committing a bribery offence or the use of false documents with intent to deceive one's company is a fine of HK\$500,000 and an imprisonment of seven years.

Best practice recommendations

You may ask how these directors, who were empowered to enhance the ethical governance of their companies, ended up becoming the orchestrator of unethical acts against the company. It may be that some company directors engage in unethical acts simply because they have low personal ethical standards and they disregard their own legal obligations. In some cases they may not have an adequate understanding of, or respect for, the relevant legislation, regulatory guidelines and codes of ethics regulating their actions and decisions. Some of them may not have a clear understanding of the severity of the consequences of their actions.

It is the responsibility of directors to fully understand their duties and to continuously identify and assess the

challenges and risks facing boards, fellow directors and management teams. The most common ethical challenges company directors face can be broadly classified into five categories:

1. ethical challenges related to investments
2. collusion among management
3. conspiracy among employees
4. undesirable association with outside parties like suppliers and contractors, and
5. secret dealings with clients.

The audit committee within the company can help to mitigate risks in some of these areas, such as generating a list of specific questions to go through with the management. This exercise would at the very least ensure the company directors have addressed the issues in question and should spur appropriate action.

Apart from the above measure, other possible best practices recommended by the ICAC to strengthen the monitoring role of company directors include:

- exercising due diligence
- having a good mix of board directors that in sum ensures a balanced

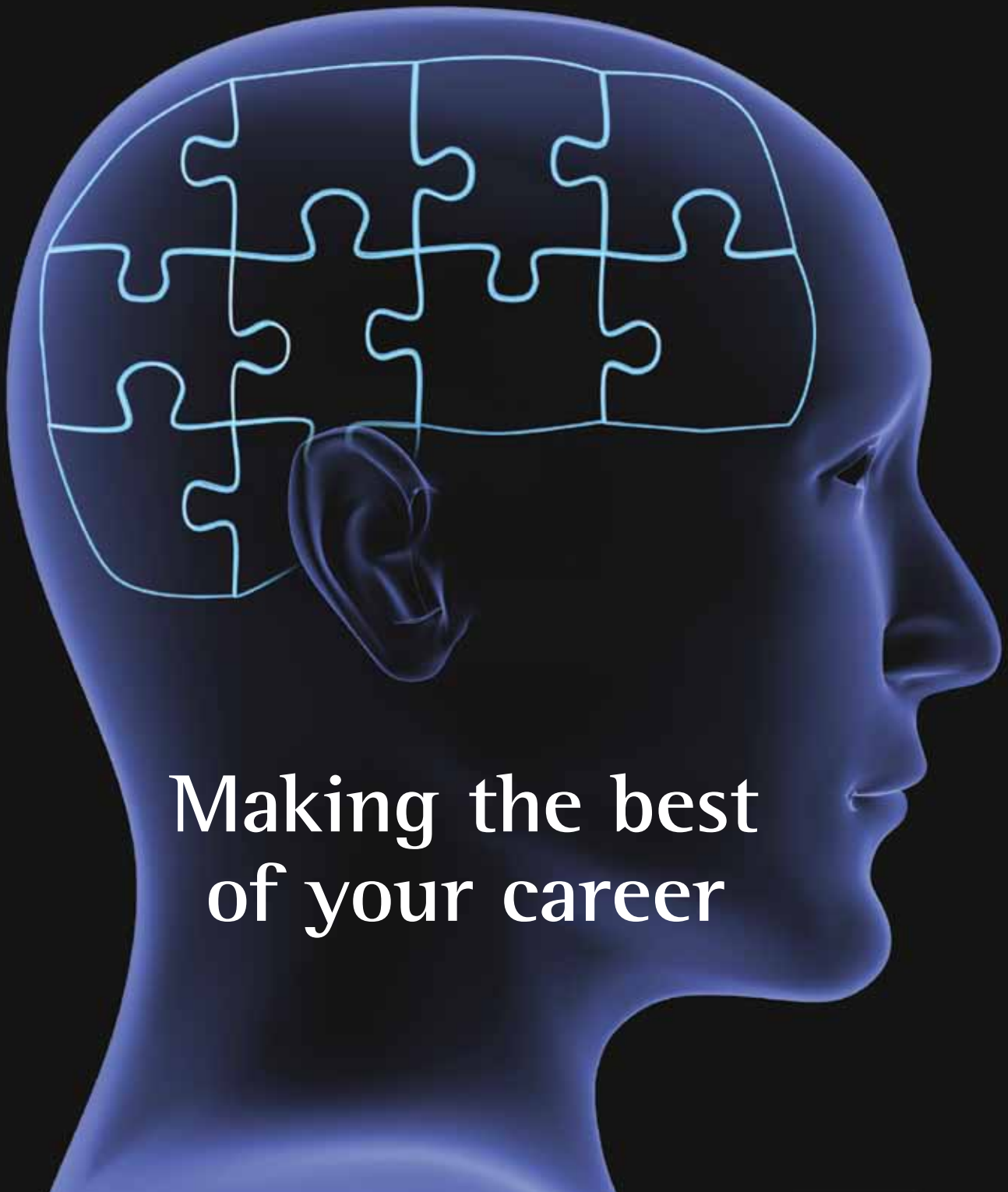
diversity of relevant experience and knowledge

- segregation of duties especially between chairman and chief executive officer
- strengthening internal controls
- setting up relevant committees, and
- cultivating sensitivity to warning signs (that is be vigilant and watch for warning signs embedded in corporate performance and other indicators).

Even the most meticulous rules and stringent internal controls are no guarantee against corporate governance failure, so it is important that company directors promote an ethical corporate culture within the corporation. Directors must 'walk the talk' both on a personal and corporate level. They should remember that they are the leaders of their companies, and, as management guru Peter Drucker, Professor of Social Science and Management, Claremont Graduate University, US, points out, 'management is doing things right, leadership is doing the right things.'

The Hong Kong Ethics Development Centre, Independent Commission Against Corruption

The Hong Kong Ethics Development Centre of the ICAC is tasked to promote business and professional ethics in Hong Kong as the first line of defence against corruption. If you are interested in using its services to strengthen the corporate governance of your company, please visit its website: www.icac.org.hk/hkedc, or call: 2587 9812.



Making the best of your career

Last year the Institute started a series of informal get-togethers under the guise of 'Happy Friday for Chartered Secretaries' – an opportunity for the Institute's members of all ages and backgrounds to meet and discuss topical professional issues. At one such gathering in November last year, two of the Institute's fellows, Peter Greenwood, Executive Director – Strategy with CLP Holdings and Susie Cheung, General Counsel and Company Secretary of the Hong Kong Mortgage Corporation, offered some reflections on the skills and qualities company secretaries need to make the best of their career.

In recent years, the role of the company secretary has grown in importance and received increasing recognition. This is largely the result of the increasing importance attached to good corporate governance and a better appreciation of the central role which the company secretary can play in the adoption, implementation and monitoring of high governance standards. There has never been a better time to be a company secretary. There have never been more opportunities for the younger members of our profession to develop and apply their skills at the highest levels of management.

At the Institute's 'Happy Friday for Chartered Secretaries' gathering in November last year, we were invited to share some observations about career development for younger members of the profession. The discussion focused on a number of key factors or qualities which can help young corporate governance professionals develop their maximum potential.

Functional excellence

Thorough and up-to-date mastery of all of the technical aspects of a company secretary's role is essential. It might seem old-fashioned but there is no substitute for genuine in-depth knowledge of the Companies Ordinance, Listing Rules and the mass of other legislation and regulation which bears on the administration and

governance of the modern corporation. Shareholders, directors and senior management look to the company secretary as the primary source of advice, information and assurance about compliance with these critical aspects of any businesses' legal environment. The era has passed when regulation was light-handed, easy to learn, and seldom changed. Gone too are the days when, in the absence of actual knowledge, common sense would be sufficient to guide compliance. Today's company secretary, in order to advance in his or her chosen profession or to gravitate to a larger role, must first and foremost know the rules.

Good communication skills

Company secretaries increasingly need to have the skills to communicate to a broad range of stakeholders across the full range of media. A suite of communication skills includes:

- **language** – English and Putonghua at least. Practitioners should be able to communicate effectively and professionally in the languages they operate in.
- **presentation skills** – the ability to hold an audience, to present complex issues in a concise and impactful way and the capability to exploit the full range of modern communication platforms, and

Highlights

A successful company secretary needs to have:

- an in-depth knowledge of all legislation and regulation relevant to corporate administration and governance
- the communication and interpersonal skills needed to communicate and interact with a broad range of stakeholders
- the commercial awareness needed to apply his or her functional skills to practical, value-adding business solutions
- the willingness to adapt to, and evolve with, the changing business environment
- a global perspective and awareness of best governance practices in jurisdictions across the world, and
- the honesty and integrity needed to uphold professional standards of ethics and conduct.

“
 In the long term, no one respects someone who is prepared to compromise on their ethics and conduct. Short-term popularity gained at the expense of long-term credibility is a poor bargain for an ambitious company secretary.
 ”

- **narrative ability** – the capability to deploy an argument, a proposal or a recommendation in narrative form, not merely in bullet points or as a presentation.

The last of those observations may seem to be the most surprising in the 'Powerpoint' era. However, a good company secretary must be able to present his or her thoughts in a coherent, connected and, where necessary, nuanced way. There is even a trend favouring the provision of information to boards in narrative form, rather than as a Powerpoint presentation. This is on the basis that Powerpoint presentations leave a dangerously inadequate record of the manner in which an issue was put before directors and, from an evidentiary perspective, fail to establish that matters were laid before the board, analysed and considered, with the completeness that the issue deserved.

Excellent interpersonal skills

These are skills which are essential for advancement in any career, but they are especially important for a company secretary who needs to interact effectively with every decision-maker within a company, right up to the chairman and

shareholders, and with every colleague whose input and assistance is required in order to enable an effective decision making process. A key element of the company secretary's role is ensuring that decisions are taken at the right time, by the right people possessing the right information – bringing that together demands excellent interpersonal skills.

Commercial awareness

The developing company secretary will want to see his or her role as beyond that of 'minute-taker' or 'compliance box-ticker'. With connections at the highest levels of decision-making within a corporation and oversight across all of a company's activities, the company secretary is well positioned to make a broad contribution as a member of senior management. To do this requires the addition of commercial awareness whereby the company secretary applies his or her functional skills to practical, value-adding business solutions. Aside from the experience acquired at the workplace itself, this suggests a strong case for company secretaries, as with other high-potential younger managers, to add a business or finance qualification to their personal portfolio. In other words,

career-long learning is as beneficial for a company secretary as for any other management professional.

Willingness to adapt, evolve and change

Company secretaries have traditionally been regarded as belonging to a conservative or old-fashioned profession. This is right and proper since the core aspects of the job involve regulatory compliance and a company secretary should be inherently risk-averse. However, the job has changed enormously in recent years and will continue to do so. A company secretary who wants to make the best of his or her career must want to adapt, evolve and change, rather than to be characterised by 'a fear of the new'. This means being a driver of change – an accelerator, not a brake, on improved and enhanced corporate governance practices and processes.

For example, as businesses become more complex and the decision-making process more intense and rapid, company secretaries can reassess the volume and content of the information provided to directors and the means (including the growing use of electronic board platforms) by which that information is transmitted. Companies are increasingly traded on a number of markets (some companies may have their shares traded for as much as 18 hours in any given trading day). No one is better placed than a company secretary to understand and manage the implications on governance and disclosure of global security trading as it moves towards what may ultimately be a 24/7/365 basis.

Broad horizon

Business is global. Hong Kong's future depends on its continuing capacity to serve as a hub for the exchange of ideas,

the provision of value-adding services, a global financial centre and pivot for East/West commercial exchange. Few company secretaries will be able to define their role and restrict their horizons by reference to Hong Kong alone. A modern company secretary will need a wide vision. This calls for a desire to search for and capture best governance practices not only in other companies, but in markets and jurisdictions across the world. Company secretaries who work for large listed-companies will need to have the ability to contribute to the collective effort by their board and fellow management to make their business not merely good by Hong Kong standards, but amongst the best in Asia or worldwide.

Honesty and integrity

Company secretaryship is a profession. A professional is someone who puts honesty and integrity, and recognition of the higher values of his or her role, above self-interest. None of us can choose to be smart or intelligent – if so, this would be a choice we would have all made already. But we can choose to be honest and we can abide by that choice. Even though a temporary advantage may be perceived from acquiescing in some conduct which falls short of proper legal or business standards, in the long term no one respects someone who is prepared to compromise on their ethics and conduct. Short-term popularity gained at the expense of long-term

credibility is a poor bargain for an ambitious company secretary.

Peter Greenwood

Executive Director – Strategy with CLP Holdings

Susie Cheung

General Counsel and Company Secretary of the Hong Kong Mortgage Corporation

This article is based on the authors' joint presentation at the Happy Friday event held on 23 November 2012 at The Hong Kong Club. Information on forthcoming events are available on the Institute's website: www.hkics.org.hk.

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The big picture

The latest *Global Risks* report published by the World Economic Forum is an excellent resource for boards prepared to think more widely about the global trends shaping the future of businesses around the world

Since the global financial crisis, companies have become much more focused on the need for effective risk management and this increased attention has resulted in more sophisticated metrics for the assessment and mitigation of risk. These metrics work reasonably well where companies are considering the most common risk scenarios, such as compliance risk or cyber security, but they are less suited to a consideration of the strategic risks businesses face as a result of macro-level and long-term global trends.

The reason for this is fairly obvious. In today's complex and fast-changing global environment it is difficult to predict which trends may become a real threat and global risks are largely beyond any individual company's control or influence. This does not mean, of course, that they can be safely ignored. In some sectors, notably the energy sector, the need to address the big picture – issues such as geopolitical instability, climate change, terrorism, etc – has been recognised for some time. But more recently there has been a growing perception that many global trends pose considerable long-term uncertainty that will ultimately require a response from every business. However, getting such trends onto board agendas may be a daunting prospect for company secretaries and board chairmen. Which trends should be considered relevant and how far into the future should the board set its planning horizon?

The *Global Risks* report

For the past eight years, the World Economic Forum has been publishing its *Global Risks* report which analyses the perceived impact and likelihood of 50 prevalent global risks over a 10-year time horizon. The latest report (*Global*

Risks 2013, see www.weforum.org/globalrisks2013 for more information) is based on the Global Risks Perception Survey conducted by World Economic Forum in September 2012. Over 1,000 respondents, comprising top experts and high-level leaders from business, academia, NGOs, international organisations, the public sector and civil society, evaluated 50 global risks in five categories – economic, environmental, geopolitical, societal and technological. For each global risk, respondents were asked to rate on a scale from 1 to 5 both how likely was it that the risk would occur over the next 10 years and how much impact the risk would have if it were to occur.

The report is a highly useful resource for boards eager to expand the scope of their strategic planning since gives an annual league table of the major threats currently at the top of the political and business agenda. This year's report finds that the top five risks by likelihood are:

1. severe income disparity
2. chronic fiscal imbalances
3. rising greenhouse gas emissions
4. water supply crises, and

5. mismanagement of population ageing.

While the top five risks by impact are:

1. major systemic financial failure
2. water supply crises
3. chronic fiscal imbalances
4. food shortage crises, and
5. diffusion of weapons of mass destruction.

The report points out that the 50 global risks covered by the survey are interdependent. This makes strategic risk management much more difficult and increases the potential damage of any one risk factor. The report warns, for example, of the dangers of multiple systems failing. The world is still reeling, of course, from the effects of the global financial crisis and a major economic crisis happening in tandem with a major environmental crisis would clearly be catastrophic. The narrative emerging from the survey is clear: like a super storm, two major systems are on a collision course. The resulting interplay between stresses on the economic and

Highlights

- the *Global Risks* report is a highly useful resource for boards eager to expand the scope of their strategic planning
- the report provides an annual league table of the major threats currently at the top of the political and business agenda
- the report also makes recommendations on building resilience in the face of these threats

The evolving risk landscape

Top five global risks in terms of impact and likelihood, 2007–2013

Top five global risks in terms of likelihood

	2007	2008	2009	2010	2011	2012*	2013*
1st	Breakdown of critical information infrastructure	Asset price collapse	Asset price collapse	Asset price collapse	Meteorological catastrophes	Severe income disparity	Severe income disparity
2nd	Chronic disease (developed)	Middle East instability	Slowing Chinese economy (<6%)	Slowing Chinese economy (<6%)	Hydrological catastrophes	Chronic fiscal imbalances	Chronic fiscal imbalances
3rd	Oil price shock	Failed and failing states	Chronic disease	Chronic disease	Corruption	Rising greenhouse gas emissions	Rising greenhouse gas emissions
4th	China economic hard landing	Oil and gas price spike	Global governance gaps	Fiscal crises	Biodiversity loss	Cyber attacks	Water supply crises
5th	Asset price collapse	Chronic disease (developed)	Retrenchment from globalisation (emerging)	Global governance gaps	Climatological catastrophes	Water supply crises	Mismanagement of population ageing

Top five global risks in terms of impact

	2007	2008	2009	2010	2011	2012*	2013*
1st	Asset price collapse	Asset price collapse	Asset price collapse	Asset price collapse	Fiscal crises	Major systemic financial failure	Major systemic financial failure
2nd	Retrenchment from globalisation	Retrenchment from globalisation (developed)	Retrenchment from globalisation (developed)	Retrenchment from globalisation (developed)	Climatological catastrophes	Water supply crises	Water supply crises
3rd	Interstate and civil wars	Slowing Chinese economy (<6%)	Oil and gas price spike	Oil price spikes	Geopolitical conflict	Food shortage crises	Chronic fiscal imbalances
4th	Pandemics	Oil and gas price spike	Chronic disease	Chronic disease	Asset price collapse	Chronic fiscal imbalances	Food shortage crises
5th	Oil price shock	Pandemics	Fiscal crises	Fiscal crises	Extreme energy price volatility	Extreme volatility in energy and agriculture prices	Diffusion of weapons of mass destruction

■ Economic ■ Environmental ■ Geopolitical ■ Societal ■ Technological

Source: World Economic Forum – *Global Risks 2013*, Eighth Edition

*The survey methodology changed significantly after the 2011 report. In contrast to the years 2007 to 2011, the list of 50 risks that was assessed by the survey did not change in 2012 and 2013.



environmental systems will present unprecedented challenges to global and national resilience,' the report says.

In an article on the Project Syndicate website, Lee Howell, Managing Director of the World Economic Forum's Risk Response Network which produced the report, commented that facing stresses on both the economic and environmental systems simultaneously would be 'like losing both engines on an airplane in mid-flight'.

What if...

Many of the threats discussed by *Global Risks* report will already be on the radars of most businesses and some are unlikely to ever make it as far as a board agenda – the discovery of alien life, damage to space-based infrastructure and the dangers of geomagnetic storms, for example. In between these poles there are many scenarios which deserve attention. For example, in its discussion of technological risks the report highlights the risk of 'digital wildfires'. Social media increasingly allows information to rapidly spread around the world and while the benefits of this are obvious, the report points out that this connectivity could also enable the rapid viral spread of information that is either intentionally or unintentionally misleading or provocative with serious consequences.

Another global trend given detailed consideration in the report is the spread of antibiotic-resistant bacteria. The numbers of lives now being lost due to antibiotic-resistant infections may be miniscule in comparison with big killers like heart disease and cancer, but the prospect of a world in which antibiotics are progressively rendered ineffective for treating even common infections is

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facing stresses on both
[the economic and environmental]
systems simultaneously is like losing
both engines on an airplane in mid-flight
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clearly alarming. On top of destabilising our health systems there are profound cost implications for economic systems and for the stability of social systems. The report highlights the comment by Dr Margaret Chan, Director-General, World Health Organisation that 'a post-antibiotic era means, in effect, an end to modern medicine as we know it. Things as common as strep throat or a child's scratched knee could once again kill'.

Building resilience

The *Global Risks* report is a useful resource for boards, not only in terms of identifying the external threats shaping the future of businesses around the world, but also for its recommendations on building resilience in the face of these threats.

This year's report includes a 'Special Report' section, which attempts to initiate a national resilience measurement with regard to global risks. It explores the use of qualitative and quantitative indicators to assess overall national resilience to global risks by looking at five national-level subsystems (economic, environmental, governance, infrastructure and social) through the lens of five components: robustness, redundancy,

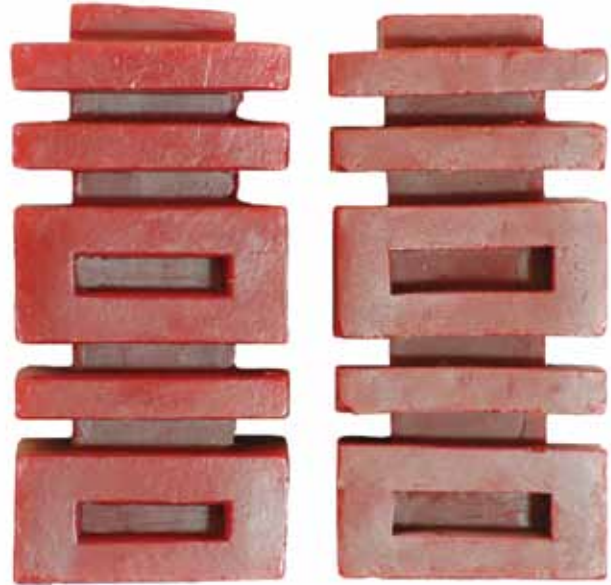
resourcefulness, response and recovery. 'The aim is to develop a new diagnostic report to enable decision-makers to track progress in building national resilience and possibly identify where further investments are needed,' the report states.

The development of these metrics is in its early stages, says Lee Howell in his article, however he expresses the hope that that this diagnostic tool can become an 'MRI' for national decision-makers to assess their countries' resilience to global risks. 'By revealing underlying weaknesses that more traditional risk-assessment methods may miss, we could pinpoint the structural reforms, behavioural changes, and strategic investments that increased resilience requires,' he writes. 

The World Economic Forum's Global Risks 2013 report is the flagship research publication of the World Economic Forum's Risk Response Network. Further information can be found at www.weforum.org/risk

Lee Howell's article is available on the Project Syndicate website: www.project-syndicate.org.

Joint ventures in China: critical steps for success



Although China is a very lucrative and attractive market, business success in China is difficult. James Chapman, Partner, Foley & Lardner LLP, argues that foreign companies can save themselves millions of dollars and reap great rewards by learning from those that have previously succeeded and failed in China. He sets out some key best practices that will put companies on the road to success.

China, like any foreign market, is difficult to succeed in alone. The business practices, language, culture, legal environment and other obstacles, make success in China elusive. In addition, Chinese law requires a foreign company to have minority ownership of enterprises operating in certain industries such as banks and insurance companies. For these reasons, joint ventures in China are common. According to the US China Business Council, in 2011 there were 5,289 joint ventures in China and 2010 saw 5,270. In these years, joint ventures represented approximately 20% of all foreign direct investment in China. It is also widely known that the failure rate of joint ventures in China is high.

Joint ventures in China have achieved a reputation for being difficult to manage. Reasons include differing expectations, overestimation of the Chinese partner's market position, conflicting management styles, lack of integrity, corruption, and greed. Parties will come together, usually after lengthy negotiations, and celebrate the formation of the joint venture and only a short while later, after millions of dollars of losses, wonder what went wrong. There are a number of reasons why few joint ventures in China succeed while most fail. Most of these involve understanding the intangible aspects of doing business in China. This article sets forth a number of best practices that if followed are likely to dramatically increase the likelihood of success.

Carefully select your joint venture partner

Like other ventures, one should take great care in selecting a Chinese joint venture partner. Foreign companies must establish a list of criteria for selecting a partner. The criteria should include experience, integrity, guanxi, expertise, quality and other factors. For example, entering the Chinese market may require access to a robust supply chain. Without such access the foreign party is required to develop and manage an extra layer of business relationships and expense. If the potential Chinese partner possesses a proven supply chain, then this may prove to be a primary driver. The 'right' partner must not only have the appropriate capabilities, but must also be motivated and sufficiently financed to succeed. In

In addition, a foreign company must make the investment in building a relationship with potential joint venture candidates. This usually requires the foreign company to locate an executive or team of people on the ground in China. This not only demonstrates a commitment to China but there are just some things that cannot be learned from afar. There is no substitute for being on the ground in China. In addition, the foreign company must conduct thorough due diligence of the shortlist of potential partners, their management and major shareholders. The due diligence should include among other things:

1. criminal background checks
2. civil lawsuit checks
3. interviews with customers, suppliers and others that have done business with the potential partner
4. interviews with parties active in the target industry, and
5. interviews with employees.

There are a number of qualified companies that excel in assisting with the due diligence process. Notwithstanding this common sense advice, many foreign investors enter into joint ventures without sufficient scrutiny. However, notwithstanding the above, the most reliable method of selecting a joint venture partner is to start with a party known to be honest with a proven track record of dealing with parties known by the foreign partners. However, above all you should avoid 'marrying your first date'. The company must go through a disciplined process, not cut corners and avoid acting rashly based upon 'gold rush' fever or enthusiasm.

Always allow your Chinese partner to maintain face

Business relationships in China are complex. Disagreements between partners are common. Generally, the Chinese believe that the parties can take different positions on an issue and both be right. Although this concept may seem strange to foreign executives, it is fundamental in China. At the root of this belief is the concept of 'mianzi' or 'face'. Generally, China is a hierarchical society and one's position in that hierarchy is very important. Any actions that undermine that position can result in disastrous consequences. In addition, the ability to build the 'face' of your partner is an important part of building and maintaining relationships in China. Accordingly, although it is important for a foreign joint venture partner to be firm and protect its interests (being too accommodating creates its own cultural problems), the foreign partner must avoid words and actions that could embarrass, diminish or undermine the authority and standing of its Chinese partner. Accordingly, solutions to problems and interaction with the Chinese partner must be calculated to allow the Chinese partner to save 'face' and avoid embarrassment. These solutions and actions must avoid a sense of condescension or lack of respect. Many foreign managers believe that the Chinese are not sophisticated, and lack modern management skills and experience. Taking the approach, which is more common than one would believe, that the foreign partner is arriving to show the locals how international business is conducted, is a recipe for failure.

Develop relationships with the personnel working in the joint venture

A Chinese joint venture cannot be managed through periodic board

meetings. Although such meetings are important and the relationships with the Chinese representatives on the board of directors must be developed and maintained, the executives in the foreign partner with responsibility for the joint venture must have frequent contact, and develop relationships, with the managers and executives that are actually managing the day-to-day operations of the joint venture in China. The relationship must be based upon respect. This cannot be circumvented and there are no short cuts in this process. This relationship building requires frequent business and social meetings. As mentioned above, this is one of the reasons why a presence on the ground in China is so important. The

Highlights

- don't try to cut corners – many foreign investors enter into joint ventures without sufficient due diligence
- succeeding in China requires an understanding of the intangible aspects of doing business in China, including the cultural assumptions, and communication and working styles of Chinese business partners
- an on-the-ground presence in China is essential – this helps to develop the necessary relationships and is instrumental in identifying problems early and being in a position to solve them
- maintain a strong legal foundation for your business, including a strong anti-bribery policy and legal compliance programme



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a Chinese joint
venture cannot be
managed through
periodic board
meetings
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foreign joint venture partner must invest time and energy in these relationships. Foreign managers must not ignore or fail to listen to local managers. They must avoid being perceived as arrogant. In addition, the foreign investor should have a substantial role in the day-to-day management of the joint venture. A joint venture is not a vehicle to allow a Chinese partner to manage the business with minimal executive time from the foreign investor. If the foreign investor takes this approach, problems in management, financial reporting, diversion of revenues, quality, and intellectual property theft are likely to occur. If the foreign investor cannot afford to send a full-time manager to China, it should not be investing in China at all.

The relationship-oriented approach with a foreign manager active in the business is instrumental in identifying problems early and being in a position to solve them. As mentioned above, in order to avoid losing face, managers of the joint venture are likely to downplay, avoid or even hide problems with the business operation. The best way to overcome this tendency is for the foreign investor to have very frequent social and business contacts with those running the day-to-day operations of the joint

venture, participate in the day-to-day operations, ask many questions, listen and understand the Chinese indirect communication style.

Understand and maintain an alignment of the parties' interests

Identifying the Chinese partner's interests in pursuing the joint venture is not an easy task. Unlike Americans, who, for example, tend to be straightforward in discussing their interests in a transaction or relationship, the Chinese tend to take a different approach. The Chinese tend not to reveal their actual interests prior to the establishment of some level of trust between the parties. For example, the Chinese partner may be interested in a quick short-term profit or obtaining technical know-how through the joint venture so it can independently pursue the business on its own at a later date. It may desire to launch the product line under its own brand or just have the prestige of being partnered with a well-known foreign company. Too often from the initiation of the joint venture, the parties are pursuing different agendas at the expense of the other. Part of the challenge is to overcome the different communication and working styles of the parties. However, an emphasis on relationship building, training and

management can help build workable communication channels.

In addition, one must be mindful of the 'crouching tiger, hidden dragon' phenomenon. The 'hidden dragon' concept represents a myriad of invisible vested interests. The Chinese partner is in some instances just an instrument of those interests. These hidden interests can change their priorities, affect the initial agreements and change the dynamics of the joint venture. For example, one type of hidden dragon is local government officials which often can be the real authority behind the Chinese partner. These local officials may control the appointment of key people, impose unreasonable requirements of local tax collection and job creation and intervene from time to time to impose their will on the joint venture. However, the Chinese partner often has strong 'guanxi' with the local authorities and may indirectly control the joint venture by using this power in the event of a disagreement, hence the reference 'crouching tiger, hidden dragon'. The foreign partner must make an effort to understand the Chinese partner's relationships with local government officials and other hidden dragons and identify and understand the real decision makers.

Balancing these interests and keeping them aligned is tough. As mentioned above, an on-the-ground presence is essential for keeping one's hand on the pulse and being able to develop the relationships with the Chinese partner and local government officials. Constant contact is necessary to understand the others' interests and adjust as necessary to keep such interests aligned. Once these interests are identified, they must be translated into clear objectives. At this point, the joint venture has a standard for measuring progress and satisfaction. For example, investment objectives should be agreed upon and continually re-evaluated jointly as the venture progresses. The partners should set clear corporate values, communicate them to the employees on a continuous basis and monitor progress in implementing such values. The parties should make adjustments as necessary to keep the interests aligned as circumstances change. These corporate values would include such items as product design, product quality and customer service. The foreign partner should often communicate the shared interests and mutual benefits. In this way, the parties can relentlessly pursue the achievement of the common objectives.

Meet the author

James Chapman is a Partner in Foley & Lardner's Silicon Valley and Shanghai offices. His practice focuses on mergers and acquisitions, venture capital and securities law. Mr Chapman has been involved in over 250 mergers, acquisitions and financing transactions. He also has extensive experience doing business in China. He represents US companies acquiring China-based companies, structures investments, joint ventures and technology transfers in China and represents Chinese companies in public and private securities offerings in the US. Mr Chapman is a frequent speaker at China-focused events and has been named as one of the top M&A attorneys in the US by Legal 500.

The author can be contacted by email: jchapman@foley.com.

However, one must remember that China is changing rapidly and the parties must be flexible and willing to adapt to these changes. In circumstances where the interests of the parties diverge in ways that cannot be brought together, the parties must be willing to implement a pre-existing exit strategy and allow the joint venture to die. Unilever has shut down more than a dozen joint ventures and Coca-Cola and Starbucks have recently bought out their Chinese partners.

Always have a strong legal foundation for business relationships

The Chinese commonly use the phrase, 'we know the law, but that is not how things are done in China'. Cutting corners or circumventing the law based upon the belief of common practice is a 'no lose' situation for the Chinese partner and a ticking time bomb for the foreign partner. It is common for a Chinese party to use the failure to comply with the law as leverage to get more concessions from the foreign partner later or even force the foreign partner out of the lucrative business arrangement. In this regard, the foreign partner must establish a means

of self-protection from the beginning. All material business relationships should be documented. A strong legal foundation would include a majority position in the joint venture, both ownership and management, a detailed joint venture agreement, the ability to control key hires such as the chief financial officer, controller and the human resources managers, develop its own relationships and 'guanxi' with local government officials, strong anti-bribery policy and legal compliance programmes, and a strong internal and external trade secret protection programme.

In addition, the foreign partner should negotiate control of the 'seals' or 'chops' as they are often called. The 'chop' is often required for authorising actions by a company in China. In addition, the joint venture must ensure that it has all of the necessary permits to operate. In China, permits authorising the conduct of a certain business are very narrowly drawn. In addition, the permitting regime is complex. It is not unusual for Chinese companies to operate illegally because of the lack of proper permits. The problem can increase as the company evolves and expands its business. Similarly, it is common for Chinese companies to maintain multiple sets of books one of which is kept to justify the payment of low taxes. As mentioned above, the foreign partner's control of the finance function should prevent this type of business practice.

James Chapman

Partner, Foley & Lardner LLP

A special thanks to Eric Chapman who served as a research assistant for this article.

合资企业 成功之道

中国市场相当吸引，商机处处，然而要在中国成功经营，并非易事。Foley & Lardner LLP 合伙人James Chapman则表示，从前人的成功和失败经验学习，可以省回数以百万元计的成本，取得丰厚成果。他提出几项主要的最佳经营方式，帮助企业踏上成功之路。



独力投资海外市场，要取得成功，并不容易，中国市场也不例外。商业惯例、语言、文化、法律制度等方面的差异和其他障碍，使外资企业难以在中国成功经营。况且，中国法律要求经营银行、保险等若干行业的外资企业只能拥有少数股权。种种因素，导致合资企业在中国相当普遍。根据美中贸易全国委员会统计，2011年，中国共有5,289家合资企业，2010年则有5,270家；在这两年，合资企业占投资中国的海外直接投资总额约20%。此外，众所周知，在中国经营合资企业的失败率很高，人们普遍认为合资企业难以管理，原因包括期望不同、对中方合伙人的市场地位估计过高、管理方式不协调，以及企业人员品格欠佳、腐败、贪婪等。合资双方通常经过长期商讨后，才会达成合资协议，可是刚庆祝合资企业成立不久，便亏蚀数百万元，令人费解。合资企业成功者少，失败者多，有多方面的原因，当中大部分涉及在中国营商的一些无形因素。本文列出多项最佳做法，若能付诸实行，成功的机会便大大增加。

小心物色合资伙伴

正如经营其他项目一样，为合资企业物色中方合资方时，必须十分小心。外资企业必须列明合资方应具备的条件，包括经验、品格、关系、专门知识、素质和其他因素。举例说，要进入中国市场，可能需要有稳固的供应链，否则外资方便须建立和管理另一重商业关系，花费额外开支；假如合资企业的中方已具备行之有效的供应链，这可能是企业成长的主要动力。适当的合资方不仅应具备合适的才干和能力，还应有动力，有充足的财力，才可成功。此外，外资公司应投入成本，与有可能成为合资伙伴的人建立关系；一般的做法是在中国派驻行政人员或一组工作人员。这不仅显示自己对中国的投入程度，而且有些在中国发生的事情，在远方是难以掌握的，留驻中国实地了解情况，是无可替代的做法。此外，外资公司必须彻底查核有可能成为合资伙伴的潜在合资方、

其管理层和主要股东。查核工作的范围须包括以下各项：

1. 查核刑事纪录
2. 查核民事诉讼
3. 会见潜在合资方的客户、供应商和曾与之有业务往来的其他人士
4. 会见业内的活跃人士；以及
5. 会见雇员。

市场上有多家合格的公司，擅长提供这种查核服务。建立合资关系前先作详尽的查核，是普通常识，但许多外国投资者仍是事先未作充份调查，便贸然成立合资企业。不过，最保险的做法，还是先找一些曾经和自己认识的人有业务来往，证实为诚实可靠的人作为合资伙伴。最重要的是，避免「和首次约会的人结婚」。公司必须经过严格的选择过程，不要走捷径，避免盲目跟随「淘金」热潮，因一时之兴而鲁莽行事。

保全中方合伙人的面子

在中国营商，商业关系十分复杂，伙伴之间意见不合，是常有的事。一般来说，中国人认为伙伴对同一事件可以有不同立场，而双方都可以是对的。对于外国人来说，这观念看似奇怪，在中国却是很基本的概念；归根究底，是「面

子」的问题。中国社会的阶级观念很强，各人尊卑有序，任何不符身分的行为，都可能带来严重的后果。此外，为伙伴赏面，是建立和维持良好关系的要素。因此，合资企业的外资方保持坚定、维护自己的利益固然重要（太易于妥协亦会产生文化问题），但也应在言谈间和行动上避免令中方尴尬，或有损其权威和地位。有见及此，解决问题的方法与中方交往时，必须小心计划，让中方保全颜面，避免尴尬。解决问题的方法和交往时的行为，必须避免让人有高高在上或缺缺尊重的感觉。外国管理人员往往认为中国人不够老练，缺乏现代管理技巧和经验；外资方若抱着向中国伙伴引介国际营商手法的心态，必败无疑。大家或许不知道，抱持这种心态的外资公司为数不少。

与合资企业的职员建立关系

管理中国的合资企业，不能单靠定期举行的董事会会议。这些会议固然重要，而且必须与董事会中的中方代表建立和维持良好的关系；但外资方的负责人员也必须与实际管理中国合资企业日常运作的经理和行政人员经常保持联系，与他们建立关系。这关系必须以互相尊重为基础。这是不可忽略的一环，过程中也没有捷径。关系的建立，有赖经常举行商务会议和社交聚会。正如上文所述，这是必须实地留驻中国的原因之一，合资企业的外资方必须在这些关系上投放时间和精力。外资方的管理人员

摘要

- 不要走捷径：许多外国投资者没有查核清楚便贸然建立合资企业
- 要在中国取得成功，必须了解在中国营商的无形因素，包括中方合伙人的文化假设、沟通方法和做事方式
- 必须实地留驻中国，这样有助建立所需关系，及早察觉问题，寻求解决方法
- 为业务建立稳固的法律基础，包括明确有力的防贪政策和合规计划

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管理中国的合资企业，
不能单靠定期举行的董
事会会议
”



不可忽视本地管理人员的声音，避免给人高傲自大的印象。此外，外方投资者在合资企业的日常管理中应当担当重要角色。经营合资企业，外资方不可吝啬自己的时间，完全放手让中方管理业务；假如采取这种做法，便有可能产生管理、财务报告、产品和服务质素方面的问题，甚至有收益被侵吞，知识产权被盗的危险。假如外国投资者不能派遣全职管理人员长驻中国，便根本不应投资中国。

重视建立关系，派驻管理人员积极参与业务，有助及早察觉问题，寻求解决方法。如上文所述，为免丢脸，合资企业的管理人员很可能低调处理或避免提出业务运作上的问题，甚至加以掩饰。处理这种情况的最佳方法，就是经常与管理合资企业日常运作的人员频密保持社交和业务上的接触，参与日常运作，经常提问，用心聆听，了解中国人含蓄的沟通方式。

了解合资双方的利益所在，保持利益一致

要辨析中方经营合资企业的利益所在，

并非易事。外国人如美国人讨论自己在某宗交易或某项关系中的利益时，一般比较直接；中国人则不同，在未与对方建立互信之前，通常不会透露自己的实际利益所在。举例说，中方可能希望透过合资企业迅速获取短期利益，或获得技术上的知识，好让自己日后可以自行经营有关业务；可能有意日后以自家品牌推出有关产品；又或纯粹藉与知名外国公司合作提高声誉。从合资企业成立开始，合资双方往往就各自追求不同的目标，而牺牲对方的利益。合资各方要面对的一项考验，是接受对方的不同沟通方法和做事方式。注重建立关系、培训和管理，有助建立可行的沟通渠道。

此外，我们还要留意企业中的「卧虎藏龙」。「藏龙」指的是企业背后无形的一众既得利益者。有时候，中方投资者只是既得利益者的工具，这些既得利益者可以改变中方投资者考虑事项的优先次序，影响原定协议，改变合资企业的生态。例如当地的政府人员，便是藏龙的一种，他们可能是中方投资者背后的真正权威。这些当地人员可能控制了主要人员的委任，提出不合理的地方税收

和创造就业机会的要求，并且不时介入，逼使合资企业按他们的意愿行事。不过，中方投资者往往与当地政府关系密切，在争议发生时，有可能利用这种权力非直接地控制合资企业，因此有「卧虎藏龙」之称。外资方必须设法弄清中方投资者与当地政府人员和其他藏龙的关系，辨清真正的决策者，了解他们。

平衡各方利益，让各方利益保持一致，是很困难的事。如上文所述，必须实地留驻中国，才可了解最新情况，与中方投资者和当地政府人员建立关系。应经常与中方保持接触，以了解各方利益，并在有需要时予以调整，让各方利益保持一致。认清利益所在后，必须订立清晰目标；这样一来，合资企业便订有可量度的标准，衡量工作进度和表现满意度。例如应协定投资目标，并在企业发展期间持续共同检讨目标。合资各方应清楚订明企业的价值取向，经常与员工沟通，让他们认识这些价值，并监察这些价值的实践进度。在环境有变时，双方可按需要调整，以保持利益一



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留驻中国实地了解情况，
是无可替代的做法
”

致。企业价值涵盖产品设计、产品质量和客户服务等范畴。外资方应经常说明这些共同利益和互利情况，务求双方锲而不舍地追求共同的目标。

不过，我们应紧记，中国的面貌变化迅速，合资各方必须保持灵活，随时适应这些转变。假如双方的利益南辕北辙，无法保持一致，双方必须愿意按既定策略退出，终止合资企业。联合利华曾关闭十多家合资企业，可口可乐和星巴克最近亦买下了中国投资方在合资企业中的股权。

作者简介

James Chapman是美国富理达律师事务所 (Foley & Lardner LLP) 硅谷和上海办事处的合伙人，专门从事收购与合并、创投基金和证券法方面的工作，曾参与超过250项合并、收购及融资交易。中国业务经验丰富，包括代表美国公司收购中国公司，跟进在中国投资、成立合资企业和技术转移的交易，也代表中国公司到美国上市或非公开招股。Mr. Chapman经常在以中国为主题的场合演讲，获Legal 500选为美国最杰出的收购合并律师之一。

作者可经电邮联系，邮址为：jchapman@foley.com。

商业关系须有稳固的法律基础

中国人经常这样说：「我们知道法例的规定，但是我们不是这样做事的。」因循所谓惯例而走捷径、绕过法例，对中方来说没有损失，但对外资方来说，却是个定时炸弹。中方往往利用违法作为工具，驱使外资方日后给予更多优惠，甚至逼使外资方退出利润丰厚的业务安排。有见及此，外资方必须从一开始就建立自我保护机制，以文件记录一切重要的商业关系。稳固的法律基础包括在合资企业的股权和管理权方面占大多数，订立

详尽的合资合同，掌控首席财务官、审计官和人力资源经理等主要人员的任命，自行与当地政府人员建立关系，订立明确有力的防贪政策和合规计划，以及制订完善的计划以对内和对外保障商业秘密。

此外，外资方须与中方议定对印章的控制权：中国企业的行为，往往须凭印章作实。合资企业亦应确保自己具备营运所需的一切准证：在中国经营业务的各色许可证五花八门，每种许可证涵盖的范围非常狭窄，而且批准制度相当复杂，中国公司因准证不全而违法经营，是常有的事；公司业务不断演变扩充时，这问题会日益严重。同样，中国公司往往备存多套账目，当中一套用以作为缴纳低税的佐证。如上所述，外资方若能控制财务工作，便可避免这种情况发生。

James Chapman

Foley & Lardner LLP 合伙人

撰写本文期间，Eric Chapman协助相关研究工作，特此致谢。

A review of seminars: January 2013

7 January 2013



Raymond Yuen, Eva Chan and Davy Lee (Chair)

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

'This is a very useful and important topic. The seminar recorded a full-house attendance. Very practical and real-life experiences of the presentations were shared and analysed. No wonder this is a re-run seminar.'

10 January 2013



Gloria Ma (Chair) and April Chan

From Gloria Ma, FCIS FCS(PE), Director, Corporate Secretarial, KCS Hong Kong Ltd, and chair of the seminar delivered by April Chan, Past President, HKICS and Company Secretary, CLP Holdings Ltd, on 'Integrated reporting: what does it really mean from a practitioner's perspective?'

'In the first session April gave a very thorough and informative overview on integrated reporting during which she highlighted the concepts of "value creation story" and "in the short, medium and long term" as core fundamentals. She then moved on to share her experience of the challenges that CLP faced in preparing the 2011 Annual Report in an integrated model which was well received by the attendees.'

15 January 2013



Angie Fung (Chair) and Michael Chan

From Angie Fung, FCIS FCS, Head of Company Secretarial Services, Hongkong Land Ltd and chair of the seminar delivered by Michael Chan, Chief Executive, C&C Advisory Services Ltd, on 'Disclosure of inside information and systems of internal control'.

'This was a very comprehensive presentation that touched on all the requirements and important aspects of the disclosure of inside information which has now been given statutory backing. It emphasised the importance of not only making the necessary disclosures but also of making them timely. Most important of all, the seminar emphasised the need to identify, assess and escalate the information for the attention of the board to decide about the need for disclosures.'

New Graduates

Chan Ching Nga	Lui Nga Man
Chan Tsz Yan	Or Miu Ling
Chan Yu Wong	Poon Tsz Kwan
Cheung Sze Nga	Seto Shiu Mei, May
Cheung Wai Lun	Sit Lo Yan
Chong Wai Kei	Szeto Kar Yee, Cynthia
Fok Chung Fai	Tong Suet Fong
Fu Fung Yau	Tong Yu Sheung
Fung Yip Ying	Tse Shuk In
Kan Hon Yan	Wan Mei Wa, Ruby
Lai Hoi Nga	Wang Nga Wing
Lai Ka Kei	Wong Chun Kit
Lam Siu Man	Wong Kam Sau
Lam Yee Wa	Wong Kam Sheung
Lam Yi Ching	Wong Sau Yi
Lau Mei Ki, Maggie	Wong Wai Ting, Teresa
Li Wai Ching, Veronica	Wong Yuk Kiu
Lin Sze Wan	Yip Zodia Wang
Lo Suk On	

New Associates

Chan Chi Wah	Lo Mei Chun
Chan Mei Leng	Louie Chi Man
Chan Yuk Kuk	Lung Man Yin
Cheung Hin Man	Ng Siu Ping
Cheung Ka Ki	Ng Wing Sze
Cheung Siu Kuen	Sze Chun Ting
Chiu Shuk Yan	Tsang Sui Ying
Chow Pui Ki	Tse Chor Yuk, Gloria
Chu Lai Wan	Tse Kin Sum
Fan Bui Sai	Ty Lai Ting
Fok Lai Yan	Wong Fu Yee
Fong Kwok Kin	Wong Siu Wai
Ip Lap Ko	Wong Yee Ma
Jiang Wei Yi	Yeung Bik Shan
Koo Ki Wai, Kitty	Yeung Yin Mei
Lam Kam Hung	Yip Wing Hang
Lau Nga Yin	Yuen See Yan
Law Sin Ting	Yuen Siu Wai, Ivan
Li Chui Man	Yung Yuen Man
Li Shuk Wa	

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
Cheung Chin Wa, Angus <i>ACIS ACS</i>	China Agri-Products Exchange Ltd (stock code: 149)	1 December 2013
Tsang Hing Bun <i>ACIS ACS</i>	China Financial Leasing Group Ltd (stock code: 2312)	5 December 2013
Chu Lai Shan, Sammie <i>ACIS ACS(PE)</i>	Winox Holdings Ltd (stock code: 6838)	14 December 2013
Ip Pui Sum <i>ACIS ACS</i>	LuoYang Glass Company Ltd (stock code: 1108)	18 December 2013
Chan Yuen Ying, Stella <i>ACIS ACS</i>	Carnival Group International Holdings Ltd (stock code: 996)	19 December 2013
Mui Ngar May, Joel <i>ACIS ACS(PE)</i>	Midland Holdings Ltd (stock code: 1200) Midland IC&I Ltd (stock code: 456)	27 December 2013
Hon Ming Sang <i>ACIS ACS</i>	Rising Development Holdings Ltd (stock code: 1004)	31 December 2013

Mandatory CPD

MCPD programme in-house training policy update

With effect from 1 January 2013, course providers applying to contribute to in-house mandatory CPD training courses should send in their application form signed by a Fellow who is also a holder of the HKICS Practitioner's Endorsement (PE).

Mandatory CPD requirements

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

The Institute has randomly selected 129 members who qualified between 1 January 2005 and 31 July 2011 for audit checking for CPD compliance during 2011/2012. Up to January 2013, 102 (79%) have supplied the requested evidence.

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

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

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

Submission of declaration form

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

Exemption from mandatory CPD requirements

Exemption from MCPD requirements is available to retired members and honorary members. Members in distress or with special grounds (such as suffering from

long-term illness or where it is impractical to attend or access CPD events) may also apply for exemption from MCPD to the Professional Development Committee and are subject to approval by the committee at its sole discretion.

Enhanced CPD programme

The Institute cordially invites you to take part in our ECPD Programme, a professional training programme that best suits the needs of company secretaries of Hong Kong listed issuers who need to comply with the mandatory requirement of 15 CPD hours every year. The Institute launched its MCPD programme in August 2011 and, from January 2012, its requirement for Chartered Secretaries to accumulate at least 15 CPD points each year has been backed up by a similar requirement in Hong Kong's listing rules.

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

Membership activities

Annual Dinner 2013

The Institute's Annual Dinner 2013 was held on 24 January 2013 at the Conrad Hong Kong. Details with photos will be reported upon in the next issue of *CSj*.

Fellows-only benefit - IPO Guide 2013

The *Hong Kong IPO Guide 2013*, published by LexisNexis and supported by various organisations including the Institute, has just been released. As an exclusive benefit for Fellows, a limited number of hard copies are available for collection at the secretariat office on a first-come-first-served basis.

HKICS Annual General Meeting 2012

The HKICS held its Annual General Meeting (AGM) on 28 December 2012 during which the scrutineers' report with the ballot votes received by the eight candidates for the election of Council members was read. Four candidates namely, Ms Susie SF Cheung, Mr Jack SL Chow, Dr Gao Wei and Ms Polly OY Wong were re-elected as Council members, and one candidate Dr Eva YW Chan was elected as a Council member.

The AGM was followed by a Council meeting during which the Honorary officers were elected with Ms Edith Shih, Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd, being elected as President again for 2012/2013. Please see the full list below of HKICS Council members.



HKICS Council 2012/13

Honorary officers:

Edith Shih *FCIS FCS(PE)* - President
 Dr Maurice WF Ngai *FCIS FCS(PE)* - Vice-President
 Ivan KW Tam *FCIS FCS* - Vice-President
 Jack SL Chow *FCIS FCS* - Treasurer (re-elected to Council)

Council members with re-elected/ new council members:

Dr Eva YW Chan *FCIS FCS(PE)* (newly elected)
 Susie SF Cheung *FCIS FCS(PE)* (re-elected to Council)
 Dr Gao Wei *FCIS FCS* (re-elected to Council)
 Eddie KC Liou *FCIS FCS(PE)*
 Paul DS Moyes *FCIS FCS*
 Douglas C Oxley *FCIS FCS*
 Alberta K Sie *FCIS FCS(PE)*
 Polly OY Wong *FCIS FCS(PE)* (re-elected to Council)

Ex-officio

April WY Chan *FCIS FCS(PE)* (Past President)

Committee chairmen:

Audit Committee - Dr Maurice WF Ngai *FCIS FCS(PE)*
 Education Committee - Alberta K Sie *FCIS FCS(PE)*
 Human Resources Committee - April WY Chan *FCIS FCS(PE)*
 Membership Committee - Susie SF Cheung *FCIS FCS(PE)*
 Nomination Committee - Neil McNamara *FCIS FCS*
 (Past President)
 Professional Development Committee - Polly OY Wong
FCIS FCS(PE)

Past President, Natalia KM Seng *FCIS FCS(PE)*, will continue her appointment as the representative of China Division of ICSA to serve on International Council for 2013.

压篇幅降成本 年报新规实施进行时

针对内地及香港分别出台的年报披露及上市新规，香港特许秘书公会与上海证券交易所（上交所）于11月27-29日在厦门联合举办主题为“财务审计与年度业绩报告”的“中国A+H股上市公司董事会秘书后续专业培训班暨香港特许秘书公会第二十八期联席成员强化持续专业发展讲座”。上交所公司管理部代表针对2012年年报准则及上市公司权益变动做了详细介绍，新准则将大幅缩减年报摘要篇幅、全文披露内容和成本，并鼓励差异化披露。针对香港市场的年度报告，来自欧华律师事务所的讲者则提示了应特别注意事项，主要包括关联交易章节、权益披露章节及企业管治章节。

针对2012年年报准则及上市公司权益变动，上交所代表表示，2007年以来，证券市场、公司治理、监管实践和投资者需求不断发展，迫切需要提高年报信息披露的有效性和针对性。因此，2011年12月30日证监会公开征求意见修改年报准则，并在2012年9月正式发布。修订后的准则旨在突出重点，简化信息披露内容，并以投资者为导向，提高决策有效性。

上交所代表介绍，新准则的特点主要是大幅缩减年报摘要篇幅，降低信息披露成本；并简化年报全文披露内容，强化投资者关心事项的披露；体现公司投资价值，增加非财务信息披



露；增加自愿披露内容，鼓励差异化披露。

具体的修订内容涉及总则、正文及附录，其中较为重要的修改包括年报正文中的重要提示增加了利润分配、前瞻性信息风险提示、释义说明及重大风险提示；而在会计数据要求方面，删除了四个财务指标，包括：营业利润、利润总额、每股经营活动产生的现金流量净额、归属于上市公司股东的每股净资产。股东情况和董监高监管方面，则新增了报告期末及披露日前5个交易日股东数、融资融券、董事薪酬、核心技术人员及员工情况五项；年报摘要及附则部分，仅留下重

要提示、财务数据和股东变化、管理层讨论与分析、部分财务事项，删除董监高、监事会报告、重要事项及原有释义。

欧华律师事务所合伙人兼中国资本市场业务负责人刘巍则介绍了各国证券上市监管法律的趋势及香港上市的新规则。他认为，随着经济金融全球一体化不断深入，各监管机构及交易所相互借鉴，共同发展，监管有日益趋同之势，各市场上市的刚性指标逐步降低，各大交易所激烈竞争，陆续推出相对宽松的上市条件，尤其是对经营业绩或盈利记录设置较低的标准。

他还透露，内地和香港正在磋商降低内地企业到香港上市的门槛，降低对资产、利润的要求，鼓励民营企业以“小H股”形式赴港上市。目前，香港业已降低了矿业公司在盈利测试等财务数据方面的上市门槛。

此外，各国均加强监管，加强软性约束，甚或硬性规范。提高上市前和上

This article reviews a joint ECPD seminar for HKICS affiliated persons and training session for board secretaries of A+H share listed companies organised by the HKICS and the Shanghai Stock Exchange from 27-29 November 2012 in Xiamen. Speakers from the Shanghai Stock Exchange and a law firm discussed the new rules in mainland China and Hong Kong regarding annual report disclosure as well as regulatory trends.

Appointments update

Several senior members of the Institute have received new official appointments as detailed below.

Dr Maurice Ngai

Dr Maurice Ngai, CEO of SW Corporate Services Group Ltd, HKICS Vice-President and the Chairman of the Institute's Audit Committee, was appointed as one of the non-official members of the Working Group on Professional Services under the Economic Development Commission (EDC) led by the Chief Executive of HKSAR. The terms of reference of the EDC are to provide visionary direction and advice to the government on the overall strategy and policy to broaden Hong Kong's economic base and to enhance Hong Kong's economic growth and development; and, in particular, to explore and identify growth sectors or clusters of sectors which present opportunities for Hong Kong's further economic growth, and recommend possible policy and other support for these industries.

Liu Ting An

Liu Ting An, Deputy Chairman and President of China Life Insurance (Overseas) Company Ltd and HKICS Fellow, was appointed as one of the non-official members of the Financial Services Development Council (FSDC) led by Laura Cha. The terms of reference of the FSDC are to provide a high-level and effective platform for stakeholders to explore ways to complement the internationalisation of Chinese financial markets and to help facilitate the further development of Hong Kong's financial services industry, including advising the government on areas related to diversifying the financial services industry and enhancing Hong Kong's position and functions as an international financial centre of China and in the region.

Wendy Yung Wen Yee

Wendy Yung Wen Yee, Executive Director and Company Secretary of Hysan Development Co Ltd and HKICS Fellow, has been appointed to the Standing Committee on Company Law Reform (SCCLR). The new SCCLR line-up also includes a new Chairman – Anderson Chow Ka Ming, a senior counsel with broad civil practice experience in company law matters. He succeeds outgoing chairman Godfrey Lam Wan Ho. HKICS President Edith Shih also stepped down from the SCCLR after six years on the Committee.

市后的信息披露要求，并强化对公司治理的要求。如英国修改公司治理准则和相关法规，加强对审计委员会行使职责等方面的信息披露；出台法律草案，要求上市公司披露董事会和高管成员中的性别比例。香港则增强对上市公司市场披露及社会责任的要求，例如要求公司对环境保护和社区参与作出报告，以及要求上市公司的董事会成员多元化。针对香港市场的年度报告，他提示应特别注意事项主要包括关联交易章节、权益披露章节及企业管治章节。

针对已于2012年1月1日实施的港交所上市规则最新修订，刘巍特别提到，对公司秘书任职资格及后续专业培训提出了更明确及严格的要求，规定公司秘书包括联席秘书（董事会秘书）须每财年参加不少于15学时专业培训。所有董事应参与持续专业发展并更新其知识及技能，以确保其继续在具备全面资讯及切合所需的情况下对董事会作出贡献。发行人应负责安排合适的培训并提供有关经费，以及适当注重上市公司董事的角色、职能及责任。

在最后的讨论环节，现场讨论嘉宾都极为关注如何做好信息披露，让上市公司内部控制从只关注财务报告转变为覆盖面更为全面。嘉宾们均表示，对于上市公司而言最重要需做好三个披露：一是年报、有关财务及企业情况、环境社会报告等情况披露，第二是年度发生的重大事件披露，第三则是尚未发生事情的披露。披露到位需要完善的制度流程进行内部控制，而在实际操作过程中，很多高管都认为内控与其无关，事实上，上市公司需认识到内控是公司整体系统的一部分，而非监管部门强加的要求。

IQS examination timetable (May 2013)

	Tuesday 28 May 2013	Wednesday 29 May 2013	Thursday 30 May 2013	Friday 31 May 2013
09:30–12:30	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
14:00–17:00	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Examination enrolment

Examination enrolment for the May 2013 diet starts from 1 March and ends on 28 March 2013. The examination entry form will be available on the Institute's website in late February 2013.

IQS book order form

The updated book order form is available for download on the Institute's website.

HKU SPACE examination preparatory courses (Spring term)

HKU SPACE examination preparatory courses (Spring term) begin from 21 February 2013. Please refer to the timetable and enrolment form on the Institute's website. For queries, please contact HKU SPACE at 2867 8478.

HKICS examination technique workshops

These three-hour workshops covering the eight subjects which aim to improve students' examination techniques will commence in April 2013. The fee is HK\$400 per workshop. Students can download the enrolment form on the Institute's website.

IQS information session

On 21 January 2013, the Institute held an IQS information session for members of the public who are interested in exploring or pursuing a career in the Chartered Secretary profession. Iris Liu ACIS ACS, Company Secretarial Officer from the Emperor Group, shared her experience of working in the company secretarial profession.



Candy Wong presenting a souvenir to Iris Liu ACIS ACS

‘PRC Corporation Practices’ – HKU SPACE programme series

Programme name	Date	Time	Venue
Taxation in PRC (中国税务)	2 Mar, 9 Mar, 16 Mar and 23 Mar 2013 (Saturdays)	14:00-17:00 and 18:00-21:00	to be confirmed
Corporate Secretaryship in PRC (中国董事会秘书实务)	20 Apr, 27 Apr, 4 May and 11 May 2013 (Saturdays)	14:00-17:00 and 18:00-21:00	to be confirmed
Corporate Law in PRC (中国公司法)	8 Jun, 15 Jun, 22 Jun and 29 Jun 2013 (Saturdays)	14:00-17:00 and 18:00-21:00	to be confirmed
Corporate Governance in PRC (中国公司治理)	6 Jul, 13 Jul, 20 Jul and 27 Jul 2013 (Saturdays)	14:00-17:00 and 18:00-21:00	to be confirmed
Corporate Administration in PRC (中国公司行政)	7 Jul, 14 Jul, 21 Jul, 28 Jul 2013 (Sundays)	14:00-17:00 and 18:00-21:00	to be confirmed

18 Enhanced Continuing Professional Development (ECPD) points will be accredited to participants who attain an attendance record of at least 75% in any of the above courses. For details of the ECPD points arrangement, please contact the Institute at 2881 6177.

For enquiries, please contact Ms Wong (Tel: 2867 8481) or Ms Lee (Tel: 2867 8473) of HKU SPACE.

Student Ambassadors Programme (SAP) – organic farm visit

An outing to the Lohas organic farm was organised for student ambassadors and mentors on 19 January 2013. A workshop on organic farming was delivered to the attendees and the group enjoyed a farm tour and lunch.



Group photo at the Lohas organic farm

Student Ambassadors Programme (SAP) – Summer Internship Programme 2013

This internship programme is important for promoting the profession to local university students and the Institute has been arranging summer internships for undergraduates since 2005. The internship period is for a maximum period of eight weeks usually running within June to August.

If members are interested and available to offer internship position(s) in the summer of 2013, or for any enquiry regarding internship arrangements, please contact the Education and Examinations section at 2881 6177 or student@hkics.org.hk.

Careers

To advertise your vacancy, contact Paul Davis:

Tel: +852 2982 0559

Email: paul@ninehillsmidia.com



We are the subsidiary of a listed company in Hong Kong having a vertically integrated organization from product development to retailing. We own several famous lingerie brands with more than 2,000 retail outlets in China and Hong Kong while operating three major production facilities located in China with a total of around 8,000 employees. To support the rapid growth of our business, we would like to invite highly committed and experienced professionals to fill the following position :

Company Secretary & Legal Counsel

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- Advise the board and the management team of new corporate governance requirements and ensure proper and timely compliance with the Hong Kong Listing Rules and other regulatory requirements
- Responsible for group day-to-day legal matters
- Liaise directly with the Hong Kong Stock Exchange and be responsible for drafting announcements, circulars and interim / annual reports
- Maintain proper statutory records, including complete records of meetings, and assist in the review of other corporate projects for compliance and reporting purposes

Requirements: -

- Qualified solicitor
- Degree holder and member of HKICS or ICSA
- Minimum 5 years post qualification experiences preferably gained from manufacturing industry
- Familiar with Listing Rules, SFO, Companies Ordinance, Contractual Law, Trademark and Patent application and renewal. Experienced in preparation of Annual Report, Circular, Press Announcement; Stock Exchange's filings and corporate governance report

- Knowledge of PRC Contractual Law, Trademark and Patent application and renewal
- Well-organized and systematic, proactive, able to work independently
- Good communication and interpersonal skills
- High proficiency in both written and spoken English and Mandarin
- Proficiency in computer skills (MS Office and Chinese Word Processing)

A competitive remuneration package and excellent career prospects will be offered to the right candidate. Interested parties please send full resume with salary expectation and availability to:

Assistant Human Resources & Administration Director, Embry (H.K.) Limited, 7/F., Wyler Centre II, 200 Tai Lin Pai Road, Kwai Chung, N.T. or E-mail to emhrd@embryform.com.

Candidates who have not been invited for an interview within six weeks may consider their applications unsuccessful.

(Data collected would be used for recruitment purpose only.)



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Company Secretarial Manager

Requirements:

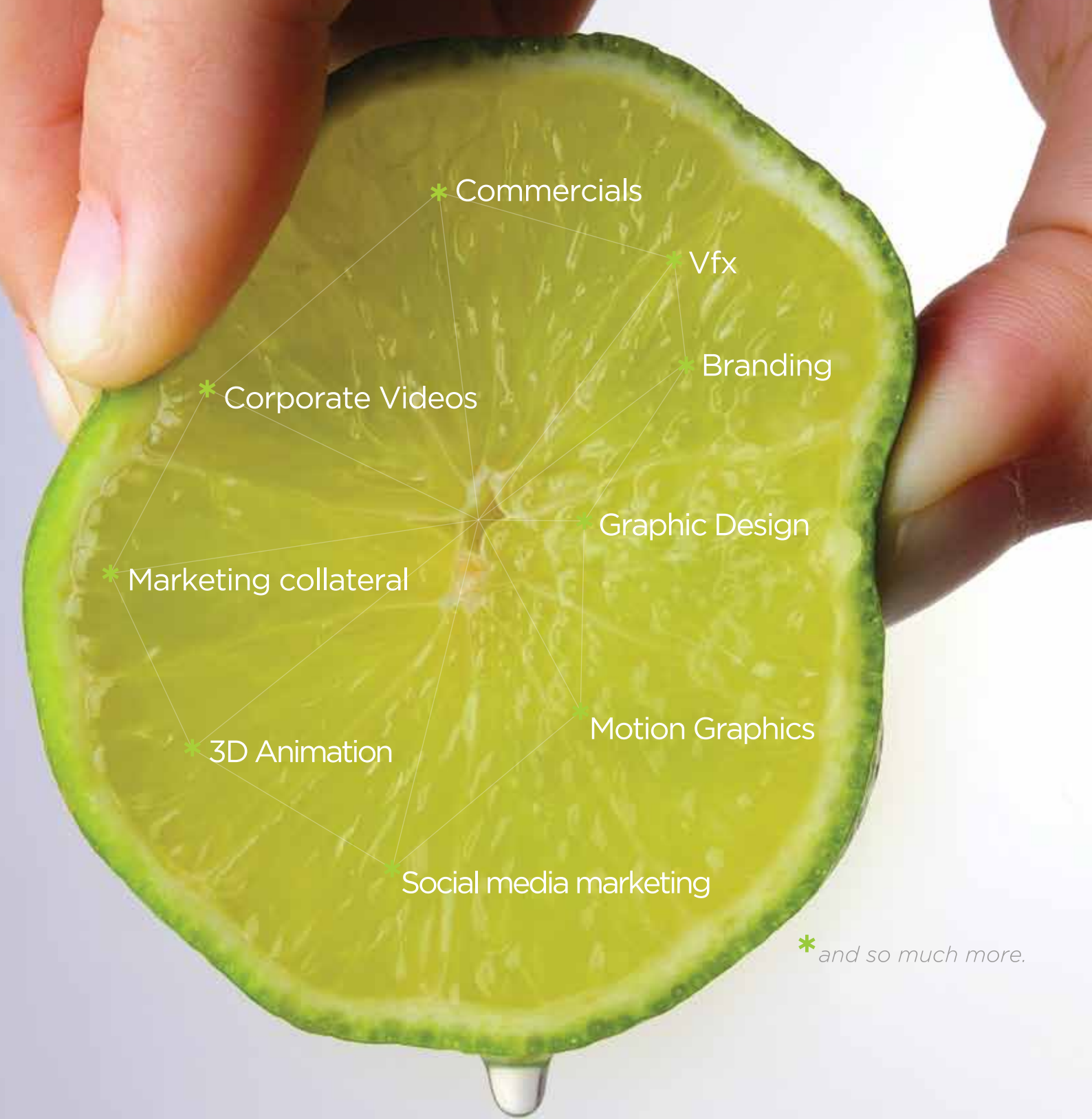
- ACS and university graduate/professional diploma holder of company secretaryship / corporate administration;
- At least 10-12 years' company secretarial experience gained from listed companies or professional firms, of which about 4 years in supervising a team of professional staff;
- Well-versed in Hong Kong Listing Rules, Companies Ordinance, Securities and Futures Ordinance, Takeovers Code, etc.
- Self-motivated, meticulous, able to meet tight schedules and work under pressure
- Proficient in MS Office including Chinese Word Processing
- Good communication skills including both written English and Chinese

Applicants with less experience will be considered for the post of Assistant Company Secretarial Manager.

Please quote the position and reference number (11/137/CSJ) in your application and apply with full resume to:

Group Human Resources & Administration Controller, Lai Sun Development Company Limited, 11/F, Lai Sun Commercial Centre, 680 Cheung Sha Wan Road, Kowloon or by email to hr@laisun.com

Personal data provided in the employment applications will be treated in strict confidence and used only for recruitment purpose by the Lai Sun Group of Companies. All unsuccessful applications will be destroyed upon completion of the process.



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