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January 2013

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The journal of The Hong Kong Institute of Chartered Secretaries

香港特許秘書公會會刊

The year ahead

A compliance primer for 2013

New PSI disclosure rules
Competition ordinance
Ben Mathews interview

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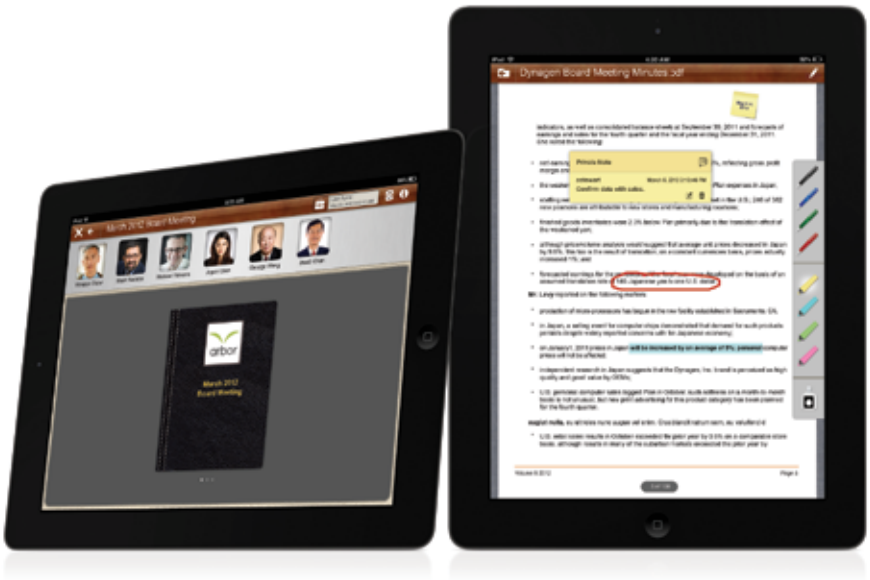

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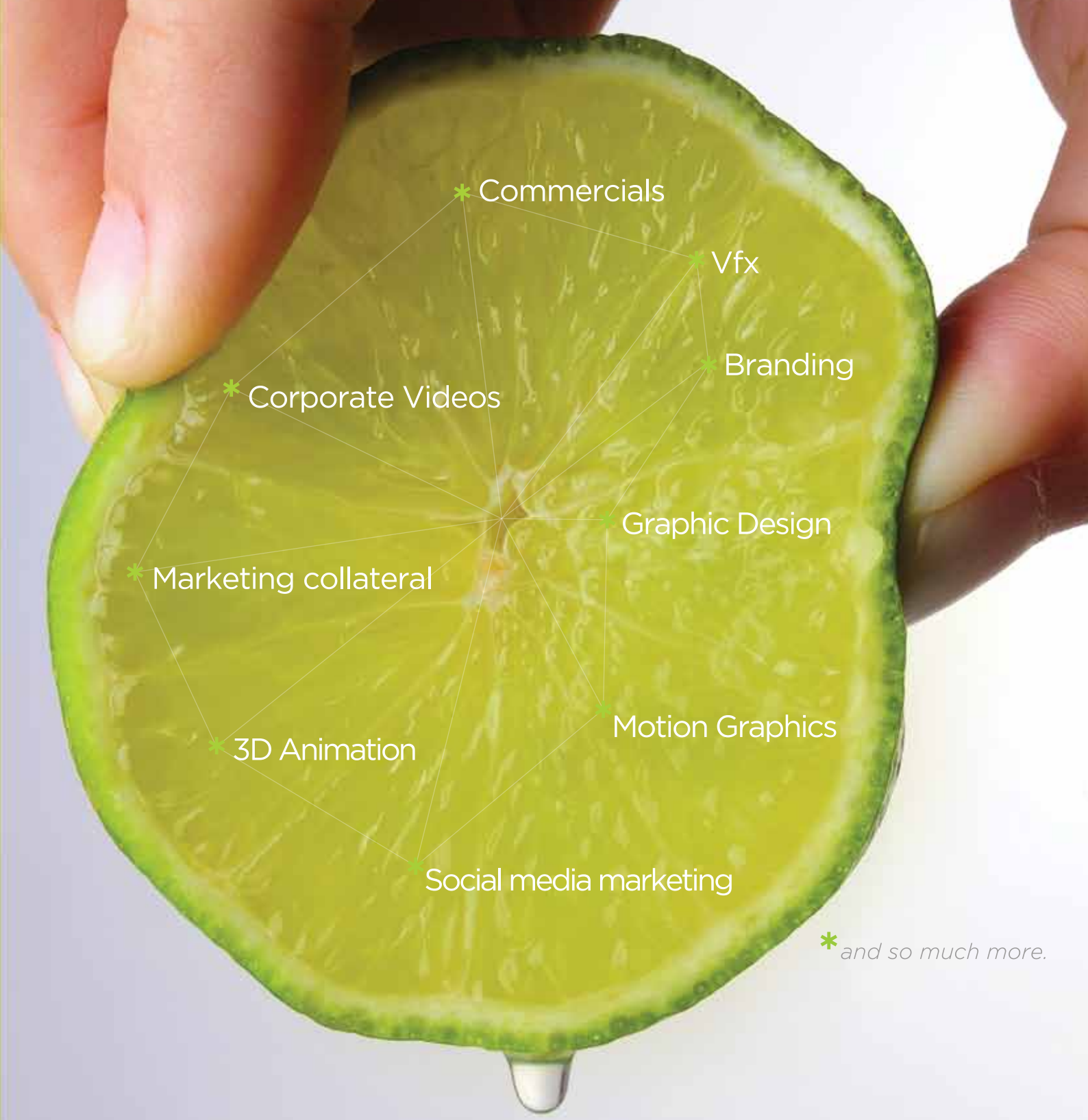

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

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

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

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January 2013

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

Circulation: 9,100
Annual subscription: HK$2600 (US$340)
To subscribe call: (852) 2982 0559 or
email: enquiries@ninehillsmedia.com

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ISSN 1023-4128

ninehills media

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What makes a good company secretary?

This month sees the implementation of the Securities and Futures (Amendment) Ordinance 2012 (the revised SFO). This will not, of course, be news to *CSj* readers since most practitioners will have been setting up the necessary internal control systems to ensure compliance with the revised SFO over the last six months.

The challenges involved in this process has made me reflect on the nature of compliance work and the skills needed by company secretaries today. As anyone familiar with compliance work will know, the key to effective compliance is not limited to having a good grasp of the relevant black letter requirements. Compliance with the revised SFO is a prime example of this. The new regime provides that, unless exempted, a listed company must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose that information to the public.

That might sound reasonably straightforward, but the catch comes in the definition of 'inside information'. This is where the compliance trail leads us away from the black letter approach and into very different territory. As Timothy Loh, Partner, Timothy Loh Solicitors, puts it in his article on the revised SFO in this month's journal (see pages 14–19), 'In practice, what constitutes inside information is often a difficult question of judgement. Information which may constitute inside information in one context may not constitute inside information in a different context'.

The fact is, it is impossible to define 'inside information' in a comprehensive and unambiguous way. The revised SFO broadly adopts the existing definition of inside information (previously known as 'relevant information') from the market misconduct regime. Inside information needs to be relevant and specific; it must not be information generally known to that segment of the market which deals or would likely deal in the corporation's securities; and it must be information that would be likely to materially affect the price of the corporation's securities.

Again, at face value, that would seem to be eminently clear, but, as Charles Grieve, Senior Director of Corporate Finance, Securities and Futures Commission, pointed out in his presentation at the Institute's Annual Corporate and Regulatory Update seminar last year, context is all. 'Specific' information does not necessarily mean 'precise' information – if your company has lost a lot of money but you don't know yet how much, you need to tell the market, Mr Grieve advises. Similarly, despite the fact that foreign exchange rates are generally known to the market, if your company's financial hedging strategy means that a change in those rates has resulted in substantial losses, you would be obliged to make a disclosure.

The uncertainty surrounding the definition of inside information in the revised SFO is not a special case. Similar challenges exist in the major pieces of legislation brought in last year which are covered in this month's journal. How should companies go about reporting on the environmental and social issues impacting their businesses as required by the new Companies Ordinance? How should companies determine whether any aspect of their operations will have an adverse effect on competition and so contravene Hong Kong's new Competition Ordinance?

These challenges do not stem from flawed legal drafting – it is impossible to draft highly precise and comprehensive rules that can be applied to all areas of corporate regulation. Hong Kong follows a principles-based regulatory approach which recognises that compliance with market rules involves a judgement call based on many factors.

In fact, effective compliance with the legislation covered in this month's journal requires an unusual combination of skills. Firstly, it requires a good sense of the bigger picture behind the legislation in hand. What stakeholder expectations led to the legislation in the first place? What are the regulators trying to accomplish with the new law? But it also requires attention to the minutest detail to identify how the new law will apply to the specific circumstances and business operations of the company, and to work out effective internal controls and procedures to ensure long-term compliance.

These, of course, are the skills that company secretaries spend their careers acquiring. Thus, while the legislation introduced last year has certainly increased the complexity and difficulty of company secretarial practice in Hong Kong, it has also provided a timely reminder to companies of the value such professionals bring.

Edith Shih *FCIS FCS(PE)*

良好公司秘书的特点

《2012年证券及期货(修订)条例》本月开始实施。对于本刊读者来说,这当然不是新闻,因为过去半年来,大部分业内人士都一直筹备设立所需的内部监控制度,确保符合修订后的条例。

这筹备过程所带来的考验,促使我反思合规工作的性质,以及今天公司秘书所需的技能。熟悉合规工作的人士都知道,要有效地遵从规则,仅对相关的法规条文有充分的认识是不足够的。遵从修订后的《证券及期货条例》便是个好例子,在新规定下,上市公司知道有「内幕消息」后,除非获得豁免,否则须在合理而确实可行的范围内,尽快向公众披露有关资料。

这规定看来简单直接,但问题就出在「内幕消息」的定义上。正是这种情况,把合规工作从直接的字面解释引领到另一截然不同的方向。正如Timothy Loh Solicitors律师行合伙人Timothy Loh律师在今期有关修订后的《证券及期货条例》的文章(见第14至19页)所指:「在实际运作上,哪些消息属于内幕消息,并不容易辨清,须运用判断力。在某情况下构成内幕消息的资料,在另一情况下可能并不构成内幕消息。」

实际上,我们不可能为「内幕消息」下一个全面而不含糊的定义。修订后的《证券及期货条例》大致采用规管市场失当行为的制度中现时对「内幕消息」(前称「有关消息」)所下的定义。内幕消息须是相关而具体的,并非普遍为买卖或有可能买卖有关公司证券的市场人士所知,而且相当可能会对该公司证券的价格造成重大影响。

表面看来,这定义也相当清楚,但正如证券及期货事务监察委员会企业融资部高级总监纪礼富先生在公会去年的公司规管最新发展研讨会中讲解时所指,一切视乎实际情况而定。「具体」消息不一定指「精确」的消息:假如公司有重大亏损,但你仍未知悉亏损数额,纪礼富先生建议你应向市场披露。同样,虽然外汇价格普遍为市场所知,假如在公司的财务对冲策略下,外汇兑换价的变动导致大额亏损,你便有义务予以披露。

修订后的《证券及期货条例》中内幕消息一词定义不明确,并非个别的特殊现象,去年通过的多项重要法例中也有类似的例子,请参阅本刊今期的讨论。公司应如何按新《公司条例》的规定,报告对业务有影响的环境和社会事宜?公司应如何确定其运作的任何方面会对竞争有不利影响,违反香港刚通过的《竞争条例》?

这些考验,并非法律条文草拟不当所致;要写出非常精确完备、可应用于各层面的公司规管的条文,是不可能的事。香港采用原则为本的规管制度,明白到合规工作牵涉判断过程,须考虑不同因素。

事实上,要有效地遵从本刊今期所讨论的法例,须具备多方面的技能。首先,合规人员须认识法例的背景:持份者有什么期望,令致某条法例获得通过?监管机构推出新法例,是想达到什么目的?此外,合规人员也须留意最细微的细节,辨清新法例如何适用于公司的具体情况和业务运作,从而制定有效的内部管控措施和程序,确保日后能持续遵守相关要求。

这些当然是公司秘书在整个事业生涯上不断学习的技能。因此,即使去年通过的法例肯定增加了香港公司秘书事务的复杂性和困难度,但也正好提醒各企业,公司秘书专业有极重要的价值。

施熙德

CHARTERED SECRETARIES
特許秘書

Your invitation to

The Hong Kong Institute of Chartered Secretaries'

Annual Dinner 2013

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

For enquiries, please contact the Secretariat at 2881 6177 or member@hkics.org.hk

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Ask the Expert

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

Q: *My company is a listed company in Hong Kong and I would like to know whether we can use solely electronic means to communicate with shareholders?*

Computershare

A: Since December 2010, Hong Kong incorporated companies have been able to communicate electronically with their shareholders (Companies Ordinance Part IVAAA). The Hong Kong Stock Exchange also allows listed companies, if they are permitted by their own constitutional documents, to communicate with both their registered and non-registered shareholders electronically (Rule 2.07 of the Main Board Listing Rules or Rule 16.04 of the GEM Listing Rules).

To meet the regulatory requirements, a listed company wishing to adopt electronic communications would initially send a notification letter together with a reply form to its registered shareholders. These shareholders are asked to choose the language and their preferred means of receipt of corporate communications and to return the reply form to the share registrar within 28 calendar days. The choices of communication methods will typically include receiving the English and/ or Chinese printed copies or accessing through the company's website. Corporate communications includes the annual report, interim report, notice of meeting, listing document, circular, proxy form and any document issued for the information or action of shareholders. Those shareholders who have not replied within the deadline are deemed to have consented to receive a web-based version of corporate communications.

Subsequently, each time the issuer publishes a corporate communication, it should send a notification to those shareholders who have expressly elected or who have been deemed to have consented to receive the website version of the communication. Such notification can be in the form of a letter or an email. For those shareholders who have elected to receive physical copies, the company must continue to send them hardcopies in their preferred languages.

For non-registered shareholders, the Hong Kong Stock Exchange allows the issuers to simply send them a notification together with a request form when it publishes a corporate communication, without the need to seek for their choices on the preferred means of receipt beforehand. Those who wish to receive a hardcopy may fill out a request form.

The share registrar will record the preference of both the registered and non-registered shareholders who have returned request forms. Ongoing communications will be sent to these shareholders according to their preferences until they have ceased to be shareholders of the company. Shareholders are allowed to change their language preferences and the means of receiving corporate communications at any time. The issuer is required to provide an email address and a hotline during office hours for shareholder inquiries on any communications.

Since shareholders may separately request hardcopies from time to time, issuers will need to reserve a certain quantity of corporate communications to cater for such requests. As it is not easy to ascertain the exact quantities required issuers should consider using digital printing, which is more cost-effective for small print-runs.

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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@ninehillsmedia.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@ninehillsmedia.com, or telephone: +852 2982 0559.

The year ahead

A compliance primer for 2013

2012 was a momentous year for company secretaries in Hong Kong. In the wake of the dragon's passing, *CSj* assesses the implications going forward of the major corporate governance reforms and professional developments of last year. One thing is very clear, all compliance professionals in Hong Kong, company secretaries included, have a lot of homework to do.

The year of the dragon is supposed to be characterised by abundant good energy but last year's dragon, if he is judged by GDP growth and economic activity, was a rather mellow fellow. In one area, however, the dragon lived up to his reputation – it was a bumper year for corporate regulation.

'Bumper' is perhaps something of an understatement. 2012 gave us the gargantuan new Companies Ordinance, published in August, which will significantly change Hong Kong's compliance landscape in areas such as corporate reporting, directors' duties, corporate administration and management of the AGM.

In any ordinary year, the Ordinance's 900 sections and 11 schedules would have been quite enough to keep company secretaries busy, but the dragon had other surprises up his sleeve. In May the Securities and Futures Commission (SFC) published the Securities and Futures (Amendment) Ordinance 2012 – substantially expanding the existing framework for the disclosure of price-sensitive information by listed companies. 2012 also saw the introduction of Hong Kong's new Competition Ordinance; new requirements on anti-money laundering and counter-terrorist financing; amendments to the Codes on Takeovers and Mergers and Share Repurchases; new rules on company announcements during share trading hours; and a substantial revision of the Corporate Governance Code and associated Listing Rules.

Quite a lot for busy company secretaries to be getting on with, even without considering the overseas legislation they need to keep tabs on. As a result of the financial crisis, the international community has been implementing what the SFC has called 'the most radical financial reform proposals since the Great Depression'. Dodd-Frank, the UK Bribery Act, the Foreign Corrupt Practices Act (FCPA), the Foreign Accounts Tax Compliance Act (see 'FATCA: the facts' on page 12) and Basel III may have compliance implications for Hong Kong companies.

This month, *CSj* highlights the compliance challenges that this legislation and regulation will bring for company secretaries in Hong Kong.

The new Companies Ordinance

The final draft of the long-awaited Companies Ordinance was published in August last year. Of all the pieces of legislation brought in during 2012, it will undoubtedly have the most impact on company secretaries. The sheer scale of the law is daunting and most of the reforms it ushers in will have relevance for company secretaries.

The reforms topping the compliance 'to do' list at the moment are the Ordinance's corporate reporting provisions. Public companies, together with 'larger' private companies and guarantee companies, will be required to include an analytical and forward-looking Business Review in a Directors' Report section in their annual reports. The Review must include information relating to environmental and employee matters that have a significant effect on the company (see Schedule 5 to the new Ordinance for more on this).

Further details of the required contents of the Directors' Report are set out in the first phase of public consultation on the subsidiary legislation to be implemented this year as a precursor to the implementation of the new Companies Ordinance in 2014. The Companies (Directors' Report) Regulation will require a directors' report to include information on directors' interests, donations made by the company and its subsidiary undertakings, reasons for the resignation of a director, and other matters.

Despite the fact that these provisions will not come into force until 2014, company secretaries would do well to prepare now for their implementation. That said, not all companies will need to comply since the new Companies Ordinance includes provisions designed to facilitate 'small private companies' to prepare simplified financial and directors' reports. Company secretaries need to look at the detailed size and other criteria stipulated in the new

Highlights

- the legislation and regulation published in 2012 will significantly change Hong Kong's compliance landscape
- it is still unclear how the new legislation will be interpreted by the courts – in particular the definition of 'inside information'
- guidelines are available but they are 'non-exhaustive and purely indicative' – companies will need to make a judgement call regarding compliance

> "one thing is very clear, all compliance professionals, company secretaries included, have a lot of homework to do"

Ordinance to see whether their company qualifies for this simplified reporting.

Other relevant reforms implemented, or to be implemented, by the Companies Ordinance are set out below.

Deregulatory reforms relating to annual general meetings (AGMs). One of the primary goals of the Companies Ordinance rewrite exercise was to reduce, where possible, companies' compliance burden. This is evident in a number of provisions relating to the AGM, for example enabling companies to dispense with AGMs by unanimous shareholders' consent and hold general meetings at more than one location using electronic technology.

Deregulatory reforms relating to company administration. The Ordinance abolishes the memorandum of association and the concept of par value shares. Current provisions in a company's memorandum of association will be regarded as part of the company's articles, and existing balances in the share premium account and capital redemption reserve will become part of the company's share capital.

Reforms relating to officers of the company. Several provisions of the new ordinance will have implications for company secretaries as officers of the company and may affect their personal liability. For example, the Ordinance lowers the threshold for prosecuting an officer of the company for a breach of various administrative requirements, such as a failure to file returns and documents on time with the Companies Registry.

Codification of directors duties of care, skill and diligence. Directors' duties of care, skill and diligence have been codified, including both subjective and objective tests. Directors' fiduciary duties remain uncodified and will continue to be defined by case law.

The second phase of public consultation on the subsidiary legislation to be implemented as a precursor to the implementation of the new Companies Ordinance closed last month. The consultation conclusions should be published in the first quarter of 2013 on the websites of the Financial Services and the Treasury Bureau (www.fstb.gov.hk/fsb) and the Companies Registry (www.cr.gov.hk).

Hong Kong's governance scorecard

Company secretaries need to focus on the compliance implications of the new legislation and regulation brought in last year, but it is worth looking for a moment at the bigger picture. How effective will these new rules be? A law may start with its publication in the government Gazette, but its effectiveness is largely determined by what happens to it once it is unleashed on the market. How will it be perceived by the market? How effectively will it be implemented and enforced?

Moreover, where do these new laws and regulations place Hong Kong in the global corporate governance rankings? Global markets are increasingly compared on their corporate governance requirements – the rights of shareholders, equitable treatment of shareholders, disclosure and transparency, board responsibilities, etc – so where do we now stand in comparison with other major jurisdictions?

Over the course of 2013 and beyond, *CSj* will be tracking the major pieces of legislation and regulation brought in last year.

The Securities and Futures (Amendment) Ordinance

A more immediate concern from a compliance perspective is the Securities and Futures (Amendment) Ordinance 2012 which was enacted in May last year and became effective at the beginning of this month. The Ordinance introduces a statutory regime which substantially expands the existing framework for the disclosure of price-sensitive information by companies listed on the Stock Exchange of Hong Kong. The new regime has been of particular interest to company secretaries both from a compliance perspective and because of the potential personal liability it imposes on company officers. These issues are dealt with in full in the following cover story (see pages 14–19).

Corporate Governance Code and Listing Rule changes

In addition to raising company secretaries' work burden, the year of the dragon brought some significant benefits to members of the profession in Hong Kong. The changes to Hong Kong's Corporate Governance Code and associated Listing Rules brought in by Hong Kong Exchanges and Clearing (HKEx) in April last year, saw the roles and responsibilities of company secretaries defined for the first time in regulation (see new Section F of the revised Code).

Equally significant for company secretaries' standing in Hong Kong were the changes brought in relating to practitioners' qualifications, experience and training. In particular, new Listing Rule 3.29 requiring company secretaries to undertake 15 hours' professional training per year, which matches the Institute's mandatory CPD requirement implemented in August 2011.

Some other changes may seem fairly minor but are likely to have a significant impact on the way the company secretary role is perceived. For example, the requirement for any board decision to appoint or dismiss the company secretary to be made at a physical board meeting rather than by written resolution and the provision that the company secretary should report to the chairman and/ or chief executive.

Many other revisions to the Code and associated Listing Rules will have implications for the company secretary's advisory and compliance functions. For example:

- the board is now specified as being responsible for corporate governance and there is a new Listing Rule requiring the corporate governance policy and duties to be disclosed in the corporate governance report
- there is a new main board and GEM Listing Rule requiring one-third of the board to be INEDs
- the board is required to regularly review the contribution of directors and whether they are spending sufficient time on duties
- expanded Listing Rule 3.08 requires directors to take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to their attention
- new Code provision A.6.6 requires directors to inform the issuer of any change to their significant commitments in a timely manner, and
- directors need to disclose in the corporate governance report details

New rules: compliance homework for 2013

	Published	Effective
Companies Ordinance	August 2012	2014
Securities and Futures (Amendment) Ordinance	May 2012	1 January 2013
Corporate Governance Code	December 2011	1 April 2012
Listing Rules	December 2011	1 January 2012*
Competition Ordinance	June 2012	Late 2013 or early 2014

* The rule requiring one-third representation of independent non-executive directors (INEDs) on the board, became effective on 31 December 2012. The Exchange has adopted the same schedule for phasing in the requirement for 15 hours' professional training for company secretaries as the HKICS has adopted in its mandatory CPD programme. That is, a staggered implementation based on the date of the company secretary's appointment (for details, see the 'news and consultations' section of the Exchange's website www.hkex.com.hk, or the ECPD section of the HKICS website www.hkics.org.hk).

of how they complied with the code provision on training, which involves providing records of training they received.

The Competition Ordinance

In June last year, the Legislative Council enacted Hong Kong's new Competition Ordinance (Cap 619). Competition compliance will be a new area for most members of the profession since this is Hong Kong's first comprehensive competition law – it will apply to any company, listed or unlisted, so long as they are 'engaged in economic activity'.

The Ordinance prohibits the making or giving effect to anti-competitive agreements, concerted practices or the decisions of a [trade] association 'if the object or effect... is to prevent, restrict or distort competition in Hong Kong'. It also prohibits an undertaking with substantial market power [from] abusing such power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

These prohibitions are expected to come into force in late 2013 or 2014.

FATCA: the facts

Ensuring compliance with Hong Kong's changing legislation is a tough call, but these days compliance professionals also need to keep on eye on international compliance developments. Companies anywhere in the world might be subject to the requirements of global regulatory bodies, such as the World Trade Organisation and the Basel Committee on Banking Supervision, or to the increasing number of domestic national laws with an extraterritorial reach, such as the UK Bribery Act and the Foreign Corrupt Practices Act (FCPA).

There is some doubt under international law as to the legality of national states imposing jurisdiction over organisations operating outside their national borders, but this has not stopped the US and the UK in particular from imposing ever wider international jurisdiction in such areas as anti-corruption and anti-tax evasion legislation.

The latest battleground in this latter area is the Foreign Account Tax Compliance Act (FATCA) – a new US law designed to combat tax evasion by US persons holding investments in offshore accounts. Enacted in 2010, FATCA will be subject to a phased implementation starting on 1 January 2014 and concluding in 2017. Under FATCA, US taxpayers holding financial assets that exceed certain thresholds outside the US must report those assets to the US Internal Revenue Service (IRS). In addition, FATCA will require foreign financial institutions to report directly to the IRS certain information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.

FATCA is highly controversial and there have been some doubts about its enforceability, particularly since it shifts the regulatory burden for anti-tax evasion onto international financial institutions. FATCA will mean that financial institutions in Hong Kong with financial accounts held by US taxpayers, or held by foreign entities with substantial US ownership, will be expected to enter into a special agreement with the IRS by 30 June 2013 under which they will be obligated to:

- undertake certain identification and due diligence procedures with respect to its account holders
- report annually to the IRS on its account holders who are US persons or foreign entities with substantial US ownership, and
- withhold and pay over to the IRS 30% of any payments of US source income, as well as gross proceeds from the sale of securities that generate US source income, made to foreign financial institutions not participating with FATCA, individual account holders failing to provide sufficient information to determine whether or not they are a US person, or foreign entity account holders failing to provide sufficient information about the identity of its substantial US owners.

> "while the legislation introduced last year has certainly increased the complexity and difficulty of company secretarial practice in Hong Kong, it has also provided a timely reminder to companies of the value such professionals bring"

In his article on the new Ordinance (see pages 20–24 of this edition of *CSj*), Mark Williams, Professor of Law, Hong Kong Polytechnic University, urges company secretaries to take immediate action to ensure that they, and their boards, fully appreciate how these new prohibitions will affect the business of their companies.

The compliance challenge

It is too early to measure the success of the corporate governance reforms brought in last year, most of them are as yet untested. Moreover, in many cases, a fair degree of uncertainty remains as to how they will be implemented in practice.

The new PSI disclosure regime, for example, has raised a lot of concern in the market about the definition of 'inside information'. The revised Securities and Futures Ordinance (SFO) does provide a definition of 'inside information' but it raises as many questions as it answers. Charles Grieve, Senior Director of Corporate Finance, SFC, pointed out in his presentation at the Institute's Annual Corporate and Regulatory Update seminar in May last year that the uncertainty surrounding this definition is not the result of vague drafting. There are limits on how precise you can be when drafting rules on complex matters of corporate regulation – 'It is going to be a judgement call', he said.

The good news for companies somewhat daunted by this uncertainty is that the SFC has issued draft guidelines (effective this month) on the implementation of the statutory PSI disclosure regime. These guidelines include a list of examples of events and circumstances which may constitute inside information. Mr Grieve warned, however, that the list is 'non-exhaustive and purely indicative'.

There are similar concerns in the market about the definition of 'anti-competitive behaviour' in the new competition ordinance. Price fixing, bid-rigging, market allocation or limiting production are fairly obviously anti-competitive, but are there routine business practices which will now be caught by the ordinance? As Professor Mark Williams points out, determining whether an adverse effect on competition has occurred in a market requires an assessment of the product or service concerned, the nature of the supply or distribution channel, the size and market share of the suppliers or customers, etc.

The new legislation and regulation brought in last year reinforces the point that regulatory compliance cannot be a routine box-ticking process – it requires considered and well-informed judgement. This, of course, is where company secretaries come in. As Edith Shih, HKCIS President, points out in this month's President's Message: 'while legislation introduced last year has certainly increased the complexity and difficulty of company secretarial practice in Hong Kong, it has also provided a timely reminder to companies of the value such professionals bring'. CSj

> *The SFC guidelines on the implementation of the statutory PSI disclosure regime became effective at the beginning of this month and are available on the SFC website (www.sfc.hk). Since December 2012, the SFC has also been providing an informal consultation service on the new disclosure requirements.*

New requirements for PSI disclosure

A guide for Hong Kong company secretaries

New legislation in Hong Kong introduces a statutory regime for the disclosure of price-sensitive information by companies listed in Hong Kong. The regime substantially expands the existing framework and imposes personal liability on officers of such companies, including company secretaries. In this article, Timothy Loh, Principal, Timothy Loh Solicitors, provides an overview of the new legislation and offers suggestions on compliance.

The Securities and Futures (Amendment) Ordinance 2012 introduces a statutory regime mandating that companies listed on the Stock Exchange of Hong Kong (the Exchange) disclose price-sensitive information. This legislation, which is accompanied by guidelines (see the *Guidelines on Disclosure of Inside Information* on the SFC website) took effect on 1 January 2013.

Background

The new disclosure regime will supplement existing disclosure requirements under the Listing Rules. The latter have sometimes been regarded as inadequate because sanctions for breach have historically been limited. However, given a more aggressive approach recently by the SFC and the courts in interpreting the Securities and Futures Ordinance (SFO), it is clear now that the pre-existing disclosure regime was not as inadequate as some once thought. As a result, the new disclosure regime will, in fact, only provide another tool (albeit an important tool) for ensuring market transparency.

Taken together, the pre-existing and the new disclosure requirements will mean that officers of listed companies now face an array of possible sanctions for failing to properly disclose price-sensitive information. It is therefore incumbent upon listed companies and their officers to establish policies and procedures to ensure compliance.

The new disclosure regime

The new disclosure regime establishes obligations for listed companies to make disclosure and for their officers personally to ensure that disclosure takes place properly. At the heart of the new disclosure regime is the definition of 'inside information'. This term determines what constitutes price-sensitive information and therefore what needs to be disclosed and when. For companies, the regime provides that, unless exempted, a listed company must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose that information to the public.

Inside information

The new legislation broadly adopts the existing definition of inside information (previously known as 'relevant information') from the market misconduct regime. As a result, 'inside information' means, in relation to a listed company,

specific information that meets all of the following three conditions. The information must be:

1. ***relevant*** – it must be about the company, a shareholder or officer of the company or the listed securities of the company or their derivatives

2. ***non-public*** – it must not be generally known to persons who are accustomed to, or would be likely to, deal in the listed securities of the company, and

3. ***price-sensitive*** – if generally known to such persons the information must be likely to materially affect the price of those securities.

Practical difficulties

In practice, what constitutes inside information is often a difficult question of judgement. Information which may constitute inside information in one context may not constitute inside information in a different context. For example, a HK$50 million transaction may be significant for one listed company but may be insignificant for another substantially larger listed company.

Equally, information may be of an uncertain nature and its materiality therefore difficult to ascertain. Reasonable men may differ as to whether any specific piece of information may, by itself or in conjunction with other information, be likely to affect the price of a company's securities in a material way. For example, where a listed company is in discussions about a possible transaction, the extent to which those discussions have progressed will be critical in determining whether information about that possible transaction constitutes inside information. There is no bright line test as to when the discussions will have progressed far enough to constitute inside information.

SFC guidance

The SFC has issued guidance as to what constitutes inside information and such guidance is admissible in court, but it will not bind a court. Thus, in the end, in the event of any doubt as to what constitutes inside information, it will almost always be beneficial to seek independent professional advice. This is particularly so given that, as discussed below, (i) the new disclosure regime is not triggered unless

Highlights

- the revised Securities and Futures Ordinance substantially expands the existing framework for the disclosure of price-sensitive information and imposes personal liability on officers of listed companies, including company secretaries

- companies should consider drafting a formal written statement setting out the terms of their compliance programme and initiating staff training to ensure familiarity with the programme across the organisation

- companies should consider establishing a disclosure committee to monitor and direct PSI disclosure, and designating one or more company officer(s) conversant with regulatory requirements to be the company's spokesperson(s) for PSI disclosures

> **In practice, what constitutes inside information is often a difficult question of judgement. Information which may constitute inside information in one context may not constitute inside information in a different context.**

a reasonable person would consider that the information in question is inside information, and (ii) the failure to seek such advice may be regarded as negligent, thus exposing officers to potential personal liability.

Management accounts

It is unclear to what extent a listed company's financial position may constitute inside information ahead of the release of its financial results. Take for example a listed company whose financial year ends on 31 December. By mid-January, the company may have a fairly good idea of its financial results for the previous financial year but the financial results will not be finalised until an audit is completed. The audit itself may not be completed until March. Does information as to the financial results as set out in the management accounts constitute inside information? At least to the extent that the financial results may differ markedly from market expectations, it may be argued that such information may constitute inside information, otherwise a person would be permitted to trade on the basis of this information. If this is correct, then under the new disclosure regime, a listed company must disclose this information, possibly in the form of management guidance, even before the financial results have been audited.

Knowledge of inside information

As set out above, the new disclosure regime is triggered only when inside information has come to the knowledge of a listed company. In this regard, inside information has come to the knowledge of a listed company if two conditions are satisfied.

1. ***Officer knowledge.*** The information has, or ought reasonably to have, come to the knowledge of an officer of the company in the course of performing functions as an officer of the company. Significantly, liability may follow if an officer 'ought reasonably' to have known about the information and thus, it is no defence to deny actual knowledge.

2. ***Objective test.*** A reasonable person, acting as an officer of the company, would consider that the information is inside information in relation to the company. As a result of this condition, it seems that a good faith determination that information is not inside information does not discharge liability for breach of the new disclosure regime if it is subsequently held that such information was inside information.

It is not clear under the SFO who might qualify as an 'officer' for the purpose of the new disclosure regime. The SFO does provide that an officer will include a director, manager or secretary or any other person involved in the management of a listed company, but does not go on to define a 'manager' or a 'person involved in the management of a listed company'. In an attempt to clarify, the SFC has suggested in its *Guidelines on Disclosure of Inside Information* that a 'manager' will normally refer to a person under the immediate authority of the board who is charged with management responsibility affecting the whole of the corporation or a substantial part of the corporation.

Exemptions

Broadly, at present, there are three categories of exemption from the disclosure requirement. All these exemptions will apply on a case by case basis.

1. ***The disclosure is prohibited by Hong Kong law.*** A listed company is not required to disclose inside information if and so long as the disclosure is prohibited under, or would contravene, a restriction imposed by Hong Kong legislation or an order of a Hong Kong court. In this regard, a mere contractual restriction on disclosure would seem insufficient to invoke exemption as such a restriction would not originate from Hong Kong legislation; however, to the extent that such a restriction were enforced by a Hong Kong court

Action required

What should you be doing to ensure compliance? With the introduction of the new disclosure regime, it is perhaps timely for listed companies to review their policies and procedures to ensure compliance. Appropriate policies and procedures will, amongst other things, enable a listed company to demonstrate that it has in place reasonable precautions to preserve confidentiality of inside information which is not yet ripe for disclosure and to enable officers of a listed company to demonstrate that they have put in place proper safeguards to ensure disclosure as required. A failure in either of these regards may mean that a listed company will be unable to withhold disclosure of confidential information relating to a proposal or negotiation that has not yet reached fruition or that an officer may be more likely to be personally liable for a breach of a disclosure requirement.

The new legislation does not spell out what policies and procedures are required. The references to 'reasonable measures' and 'proper safeguards' are vague. We suggest a formal written statement setting out the terms of a compliance programme, staff training to ensure knowledge of the programme and programme content broadly as set out below.

- ***Governance structure for disclosure.*** This may, for example, include establishing (i) a disclosure committee to determine whether information constitutes inside information and what information will be disclosed, (ii) procedures for monitoring and escalating information which may constitute inside information to the disclosure committee, and (iii) procedures for seeking advice from legal advisers and regulatory bodies as the case may be to determine whether information constitutes inside information.

- ***Disclosure methodology.*** Policies and procedures may, for example, include (i) designating one or more spokespersons conversant with regulatory requirements to control the flow, quality and consistency of inside information being disclosed, whether written or verbal, and (ii) developing protocols for the release of information to vet the accuracy of information to be disclosed and to ensure timely and equal access by the investing public. These protocols should address how spokespersons should deal with rumours, analyst reports, conference calls and media requests for inside information.

- ***Security and confidentiality.*** Policies and procedures (i) to ensure that inside information which is not disclosed is kept confidential, (ii) to review publicly available information and information disclosed to analysts, the media or in conference calls to determine whether confidentiality has been breached, and (iii) to disclose inside information where confidentiality has been breached.

- ***Record keeping.*** Policies and procedures should be adopted to ensure that disclosure committee decisions are defensible and that there is no misunderstanding as to what has been disclosed and when.

through an injunction, it would seem sufficient to invoke exemption.

2. ***The disclosure is prohibited by foreign law.*** The SFC may, on an application by a listed company, waive a disclosure requirement if disclosure is prohibited under, or would contravene, any restriction imposed by legislation outside of Hong Kong, or any order of a court outside Hong Kong, or would contravene any restriction imposed by any law enforcement agency or other government authority outside of Hong Kong.

3. ***The information is confidential.*** A listed company is not required to disclose inside information if the information concerns an incomplete proposal or negotiation or the information is a trade secret. However, to qualify for exemption, the company must take reasonable

precautions to keep the information confidential and confidentiality must in fact be kept. If confidentiality is breached, a listed company must as soon as reasonably practicable after it becomes aware of the breach disclose the information. In this case, it will not be liable if, despite the breach, it had taken reasonable measures to maintain confidentiality. A listed company may, without breaching confidentiality, disclose the inside information to a person who requires the information to perform his functions and who is under a duty to keep the information confidential (for example a legal adviser).

Whilst the SFC has the power to create further exemptions in consultation with the Financial Secretary, at present, it may be that the regime is overly rigid given the absence of an *ad hoc* power for the SFC to waive or defer disclosure subject to conditions. This leaves no room for competing public policy considerations (for example safety or public order) which may be applicable to relax a disclosure decision but which may be inapplicable to relax a trading prohibition. The absence of discretionary exemptive relief means that disclosure decisions will be based solely on a judgement as to whether information does or does not constitute inside information rather than on a judgement as to whether information should or should not be disclosed. This may pervert the meaning of inside information so that there may be cases where a person can trade on inside information in circumstances where, from a policy perspective, he should be prohibited from so doing and conversely, there may be cases where a listed company must disclose inside information where from a policy perspective such disclosure may be premature.

Disclosure

Where a listed company is obliged to disclose inside information, it may do so in any manner that can provide for equal, timely and effective access by the public to that inside information. Under the new disclosure regime, a listed company will be deemed to have disclosed information in a manner that provides for equal, timely and effective access if it disseminates the information through the Exchange.

False or misleading disclosure

A listed company is taken not to have complied with its disclosure obligation if both the following conditions are met:

1. the company discloses information that is false or misleading as to a material fact, or is false or misleading through the omission of a material fact, and

2. an officer of the company knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact or is false or misleading through the omission of a material fact.

Holding announcements and suspensions

Where a listed company needs more time to clarify its position before disclosing information, the SFC has suggested in its *Guidelines on Disclosure of Inside Information* that the company should consider issuing a holding announcement which details as much of the subject matter as possible and sets out reasons why a fuller announcement cannot be made.

The requirement for equal, timely and effective access may, in practice, require that listed companies seek a suspension of trading in their securities pending the disclosure of inside information. Failure to do so may result in unequal disclosure.

Officers' obligations

Officers of listed companies who fail to comply with disclosure obligations may bear personal liability. Under the new legislation, every officer of a listed company must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of disclosure requirements. If a listed company breaches disclosure requirements, an officer may be personally liable if (i) his intentional, reckless or negligent conduct resulted in the breach, or (ii) he failed to take all reasonable measures from time to time to ensure that proper safeguards existed to prevent breaches. As defined under the SFO, in relation to a corporation, an 'officer' means 'a director, manager or secretary of, or any other person involved in the management of, the corporation'. Company secretaries are therefore exposed to potential personal liability.

It is significant to note that an officer may bear personal liability even if he has no intention to mislead the investing public. Negligence itself will suffice if it resulted in a breach, as will a failure to take all reasonable measures to ensure that proper safeguards are in place.

The negligence standard implies that listed companies should seek professional advice when there is any issue as to the appropriateness of the compliance programme, or as to whether information constitutes inside information. Failure to seek such professional advice may

> "with the introduction of the new disclosure regime, it is perhaps timely for listed companies to review their policies and procedures to ensure compliance"

be regarded as a basis for a claim of negligence.

Enforcement

It is contemplated that the new disclosure regime will be enforced by the SFC through the Market Misconduct Tribunal (MMT). Thus, the SFC will investigate and, if thought fit, refer the matter to the MMT for adjudication or further investigation. Should the MMT find a breach of disclosure requirements, it may make a number of civil orders.

In the first instance, the MMT has no jurisdiction to impose criminal penalties such as imprisonment. However, where a person has been found by the MMT to have breached disclosure requirements and, as a result, the MMT has ordered that the person must not again breach the disclosure requirements, if the person does breach disclosure requirements again, that person will commit a criminal offence punishable on indictment by imprisonment for up to two years.

Directors and officers liability

If a person (including any company secretary) is identified by the MMT as being in breach of a disclosure requirement, the MMT may make a number of orders including an order to:

i. disqualify the person from being or continuing to be a director, or from otherwise being concerned or taking part in the management of a listed company or any other specified company for up to five years, or

ii. prohibit the person from dealing in securities, futures or leveraged foreign exchange contracts or any interest in them or a collective investment scheme for up to five years.

Of particular concern for directors and chief executives of listed companies (but not other officers such as company secretaries), is that the MMT may also impose a regulatory fine of up to HK$8 million.

Statutory right of action

Independent of regulatory enforcement through the MMT, a person who breaches a disclosure requirement may be liable to pay compensation by way of damages to any other person who sustains any pecuniary loss as a result of the breach. Thus, for example, it seems that if a person relies upon publicly available information to make an investment and the information turns out to be wrong and as a result, the person suffers a loss on his investment, he may sue for that loss. However, liability for compensation will only arise where it is fair, just and reasonable.

The significance of this right of action is that it is a subsidised lawsuit. Under the new disclosure regime, a finding of a breach by the MMT is not only admissible as evidence to prove a breach but, unless the contrary is proved, is conclusive evidence of the breach for the purposes of the right of action. As a result, a private litigant need not undertake what would normally be expected to be a complex process of establishing liability.

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The SFC's 'Guidelines on Disclosure of Inside Information' are available on the SFC website (www.sfc.org) under Legislation and Regulatory Handbook/ Regulatory Handbook/ Code, Guidelines and Circulars.

Company secretaries, compliance and the Competition Ordinance

Hong Kong's new Competition Ordinance was enacted in June last year and is expected to come into force late this year or early 2014. Mark Williams, Professor of Law, Hong Kong Polytechnic University, looks at the compliance implications of the Ordinance for company secretaries in Hong Kong.

On 14 June 2012, the Legislative Council enacted the Competition Ordinance No 14 of 2012 (Cap 619). The Ordinance was published in the Gazette on 22 June 2012 and will be brought into force in stages, with the institutional provisions being activated first and the prohibitions and substantive provisions to follow once the new Competition Commission (Part 9) and Competition Tribunal (Part 10) are established. Thus, it is unlikely that the prohibitory conduct rules will be in force until late 2013 or even 2014, as, once established, the Competition Commission will have to engage staff and then commence an extensive consultation exercise on the numerous guidelines that will have to be finalised before the prohibitions can be activated and investigations of allegations of anti-competitive conduct commenced.

This legislative innovation has been anticipated for almost 20 years, after the then Governor Chris Patten, invited the Consumer Council to investigate the need for such a law due to allegations of structural and behavioural problems in the domestic Hong Kong economy that rendered many sectors uncompetitive to the detriment of consumers, whether individuals or other businesses. By 1996, the Consumer Council had completed six reports indicating that anti-competitive conduct was a significant issue in each of the markets they had studied and they recommended that a general competition law should be enacted speedily to deal with these widespread problems which could ultimately negatively affect Hong Kong's overall economic competitiveness by inhibiting market entry by new firms and stifling innovation.

In late 1997, the new government rejected the Council's principal conclusions and denied that such anti-competitive problems that did exist were serious. A voluntary pro-competition policy was adopted, along with a committee, which would monitor developments. COMPAG had no power to investigate or to sanction anti-competitive conduct. This remained the position until 2005 when the second chief Executive Donald Tsang, changed policy and began the process that ultimately led to the enactment of the Competition Ordinance.

Meanwhile, two sectors of the economy (namely telecommunications and broadcasting) were subject to pro-competition rules from the mid-1990s though with different legal provisions and different enforcement agencies. As a result of the Communications Authority Ordinance (Cap 616), the old Broadcasting Authority and the Office of the Telecommunications Authority were abolished and a single sectoral regulator was established, the Communications Authority. However, the Communications Authority will continue to implement the separate underlying regulatory provisions contained in Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106). This includes the two distinct competition regimes for each sector, both of which are different to the general competition rules that

Highlights

- company secretaries need to take immediate action to ensure that they and their boards fully appreciate how these new prohibitions will affect the business conduct of their company
- education of directors and relevant staff needs to be undertaken to raise awareness of the new law and what may not be permitted and the consequences of non-compliance should an investigation be conducted
- directors may face disqualification for up to five years where they have been personally involved with the offending conduct by directly approving it or not taking reasonable steps to prevent its occurrence (persons in the company who are accessories may also be liable)
- the Competition Commission will produce up to 12 sets of guidance to assist companies and their advisers assess their business practices to ensure compliance with the Competition Ordinance

apply to the rest of the economy. The Communications Authority and the Competition Commission will have concurrent powers to enforce the competition rules.

Substantive competition rules

The purpose of the Competition Ordinance is to protect the process of competition, so ensuring that consumers (individuals and firms) have access to greater product choice through the encouragement of innovation, competitive prices and that markets remain open and dynamic. The law applies generally to 'undertakings' which are defined in Section 2 as 'any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity'. Companies, whether listed or unlisted, established under the Companies Ordinance (Cap 32) are caught by this definition so long as they are 'engaged in economic activity'.

The Ordinance creates two specific prohibitions – the making or giving effect to anti-competitive agreements, concerted practices or the decisions of a [trade] association 'if the object or effect... is to prevent, restrict or distort competition in Hong Kong'; this is known as the First Conduct Rule. The Second Conduct rule prohibits 'an undertaking with substantial market power [from] abusing such power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong'.

These provisions are rather imprecise and general but that is common in competition legislation globally, as the law seeks to protect the process of competition, which is not a legal but an economic concept. Consequently, whilst the Ordinance does provide some examples of anti-competitive conduct caught by the prohibitions it is not definitive as much depends on the facts of each case and the analysis of economic effects in a particular market which can be infinitely varied and also change over time.

Critics of pro-competition legislation often protest that the law is uncertain and a minefield for the unwary as the same act in market A might be legal but unlawful in market B depending on the differing characteristics of the product or service concerned, the nature of the supply or distribution channel, the size and market share of the suppliers or customers. The economic effect of the conduct will entirely depend on this type of economic analysis to determine whether an adverse effect on competition in the relevant market has occurred or may occur in the future. The intention of the parties is irrelevant as the test is whether the 'object or effect' of the conduct is anti-competitive.

Furthermore, the territorial scope of the Ordinance is wide. Where anti-competitive effects are caused in a domestic market in Hong Kong, the relevant undertaking will be liable regardless of whether the base of the undertaking is outside Hong Kong. Various exclusions and exemptions to the law are made, one of the most controversial being the exclusion of virtually all statutory bodies from the ambit of the Ordinance.

Enforcement by the Competition Commission

Enforcement of the Ordinance's conduct rules will be undertaken by the Competition Commission. Stand-alone private rights of action were included in the original Bill but were dropped following vociferous lobbying by various business groups who said they feared significant consumer litigation and also that large undertakings would use the threat of litigation to intimidate smaller rivals, though no evidence of this irrational phenomenon was provided from anywhere else in the world.

The Competition Commission has wide ranging investigatory powers, including a right to obtain documents and information and to enter premises to search and seize evidence, when authorised by warrant. The Commission also has power to require information from relevant persons and the right not to provide self-incriminatory material is limited and it may require this information be verified by statutory declaration. The provision of false information or otherwise obstructing an investigation are specific criminal offences and subject to fines and/ or imprisonment.

A case may be settled by the issue of a warning notice if the conduct relates to the First Conduct Rule and does not concern 'serious anti-competitive conduct' defined as price fixing, bid-rigging, market allocation or limiting production. Such a notice may require cessation of the offending conduct and if it is not obeyed, the Competition Commission may bring proceedings before the Competition Tribunal to impose penalties and other remedies. Additionally, the Commission may issue 'Block Exemptions' to cover certain market practices or individual exemptions of infringing conduct subject to specific requirements. An infringement may also be settled by the offering of 'commitments' by the offending party to the Commission.

This might include promises to cease and desist from continuing such conduct or to do, or not do, anything else

> [Company secretaries] must become familiar with the principles of the law and how it will affect their companies. They may be held responsible by stakeholders if they neglect this duty and may even render their companies or themselves liable to sanctions if this obligation is neglected

necessary to prevent future restrictions or distortions of competition. Breach of such a commitment would allow the Competition Commission to take further enforcement action. The Commission also has power to offer leniency in cases where a party co-operates with the Commission in providing evidence or information relating to breaches of the First or Second Conduct Rules. This power is often used in overseas jurisdictions in cases relating to cartels which are usually secretive and difficult to prosecute without 'inside-information'. The Commission may grant complete immunity from public sanctions in return for co-operation but follow-on actions by customers or suppliers who can prove damage would not be immunised.

Powers of the Competition Tribunal

If the case cannot be settled, the Competition Commission has no power to impose a penalty or make any other enforcement orders – such powers are reserved to the Competition Tribunal. The Tribunal will be headed by a High Court judge who may also sit with expert assessors where necessary.

The Competition Commission must prove its case to the civil standard – on a balance of probabilities.

The Competition Tribunal on being satisfied to the requisite standard of proof, that a breach of a conduct rule has occurred, has a wide range of powers to impose financial penalties (up to 10 percent of the Hong Kong turnover of the firm concerned for a maximum of three years during which the contravention took place). Additionally, the tribunal is given a wide range of powers to remedy breaches of the law including declarations; interim or permanent positive or negative injunctions; restoration of property; disposal of business operations or assets; modification of agreements; declaring agreements void or voidable; payment of damages; ordering a person to deal or not to deal with another; access or the right to use goods, premises or facilities; disgorgement of unlawful profits; and, lastly, that a person can be disqualified from being a director or involved in the promotion, formation or management of a company for up to five years with a criminal penalty of a fine of up to HK$1 million and imprisonment of up to two years should the disqualified person breach the order. It should also be noted that persons deemed to be accessories to a contravention may also be subject to sanctions by the Tribunal.

Lastly, customers or suppliers who can prove damage caused by such contravening conduct that has either been admitted to the Commission or proved at the Tribunal by the Commission, are able to seek legal redress for damage suffered and other remedies to provide them with compensation and to ensure that the consequences of the anti-competitive conduct are fully remedied.

The role of the company secretary

Clearly, the Competition Ordinance is a major piece of economic regulation and imposes significant new obligations on

> “company secretaries can, and should, play a leading role in educating their companies about the new law”

companies and may significantly affect their commercial behaviour. Conduct which may have been entirely legal or a long-standing industry practice, may now be deemed to be unlawful. If contravening behaviour is suspected, the company might be subject to investigation by the Competition Commission. If that investigation is obstructed, criminal offences may be committed. If anti-competitive behavior is admitted or proved, the company may be liable to substantial penalties and be subject to orders that might radically affect its commercial behaviour. Private parties may be able to seek damages or injunctions. Legal costs may be heavy as the 'loser pays the winners costs' principle will apply. Directors may face disqualification for up to five years where they have been personally involved with the offending conduct by directly approving it, or not taking reasonable steps to prevent its occurrence. Persons in the company who are accessories may also be liable.

Consequently, company secretaries need to take immediate action to ensure that they and their boards full appreciate how these new prohibitions will affect the business conduct of their company. Education of directors and relevant staff needs to be undertaken to raise awareness of the new law, what may not be permitted and the consequences of non-compliance should an investigation be conducted. The new legislation may well not be brought into force for at least another year and so company secretaries have a window of opportunity to get themselves and their companies fully prepared for the implementation of this new regime. However, much of the detail in relation to the exact definition of offending conduct, how the Competition Commission will select enforcement targets, utilise its investigatory functions and the attitude of the Competition Tribunal to the seriousness of breaches of the law are all, as yet, unknown. However jurisdictions such as the UK, Singapore and Australia have all been through this process previously, so significant lessons can be learnt from their experience that will be useful to Hong Kong.

The Competition Commission will have to produce numerous sets of guidance in relation to various aspects of the Competition Ordinance which will set key parameters to assist companies and their advisers assess their business practices and to consider what, if any, risk they run of contravening the law and how that eventuality can be minimised.

Company secretaries can, and should, play a leading role in educating their companies about the new law. They must become familiar with the principles of the law and how it will affect their companies. They may be held responsible by stakeholders if they neglect this duty and may even render their companies or themselves liable to sanctions if this obligation is neglected. Ultimately, compliance with the new Competition Ordinance is just another requirement of good corporate governance practice.

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Professor of Law, Hong Kong Polytechnic University

The author can be contacted by email: afmarkw@polyu.edu.hk, or by phone: 2766 7099. Professor Williams will be holding a set of workshops in 2013 to assist members understand the principles and conduct risk assessments of company activities with regard to the new competition law.

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:

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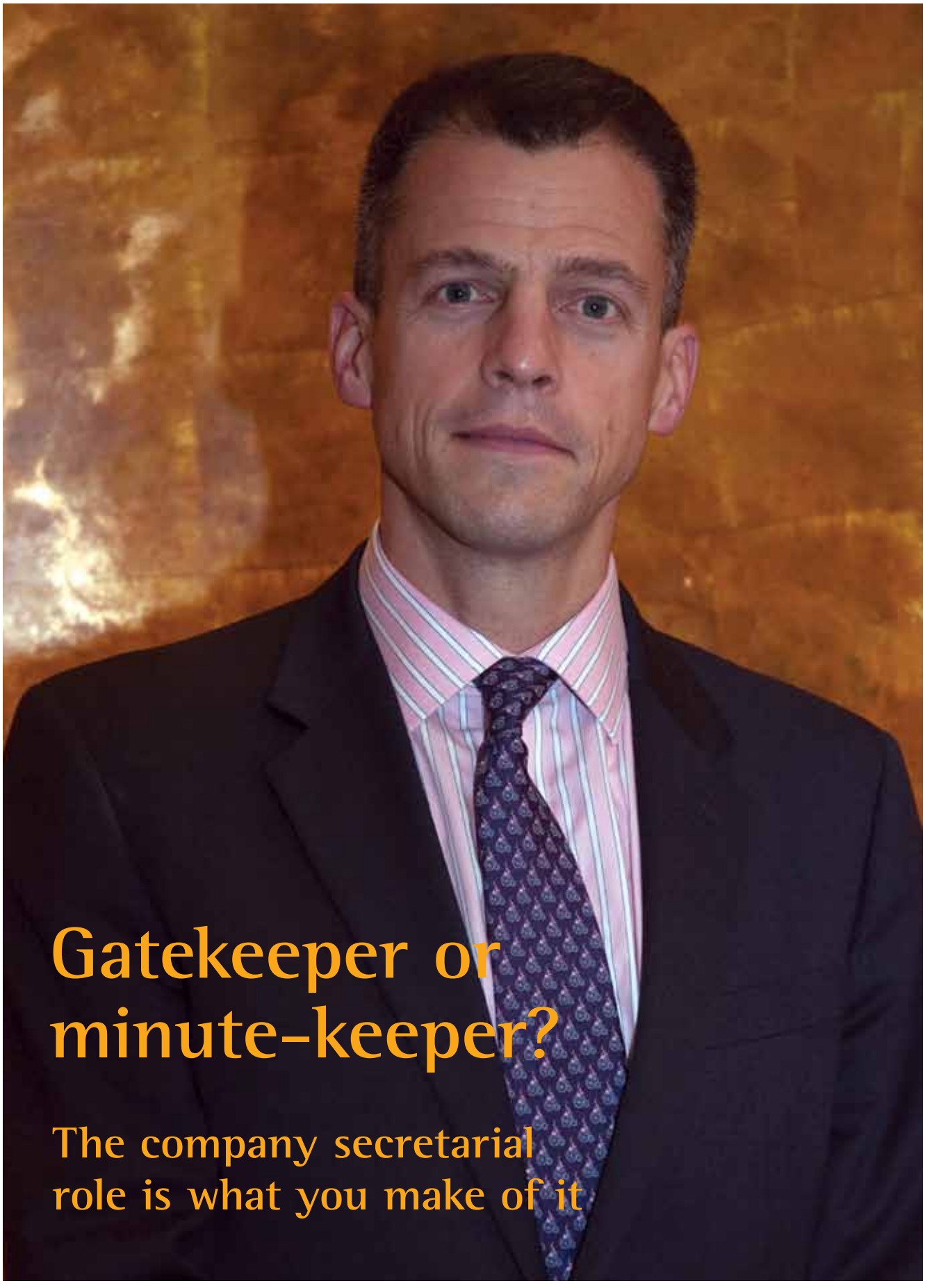
CHARTERED SECRETARIES 特許秘書



Gatekeeper or minute-keeper?

The company secretarial role is what you make of it

The expectations of the company secretarial role are higher now than they have ever been, but are company secretaries ready to take up the challenge? *CSj* talks to Ben Mathews, *FCIS,* Company Secretary and Global Head of Secretarial Services, Rio Tinto, about how to get the most out of your career.

Thanks very much for giving us this interview, can we start with some background about yourself?

'I graduated in European politics, history, geography and languages, so it was not a vocational degree in any sense of the word. When I left university I joined Price Waterhouse, as it was then, and spent four years with them during which time I qualified as a Chartered Secretary and worked in a range of areas across the firm, seeing companies at all stages of their lifecycle – from birth to grave!'

Did you take the Chartered Secretary exams as a part-time study?

'Yes. I took the exams over a two-year period as a post-graduate sponsored by Price Waterhouse. That's one of the great things about working for a larger firm – they invest in their most important assets – their people – and are therefore perhaps better than some in supporting training and development. It was a great place to start in the company secretarial world and I feel incredibly fortunate to have had that very strong, technical start in the professional services world.

I was seconded to a few clients during my time with Price Waterhouse and went on an extended placement with a large, FTSE-listed hotel and catering group called Forte in London. After seeing through a hostile and ultimately unsuccessful bid defence, I moved on for a few years to the conglomerate BAT Industries which then became British American Tobacco. These roles gave me a good general exposure to the core company secretary responsibilities.

I eventually moved to BG Group, the upstream oil and gas business of the privatised British Gas monolith created under the privatisation era of Margaret Thatcher. This provided me with an incredible exposure into the natural resources sector. I joined as Deputy Company Secretary and very shortly after that was lucky enough to be offered the opportunity to become the Company Secretary. I stayed with them for about six years before moving to Rio Tinto the Anglo-Australian miner, where I am now.'

Interesting to see that you did an arts degree before moving into the company secretary field – do you think it's a good thing have a varied background before specialising in this area?

'I think you're spot on there. The fact of the matter is that I was never attracted to the idea of doing a vocational degree and was able to make a move into business by pursuing an area of interest to me that developed during my period at University. I was lucky enough to have been able to do many varied and exciting things leading up to and during my time at University which I probably wouldn't have done if I had gone down the vocational path earlier. I think there is a richness of experience of different cultures that I was able to take advantage of and exploit in my roles when I started working and that I'm still able to exploit today.

It certainly helps to have a cultural and behavioural sensitivity in this role. There is a requirement for diplomacy and tact within a formal board environment. You need to recognise different and sometimes difficult and complex behaviours and weave them together to get the best possible outcome from the diverse range of skills and experience available around the boardroom table. Working with your chair to that effect is obviously important. I personally feel that some of the experience I've had outside of the corporate sector brings an emotional maturity and a regard and recognition for some of the challenges that boards today are facing.'

Can we turn to board effectiveness. I believe you were a member of the ICSA's Board Effectiveness Steering Group which helped draft the UK's 'Guidance on Board Effectiveness' (see 'Higgs revisited' on page 29). Are there lessons Hong Kong can learn from that exercise?

'What this area hinges on is making sure that directors have everything they need in order to come to effective decisions. That means making sure all of the infrastructure is in place and making sure that the directors have the right information – what you as the company secretary believe to be the right information – and in a balanced and digestible form. This is where things like the

> My role continues to present new challenges and stretches me in ways that I had never expected to be stretched when I started out in this career and that's part of the excitement, part of the challenge. I like that.

agenda for a meeting, whether it is a board or board committee meeting, is so critical as it leads to decisions being taken which, at the end of the day, could have long-lasting consequences for the company and its owners.

You also need to make sure you're giving enough time for discussion and dialogue – not too much, not too little. So you need to work through all of this with the chairman, chief executive and other members of the management team – what is required both from a time allocation perspective, but also in terms of the content of board papers and the inputs from the management team. It's all about managing and therefore balancing expectations. My job is to be the interface on the one side with the chairman and non-executives and on the other side with the management team to make sure that's all in place.

The revised guidance on the role and responsibilities of directors that I worked on with the ICSA in the UK was really interesting because that covered the roles that should be played by the chairman, the senior independent director, the independent non-executive directors, the executive directors and... guess what, the role of the company secretary. To judge by the number of copies of the guidance that have been accessed through one means or another, it appears to have been quite widely used and cascaded. I have certainly been embedding it into the processes that we have at the office, having spent quite a lot of time in dialogue with my own chairman to solicit his feedback and indeed other members of my board, so that actually has proved to be quite productive.'

What would you say are the most critical things for board effectiveness?

'You have got to get the information flows right. By which I mean you have to make sure that you provide, in particular to the non-executive directors, meaningful, concise and clear information at the right time, making it unambiguously clear what it is that you are seeking by way of decision, if indeed a decision is being sought at all. That may seem to be a very trite and easy thing to say, but to get it right every time is actually a much bigger task than you might believe. To company secretaries it is teaching your grandmother how to suck eggs because that's our bread and butter, that's what we do, but the expectations of management and the board about a discussion topic are not always aligned.'

You made some interesting points in your presentation at the Institute's Corporate Governance Conference 2012 about the expanding possibilities of the role of the company secretary – in particular the opportunity for company secretaries to think strategically for the board.

'Yes. I think there is a need to anticipate a problem before it becomes a problem – time and again you need to see the car

coming around the corner before it hits the buffers! It's keeping things in control and being in a position to advise and do something about it. Making connections between the various side comments that you receive from fellow directors and others within the management team is interesting and not without its own challenges. And bear in mind that problems, howsoever insignificant they may seem can quickly go "viral" in this social media world. So you have to be spinning all of those plates very fast, you're always under that scrutiny and expectations are much, much higher than before. The challenge facing the professional Chartered Secretary is one of being in a position to step up to the plate and keep ahead of the game. That's more easily said than done of course.'

Accountants have been very effective in promoting international financial reporting standards, do you think company secretaries should be promoting international corporate governance standards?

'I think that's incredibly difficult. It is much easier in my view to establish a standard basis for international financial reporting (assuming national regulators can agree!) because at the end of day the financial statements can only ever be just that – it's either 1 or 0 if you see what I mean. When you are talking about corporate governance standards, it's so much more difficult because this is necessarily a qualitative, principles-based assessment that is made. There are principles which perhaps have a potential to be applied globally. You might be able to apply the principles of the UK corporate governance code, for the sake of argument, or the Hong Kong equivalent, globally but not the detailed provisions – they don't respect jurisdictional differences, they don't respect different cultures or expectations.

Also, I have to ask myself the question, is it helpful to be able to point to the application of a detailed corporate governance provision when you are reporting to your shareholders? What do they get from it? Comfort that your company is operating in a form that is consistent with those detailed provisions? There may be some merit in that externally, but I wonder whether the reality of it is more complex. When you think about that actually happening in practice, the international corporate governance standards would have to be at such a high level as to actually raise questions about whether they are going to be of any use or comfort to stakeholders.'

Since the global financial crisis concern has been raised about the effectiveness of the comply or explain approach adopted in the UK and Hong Kong. What are your views?

'I have no bias at all but all I would observe is that there is a great deal of respect that exists, I think for good reasons, for a principles-based reporting regime which gives individual companies flexibility in the way in which they apply those principles – so long as investors and other stakeholders are happy to accept variations in their implementation, which isn't always the case.'

Yes, that seems to be an issue here, the stock exchange has received feedback suggesting that companies are reluctant to take the 'explain' route fearing that shareholders will see any deviation from the provisions of the Corporate Governance Code as bad governance.

'Yes, that's the 'comply or disdain' problem! But, seriously, there is an initiative that is brewing in the EU at the moment to take a swipe at the principles-based comply or explain regime in the UK by putting in place a legislative requirement that EU member states would have to adopt and report against. I think that just removes from companies the highly-respected flexibility that is currently afforded to them under the current arrangements.

You can read different things into the rationale for the move, but some have been arguing that the global financial crisis was the result of a failure of our corporate governance model. Is the corporate governance regime in the UK fundamentally broken? That is a big statement. The prime minister in the UK at the time of the global financial crisis, Gordon Brown, basically said just that. But David Walker [author of the 2009 Walker Review] believes it was not a failure of corporate governance but was

Higgs revisited

The UK's Financial Reporting Council (FRC) has published a number of guidelines designed to help companies implement the UK's Corporate Governance Code. Among them is the 2003 guidance based on the Derek Higgs report on the role and effectiveness of non-executive directors. In 2009, the Institute of Chartered Secretaries and Administrators (ICSA) in the UK was commissioned by the FRC to revise the Higgs guidance and it set up a Board Effectiveness Steering Group to carry out the work. Ben Mathews was a member of the Steering Group and helped draft the summation of their work – the *Guidance on Board Effectiveness,* which was published in 2011.

fundamentally about behaviours. The revisions made to the UK's Corporate Governance Code were in response to David Walker's report, including the request that directors should have available to them refreshed guidance on how to approach particular issues and on how to facilitate effective decision making around the boardroom table. Of course, that will never prevent another crisis. No form of legislation or corporate governance guideline will prevent another global financial crisis, you can never legislate for a solution, but the focus has shifted to the behavioural challenges.'

Do you think behavioural governance will become a more important issue in the future?

'Yes, I think it will. The expectations for directors are so much greater today amongst stakeholders, whether it's employees, shareholders or governments, directors are much more under scrutiny than they ever have been. I don't think that's a bad thing, they're having to take their responsibilities much more seriously than they have before.'

What does the future hold for you personally and do you have any advice for young entrants into the Chartered Secretarial profession?

'It continues to be a fascinating world to work in as a company secretary, not least in this particular sector. My role continues to present new challenges and stretches me in ways that I had never expected to be stretched when I started out in this career and that's part of the excitement, part of the challenge. I like that.

My advice to anybody that is coming up through the profession would be to never underestimate the scale of the challenge that is facing a company when it is trying to achieve the delivery of its strategy, and never underestimate the role that you as a Chartered Secretary can play in supporting and facilitating that. Given the heightened regulatory environment and the scrutiny that boards are under these days, there is a fantastic opportunity for company secretaries. I think the company secretary needs to step up to the plate and be an even more proactive player than perhaps has been the case in the past. That is not least by virtue of the fact that the environment is so much more challenging than it has ever been before, but I think there is a great opportunity to drive the agenda, to get yourself heard around the boardroom table. If you've got something to say, don't "shout it from the bottom of a well" as the saying goes – don't underestimate the contribution that you can make.'

Do you think the corporate governance advisory aspect of the role will come to dominate in the future? In the US many corporate secretaries are now their companies' designated 'Chief Governance Officers'.

'I think being the company's 'Chief Governance Officer' or 'CGO', is but one component of the role. This makes it a very big

Career reflections

- 'given the heightened regulatory environment and the scrutiny that boards are under these days, there is a fantastic opportunity for company secretaries'
- 'there is an expectation on the part of chairmen and boards that you are the company secretary, the Chief Governance Officer and whatever else they might want you to be'
- 'the [company secretarial] role continues to broaden in scope and keeping all those plates spinning at the same time is not easy'
- 'I think there is a need to anticipate a problem before it becomes a problem – time and again you need to see the car coming around the corner before it hits the buffers'
- 'If you've got something to say don't "shout it from the bottom of a well" as the saying goes – don't underestimate the contribution that you can make'
- 'My advice to anybody that is coming up through the profession would be to never underestimate the scale of the challenge that is facing a company when it is trying to achieve the delivery of its strategy, and never underestimate the role that you as a Chartered Secretary can play in supporting and facilitating that'

> “the company secretary needs to step up to the plate and be an even more proactive player than perhaps has been the case in the past”

role because there is an expectation on the part of chairmen and boards that you are the company secretary, the CGO and whatever else they might want you to be. In all seriousness, I think that the role continues to broaden in scope and keeping all those plates spinning at the same time is not easy.

We haven't talked, by the way, about the reporting lines of the company secretary and this is something I have an interest in. I report to my non-executive chairman and I think that approach is fine – it is transparent from a shareholder perspective. Of course, there isn't a single solution for every company in the same way that there isn't a golden ticket for corporate governance that can be applied across the world.'

Do you think that reporting to a non-executive chairman is preferable to reporting to a CEO?

'I don't think there is any right way to work the reporting line, other than to say that my experience has been that working directly to a non-executive chairman perhaps reinforces the independence and "line of sight" that the company secretary provides. Of course, there will be many companies that can't afford the expense associated with a resource that is purely reporting into the non-executive chairman. They need to be able to use the skill set that the company secretary brings in other areas, whether supporting the CEO or CFO in their work.

Some might say that having a completely independent company secretary might be a good thing. Perhaps, although this is a rather radical suggestion, company secretaries should not be employees of the company, perhaps they should be engaged under some kind of fee-based arrangement that preserves their independence. That would reinforce the trust amongst the non-executive component of the board, as well as other stakeholders, NGOs in our case, and shareholders obviously. It's a thought.'

You report to the non-executive chairman, but presumably you still work closely with the CEO and management?

'Of course. The beauty of the typical arrangement is that you are nicely juxtaposed between the two. Some might say you neither love them nor hate them and you are neither loved nor hated. The simplicity of the current arrangement is that it allows you to dip in and dip out. And there are still ways in which you can reinforce the independence of the company secretary, for example in the way in which he or she is assessed, appointed and removed.' CSj

Ben Mathews was interviewed at the Institute's Corporate Governance Conference 2012, held on 5–6 October in the JW Marriott Hotel, Hong Kong. He was a speaker and panellist in session two of the conference.

Bribery, corruption and enforcement

Time for tough questions and a sense of urgency

Governments, companies and communities cannot afford to be complacent in the fight against bribery and corruption, argues Mark Taylor *FCIS FCS*, Director, Boxall Barton Ltd

A hymn to the Greek goddess Athena includes the words: 'You bring folly to the corrupt and a sense of purpose to the pure'. So to what extent do governments, companies and communities have a sense of purpose when tackling corruption today?

Before looking at specifics, it is good to pause and consider the corrosive effect of corruption on society. In 2004, the seventh secretary-general of the United Nations, Kofi Annan, described corruption as an 'insidious plague', undermining democracy, posing a major obstacle to poverty alleviation and a threat to human security. In other words, the future for the global economy is bleak unless there is a determined fight against corruption.

Governments

Although there are strong statements of intent to fight corruption from many governments around the world, the enforcement statistics relating to the OECD Anti-Bribery Convention are sobering. According to the 2012 progress report by Transparency International, there are only seven countries with 'active enforcement' to deter foreign bribery. There are 12 countries in the 'moderate enforcement' category and 18 countries have little or no enforcement.

The UK is one of the seven countries classified by Transparency International as having active enforcement. However, the overall picture is not so positive with the enforcement system appearing to be under strain with significant fraud cases on the rise.

- The 11th *Global Fraud Survey* by Ernst & Young (E&Y Global Survey) notes that respondents in Western Europe have experienced a striking rise, with twice as many respondents as before suffering a significant fraud.

- The UK's Serious Fraud Office (SFO) is trying to manage a budget cut – media reports refer to a budget reduction from £52 million in 2008 to £32 million in 2012. The OECD has recently expressed concern that cuts could seriously hamper pursuit of complex fraud and corruptions cases.

- The latest figure from the UK's National Fraud Authority (see its *Annual Fraud Indicator* – March 2012) puts losses from fraud at £73 billion per annum. This figure puts the SFO's £50 million of assets recovered for 2011/ 2012 in context.

- UK businesses are taking risks in compliance with the UK Bribery Act. According to a recent research report from FTI Consulting, 31% of business people believe the Bribery Act exists mainly for appearances sake and to provide ethical guidelines.

- The OECD is looking for a zero tolerance stance to facilitation payments, but the SFO will only prosecute facilitation payments 'if on the evidence there is a realistic prospect of conviction' which suggests that complex facilitation cases with uncertain outcomes will be dropped.

Against this background, it is time to ask tough questions. Are any prosecution cases not being accepted for budgetary reasons? What happens to these cases? Do current investigator and prosecutor resources need to be strengthened? Last year the SFO initially decided not to open an investigation into Libor (the London Interbank Offered Rate which determines the average interest rate for inter-bank loans in the UK, significant fraudulent manipulation of this rate was discovered in June 2012), saying they did not have the resources to do the job and that it might overlap with work by the Financial Services Authority and the Office of Fair Trading. The decision was subsequently reversed.

The OECD itself is urging more enforcement and continues to issue hard-hitting monitoring reports encouraging countries to strengthen legislation,

Highlights

- there are strong statements of intent to fight corruption from many governments around the world, but this is not always backed up by adequate resources going into fighting bribery and corruption
- a significant reduction of the UK's Serious Fraud Office budget has led to concerns that investigation and prosecution resources in the UK will be inadequate
- the UK plans to introduce 'deferred prosecution agreements' (DPAs) designed to enable regulators to achieve out-of-court settlements in fraud cases setting out financial penalties and measures to prevent future offences

improve international cooperation and protect whistleblowers. From a UK perspective, there are some positive signs in the following areas.

- ***Government commitment.*** The Ministry of Justice website reminds us that, 'Treating economic crime more seriously and taking steps to combat it more effectively are key commitments in the coalition agreement.'

- ***Legislation.*** The Bribery Act 2010 came into force on 1 July 2011 and should result in a greater number of successful prosecutions. Whistleblowers can obtain some protection from dismissal or disciplinary proceedings under the Public Interest Disclosure Act 1988.

- ***New enforcement tools.*** Recent amendments to the Crime and Courts Bill, currently making its way through Parliament, include the planned introduction of 'deferred prosecution agreements', known as DPAs. These will result in some organisations being called to account without the time and expense associated with a criminal trial. Under the scrutiny of the judiciary, the DPAs will set out financial penalties, terms of reparation to victims, repayment of profits and measures to prevent future offending.

- ***Prevention.*** The Financial Services Authority issued a guidance document *(Financial crime – a guide to firms)* on 1 November 2012. This document runs to 69 pages and spells out good practice in relation to anti-bribery and corruption controls. Good practice includes regular review of procedures; independent monitoring of controls; consideration of how counter-fraud and anti-money laundering procedures will complement each other; clear criteria for the escalation of crime issues; and the need for practical training. With the Financial Conduct Authority planning to assume and continue the FSA's intensive supervision of financial crime issues, firms need to take the guidance seriously, particularly as the regulator has power to take action against firms that have inadequate systems and controls.

Companies

Most UK companies support eradication of corporate corruption and it is clear from the results of the FSA's thematic reviews that some will need to invest more resources in prevention measures. Organisations will need to focus on risk assessments, comprehensive due diligence, awareness training and monitoring. Some of these companies will be searching for growth overseas but will face the realities of competing on an uneven playing field.

Maintaining the right cultural values when companies operate in countries where facilitation payments are permitted and enforcement is weak will take strong leadership. By way of an example, at a time when the UK government is leading trade missions to growth economies such as Brazil, we can note from the E&Y Global Survey that 84% of Brazil respondents think that bribery and corruption happens widely in the country.

Communities

Greece is currently sitting centre stage in the European crisis with the worst levels of corruption in Europe. Local volunteers have recently set up a website (www.teleiakaipavla.gr) dedicated to sharing stories of corruption in the public sector. Media reports suggest 40,000 people visited the website within two weeks of its launch to highlight bribes. Whistleblowing on this scale can bring an added sense of urgency and purpose for those tasked with enforcement. How fitting that the people of Greece, generally considered the birthplace of democracy, are taking practical steps to encourage transparency and accountability.

Conclusion

The UK's anti-bribery and corruption framework is finally falling into place. However new legislation, prosecution tools and risk assessments are not enough. Serious criminal behaviour will only be deterred if governments commit the necessary resources to enforcement. A failure to investigate complex fraud cases will create a sceptical and cynical environment. By contrast, investment in enforcement, will increase confidence levels and give hope that the fight to alleviate poverty, conflict and inequality all exacerbated by corruption, will eventually bring economic recovery.

Mark Taylor ***FCIS FCS***
Director, Boxall Barton Ltd

Mark Taylor is a Fellow of the Hong Kong Institute of Chartered Secretaries. He can be contacted at: mark@boxalbarton.com.

The Financial Conduct Authority (FCA) will start work this year as the primary regulator of financial firms in the UK after the dissolution of the Financial Services Authority. More information can be found in 'The Journey to the FCA' on the Financial Services Authority website: www.fsa.gov.uk.

CHARTERED SECRETARIES
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2013年中國企業規管最新發展研討會

China Corporate and Regulatory Update 2013

The Mainland and Hong Kong capital markets are interdependent. By understanding each other can we effectively operate in both markets. Get the latest update from regulators and experts at the HKICS annual China Corporate and Regulatory Update.

Organiser:	The Hong Kong Institute of Chartered Secretaries
Date:	Thursday, 24 January 2013
Time:	9 a.m. - 12.30 p.m.
Language:	Putonghua
Venue:	United Conference Centre, 10/F, United Centre, 95 Queensway, Admiralty, Hong Kong

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

A review of seminars: November – December 2012

6 November 2012

Natalia Seng (Chair) and Samuel Li

From Natalia Seng FCIS FCS(PE), Chief Executive Officer, China and Hong Kong, of Tricor Group and Tricor Services Ltd and chair of the seminar delivered by Samuel Li, Samuel Li & Co, Solicitors & Notaries, on ***'Employers' liability insurance – what company secretaries should know'.***

'The speaker delivered a very comprehensive introduction to the subject and quoted relevant cases to elaborate his presentation. The presentation was well received and there was a very interactive discussion between the speaker and the audience.'

8 November 2012

Edith Shih (Chair) and Angela Mak

From Edith Shih FCIS FCS(PE), Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd, and chair of the seminar delivered by Angela Mak, Chief Financial Officer & Executive Director, TOM Group, on ***'Company structures and company secretarial practices in China'.***

'The presentation provided good solid information on the different types of PRC companies as well as corporate secretarial practices in China. Real life examples and interesting anecdotes made this presentation interesting and memorable. The information was delivered in an informal and lively manner which led to a good interaction between the presenter and the audience throughout the session.'

13 November 2012

Eric Chan (Chair), Roy Lo and Gloria So

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd and Gloria So, Risk Manager, Shinewing Risk Services Ltd, on ***'Relevant laws and regulations on inside information'.***

'Roy and Gloria delivered very useful and up-to-date information and also provided new insights to the career aspects and development of company secretaries. The case study and the Q&A session were very practical.'

15 November 2012

Davy Lee (Chair) and Francis Rowlands

From Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group, and chair of the seminar delivered by Francis Rowlands FCMA MCIM AMIMI AAE, Executive President, Dragon-IBP Asia LED Training Programmes; Immediate Past Chairman, Global Markets Committee, CIMA, on ***'Effective budgeting in a dynamic market'.***

'This is a very useful topic that attracted a big audience. However, the time available in this seminar was too short. As the chair of the seminar, I would recommend to expand it to a half-day workshop in order to fully cover the topic.'

19 November 2012

David Ng (Chair), Winnie Chung and Tim Mak

From David Ng FCIS FCS, Director, Lippo Asia Ltd, and chair of the seminar delivered by Tim Mak, Partner, Financial Services Regulatory, Hong Kong, Herbert Smith Freehills and Winnie Chung, Senior Associate, Litigation, Hong Kong, Herbert Smith Freehills, on ***'Regulatory investigations'.***

'Both Tim and Winnie are experienced in the regulatory investigation field. They conducted the seminar in a vivid way, with Winnie explaining the relevant rules and laws, and with Tim elaborating on the technical details. The handout was comprehensive showing the investigative powers of the regulatory bodies and useful practical tips on handling the investigations. The seminar was well conducted and well received.'

21 November 2012

Gloria Ma (Chair), Christopher So and Anthony Boswell

From Gloria Ma FCIS FCS(PE), Director, Corporate Secretarial, KCS Hong Kong Ltd, and chair of the seminar delivered by Anthony Boswell, Partner, Business Recovery Services division, PwC and Christopher So, Associate Director, Business Recovery Services division, PwC, on ***'Duties of officers when a company is in financial difficulties'.***

'Anthony and Christopher are both very experienced practitioners in turnaround and insolvency work. They highlighted the need to be alert to the warning signals of a company in financial difficulties, and offered potential solutions. They also illustrated real-life cases together with actions taken and outcomes. Anthony also shared with the attendees his experience in New Zealand and of court cases heard in Hong Kong and New Zealand on the conviction of officers.'

23 November 2012

Eric Chan (Chair) and Lam Chi Yuen, Nelson

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Lam Chi Yuen, Nelson, FCPA, CFA, Nelson Consulting Ltd, on ***'Financial reporting standards update for 2011/ 2012 (re-run)'.***

'Nelson's presentation was impressive. The theoretical financial reporting standards were presented in an easy to understand and interesting way. The whole seminar showed members the importance and implications of the revised financial reporting standards.'

A review of seminars: November – December 2012

29 November 2012

Lily Chiong (Chair), Clarice Yue and Michelle Chan

From Lily Chiong FCIS FCS, Senior Manager, Corporate Secretarial, KCS Hong Kong Ltd, and chair of the seminar delivered by Michelle Chan, Partner, TMT/Corporate, Hong Kong, Herbert Smith Freehills and Clarice Yue, Senior Associate, TMT/ Corporate, Hong Kong, Herbert Smith Freehills, on ***'Data protection law and trends in Hong Kong and Asia'.***

'Ms Chan and Ms Yue gave us an informative talk on the topic and provided us with an overview of data protection in Asia and an update on the Personal Data (Privacy) Ordinance including new direct marketing rules. The coverage was both comprehensive and practical. By quoting real cases, the presentation served to enhance the knowledge of the audience on the requirements of data protection including international data transfers.'

4 December 2012

YT Soon (Chair), and Dicky To

From YT Soon FCIS FCS, Director, Tricor Services Ltd, and chair of the seminar delivered by Dicky To, Managing Director, RSM Nelson Wheeler Tax Advisory Ltd, on ***'Internationalisation of RMB and its impact on Hong Kong'.***

'Dicky's presentation was very comprehensive and impressive. He is knowledgeable and managed to deliver a concise seminar, explaining the key issues, objectives, concerns and development on "Internationalisation of RMB". His practical and lively presentation manner and the real-life cases he illustrated helped enhance the audience's understanding of the topic. It is recommended that a re-run be arranged by the Institute to enable more members to participate!'

6 December 2012

Polly Wong (Chair), Peggy Leung, and Mark Jephcott

From Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller of Dynamic Holdings Ltd, and chair of the seminar delivered by Mark Jephcott, Partner, Head of Asian Competition, Herbert Smith Freehills and Peggy Leung, Senior Associate, Hong Kong, Herbert Smith Freehills, on ***'The new Competition Ordinance and what it will mean for Hong Kong businesses'.***

'Mr Jephcott and Ms Leung presented a succinct introduction and overview of the new Competition Ordinance and precisely highlighted its contentious and non-contentious implications for Chartered Secretaries and businesses in Hong Kong. Their concise illustration of conduct rules and various scenarios enhanced attendees' awareness of the new regime while their practical tips gave legitimate guidelines on due observance of the ordinance.'

10 December 2012

Eric Chan (Chair) and Candy Lam

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Candy Lam, Associate, Deacons, on ***'Copyright issues for business'.***

'Candy provided very useful information and let the audience understand the common pitfalls of the intellectual property related laws. She also gave advice to Chartered Secretaries regarding risk areas in their daily work.'

11 December 2012

Richard Leung (Chair) and Ricky Ho

From Richard Leung, Barrister-at-Law, Des Voeux Chambers, FCIS FCS, FCPA, Former President of HKICS, and chair of the seminar delivered by Ricky Ho, Director, Zhonglei Risk Advisory Services Ltd, on ***'Resumption of trading – internal control'.***

'The seminar was well received. In his presentation, Mr Ho highlighted the circumstances leading to the suspension of trading. Then he explained how an issuer could apply for resumption of trading and the preparatory work required. It was informative and interesting as many real-life examples were shown.'

12 December 2012

Roger Leung (Chair) and Sherman Yan

From Roger Leung FCIS FCS, Chief Legal and Compliance Officer of Shanghai Industrial Holdings Ltd, and chair of the seminar delivered by Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyers, on ***'Disclosure of PSI – Securities and Futures (Amendment) Ordinance 2012 and its implications on insider dealing (re-run)'.***

'The seminar was well organised and received by a large audience. The speaker Sherman, an experienced lawyer, delivered a well thought out and lively presentation with practical and interesting cases. This topic is quite "hot" and important to all of our members and the Institute should consider a re-run after the effective date of the relevant provisions of the SFO.'

13 December 2012

Bernard Wu (Chair), Calvin Lam, Polly Wan and Sharon Chan

From Bernard Wu FCIS FCS, Managing Director, Agricultural Bank of China Group – ABCI Investment Management Ltd, and chair of the seminar delivered by Calvin Lam, Tax Partner, Deloitte Touche Tohmatsu, Polly Wan, Director, Deloitte Touche Tohmatsu and Sharon Chan, Manager, Deloitte Touche Tohmatsu, on ***'Fund repatriation from China'.***

'The seminar was delivered by three speakers from Deloitte Touche Tohmatsu, a Big Four accounting firm. The materials were well prepared, all the speakers are experienced and seasoned professionals in the areas of cross-border tax issues and fund repatriation from China.'

Mandatory CPD

MCPD programme in-house training policy update

With effective from 1 January 2013, course providers applying for 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 selected 129 members who qualified between 1 January 2005 and 31 July 2011 for audit checking for CPD compliance during 2011/ 2012. Up to December 2012, 77% (99 members) 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 (mcpd@hkics.org.hk) by 15 August 2013.

Exemption from mandatory CPD requirements

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

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).

Appointment of Interim Chief Executive

The Council is pleased to announce the appointment of Edwin Ing *FCIS FCS* as Interim Chief Executive to oversee the Institute's Secretariat. Mr Ing, whose appointment began on 1 December 2012, is a senior Fellow of the Institute, with which he has a long association, and has extensive experience as a Chartered Secretary. The Council is confident that Mr Ing will contribute positively to ensuring that the highest level of service continues to be provided to members and students during this transition period, as well as helping to enhance the position of Chartered Secretary as governance professionals.

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
Cheng Man For *ACIS ACS*	China e-Learning Group Ltd (stock code: 8055)	2 November 2012
Ho Yuen Fan, Carol *ACIS ACS*	Wong's International (Holdings) Ltd (stock code: 99)	27 November 2012
Mok Ming Wai *FCIS FCS*	Future Land Development Holdings Ltd (stock code: 1030)	29 November 2012
Lam Yi Lin, Monica *ACIS ACS*	NagaCorp Ltd (stock code: 3918)	30 November 2012
To Suen Fan *ACIS ACS*	South China Holdings Ltd (stock code: 265)	30 November 2012
Chau Kwok Ming *FCIS FCS*	Up Energy Development Group Ltd (stock code: 307)	30 November 2012

Annual subscription 2012/ 2013 – final reminder

Members and graduates are reminded to settle their annual subscription for the financial year 2012/ 2013 on or before 31 January 2013. Payment can be settled by the Chartered Secretaries American Express Credit Card (see note), EPS or cheque (made payable to 'HKICS'). Failure to do so may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle a total of three years' subscriptions plus the re-election fee if they want to reinstate their membership. Members and graduates who have not received the remittance advice for the financial year 2012/ 2013, please contact the Membership section at 2881 6177.

Note: A HK$100 coupon will be issued to members or graduates who settle payment by using the Chartered Secretaries American Express Card only. All coupons can be redeemed against the cost of all ECPD seminars, members' activities and the Annual Dinner held from 1 August 2012 to 31 July 2013 subject to availability. For details of the card benefits and application form, please refer to the Institute's website.

New Graduates

Au, Jeanne
Chan Hin Tat
Chan Hoi Yan
Chan Ka Yi, Mathilda
Cheng Ka Ki
Choi Pui Fan, Frances
Du Hay Mou
Fong Kwok Kin
Fung Kam Ying
Ha Ching Ling
Ho Yuk Hay
Hui Chung Tak, John
Ip, Kammy
Ip Lap Ko
Kwok Po Kuen
Lai Sai Wo
Lam Wai Lun
Lee Ka Mun
Lee Man Sze
Lee Wing Hay, Haylie
Leung Oi Tak
Leung Sheung Ki
Leung Wing Yan
Leung Yuk Lan
Li Sau Kuen
Ling Ka Lun
Lo Man Ying
Mui On On
Ng Wai Fun
Shum Ka Man
Suen Yun Ling
Tang Chun Yung
Tsai Pak Leung
Wong Chak Yan
Wong Wing Yan
Yeung Kin Wang
Yeung Yin Mei
Yiu Tsang Ping, Darry

中国内地并购重组的监管框架与监管重点

香港特许秘书公会主办的第二十六期联席成员强化持续专业发展讲座7月18-19日在云南昆明举办。会上中国证监会上市公司监管部并购监管二处副处长蔡曼莉以《并购发展趋势与最新监管法规政策解读》为题，介绍了国内外上市公司并购重组发展趋势、国内市场的监管架构和制度。

This article reviews an ECPD seminar held on July 18-19 in Kunming for affiliated persons, in which Cai Manli of the China Securities Regulatory Commission explains the regulatory framework for merger and acquisition exercises in mainland China.

快速扩张的并购重组

“并购重组的交易数量和金额都在快速增长”，蔡曼莉在演讲的开头指出，国内市场上这一趋势在2006年更是开始加速，主要刺激因素源于股权分置改革让上市公司有了并购重组的发展平台。

而从全球市场来看，并购同样非常活跃，“世界500强企业都是通过并购快速发展起来的”，她提供的数据显示，“十一五”期间，我国的并购金额高达6.4万亿元，共交易1.67万单，分别是“十五”期间的4.5和6.4倍。同时，上市公司并购交易额的占比逐年上升。2005年以前平均占比不足20%，2006年到2010年的平均占比已达48%，2011年更是高达67%。值得关注的是跨境并购同期快速发展，2008年更是表现突出。“中联重科海外并购案是中国企业走出去非常好的案例，从中联重科后来的发展不难看出，海外并购让这家公司藉助国际渠道拓展海外市场，而且在收购后净利润、产品覆盖率大大上升”。

在并购的同时，更多的中国企业通过并购进行行业整合，蔡曼莉特别指出，近年来，境内的钢铁、航空、电信、煤炭、医药、装备制造、军工等行业都依托资本市场，进行了大规模整合，不少大型国企实现了集团整体上市，有力地促进了产业集中和结构调整。

监管框架

眼下，越来越多企业试图进行并购重组，蔡曼莉表示，上市公司并购重组监管的核心是通过强化信息披露机制和公平决策机制，使投资者了解上市公司控制权和核心资产业务重大变动的真实情况。

她为参会嘉宾介绍了并购环节需要关注的监管架构(图1)：第一个层次为基本法律，包括公司法和证券法；第二个层次是行政法规，包括正在起草过程中的上市公司监督管理条例，这一条例有望在今年内正式发布实施；第三是部门规章办法，根据不同的并购重组行为制定，如上市公司收购管理办法、重大资产重组管理办法、并购重组财务顾问管理办法、回购社会公众股份管理办法（试行）等；第四是自律规章，主要是中登公司及交易所业务规则。此外，一些外资、国资及特殊行业监管相关规定也需特别注意。

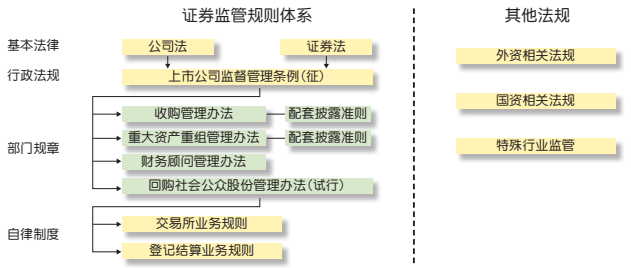


图1 并购重组监管的法规体系

在这些监管架构下，证监会上市公司监管部与交易所、证监局“三个部门、三点一线构成对上市公司的全方位监管”（图2）。她表示，除此之外，证监会还有发行部履行对再融资需求的监管，稽查局负责稽查上市公司违规行为。

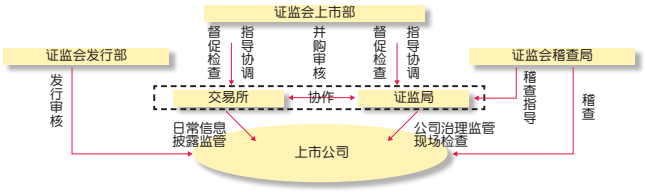


图2 并购重组监管的分工协调

根据股权和资产重组的取得方式不同，其监管方式已有所区别（图3）。

股权收购	取得方式	行政审批/信息披露
5%≤持股比例<30%	自愿要约	行政审批
	其他方式	信息披露
持股比例>30%	强制要约（全面或部分）	行政审批
	要约豁免	行政审批
资产重组	取得方式	行政审批/信息披露
资产变动≤50%	资产出售/购买/置换	信息披露
资产变动>50%	资产出售/购买/置换	行政审批
	发行股份购买资产	行政审批

图3 并购重组的监管方式

序号	行政许可项目	审核时限
1	上市公司收购报告书备案	10或20工作日
2	要约收购	15工作日
3	要约收购义务豁免(62条)	20工作日
	要约收购义务豁免(63条)	10工作日
4	上市公司重大资产重组(不上重组会)	20工作日
	上市公司重大资产重组(上重组会)	20工作日
5	上市公司发行股份购买资产	3个月
6	上市公司合并、分立	3个月
7	上市公司回购股份	10工作日

图4 并购重组监管的审核事项

不过，值得关注的是，监管层对不同类型的重大资产重组体现不同的监管重点：整体上市强调披露关联交易决策的公平性以及定价的公允性依据；对于同行业并购强调披露标的资产与既有业务的协同效应以及产业发展前景；借壳上市则强调披露拟借壳的经营实体的持续经营能力、规范运作水平。

新办法出炉

伴随并购重组的快速扩张，证监会出台《关于修改上市公司重大资产重组与配套融资相关规定的决定》，明确规定借壳重组标准与IPO趋同，这一规定旨在遏制市场绩差股投机炒作和内幕交易等问题，有利于统筹平衡借壳上市和IPO的监管效率。

蔡曼莉介绍，新规允许向第三方发行，规定上市公司为促进行业或者产业整合，增强与现有主营业务的协同效应，在其控制权不发生变更的情况下，可以向控股股东、实际控制人或者其控制的关联人之外的特定对象发行股份购买资产。

此外，新规减少了行政审批事项，取消因发行行为引发的豁免许可，取消30%以上大股东每年2%自由增持的豁免许可，取消50%以上股东自由增持的豁免许可，取消因继承引发的豁免许可。

下一步，证监会还将加大资本市场支持并购重组的力度，支持各种所有制企业利用并购重组加快发展，推动跨区域、跨所有制并购；并支持上市公司创新并购重组方式，提高资源配置效率；完善相关规章及配套政策，健全市场化定价机制；依法打击和防控内幕交易；加大中介机构在并购重组中的作用和责任，进一步规范和改进并购重组行政审批工作，并优化上市公司并购重组外部环境。

除此之外，来自中金香港、韬睿惠悦、史密夫律师事务所等机构的嘉宾分别就融资方式与渠道、并购重组之规划决策及其过程控制，企业并购尽职调查与风险规避进行了主题演讲。

The 28th Affiliated Persons (AP) ECPD seminars in Xiamen

Following the MoU with the Shanghai Stock Exchange (SSE) in 2011, a second joint annual training programme collaborating with SSE for board secretaries of A+H share companies included the 28th Affiliated Persons (AP) ECPD seminar which was held from 27 to 29 November 2012 in Xiamen on the theme 'Financial Audit and Performance Report'. Over 150 participants attended the seminars, including 46 from H-share companies, 10 from A-share companies, 49 from A+H companies, nine from red-chip companies and other professionals. Mr Wu Qi of SSE together with other senior professionals and senior board secretaries shared their views and experiences with the attendees.

A dinner gathering was held after the seminars on 27 November for networking purposes. The Institute would like to express its sincere thanks to the following organisations and companies for supporting and sponsoring the seminars and the dinner gathering.

Associate organiser:
Shinewing CPA Ltd

Supporting organisation:
Xiamen Listed Companies Association

Sponsors:

- Equity Financial Press Ltd
- Wonderfulsky Financial Group
- Computershare Hong Kong Investor Services Ltd

Membership activities

Happy Friday for Chartered Secretaries

The second 'Happy Friday for Chartered Secretaries' was held on 23 November 2012 at The Hong Kong Club with over 60 participants. Fellow members Peter Greenwood and Susie Cheung shared their insights on 'Making the Best of your Career' highlighting functional capability, communication and presentation skills, narrative ability, interpersonal skills, adaptability and honesty. Members enjoyed the sharing experience along with nice wine, drinks and snacks in a relaxed environment. CLP Holdings Ltd was the title sponsor of this Happy Friday.

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

Peter Greenwood and Susie Cheung sharing their insights with members

Members networking at the event

New membership re-election policy

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

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

We understand that members might have reluctantly chosen not to renew their membership due to sickness, unemployment, pregnancy, etc. This new re-election policy aims to encourage lapsed members to rejoin the Institute. All applications are subject to the approval of the Membership Committee.

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

Collaborative Course Agreement (CCA) signing ceremony 2012

The Institute held the Collaborative Course Agreement (CCA) signing ceremony 2012 with the Open University of Hong Kong, The Hong Kong Polytechnic University and City University of Hong Kong on 29 November 2012. The CCA is important to the Institute's development of the Chartered Secretary profession.

Edith Shih *FCIS FCS(PE)*, the President of HKICS, gave a welcoming speech to the attending guests. Alberta Sie *FCIS FCS(PE)*, the Education Committee Chairman, represented the Institute to sign the contracts with representatives from the three universities: Professor YK Ip, Dean, Li Shau Kee School of Business and Administration, Open University of Hong Kong; Professor Agnes Cheng, Head and Chair Professor of Accounting, School of Accounting and Finance, The Hong Kong Polytechnic University; and Professor JB Kim *FCIS FCS*, Head and Chair Professor of Accountancy, Department of Accountancy, City University of Hong Kong. This was followed by an exchange of souvenirs and lunch.

Other attendees at the signing ceremonies included:

Council Members

- Polly Wong *FCIS FCS(PE)*, Vice-President
- Bernard Wu *FCIS FCS*
- Paul Moyes *FCIS FCS*

Open University of Hong Kong

- Professor Alan Au *FCIS FCS*, Associate Dean, Lee Shau Kee School of Business and Administration
- Dr Lynne Chow, Strand Leader & Associate Professor, Lee Shau Kee School of Business and Administration
- Dr Susana Yuen *ACIS ACS*, Associate Professor, Discipline Leader of Master of Corporate Governance

The Hong Kong Polytechnic University

- Dr Samuel Chan, Associate Professor, Programme Director of Master of Corporate Governance
- Anna Sum *FCIS FCS*, Lecturer, Programme Manager of Master of Corporate Governance
- Dr Lu Hai Tian, Associate Professor, School of Accounting & Finance

City University of Hong Kong

- Professor Cheong Yi, Associate Head, Department of Accountancy
- Dr Guan Yuyan, Assistant Professor and Associate Programme Leader of MScPACG
- Alfred Ma, Assistant Professor and Programme leader of MScPACG

Edith Shih FCIS FCS(PE) giving a welcoming speech to the attendees

Contracts signing

At the lunch

Group photo

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

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.

Upcoming activity

International Qualifying Scheme (IQS) information session

This free seminar will include information on the International Qualifying Scheme (IQS) and members of the Institute are invited to share their valuable experience on career prospects after acquiring the Chartered Secretary qualification.

This seminar is open to the public. Members and students are welcome to recommend their colleagues and friends to attend the session in order to learn more about the Chartered Secretary qualification.

Date:	21 January 2013 (Monday)
Time:	19:00 – 20:30
Venue:	The Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Speaker:	Iris Liu *ACIS ACS* Company Secretarial Officer, Emperor Group
Enrolment deadline:	14 January 2013 (Monday) [allocation on a first-come-first-served basis. Participants will receive an email confirmation]

Policy reminder

Maintenance of studentship

Student renewal fees are due each year on the anniversary of the date of registration. A renewal debit note will be sent to students two months prior to the expiry date. Students are required to settle the renewal debit note by the deadline. Students whose renewal fees remain overdue for two months will be automatically removed from the register.

Collaborative Courses (CCA) students must maintain their studentship with the Institute during their course of study with a minimum period of two years for their applications for full exemptions in order to become a Graduate of the Institute.

CCA students who re-register with the Institute as students during their course of study must maintain their studentship with a minimum of two years for their applications for full exemptions from the date of re-registration. Please refer to the Institute's website for details.

Updated IQS recommended and reference reading lists

There are new additions to the recommended reading list for the IQS subjects: Strategic and Operations Management, Hong Kong Corporate Law and Hong Kong Financial Accounting. Students can refer to the Institute's website for details and the order form.

A new reference reading list is available on the Institute's website for IQS subjects: Corporate Governance and Corporate Administration.

Consultation conclusions on board diversity

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEx), has published its consultation conclusions on board diversity. The consultation found there is strong support for the Exchange's proposed measures to promote board diversity among listed issuers in Hong Kong and the Exchange will implement those measures on 1 September 2013.

- A new Code Provision A.5.6 will be added to the Corporate Governance Code stating that: 'The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report'.

- A note will be added under Code Provision A.5.6 to clarify that: 'Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose'.

- The phrase 'and diversity of perspectives' will be added to the Principle under A.3 on 'Board Composition'. This is so that when the issuer reviews its board composition, in addition to considering whether it has a balance of skills, experience and independence, it should also consider the benefits of diversity.

- A new Principle will be added under A.5: 'In carrying out its responsibilities, the nomination committee should give adequate consideration to the Principles under A.3 and A.4'. This is because the Principles under A.3 and A.4 under 'Board composition' and 'Appointment, re-election and removal' should also apply to nomination committees.

- The Mandatory Disclosure Requirement under Section L of the Code, under 'Board Committees', will be revised to state 'If the nomination committee (or the board) has a policy concerning diversity, this section should include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives'. This is to set out the details required in relation to the disclosure.

Consultation conclusions on IPO sponsors

The Securities and Futures Commission (SFC) has published its consultation conclusions on IPO sponsors. It will adopt most of the key reforms intended to improve the due diligence standards of sponsors of IPOs. These include:

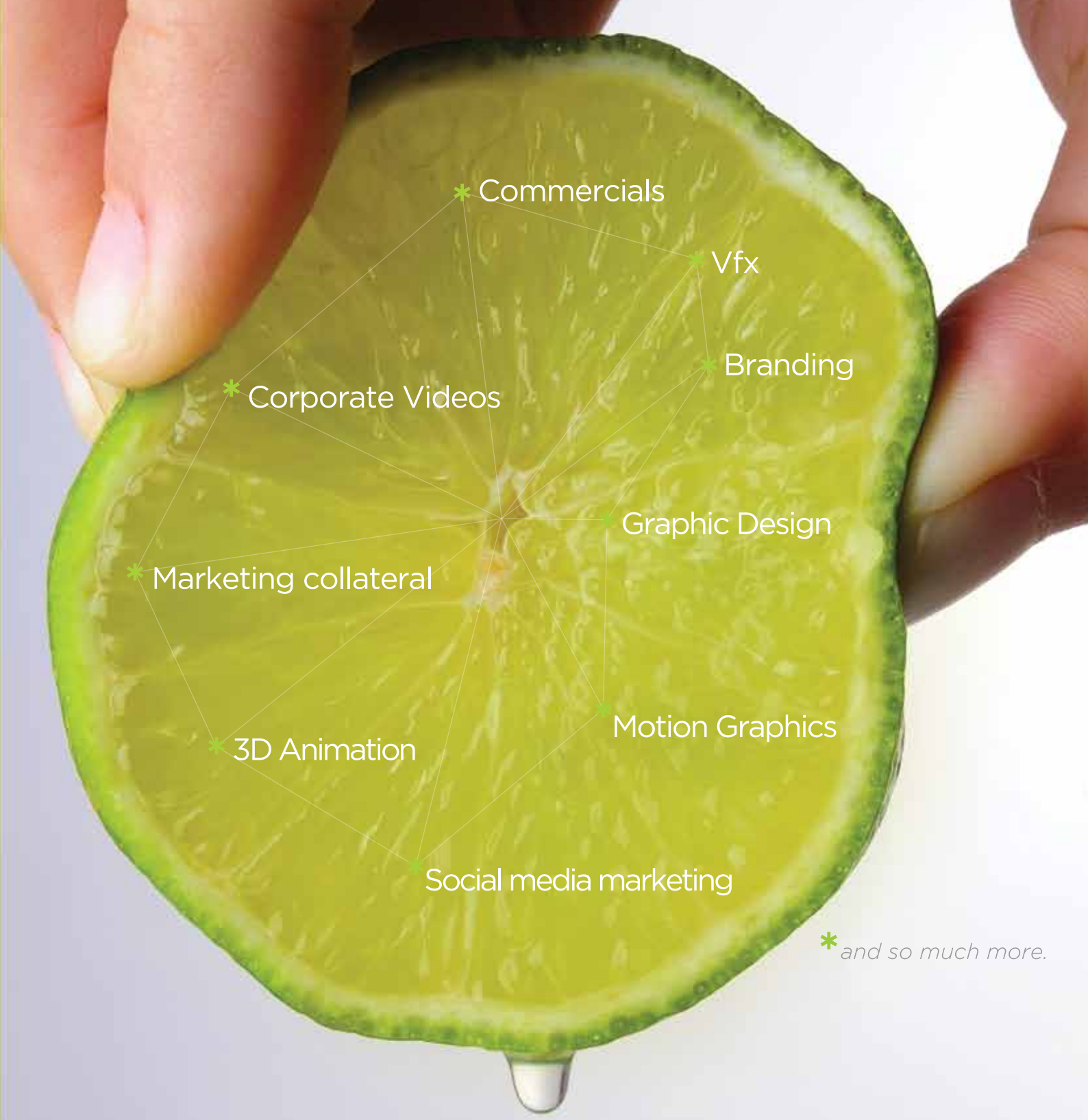
- clarifying the law so that sponsor firms have civil and criminal liability for defective prospectuses (criminal liability should depend on whether a sponsor firm knowingly or recklessly approved a prospectus containing an untrue statement, including an omission, which was materially adverse from an investor's perspective)

- the SFC will publish the advanced draft prospectus filed with a listing application on the stock exchange website: www.hkex.com.hk

- sponsors will need to assess critically any expert report against the totality of its knowledge of the company and its industry sector to ensure that overall disclosure to the public is coherent and consistent, and

- a listing applicant will need to formally appoint a sponsor at least two months before a listing application.

The new requirements will apply to listing applications submitted on or after 1 October 2013. Related amendments to the SFC's Corporate Finance Adviser Code of Conduct and Sponsor Guidelines will also become effective on the same day. Legislative amendments will follow a separate timetable. The Stock Exchange will make appropriate changes to the Listing Rules with a view to bringing the revised rules into force when the requirements become effective.



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Tricor is a global provider of integrated Business, Corporate and Investor services. As a business enabler, Tricor provides outsourced expertise in corporate administration, compliance and business support functions that allows you to concentrate on what you do best - Building Business.

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