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

Membership statistics update

As of 10 October 2013, the Institute's membership statistics were as follows:

Students: 3,181
Graduates: 511
Associates: 4,768
Fellows: 479

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Contents

Raising the bar

This month our journal reviews the latest edition of *The Essential Company Secretary* – our one-stop guide to the essential responsibilities and duties of company secretaries in Hong Kong. You may be wondering why we are giving such prominence to what is essentially – no pun intended – a practical reference manual for busy company secretaries in Hong Kong.

Well, while it is true that this guide offers a wealth of practical information on how to ensure best practice in our daily work, it also seeks to remind readers of what it means to be a professional company secretary. After all, in addition to our many daily tasks, we are also expected to be the company's in-house custodian of corporate governance and even the conscience of the company.

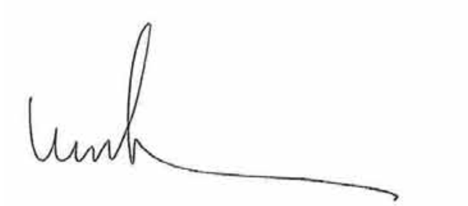
As this month's cover story (see pages 8–13) makes abundantly clear, these roles have become a lot tougher in the current business environment. When this guide was first published in 1994, companies' social obligations were much more closely tied to compliance with legislation and regulation. In the subsequent two decades, the social contract underpinning limited liability companies has largely been rewritten. Pressure has grown for companies to adhere to ethical principles such as accountability, integrity and transparency, not only because of legal or regulatory compliance, but also because of stakeholder expectations.

No surprises then that the most consistent theme of the revised guide is the need for HKICS members to actively promote good corporate governance practices and to discharge their duties with a high degree of integrity. The guide points out that 'the reputation of the profession of the company secretary generally, and that of the HKICS within the corporate, investing and regulatory communities of Hong Kong, stands and falls on the individual and collective efforts of its members in performing their duties with integrity, skill and dedication.'

A heavy burden indeed, but one that also lies at the foundation of the value we bring to companies. The risks of falling foul of stakeholder expectations in the hyper-connected global environment in which companies now operate are all too evident – malpractice or an ethical lapse can very rapidly undo years of trust building with stakeholders. In this context, companies have seen the value of having an officer on the board specifically tasked with advising on corporate governance expectations – which are not, of course, always identical with corporate governance requirements. Companies, both in Hong Kong and overseas, have also increasingly recognised the importance of getting properly qualified professionals to fill the role of the company secretary.

The flipside of this elevated status is that company secretaries are themselves held to higher expectations, both inside and outside companies. Indeed, since 1 January this year these 'expectations' took on the very real form of a new legal liability. Company secretaries are specifically included in the definition of the company officers who are liable under the Securities and Futures Ordinance (SFO) if their intentional, reckless or negligent conduct results in the breach of the SFO's inside information disclosure requirements.

The revised guide warns readers that 'in view of potential liabilities, company secretaries cannot afford to ignore any cases of non-compliance with legislation or regulation that come to their attention, even if the directors have purported to make someone else responsible for those matters.' All the more reason, therefore, to get hold of a copy of the latest edition of *The Essential Company Secretary* and stay informed of both the latest company secretarial best practice recommendations and the aspirations of the profession to which we belong.



Edith Shih *FCIS FCS(PE)*

提高标准

今期月刊介绍最新版本的《不可或缺的公司秘书》。这是公会出版的一站式指南，概述香港公司秘书的最基本职责和责任。这基本上是为香港忙碌的公司秘书编写的实用参考指南，各位可能觉得奇怪，为什么我们这样隆重其事地推介。

这指南固然提供大量实用的资料，协助公司秘书掌握日常工作中的最佳做法；同时，指南亦务求提醒读者，担任专业公司秘书到底是什么一回事呢？毕竟，人们预期公司秘书除处理日常繁重的工作之外，也要以公司内部人员的身份维持良好的公司治理甚至作公司的良心。

今期的封面故事（见第8至13页）清楚指出，在目前的营商环境中，要做好这些角色，比以前更加困难。这指南初版在1994年出版时，公司的社会责任，主要是严格遵守法例和规例。其后20年间，有限责任公司背后的社会义务已大大改写。要求公司坚守道德原则（例如问责性、诚信、透明度等）的压力越来越大，这些压力不仅来自法例或规则，也来自利益相关人士的期望。

在这情况下，难怪贯彻修订版指南的主题，就是公会会员须积极提倡良好公司治理实践，并以高度的诚信履行职责。指南指出：「公司秘书专业的信誉，以及公会在香港的公司、投资者及监管者心目中的地位，取决于其会员能否个别及共同努力，以正直无私的态度、熟练的技能以及敬业的精神履行职责。」

这的确是个重担，但亦是我们为公司带来价值的基础。现今公司在全球联系紧密的环境中营运，未能符合利益相关人士期望的风险十分明显：若有不当行为，或违反道德标准的行为，便可使多年来与利益相关人士建立的信任毁于一旦。有见及此，公司明白到值得在董事会设置专职，就外界对公司治理的期望向董事提供意见。对公司治理的期望，当然并非完全等同于公司治理的规定。香港和海外的公司也逐渐认识到由合资格专业人士担任公司秘书一职的重要性。

公司秘书的地位提升以后，公司内外对公司秘书的期望也相应提高。的确，自今年1月1日起，这些「期望」以实在的新法律责任的形式出现。《证券及期货条例》规定，公司高级人员如因蓄意、罔顾后果或疏忽的行为，导致违反条例中的内幕消息披露规定，即须负上法律责任；而高级人员的定义，明确包括公司秘书。

修订版指南提醒读者：「鉴于有潜在的法律责任，即使董事声称由其他人对此负责，公司秘书若发现违法违规事件，实不能置之不理。」正因如此，各位更应参阅最新版的《不可或缺的公司秘书》，了解最新的公司秘书最佳实务建议，以及公司秘书专业的抱负。

施熙德

Ask the Expert

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

Computershare

Q: *We are planning to launch an employee share incentive scheme – what are the trends in Hong Kong and China?*

A: Over the past 10 years in Hong Kong and China, there has been a dramatic increase in the types of share plans being implemented as compensation tools to incentivise, motivate and attract staff. Prior to 2005, the use of employee share plans was limited to cash-settled stock appreciation rights (SARs), which are essentially a cash payout based on an increase in the underlying share price. With SARs the employee is never a 'shareholder' and for all intents and purposes, it is a cash bonus plan.

In 2005, the PRC State Administration of Foreign Exchange (SAFE) promulgated its first circular (Circular 78) regarding the registration and funds process flow required for a PRC employee to participate in overseas listed share plans. In 2006, PRC State Administration of Taxation also released 'Circular 35' which not only clarified how gains from employee share plans should be taxed, but also provided PRC employees with the ability to spread the gain over several months.

With these two regulatory clarifications, coupled with the increasing shortage of qualified staff and high turnover rates in both Hong Kong and China, employee share incentive plans have quickly evolved into one of the primary tools used by companies to address employee attraction, motivation and retention.

Initially, the primary plan designs implemented were stock option plans that were granted primarily to executives and senior managers. In line with the global trend, a few years later there was a shift away from stock options towards full-value restricted share awards, as well as an increase in the number of employees receiving share awards. This was because stock options have the potential to be demotivating if they are 'underwater' whereas restricted stock awards always hold value for the employee. These were also preferable to shareholders and issuers as they typically create less shareholder dilution.

> "employee share incentive plans have quickly evolved into one of the primary tools used by companies to address employee attraction, motivation and retention"

At about the same time there was a noticeable shift in the vesting criteria applied to these awards. Historically, the majority of vesting schedules were time-based. In line with the global trends, an evolution towards performance-based vesting emerged: the participant must not only remain employed but individual or company targets must be achieved. Performance-based vesting is generally the preference of boards and remuneration committees as well as shareholders.

Since 2010, employee share purchase plans (ESPP) have been rolled out in Hong Kong and China; not only demonstrating a dramatic evolution of share plans in the region but also dramatically increasing the number of participants. Unlike stock options, restricted shares and performance-based plans; with an ESPP the entire employee population is eligible to participate - everyone from the tea lady to the CEO can elect to invest a portion of their salary into a pool to purchase shares, usually on a monthly or quarterly basis. Companies provide either matching shares or a discount on the purchase price, as well shouldering the associated administration and purchase costs. ESPP plans have proven to be enormously popular in China with participation rates exceeding global results and some companies achieving nearly 60% participation.

Employees in Hong Kong and China are increasingly considering a company's share plan when deciding who to work for, so having the right plan in place will become more and more important.

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

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

Essential reading

The Essential Company Secretary is, just as the title suggests, a one-stop guide to the essential responsibilities and duties of company secretaries in Hong Kong. Last month the HKICS published a revised edition of the guide which, in addition to giving readers useful advice on company secretarial practice, acts as a reminder of the higher standards of professionalism and integrity expected in the current business environment.

The Essential Company Secretary has come a long way since it was first published in 1994. Under its original title, *Duties of the Company Secretary in Hong Kong*, the guide was one of the first publications designed as a reference tool for HKICS members. Published in English and Chinese, it served as a useful guide to the many statutory requirements (and penalties) which affect members as advisers to directors and personally as officers of companies.

The guide was subsequently revised in 2004 following the Higgs report in the UK (*The Review of the Role and Effectiveness of Non-Executive Directors*, published in January 2003) which highlighted the role played by company secretaries in maintaining good corporate governance standards. It was reprinted, but not updated, in 2006 and was therefore due for a further round of revisions to keep it up to date with the fast-changing world of the corporate secretary in Hong Kong. Last year, the HKICS assembled a team (see 'The people behind the guide' on page 10) to do just that, and the revised guide was launched last month.

The 2013 edition of the guide is both a practical reference work for company secretaries in Hong Kong, but also a call to arms – reminding practitioners that expectations, both regarding the corporate governance standards of companies and the integrity and professionalism of those advising them, have been on the rise globally since the financial crisis. Mohan Datwani, HKICS Director of Technical and Research, believes it is a must read for practitioners. 'Many company secretaries in Hong Kong are very busy with their daily work, but I think all professional company secretaries need to step back and take some time to read this guide since it encapsulates the aspirations of what being a good company secretary is all about.'

Raising the bar

The most consistent theme of the revised guide is the need for HKICS members to actively promote good corporate governance practices and discharge their duties with a high degree of integrity. It points out that the reputation, both of the profession and the HKICS, 'stands and falls on the individual and collective efforts of its members in performing their duties with integrity, skill and dedication'.

'People are more reliant on the company secretary to draw any irregularities to the attention of the board,' says April Chan *FCIS FCS (PE)*, HKICS Past President and Chairman of the Technical Consultation Panel. 'All stakeholders, including regulators and shareholders, have higher expectations of the standards of professionalism and ethics of company secretaries.'

This view is seconded by Jack Chow *FCIS FCS*, HKICS Treasurer and Chairman of the Institute's Professional Development Committee. He points out that company secretaries now play a crucial role in keeping directors informed about corporate governance expectations. 'Directors may not be acquainted with the relevant rules and regulations, but, with the assistance of company secretaries, they are able to obtain appropriate advice to carry their duties pursuant to the rules and regulations.'

He adds that company secretaries need to keep up to date with relevant developments via regular attendance at CPD events and seminars and should bear in mind their higher exposure to legal liabilities. Both of these points are backed up in the guide.

1. Stay relevant

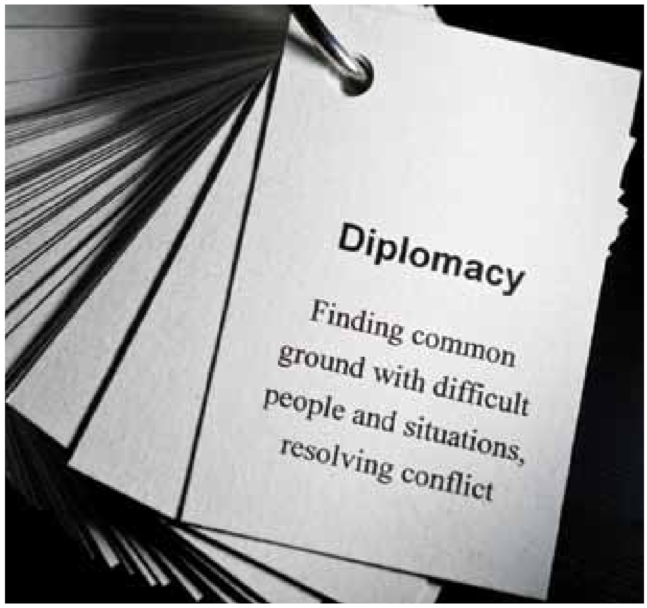
The revised guide states that 'all members are required to update their knowledge and training by complying with the Institute's prevailing mandatory continuing professional development requirements'. In August 2011, the HKICS brought in a mandatory requirement for its members to attend 15 hours of CPD per year. Since January 2012, this has been backed by a similar requirement in the listing rules. Appendix I of the revised guide sets out for ease of reference the arrangements for the phased introduction of these requirements.

2. Watch your back

Jack Chow reminds company secretaries

Highlights

- members of the HKICS are expected to actively promote good corporate governance practices and discharge their duties with a high degree of integrity
- updating members' knowledge through regular attendance at CPD events and seminars is now a minimum and mandatory requirement for company secretaries
- company secretaries should bear in mind the higher legal liabilities they are exposed to in the current business environment, particularly in terms of the disclosure of inside information



that they should bear in mind the higher legal liabilities they are exposed to in the current business environment. 'Like it or not, legal liabilities are imposed on company secretaries. Where an individual is named as the company secretary, the liabilities carry. In other words, the office of company secretary has a defined scope of responsibilities, failure to discharge the duties renders the company secretary exposed to litigation.'

The revised guide also mentions the raised legal liabilities practitioners face – indeed, it reminds company secretaries that they have the overall responsibility for ensuring regulatory compliance, irrespective of which individual is tasked with compliance in specific areas of the company's operation. 'In view of potential liabilities, company secretaries cannot afford to ignore any cases of non-compliance with legislation or regulation that come to their attention, even if the directors have purported to make someone else responsible for those matters. As an officer of the company, the company secretary has a duty to monitor these matters, regardless of the terms of his or her employment and should draw such cases to the attention of the directors and advise them of their own and the company's duties and obligations,' the guide states.

April Chan cites, as an example, the system adopted by the company she works for – CLP. 'As company secretary, despite the fact that emissions compliance is the responsibility of individual business managers, I am still the key person to ensure that good governance is adhered to. In this case, that means ensuring that proper systems are in place to ensure that any potential incidences of non-compliance with emissions standards are reported to the board and board committees – in this case the audit committee – and that action is taken to remedy the situation.'

The people behind the guide

The 2013 edition of *The Essential Company Secretary* was prepared by:

- April Chan *FCIS FCS (PE)*, HKICS Past President and Chairman of the Technical Consultation Panel
- Jack Chow *FCIS FCS,* HKICS Treasurer and Chairman of the Professional Development Committee
- Mohan Datwani, HKICS Director of Technical and Research
- Edwin Ing *FCIS FCS*, former HKICS President
- Mike Scales *FCIS FCS*, former HKICS President
- Edith Shih *FCIS FCS (PE)*, HKICS President
- Samantha Suen *FCIS FCS*, HKICS Chief Executive

The governance agenda

The company secretarial role, both in Hong Kong and internationally, has continued to evolve towards a greater responsibility for corporate governance. Since the global financial crisis, regulators have increasingly sought to exploit the opportunities of the company secretary role to enhance governance and board effectiveness. This was evident in Hong

> "I think all professional company secretaries need to step back and take some time to read this guide since it encapsulates the aspirations of what being a good company secretary is all about"

Mohan Datwani, HKICS Director of Technical and Research

Kong with the 2012 revisions to the Hong Kong Corporate Governance Code and the listing rules to clarify the role of the company secretaries in corporate governance and board support.

These code provisions and listing rules are included in the revised guide for ease of reference. Rule 3.28, for example, which contains the new standards relating to the qualifications, requisite knowledge and experience of company secretaries of listed companies, is set out in Appendix I. Appendix II sets out the new Section F of the Corporate Governance Code which is devoted to the role of the company secretary.

'The role has changed,' says Louisa Lau *FCIS FCS(PE)*, HKICS General Manager and Company Secretary. 'In the past, the role was often seen as primarily an administrative one, but now the emphasis is on the value company secretaries bring as corporate governance advisers.'

New horizons

It has been nearly a decade since the last revision of *The Essential Company Secretary* and, as you might expect, the business environment within which companies operate has changed. The 2013 edition of the guide addresses a number of issues at the cutting edge of company secretarial practice.

Continuous disclosure

Perhaps the biggest challenge for company secretaries over the last year has been establishing internal controls to ensure compliance with Hong Kong's inside information disclosure regime. Appendix III of the revised guide reminds company secretaries of the need to:

- have procedures in place to identify, monitor and disclose inside information
- keep directors and senior management reminded of their continuous disclosure obligations, and
- properly document decisions on the disclosure of inside information and non-disclosure thereof based on safe harbours.

In principle, April Chan is supportive of the regulators' strategy to cultivate a 'continuous disclosure' culture among Hong Kong listed companies. 'The capital market is international and investors expect timely disclosure of price-sensitive information, so this is the way forward in terms of encouraging a culture of transparency. However, in practice I think that the Securities and Futures Commission (SFC) and the Stock Exchange should provide more guidance for listed companies on what constitutes inside information and the meaning of the safe harbours.'

She adds that the company secretary has a crucial role to play in helping the board to discharge its obligations under the inside information disclosure requirements in the revised Securities and Futures Ordinance (SFO). 'Companies need to have procedures in place to determine whether a particular piece of information is inside information. They also need to set up training programmes to ensure that all managers are aware of their obligations. Very naturally, these fall under the responsibility of the company secretary,' she says.

Environmental, social and governance (ESG) reporting

There has been increasing pressure on listed companies in Hong Kong to engage in ESG reporting. While stakeholders are clearly interested in the economic performance of the company, there has been an increased demand, both internationally and in Hong Kong, for more information about the environmental, social and governance performance of the company.

While there are currently no mandatory requirements for ESG reporting, this is set to change. The new Companies Ordinance, set for implementation in the first quarter of 2014, will require public companies, together with 'larger' private companies and guarantee companies, 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. In addition, the current recommended best practice on ESG reporting in the Corporate Governance Code is likely to be upgraded to a code provision by 2015.

The revised guide flags up the importance of sustainability issues and ESG reporting developments, pointing out that company secretaries are responsible for 'advising the board in relation to its sustainability and ESG policies and practices and reporting thereon'.

April Chan emphasises that company secretaries cannot confine themselves to purely governance matters alone. Not only do they need to advise the board on ESG issues, but also their responsibility both for shareholder communication and for corporate reporting mean that ESG reporting will be an increasingly major issue they will need to engage with. While many companies have a separate investor relations department, these departments usually handle communication with analysts, fund managers, and institutional investors and liaison with retail shareholders remains with the company secretary.

'In CLP, with our long history, we have many long-term retail shareholders and we find that they are very interested in

Should company secretaries be legally liable for disclosure failures?

In the past, one of the differences between board secretaries in mainland China and company secretaries in Hong Kong was that board secretaries carried personal legal liability for any breaches of disclosure requirements. That changed in January this year with the implementation of Hong Kong's new inside information disclosure regime. Company secretaries are specifically included in the definition of the company officers who are liable under the Securities and Futures Ordinance (SFO) if their intentional, reckless or negligent conduct results in the breach of the new disclosure requirements.

While no company secretaries have so far fallen foul of these new legal liabilities, they have launched a debate among practitioners in Hong Kong about the potential mismatch between company secretaries' liabilities and their powers. Some practitioners have pointed out that company secretaries, unless they are also directors, do not make the decisions relating to inside information disclosure – they have an advisory role and should not therefore be held liable for decisions they have no power to change.

This has been a long-standing debate among board secretaries in mainland China. HKICS affiliates on the mainland recently lobbied regulators (see 'Responsibility without power?' *CSj*, June 2013, pages 28–31) arguing that their legal liabilities are excessive in view of the limitations to their power within companies.

April Chan points out that the new legal liability for company secretaries under the SFO is not focused on board decisions, but on the obligation of company secretaries, as officers of the company, to draw any irregularities to the attention of directors and advise them on the consequences of any breach of legislation and the sorts of procedures that should be put in place to avoid non-compliance.

She adds that, if the company is challenged by the regulator about disclosure decisions, it will be a defence to be able to point to the procedures in place to ensure that all potential inside information is reviewed in terms of the company's obligations under the revised SFO.

What's your view? Should company secretaries be legally liable for disclosure failures? Is there a mismatch between company secretaries' liabilities and their powers? Join this debate by emailing the CSj Editor at: kieran@ninehillsmedia.com.

> "all stakeholders, including regulators and shareholders, have higher expectations of the standards of professionalism and ethics of company secretaries"

April Chan *FCIS FCS (PE)*, HKICS Past President and Chairman of the Technical Consultation Panel

the environmental performance of the company. Company secretaries should keep up to date with ESG disclosure, sustainability issues and reporting developments to give meaningful advice to the board on these issues,' she says.

Stakeholder engagement

You might not expect company secretaries to be avid followers of philosophical debates, but one such debate has had a direct impact on their work. In the decade since the last revision of *The Essential Company Secretary*, 'shareholder capitalism' has taken a beating from the rival school of 'stakeholder capitalism'. While there are still many who believe that companies exist solely to make money for their shareholders, now the majority view is that companies exist for the benefit of all of their stakeholders – including the communities they operate in.

It seems certain that company secretaries will be hearing a lot more about stakeholder engagement in the coming years and the revised guide flags up this issue for readers. It advises that company secretaries need to ensure 'that the concept of stakeholders (particularly employees) is in the board's mind when important business decisions are being taken'.

What's in it for me?

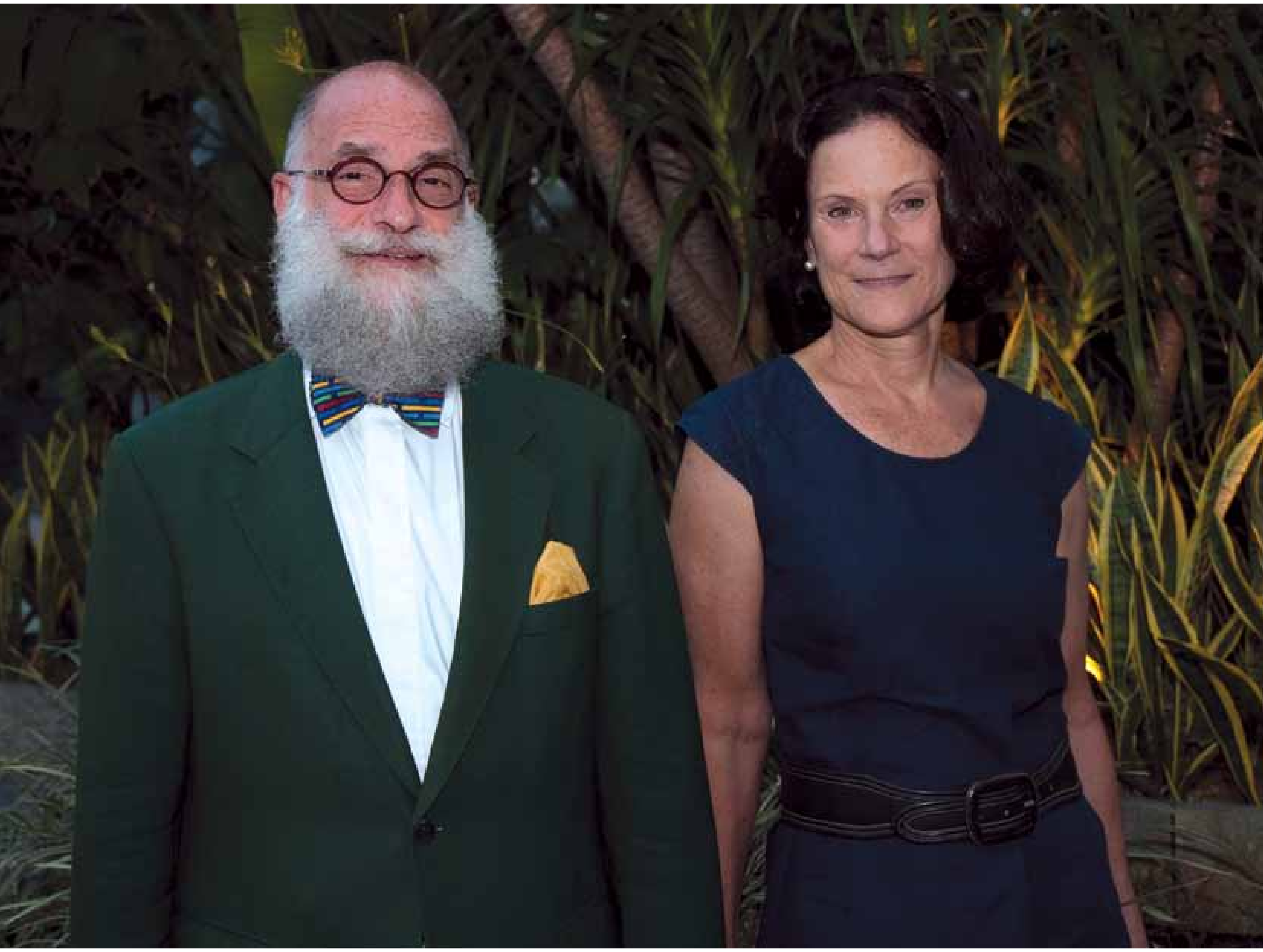
The 2013 edition of *The Essential Company Secretary* sets its sights not only on raising the awareness among HKICS members of the need for high professional standards and good ethics – it also aims to give readers useful advice on company secretarial practice.

April Chan believes the guide successfully combines aspirational encouragement with practical advice. 'If you produce something for members, they will certainly look for tips on best practice and I believe *The Essential Company Secretary* is a very useful tool for company secretaries.' In particular she refers readers to Appendix III of the guide which sets out the specific responsibilities relating to directors and senior management for company secretaries to review. This has been set out as a series of questions, such as:

- Do you have direct access to the chairman on governance issues and all matters relating to board and shareholder proceedings?
- Do you ensure that there is unlimited and equal provision of information to all board members?
- Do you co-ordinate the timely flow of information to the board?

'This is a list of questions company secretaries can ask themselves to identify and review whether their current duties conform to the general expectation and then they can make appropriate changes if necessary,' Chan says.

> *'The Essential Company Secretary' is available on the HKICS website (www.hkics.org.hk) under 'publications'.*



Sustainability reporting

Telling the story rather than ticking the boxes

This month *CSj* hears from the team behind the MTR corporation's award-winning sustainability reports – Theodora Thunder, Managing Director, Streeter Strategic Ltd, and Dr Glenn Frommer, Head of Corporate Sustainability, MTR Corporation – about what it takes to put together a first-rate sustainability report.

Can we start with some background about yourselves and your collaboration on the MTR sustainability reports?

Theodora: 'In 1996 I started working on the MTR annual reports in the lead up to the MTR listing in 2000. The 1997, 1998 and 1999 reports were award winning – they won awards for photography, editorial, transparency and governance. I went on to work for Euromoney, but Glen came to me in 2005 and asked me to do the MTR's first sustainability report. Before that the MTR had produced environmental reports.'

Glenn: 'Yes, we did an environmental report essentially on the back of the IPO. The investors wanted to meet with people who worked in the company and could tell the company story. At that meeting you had the potential big investors, including the banks, the insurance companies and the pension funds, and on the other side of the table were MTR employees representing governance, safety, the environment, etc. The discussion lasted several hours and the investors were very appreciative of the briefing we gave. The reports attempt to give them that sort of information annually.

That first year we produced an environmental report. Then from 2001 we combined the environment with social, governance and economic issues to make it more of a sustainability report. But I wasn't happy with the lack of integrated thinking in these reports so I got in touch with Theodora. I recalled from our discussions about the annual reports in the lead up to the listing that we had a complementary view of what was needed. She understood the tools and the wherewithal of journalism – which I don't. So that's why I wanted to start our cooperation and it was very successful.'

So it's not just about giving readers the figures – you need a wordsmith on board to tell the company story?

Glenn: 'Yes. From the early days my job was to build and integrate the systems inside the company and get the data, and Theodora's function was to tell the story.'

Theodora: 'To put it into context.'

Glenn: 'We've had a collaboration since 2004 and we have been very successful in telling the company story year on year as the story changes and evolves.'

Do you have any advice for those new to sustainability reporting?

Glenn: 'The first thing to bear in mind is that it takes at least a couple of years to get there. So you need to have longer-term thinking and you need to approach it methodically step by step'.

Theodora: 'This is why we recommend companies start building their ESG [environmental, social and governance] data now. When investors start asking questions, two years of data is not going to give you enough information. At three years you start to see trends and then you are going to have more of a story to tell. Every year I learn something new. It's quite interesting – you can see how the company is going and you can see the opportunities and where the gaps are. You can grow your story.'

Glenn: 'The first question you need to ask yourself is why you are writing a sustainability report. Are you doing it because the board wants it or to stay ahead of your competitors? Is there a push from the CEO, is there a pull from the market? You need to have clarity on that because, once you understand why you

Highlights

- those new to sustainability reporting need to ask themselves what story they want to tell and who they want to tell it to
- companies in Hong Kong sometimes take the approach that you don't need to tell people what they don't need to know, but this goes counter to the sustainability ethos
- good sustainability reporting is not about compliance and box ticking, when done well the main beneficiary of the process is the organisation itself

> I started working here 22 years ago when the IFC and Kowloon stations were underwater, Chep Lak Kok was still an island and there were flying fish in Sunny Bay

Dr Glenn Frommer, Head of Corporate Sustainability, MTR Corporation

are writing the report, you can craft the thoughts and processes accordingly.'

Theodora: 'You also need to ask yourself who you are writing the report for. My brief when working with Glenn was that the report was for the three A's – the analysts, activists and auditors. They are not dumb, they will tear the report apart if you haven't dotted every "i" and crossed every "t". So that meant going back and looking at the systems, checking the data and then asking what that data means.'

Glenn: 'Because we chose the three A's as our selected audience, the language in our reports has often been criticised for being overly complex, but that's what our readers expect. They expect the right information put in the right way and they expect integrated thinking.'

You mention integrated thinking, but the MTR hasn't so far gone down the route of producing an integrated report – why is that?

Glenn: 'In my view integrated reporting is exclusively for the benefit of those organisations supplying the capital for running the organisation. That is the be all and end all of integrated reporting – it is for the benefit of the financial providers. Now don't you think my more than five million daily customers should have a say about what goes on in the MTR? What about our roughly 200,000 shareholders, should they have a say? And the people in Hong Kong, Stockholm, London and Melbourne that use our services, should they have a say? I want to give a balanced report to all of the stakeholders of the company, not exclusively to the providers of finance.

Another issue to consider is the cost. An annual report is a must if you are a listed company so let's call that a cost factor of one. A sustainability report will cost you roughly between a quarter and a third of an annual report, but an integrated report may be a factor many times greater than your annual report.'

Theodora: 'You also need to bear in mind that integrated reports are often over 300 pages long – they can be overwhelming. The best integrated report I have seen was a GE [General Electric] annual report. It was 55 pages. It talked about the material issues, strategy and what they were going to do and backed it all up with small little stories here and there about why they are doing what they're doing. GE is not a small company, if they can do it in 55 pages, everybody else can.'

Integrated reporting is often presented as the next step forward from sustainability reporting, but there is value surely in the concept of 'sustainability' – ensuring that current growth does not compromise the ability of future generations to grow and prosper?

Glenn: 'The term "sustainability" is overused. If an automobile has half the carbon emission of its predecessor, it's a "sustainable" automobile, but what if the manufacturer has made four times as many of them as the original? I like the definition of sustainability developed by a Swedish medical doctor in the late 1990s – it's really very simple. There are four parts to it:

1. you don't extract things faster than the Earth can produce them
2. you don't put things back in the Earth faster than the earth can absorb them
3. the things that the Earth cannot produce or reproduce you don't use, and
4. you don't support the kind of social development that stops people from having a decent lifestyle and wages.

Of course sustainability is a wonderful aspiration, but does it stop people from getting on an airplane and flying to Korea for the weekend?'

What does sustainability mean to you in terms of your sustainability reports?

Glenn: 'What we talk about with our sustainability report is business resilience and business continuity. The MTR has an asset that is designed and built to operate for 120 years. We need to understand the impact it will have on society during its construction and its operation and we need to look at how the urban context is going to develop around the stations. I started working here 22 years ago when the IFC and Kowloon stations were underwater, Chep Lak Kok was still an island and there were flying fish in Sunny Bay. You can see how the city has developed since then.'

Theodora: 'In the 2012 report, Glenn had me write an introduction on the relationship between MTR and the city of Hong Kong. That gives the context of MTR's positioning here.'

Glenn: 'When the new lines are built we will link all 18 districts of Hong Kong. Even the people who don't use the MTR get some of the benefits. When more people travel underground this frees up the roads and you get faster bus flows. You need to think about the social context of the business. What will it mean for the development of Hong Kong that there is a fixed high-speed link to the rest of China? Hong Kong becomes linked, people will be able to live here and work in Shenzhen. It will take 25 minutes to get to the border and 45 minutes to Guangzhou. Hong Kong and the Pearl River Delta will be unrecognisable in 10 years because of this. I remember on my first trip to Hong Kong, I met people who had never left Hong Kong island – they had never even been to Kowloon.'

Theodora: 'Every year I talk about the 120-year asset life. That is particular to MTR. Most property and development companies look at 50 or 60 years for the life of a building. We have to build in a way that enables us to take on new technology, to make it environmentally friendly, to be able to serve society. This is where sustainability comes in.'

Glenn: 'I don't want to give a misperception, I am of the firm belief that an organisation should be using these reports – sustainability reports, integrated reports, whatever you call them – for the benefit of the organisation, because after all you are spending the organisation's money to tell the story. This isn't just compliance. Listed companies know that they will soon have to report on ESG factors, but they need to think about how they can use these reports for the benefit of their businesses.'

Theodora: 'Sustainability is not a box-ticking exercise, it's a year-to-year story about how you are moving forward. With the KCR/MTR merger it was very interesting. I was asking questions about water consumption, and, as you might expect, it went up because of the merger. But that's a valid explanation – we didn't hide the figures, we gave the story behind the figures. Companies in Hong Kong sometimes take the approach that you don't need to tell people what they don't need to know, but this goes counter to the sustainability story. Until people get past that you won't have the really good sustainability reporting that you need – they will just do the box ticking, the minimum.'

Glenn: 'We are telling a story that is valuable to the people of Hong Kong and valuable for the company. That's really what companies should be focusing on – what story do you want to tell and who do you want to tell it to? This is why Theodora has been focusing on websites for the last few years because the websites tell the story in a different language.'

Theodora: 'Websites are a little friendlier, they tell stories and use case studies and our website has been structured to answer GRI [the Global Reporting Initiative] directly. The printed report didn't answer GRI directly. We decided to move some material required by GRI – particularly the social and human rights issues – to the website. I didn't consider that material to the story that needed to be told.'

Glenn: 'I'm not too fussed whether our reports are compliant with GRI, or integrated reporting, or with ISO 26000. If it doesn't suit my business needs then I'm not going to use it. What suits

> "I think company secretaries need to think of the broader concepts relevant to their work – they need to get out of their box"

Theodora Thunder, Managing Director, Streeter Strategic Ltd

my business needs is enterprise risk management, stakeholder engagement and the unique sustainability competitive advantage model that we've cooked up over the years. That's my business so that's what I talk about. Everything else, well its nice to have. It's the same for every business. Every business should know how they differentiate their business and what is their unique competitive advantage. That's what people should be talking about. We should be talking about the competitive advantage of businesses and of Hong Kong – this is our home.'

Can we turn to the company secretary's role in sustainability reporting?

Glenn: 'Let me ask a simple question – how do you know you are compliant with the law? Now, some company secretaries may say: "I haven't been fined so I must be compliant", but you actually need to have good internal systems in place and you need to have defined roles and responsibilities to be certain of compliance. You need to know who is in charge of compliance with the laws regarding lifts, or noise compliance, or recycling, and you need to check what they are telling you. If they say you are compliant with the relevant legislation – what measurement are they using? Somebody has got to do the necessary checks.

Company secretaries need to go in front of the board. If they can't come with their hand on their heart and say: "I believe what I'm telling you is the truth, the whole truth and nothing but the truth", the board is going to have problems because sooner of later you are going to confront liabilities for safety violations, environmental violations, labour violations, etc.'

Does the MTR Company Secretary work closely with you on these issues?

Glenn: 'She's my boss. That shows you how seriously MTR considers the role. It's in the legal department and it doesn't only have a compliance focus, but also a risk focus – safety is all about managing risk.'

Theodora: 'I think company secretaries need to think of the broader concepts relevant to their work – they need to get out of their box. They should be well aware of where the industry is going because that will indicate where the company is either lagging behind or is right on par. In this town, everything is about keeping up with your competitors. Actually, keeping informed is not so hard to do, often it's just taking the time and to get people to do the necessary research. They should certainly be reading other company reports. Between Glenn and myself, I don't know how many reports we read in a year. I read maybe 20 or 30 of the top ones and Glenn reads a lot more than I do. But we read them for different reasons – I read them for the story, looking at who is the best at what they do and I also look at the worst.'

Glenn: 'I read them for infotainment!' CSj

Theodora Thunder and Glenn Frommer were interviewed by CSj Editor Kieran Colvert. The interviewees presented an HKICS ECPD seminar on ESG reporting last month. The seminar is reviewed on page 36. More information on the MTR sustainability reports can be found at: www.mtr.com.hk/sustainability.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Corporate governance and the corporate secretary: a brief history

As a former regulator, HKICS Fellow and an academic, Anthony Neoh *FCIS FCS*, Senior Counsel, Hong Kong Bar, brings to the corporate secretarial profession a depth of historical knowledge as well as an intimate understanding of the practical challenges faced by corporate secretaries. What better mentor then to welcome newly elected Fellows, Associates and Graduates at the Institute's annual Convocation. As Guest of Honour at this year's Convocation, held on 3 October 2013, Neoh spoke movingly about the challenges and opportunities which lie ahead for corporate secretaries in Hong Kong. The summation of his thoughts and advice are included in his preface to this year's annual Convocation booklet, published here in full.

Until the turn of the 19th into the 20th century, corporate secretaries had held a traditional but important role in the administration of corporations. As every corporation was a legal creation, it was important that there should be an officer whose function it was to ensure that all the relevant requirements are fulfilled in the maintenance of corporate existence and that the powers allotted to the various actors have been properly exercised. That officer was the corporate secretary. This traditional function remains to this day and it is just as important as it was in the 18th century when the corporate form began to assume importance in the first blossoming of international commerce under the banner of mercantilism.

As the industrial revolution developed, it became clear that private capital from individuals or families, great though they may have been in the past such as with the bankers of Florence, would not be sufficient to build the canals, the railroads and the great corporations that were about to emerge. That these creations of the modern era did emerge was due to the development of capital markets, where owners became many and the managers became few and specialised. Some have called the age of the capital markets the 'age of capitalism'. The age of capitalism is still with us today, with its power for good and its power for evil.

The power for good of capital markets is clear. Capital markets enable great projects to be implemented and great corporations to be created and maintained. The railways of Britain, Europe and the Americas could not have been built but for funds raised in the capital markets. Companies over 100 years old, to name a few include Dutch Shell, ThyssenKrupp AG, British Petroleum, GlaxoSmithKline, Citibank, IBM, China Merchants Bank and Bank of China. They are all household names and have brought profits to their shareholders and marvelous innovations or indispensible services to the world.

The power for evil of capital markets is equally clear. They concentrate power into the hands of the few. While the few can create good, they can also create evil. The tragic accident in Bhopal in India in the 1980s, the oil spill in the Gulf of Mexico three years ago, and the current corruption scandal in China of GlaxoSmithKline are but a few examples of callous conduct on the part of corporate managers. Corporate frauds, such as that of Enron, Worldcom, Parmalat have impoverished their shareholders. Also, the financial crisis of 2008 and the Libor scandal in London have each shown how greed can pervade the practitioner community in the financial services industry. Investors, many of whom had saved for a lifetime working

Highlights

- the corporate secretary's traditional administrative role of keeping records and ensuring legal compliance goes back to the 18th century when the corporate form began to assume importance
- since the latter part of the 20th century, corporate secretaries have increasingly become the principal adviser to the board and management in all aspects of corporate governance
- corporate secretaries have a duty which transcends their functions in corporate compliance, namely to ensure the corporation creates good and not evil

> "creating the best possible corporate governance is the essential gauntlet that is thrown down at the feet of the new entrant poised to enter the portals of the profession"

as salaried persons, saw a substantial part of their life savings evaporate before their eyes, powerless, as they watched the evening news on television.

That is why, in the latter part of the 20th century, the world began to wake up to the needs of good corporate governance, not only to create value for shareholders but also to ensure long-term sustainability of the corporation through good citizenship and strategic planning. The foundations for good corporate governance are still being laid as the world grapples with the changing tides of the world's economy.

Corporate secretaries today therefore fulfill more than just the traditional role of keeping records and ensuring minimum legal compliance. As much more is expected of a corporation participating in the capital markets, it is rare that the corporate secretary is not a senior member of the management team of a corporation. The best corporations aspire to implement the best corporate governance practice. The corporate secretary plays the role of the principal adviser to the board and to management in all aspects of corporate governance, including ensuring that the board and management develop a culture of responsiveness to long-term value and sustainability of the corporation.

That is why the education of the corporate secretary never ends. The literature in best corporate governance practice multiplies exponentially every year and expectations of shareholders, of the public and of governments become increasingly demanding. The corporate secretary must bring to the task the ability to fully comprehend and follow the increasing raft of regulation impacting a corporation, advising the corporation to put into its governance structure a system of compliance and ensuring that the board, as well as management, develop strategic planning aimed at the long-term sustainability of the corporation.

The corporate secretary is therefore far more than a technician but an architect working closely with the chairman of the board in the design and construction of a corporate governance structure that will endure the test of changing times and environments. This requires the corporate secretary to engage in life-long learning in acquiring knowledge not only of the complexities of the capital markets and their regulation, but also the techniques and current thinking in the field of strategic planning as they relate to their corporations.

The profession of the corporate secretary is today both an exciting and exacting profession to enter, but those who enter the profession should, I believe, take on the primary mission to ensure that the corporation creates good and not evil. That is the yardstick by which all systems of corporate governance are to be tested. It is not an excuse that the evil brought about by a corporation is the result of bad management. All bad management comes from bad corporate governance. Creating the best possible corporate governance is the essential gauntlet that is thrown down at the feet of the new entrant poised to enter the portals of the profession. May you courageously pick up this gauntlet and may you all win every battle once you enter these portals!

Anthony Neoh *JP, FCIS FCS*
Senior Counsel, Hong Kong Bar

More photos of this year's annual Convocation are available in Institute News (see pages 42-43).

Anthony Neoh is a former Chairman of the Hong Kong Securities and Futures Commission and former Chief Adviser of the China Securities Regulatory Commission. He is a practicising barrister and an academic involved in research in legal and financial history and current issues in regulation and the governance of financial markets and institutions. He frequently gives lectures and actively participates in seminars in the PRC, HKSAR and internationally, on his research interests.

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Annual Dinner 2014

Date	Tuesday, 7 January 2014
Time	Cocktail reception starts at 6.30 p.m.
	Dinner starts at 7.30 p.m.
Guest of Honour	Sir C K Chow, Chairman
	The Hong Kong Exchanges and Clearing Limited
Venue	JW Marriot Hong Kong, Ballroom
Dress code	Lounge suits
Reservation fees	HK$600 per Student
	HK$850 per Member/Graduate
	HK$950 per Non-Member
	HK$10,200 per table (12 seats)

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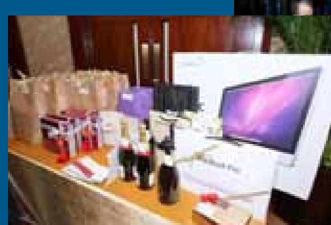


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Due diligence for IPO gatekeepers

Hong Kong's Independent Commission Against Corruption (ICAC) argues that the new regime for the regulation of IPO sponsors in Hong Kong is part of a new drive by regulators, both in Hong Kong and globally, to hold IPO gatekeepers accountable.

It would not be ludicrous to suggest that competition amongst financial centres gives rise to competition amongst regulatory regimes – despite their close cooperation – in modern global financial markets. This is particularly true for initial public offerings (IPOs) where the leading stock markets compete to woo new public listing candidates. It is in the DNA of most capitalists to seek the best place to park their money and it is generally recognised that, other global and macroeconomic factors aside, the market with the best practices and regulatory climate offers the least risk and enjoys a higher reputation.

This is precisely why the guardian role of listing professionals and practitioners, especially listing sponsors, has come under the spotlight, and in the case of Hong Kong there is no better time to up the periscope and review the current environment.

In December 2012, Hong Kong's securities watchdog, the Securities and Futures Commission (SFC), released its consultation conclusions aimed at enhancing the regulatory regime for IPO sponsors by clarifying their criminal and civil liabilities, and to top up recent requirements under the listing rules of the Hong Kong Stock Exchange that called for more extensive due diligence of listing candidates.

These regulatory tightening measures are mainly aimed at addressing the risks associated with sponsors involved in IPOs, in particular enhancing their ability to detect risks before formally filing companies for listing. Obviously, a failure on their part to identify these risks prior to bringing companies to listing would translate into potential risks and financial losses for the investing public. Hence regulators in many jurisdictions, including Hong Kong, are increasingly holding listing professionals and advisers, many of whom are IPO sponsors, accountable.

Complex risks and challenges

To be fair, professionals like sponsors are facing unprecedented challenges and difficulties. One underlying problem all IPO professionals face is the time issue – thorough due diligence and background checks on companies and directors simply takes time, the more the better, especially for businesses involved in complex business models in certain industries such as mining, gaming and green businesses.

The risks, compliance issues and due diligence concerns apply not only to listing sponsors but also other listing professionals involved in the due process, such as lawyers, auditors and underwriters.

Highlights

- any person who has authorised the issue of the prospectus faces up to three years in prison and a HK$700,000 fine if it is found that untrue statements in the prospectus brought losses for investors
- the recent due diligence concerns relating to the work of IPO sponsors also applies to other listing professionals such as lawyers, auditors and underwriters
- the Hong Kong Ethics Development Centre of the ICAC educates and helps enhance professionals' capabilities to act appropriately when they face ethical dilemmas and other challenges during the IPO preparation and due diligence process

The increasingly cross-border nature of IPOs these days also tends to complicate matters for listing professionals. A recent report by auditing firm PwC and law firm Baker & McKenzie found that listing venues like Hong Kong witnessed significant growth in cross-border IPOs between 2002 and 2011 and Chinese companies registered the largest number of international listings comprising almost a third of all cross-border listings over the same decade.

'The rising tide of cross-border IPOs and capital raising has implications for how underwriters deal with risk and compliance issues, particularly when the issuer has a business or assets in emerging economies,' said Frank Castiglia, a Sydney-based Baker & McKenzie partner, as quoted in the Thomson Reuters newsletter *Compliance Complete*. 'The cross-border dimension means that it is more important than ever for underwriters to ensure that thorough due diligence is done to meet the requirements and identify any deal with issues and risks in both the listing jurisdiction and the jurisdictions in which the issuer is based and in which it operates.'

Hong Kong was the world's top IPO venue from 2009 to 2011. It fell to fourth place in the 2012 global rankings as a result of the faltering Chinese economy, but the windfall brought its share of bad apples: the rush to market and plain avarice. The impact of falling fees is also raising concerns that the quality of due diligence may be compromised. Data compiled by Bloomberg showed that underwriters in Hong Kong earned about US$250 million from first-time share sales last year, down from the average of US$775 million each year since 2006.

A more fundamental issue is the underlying and inherently positive correlation between the fate and interests of both the sponsors and listing candidates. The eventual outcome of the listing attempts have tremendous impact on the well-being and balance sheet of the sponsors, to the extent that there may be more incentives for the sponsors to push through the listing than to 'kill' the deal.

Spotlight on risks and pitfalls

The challenges, difficulties and potential pitfalls faced by professionals involved in listing can be best demonstrated by a headline-hitting case last year. Hontex International Holdings Company Ltd, a Fujian-based fabric maker, was listed on the Hong Kong Stock Exchange on 24 December 2009 and raised approximately HK$1 billion in capital, but its trading was suspended three months later at the direction of the SFC after a report to the regulator on materially misleading overstatements of its turnover, profit and cash in its IPO prospectus.

Hontex subsequently admitted that the amounts stated in its IPO prospectus for its turnover, profit before tax and its cash and cash equivalents were materially false and misleading. The Court of First Instance ordered Hontex on 20 June 2012 to make a HK$1.03 billion repurchase offer to investors who subscribed for Hontex shares in the initial public offering or purchased them in the secondary market. The Stock Exchange eventually decided in December 2012 to cancel its listing.

The SFC also went after Mega Capital (Asia) Company Ltd, the sole sponsor of

> “hopefully, the new SFC requirements will enable and encourage the sponsor community to take a more responsible, proactive and constructive role in new IPO cases”

Hontex, for its untrue IPO prospectus. It imposed a ban against advising on future listings or dealing with securities in Hong Kong and a record fine (HK$ 42 million) for its multiple failures as a listing sponsor – including inadequate and sub-standard due diligence; failure to act independently and impartially; inadequate audit trail of due diligence work; inadequate supervision of its staff; and breach of the sponsor's undertaking and filing an untrue declaration with the Stock Exchange.

Additionally, the SFC has revoked the licence of a former director of Mega Capital and banned another former executive director from re-entering the industry for three years for their supervisory failures and refusal to accept their responsibilities as sponsor principals.

'Given the important role played by sponsors, these failures must be regarded most grimly,' said Mark Steward, the SFC's director of enforcement in a statement on the Hontex case.

The Hontex case was not the first of its kind in Hong Kong. A decade earlier, Hong Kong-listed Euro-Asia Agricultural (Holdings) Co Ltd, a China-based orchid grower from Shenyang popularly referred to as Euro-Asia, was involved in a similar case. In 2002 its founder Yang Bin was suspected of committing corporate fraud by using fake records. The Euro-Asia case highlighted similar problems involved in IPOs since the sales, earnings and other figures were inflated and yet escaped the scrutiny of sponsors, underwriters, auditors, lawyers and regulators.

These cases underscore not only the crucial gatekeeper role and responsibilities of sponsors but also the importance of their professional competence and integrity, and the negative consequences resulting from their malpractices and inadequate due diligence. Regulators and the investing public expect sponsors to demonstrate that they have done their best with integrity and professional judgement intact. Media reports have voiced public concern about sub-standard sponsor work, pointing out that sponsors should exercise reasonable judgement in conducting due diligence on listing applicants and should ensure that all major issues are properly addressed before submitting listing applications. After all, the sponsors are the only ones closely involved with the preparation of the new applicant's listing documents and their capacity is specifically licensed by the SFC.

The Hong Kong ICAC has also had its fair share of enforcement actions against listing frauds. Past cases which involved directors, executives and professional staff of listed companies highlight other areas of misconduct, such as alleged acts of corruption, insider dealing, embezzlement, falsifying documents, conflict of interest. Sponsors need to identify such failings in their due diligence work.

A case in point is an ICAC investigation which led to six people – including the former chairman, vice-chairman and a certified public accountant – being charged in 2003 for alleged conspiracy to defraud over the listing of a company and applications for letters of credit. The defendants were sentenced to jail terms

Common deficiencies in IPO sponsor work

1. Unsatisfactory due diligence on listing applicant's business:
(a) insufficient due diligence on major business stakeholders
(b) insufficient due diligence on material changes in business shortly before listing, and
(c) insufficient due diligence on the works of third party professionals/experts.

2. Questionable disclosure to the stock exchange during the listing application process.

3. Failure to maintain proper documentation of due diligence.

4. Inadequate internal systems and controls over sponsor work:
(a) inadequate manpower and resources to undertake sponsor work, and
(b) inadequate annual assessment of internal systems and controls.

Source: *Report on Sponsor Theme Inspection Findings (March 2011), SFC* of 8 to 10 years. Apart from imprisonment, the court also ordered the defendants to be disqualified from being company directors for a period equivalent to their prison terms.

The alleged offences that occurred between 1998 and 2002 include falsifying sales invoices and accounting records to inflate the turnover and profit figures of the company and misrepresenting the company's financial position in its IPO prospectus. The judge said that the sentences should reflect the seriousness of the offences and emphasised that the use of fraudulent accounting to get listed would have disasterous consequences for the public. The case involved over HK$85 million and the investigation lasted about three years.

Timely review

As mentioned earlier, Hong Kong has recently slipped from its global top listing status. This period of market consolidation may well be a timely opportunity to review the role of listing practitioners, including sponsors. In this regard, the *Consultation Conclusions on the Regulations of IPOs Sponsors* announced by the SFC in December 2012 is in line with its earlier stance to step up its review of the quality of due diligence of a number of IPOs in the city to restore investors' confidence of newly-listed share offerings. The new regime which became effective in October this year, highlights two core areas:

1. The directors of the listing company, the sponsors and 'any person who has authorised the issue of the prospectus' faces up to three years in prison and a HK$700,000 fine if it is found that untrue statement(s) in the prospectus brought losses for investors.

2. The listing documents need to be filed earlier – when the company applies to the stock exchange for approval to list rather than when the new shares are prepared to be sold. This is designed to give investors more time to digest, analyse and hopefully understand the listing debutant before making their investment decision.

Best practice

The objective of these new requirements is to clarify the standard and quality of work the sponsors are expected to meet. Hopefully, the new requirements will enable and encourage the sponsor community to take a more responsible, proactive and constructive role in new IPO cases.

According to the SFC consultation conclusions, the proposals are aimed at encouraging best practice across sponsor firms. 'The whole idea is to try to lower risk rather than increase it, so you lower risk for the sponsors because they can do their jobs properly, you lower risks for the markets because they have better gatekeepers and then you lower risks for investors,' the SFC's Ashley Alder was quoted as saying by Reuters.

The core problem is that some practitioners exhibited deficiency in due diligence in some cases, thereby damaging the reputation of the market as a whole. Consider for example, the SFC said they inspected 17 sponsors in 2011 and found various problems such as inadequate internal systems and controls as well as unsatisfactory due diligence, including a number of cases where underwriters submitted a company for listing even when due diligence was incomplete (see 'Common deficiencies in IPO sponsor work' on page 27).

Ethics and compliance for SMEs: a new guide

The English version (CD-ROM format only) of *Business Success: Integrity & Legal Compliance Corruption Prevention Guide for SMEs in Guangdong, Hong Kong and Macau* is now available. The Chinese version of this Hong Kong Ethics Development Centre guide has been available since October last year. The guide features the anti-corruption laws and regulations in Guangdong, Hong Kong and Macau; illustrative cases; common corruption risks and the corresponding preventive measures. The guide also introduces skills in managing staff integrity and the services available for SMEs operating businesses in Guangdong, Hong Kong and Macau.

To obtain a copy of the guide, request other corruption prevention services or enquire about the details of organising seminars on related topics for your organisation, call the Hong Kong Ethics Development Centre at (852) 2587 9812, or email: hkedc@crd.icac.org.hk.

> **these cases underscore not only the crucial gatekeeper role and responsibilities of sponsors but also the importance of their professional competence and integrity, and the negative consequences resulting from malpractice and inadequate due diligence**

Hence, the recent amendments proposed by the Hong Kong authorities are meant to set the minimum conduct or behavioural standards applicable to market practitioners by providing the 'hardware' to them – that is, the rules and guidelines which form the regulatory framework. The ICAC on its part, through its Hong Kong Ethics Development Centre (HKEDC), provides the 'software' to the market from the corruption prevention perspective, by means of value education which helps to develop an ethical culture in the field. Amongst its materials and courses made publicly available, the HKEDC educates and helps enhance professionals' capabilities to resist temptation and act appropriately when they face ethical dilemmas and other challenges during the IPO preparation and due diligence process, such as standing firm to decline unlawful offers, blow the whistle whenever necessary, recognise the repercussions of their every decisions, etc.

In addition to all this hardware and software, however, it is important that there is an ethical culture within the profession given the guardian role of these listing professionals and practitioners. In upholding their personal reputation, as well as the reputation of Hong Kong as a global financial centre and IPO market, not forgetting the interest of the investors, their value judgement and their 'call of the moment' is crucial in handling many of these temptations and risks that could potentially lead IPOs astray.

The implications are thus loud and clear: sponsors must exercise care in client selection and meet the standards of work expected of them. They need to ensure proper and thorough due diligence to gain full understanding of the local environment the company in question operates in and also to ensure proper disclosure. It is also of primary importance that they equip themselves with the necessary skill sets in handling possible ethical challenges and dilemmas.

The Hong Kong Ethics Development Centre
Independent Commission Against Corruption

On 22 November 2013, the Institute will organise a visit to the ICAC Hong Kong Ethics Development Centre for student ambassadors. The visit will include a seminar on the work of the ICAC and the Hong Kong Ethics Development Centre. Further details are available on the HKICS website: www.hkics.org.hk.

About the EDC

The ICAC, in its role as an anti-graft enforcement agency, actively promotes the practice and awareness of professional ethics. The ICAC offers capacity building programmes for financial practitioners. For example, The Hong Kong Ethics Development Centre (HKEDC) of the ICAC promotes business and professional ethics in Hong Kong as the first line of defence against corruption. The HKEDC offers the following services:

- integrity training for the business and professional sectors
- code of conduct formulation and review for business organisations
- advice to companies on internal controls, and
- tailor-made training videos and practical guides for different trades and professions.

Please visit www.hkedc.icac.hk or call 2587 9812 if you are interested in using these services to strengthen the corporate governance of your company.

Is the sustainability profession failing?

Erin Lyon, Executive Director, CSR Asia, argues that it is time for an honest and open dialogue about why the sustainability profession is failing to effect real change in business practices.

The sustainability profession is arguably nascent. In the relatively short time where sustainability managers have been in place, companies have made improvements to their sustainability performance, but the numbers are still small and when compared to other business support functions like law, accounting and human resources for example, limited support exists for those working in the profession.

There is no standard job description for a sustainability professional and often a limited understanding within a company of what the sustainability manager should do. A sustainability manager should be in position to guide the company through the business sustainability strategy, engaging with all departments to ensure strategy is implemented company wide. There has to be senior level engagement to ensure that the work can be conducted in a meaningful way that has an impact. The sad reality is that often many sustainability managers never get a look in with the CEO and when they do it is a chance meeting where they are quickly dismissed.

It is perhaps the combination of those two factors that has lead to the reality of a profession that is failing. If anything the existence of sustainability managers is enabling business to practice what is effectively 'business as usual, with a few tweaks here and there'.

Highlights

- there is wholesale, collective failure to make the link between successful businesses and the need to address sustainability concerns
- without an honest reflection or an assessment of performance to date, we run the risk of the sustainability profession condoning business as usual with a few tweaks
- sustainability experts lament that significant change still requires tipping points, scandals, disasters – usually ones that result in tangible costs as a result before practices change

A collective failure

There is wholesale, collective failure to make the link between successful businesses and the need to address sustainability concerns. To defend those in the profession it is important to identify the main perpetrators preventing competent people doing the job they were appointed to do.

1. The marketing, public relations and communications departments who do not empower the company to speak openly and honestly about sustainability challenges failures, and have an unbending desire to spin all company news as positive and an inability to present data and information that is not positive. In the worse cases they take small immaterial initiatives and present them out of context as hugely exaggerated achievements.

2. The senior management/ board of directors who don't know what a sustainability strategy comprises of but are 100% convinced that they know what it is, without any reference to understanding the material sustainability issues for the business, current regulation, soft law or accepted best practice.

In its worse form there is a stubborn refusal to think beyond philanthropy and 'doing things from the heart'.

3. The middle manager who has sustainability within their remit and has hired someone to work in a dedicated function on sustainability issues but does not engage, approve budget or initiatives beyond those practiced each year. Not entirely their fault as they aren't rewarded against sustainability KPIs so they never prioritise it. Raising challenging issues is not viewed as career enhancing so these issues are often ignored.

"raising challenging issues is not viewed as career enhancing so these issues are often ignored"

What needs to change?

But the blame cannot be entirely outsourced. We are systematically failing to make the case for better sustainability practices, for any sustainability practices in some cases. Sophisticated sustainability experts lament that significant change still requires tipping points, scandals, disasters – usually ones that result in tangible costs as a result before practices change.

So how do we resolve the failure of the industry, which for many is a personal disappointment. What needs to change in Asia?

- There is a need for an international, credible and independent membership body, where sustainability professionals are guided through best practice and for the industry body to lobby and educate the business community on the role of sustainability professionals. There is a need for the context of sustainability to be presented by the industry body, to provide sustainability managers with the contextual tools required by industry so that business can understand the need for sustainability practices.

- External stakeholders who have a vested interest in the company improving sustainability practices need to actively engage with companies at both industry and individual level. They need to be transparent and clear when these engagements are happening. Shareholders, insurance providers and those financing company activities need to make clear what the environment, social and governance standards are, publicly.

- Government needs to step up the discourse and legislation with respect to the role of business in society. Growth in Asia is immense and sustainable business practices are a must to create stable and secure societies. Two obvious examples are that without an engaged business community climate change mitigation and adaptation becomes an expensive and impossible task, and poverty alleviation is insurmountable. Government requires industry to engage beyond the provision of philanthropy taxes and disclosure requirements.

- Business leaders need to step up and speak out. There is a vacuum of business leaders talking about sustainability issues in Asia. The silence is deafening. Some understand the need to address the issues but have not found a voice. Without open leadership and prominent business leaders repeatedly addressing sustainability issues, as future and material issues rather than as incidental 'feel good' practices then nothing will change.

- We have to recognise the limited success to date and have a rethink of approaches.

- There must be celebration and transparent disclosure of changing business practices to highlight a 'new business as usual', there must be less focus and trumpeting of the 'triumphs' of traditional business as usual.

We need to have a dialogue about why the sustainability profession is failing to create wholesale change in business practices, why senior business and government leaders are not engaging business with sustainability issues. Without an honest reflection or an assessment of performance to date, we run the risk of the profession condoning business as usual with a few tweaks.

Erin Lyon
Executive Director, CSR Asia

Data security and board portals

Security is the number one reason why an organisation switches from physical board meeting packs to using a digital board portal solution. However, security is also often cited as the major concern for organisations which decide not to make that switch. Phillip Baldwin, Head of ICSA Boardrooms Apps (HK) Ltd, explores this apparent paradox and lays a few ghosts to rest.

When it comes to security, you need to analyse potential threats logically and methodically, weighing the likelihood of a threat happening with the potential effect if it happens, the cost to mitigate it and the inconvenience of securing your information.

If your company uses an internet-based email system, every email is just like a post card – easily read by every postman through whose hands it passes. You can improve the security of your email correspondence by embracing encryption systems and by password protecting the files you send. However, this relies on the people to whom you are sending the information having the passwords and decryption systems in place, and on their willingness and ability to use them. If the system you set up is not easy to use, you will find that people will stop using it in favour of an easier method. Any encryption system needs to be transparent to the users and should not reduce their convenience in any way.

Most corporations have security protocols in place, but it is far too easy to make a mistake with emails. For example, attachments can have unseen fields. In one example a helpful HR person at a company sent an employee telephone extension list to all employees. But the spreadsheet had hidden columns that were easily unhidden to reveal everyone's pay, bonuses and stock options – including senior management's (www.techhive.com).

Having everything encrypted helps, as do passwords. But does the CEO have a post-it note with his password in his top drawer? Does his secretary print all his emails out for him to read? If you email board papers to directors/ senior managers on the road, where do they print them out – the hotel business centre?

The risk to passwords is not just in the places you know, often it's in the places you don't. How many of us have used the same password for our online supermarket account as the one used to protect highly sensitive documents? If that password gets hacked on anyone's system, it could be used to access your corporate data without you knowing.

Password reset options are often an easy way to access a person's account. All you have to do is launch an app and tap the 'forgot your password' tab, and have it send an email to you. And where is the first place that the email is sent? The device you are currently holding. Quickly reset the password and you are into that 'secure' app.

Digital security is often forefront in people's minds, but the latest attacks are often 'social hacks', using personal but often publicly available information, such as when you forget your password and it asks 'what's your pet's name?' Pieces of personal information that are casually discarded can be used to piece together or retrieve that 30-character random password that you thought was secure.

However, sometimes quite likely, internal threats may be more damaging than super hackers on the other side of the world targeting you. Are you sure nobody

> "it doesn't matter if you've used a titanium padlock on the front door if a backup key is stored under the door mat"

can walk off with one of your backup tapes? I once spent a couple of hours in a board meeting discussing the virtues of a proposed new IT system. The directors asked all sorts of valid questions about data security. Not one asked about physical security and the reality was that the server was protected by a door with a simple push lock system that was open most of the time! It would have been a very simple task for someone to walk in and pick up the server.

Tips on data security

Here are some things to think about for data security – especially when considering a board portal/ paperless meeting solution.

It's about balance

Security and usability are closely tied and it is important to find a system that provides the balance required. If there are too many restrictions, users are bound to abandon it altogether. Yes, you can add password protection to documents, but if each document has a password, users are bound to use the same password over and over, or their passwords will be written down on sticky notes which bypass any and all security. Security works best when it's easy for administrators, flexible and secure for IT, and transparent for users.

It's about trust in people

Board papers would historically be printed, compiled, checked, and double checked. In an age of instant delivery, it's all too easy to click the wrong button and instantly deliver the wrong content to the wrong people at the wrong time, unless controls are put in place to limit this risk. Similarly, controls must be put in place to limit the ability to further distribute or copy sensitive information outside of the secure environment, without being too restrictive in making the solution unusable, or not fit for purpose.

Highlights

- when choosing a board portal/ paperless meeting solution, you need to look for a balance between security and usability
- security works best when it's easy for administrators, flexible and secure for IT, and transparent for users
- you need to invest in education and training – switching to digital board packs can be quite daunting for directors

It's about trust in security

When delivering the security of your papers, who can you trust more than your own organisation? Emailed documents will invariably be passing through one (or in some cases many) email servers. People outside the trusted environment may be able to access that content without your knowledge.

Let us assume you find someone who says they can protect your documents – can you trust them? How open are they regarding security, how up-to-date are they with the latest protection methods and how closely do they guard your security? You can gain additional peace of mind by ensuring the third party provider is audited externally, either by yourself or a professional company.

Audit logs can provide some peace of mind, but it's often a case of too little too late. If your data has been compromised, extracted, forwarded, the fact you know who was logged in is little comfort when that sensitive data has already been sold.

Content security is important. It doesn't matter if you've used a titanium padlock on the front door if a backup key is stored under the door mat. In the same way, how the key used to unlock the content is created and stored is just as important as how the content is locked.

It's about limiting risk

One way to limit risk is to limit the places content is stored, or how and when it is accessed. When distributing content either digitally or physically, can you be certain where it goes? Does it get copied or forwarded? Content management controls can limit which devices get the content, and at what time and for how long. So make sure your board portal/paperless meeting solution has these controls in place.

It is also important to have control over the receiving device. Is it secure? Is the connection secure? How strong is the security? Each link in the chain is a potential weakness, something for an attacker to use to gain access to your data. This can take the form of human error or digital security, both of which can have risk limited if managed well.

Your users should be able to access the content when they want, where they want and that means risk. When they are in a coffee shop or a hotel lobby is the WiFi compromised? Could the device be stolen or just left unlocked while they grab a latte? Could the device become compromised in some other manner, for example if someone accesses the device long enough to install a key logger without the user knowing?

The do's and don'ts of data security

The do's

Always update your software. Updates fix security flaws and issues, or combat new attacks.

Secure your device. Many people don't even bother to use password protection for their devices.

Disable emailing and printing for secure content. If it's outside of the secure environment, it's out of your control.

Control the data, where you can. When administrators are uploading papers, they may be receiving it from a variety of sources. These can be restricted to the office network for uploading, before being distributed securely to the right place at the right time to the right person, anywhere in the world.

The don'ts

Don't access data in an insecure area or over an insecure connection. Avoid WiFi public hotspots such as coffee shops, or places where someone can easily see or record you typing in your password, or look over your shoulder to see your content.

Don't write down your password. Similarly you should regularly change your password, avoid using easy-to-guess passwords and avoid using the same password everywhere.

Don't install malware. Of course, this is often done unintentionally, but observing basic security protocols when downloading software can help mitigate this risk.

Don't be overly cautious with security. You need to give users enough access and flexibility. Locking down security too much can make things worse.

> “users are bound to use the same password over and over, or their passwords will be written down on sticky notes which bypass any and all security”

It's about control

Once you can be certain that the information is stored securely, and that each link in the chain is secure, you need to be sure that content is delivered to the right people, at the right place, at the right time. All too often someone may hit 'reply all', or copy to the wrong 'Mike'.

Email systems have little or no control over what content is sent where and when, and no way to recall it either. When delivering printed papers, it's important to have the user's latest address, or it could fall into the wrong hands (and even then, it is not uncommon for couriers to deliver the wrong papers to the wrong address). With digital devices, even if you could secure the device, what is to stop them using a personal device, one that's not secured or could have been compromised? Make sure your paperless solutions provider has these issues covered. The administrator should be able to control which devices can receive what information and when, plus whether or not this information can be sent on and/ or printed out. By tying the user and information to the device, the risk of leakage is minimised.

What happens when someone leaves the company, or loses their device? With gigabytes of storage, today's devices can carry a lifetime of sensitive information in a neat little package. You could send a command to remotely wipe the contents but this assumes the WiFi is working and/ or the SIM card has not been taken out and that the device is kept above-ground and/ or not placed in a Faraday bag. It is imperative that security and control over content is maintained whether the device is online or not.

Balancing security and usability

When choosing a board portal/ paperless meeting solution, do your homework on security as well as usability. In all likelihood, the board portal you choose will be more secure than your current paper-based solution and certainly any solution involving email or a drop box type set up. But you also need to invest in education and training. Moving from paper to using a tablet device such as an iPad or surface tablet can be quite daunting for directors, but with the proper training and planning the change will be for the better. Your company's papers will be more secure, more easily kept up-to-date and conveniently delivered. There are a whole host of useful applications within the leading paperless meeting solutions that will make the life of a director much easier and, after a short training session, they will be sold on the new system. Equally, the life of the company secretary will improve dramatically when using a board portal. It will mean less paper and less time spent putting the board pack together, as well as an enhanced ability to control information and its distribution.

Phillip Baldwin
Head of ICSA Boardrooms Apps (HK) Ltd

Acknowledgements:
Richard Carrey, CEO, Technology Support Ltd (www.tecsupp.com)
Jamie Kenyon, Product Manager, BoardPad, ICSA Boardroom Apps Ltd (www.boardpad.com)

Seminar review: ESG reporting

Environmental, social and governance (ESG) reporting might seem to be a daunting prospect. How can I measure my company's energy use efficiency? Should I include our overseas subsidiaries in our ESG assessments? Do I need to get a third party to assure the ESG data? There will be many questions to be answered when companies first embark on ESG reporting, but, according to a recent ECPD seminar on the topic, companies can take a very manageable, gradual approach to the process.

The seminar – **'ESG reporting: managing the scope of information effectively'** – by Theodora Thunder, Managing Director, Streeter Strategic Ltd, and Dr Glenn Frommer, Head of Corporate Sustainability, MTR Corporation, emphasised that each step in the ESG reporting journey is relatively straightforward.

Grace Wong FCIS FCS, Company Secretary and Deputy General Manager, Investor Relations, China Mobile Ltd (seminar chair), presenting souvenirs to the speakers, Theodora Thunder and Glenn Frommer

1. Identify your key stakeholders

One of the first things you need to do before embarking on ESG reporting is to identify your key stakeholders. Dr Glenn Frommer suggested a very simple way to do this is to prepare a 'stakeholder map'. 'All you need is some sticky notes and a large board,' he said.

At a meeting of senior management, you ask everyone to write down the company's key stakeholders (each on a separate sticky note), and then place the stakeholder on the board according to their importance to the company. The greater the importance of the stakeholder to the business the further right the name is placed and the greater the influence the stakeholder has, the higher up the board they go. At the end of this process your key stakeholders are all in the top right hand corner box (see Figure 1).

2. Identify the ESG issues material to your business

This is another key step for companies embarking on ESG reporting. 'Materiality' is one of the core concepts of the latest generation of sustainability reporting guidelines from the Global Reporting Initiative (GRI). The 'G4' guidelines emphasise that businesses need to report on what matters, not just everything measured.

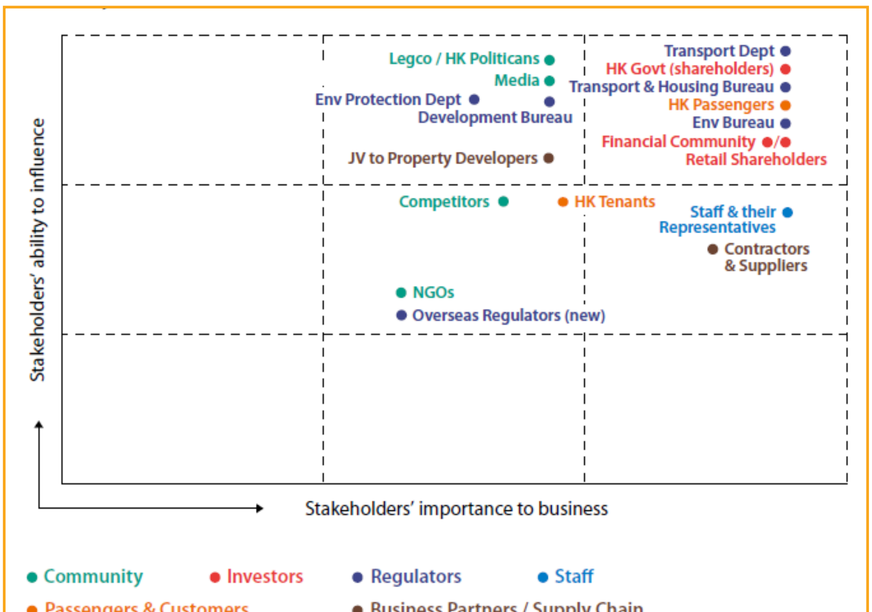
Theodora Thunder emphasised that you cannot unilaterally decide what is material to your business, this assessment has to be based on what your stakeholders are telling you is material for them. Once you have this data you can construct a 'materiality map' in the same way as you constructed your stakeholder map (see Figure 2). On the horizontal axis, issues are placed according to the degree to which they can influence business success. On the vertical axis, issues are placed according to their importance to stakeholders. 'It is not difficult,' said Dr Frommer, 'you can do it in 25 minutes.'

3. The benefits of ESG reporting

ESG reporting is often seen as a compliance issue, and indeed it will not be

Figure 1

MTR stakeholders map 2009



Source: MTR

long before some form of ESG reporting is mandatory for larger listed companies in Hong Kong, but the seminar emphasised that ESG is primarily beneficial for the benefits it brings internally to companies. Firstly, ESG reporting saves money. This is not only because it encourages the company to improve its ESG performance by, for example, reducing, or making more efficient, its energy usage, or reducing its waste production.

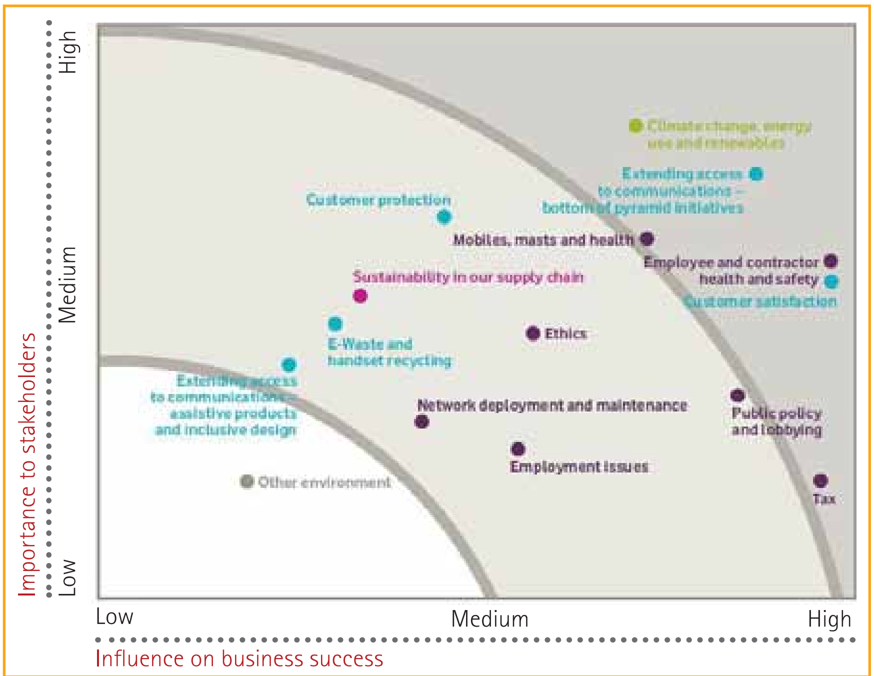
The economic benefits also come from less direct means. A company with a good record in ESG performance, for example, is more likely to be able to hire and retain the best talent – employees increasingly want to work for companies with a good record on environmental and social issues. The ESG reporting process also helps companies to develop a more sophisticated risk management strategy since they need to consider many social and environmental factors which may previously have been overlooked or underestimated.

Companies are unlikely to see these advantages immediately, the seminar speakers pointed out. They added that companies need to be in ESG reporting for the long term. 'I've been doing this for 12 years,' quipped Dr Frommer. 'When I started I was tall, I had dark hair and no beard, so you can see what it has done to me.' CSj

'ESG reporting – managing the scope of information effectively' was held on 7 October 2013. See this month's 'In Profile' column (pages 14-18) for an interview with the seminar speakers. Information on forthcoming ECPD seminars is available on the HKICS website: www.hkics.org.hk.

Figure 2

MTR materiality map



Fellows-only benefits

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

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

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

Application requirements:

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

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

Seminars: August – September 2013

27 August 2013

Negotiation skills for business – skills & practice of consensus

Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd (seminar chair), presenting a souvenir to the speaker, Honic Ip, Barrister-at-law, Garry Soo's Chambers.

4 September 2013

A briefing on the new Companies Ordinance

Mohan Datwani; Paul Moyes FCIS FCS, Executive Director, Head of Practice Development, Marketing & Communications and Director, Corporate Services, Tricor Service Ltd; Natalia Seng FCIS FCS (PE), Chief Executive Officer, China & Hong Kong, Tricor Group and Tricor Services Ltd (seminar chair), Tim Chung, Senior Solicitor (Company Law Reform), Phyllis McKenna, Deputy Principal Solicitor (Company Law Reform), Companies Registry; Samantha Suen FCIS FCS, Chief Executive, HKICS; Karen Ho, Deputy Principal Solicitor (Company Law Reform), Christine Frances Sit, Senior Solicitor (Company Law Reform), Companies Registry; Lydia Kan ACIS ACS, Director, Professional Development, HKICS; Ivy Chow, Manager, Professional Development, HKICS; at the seminar.

23 September 2013

Is Hong Kong a new premier Asian holding company for China investment?

Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd (seminar chair), presenting a souvenir to the speaker, Danny Kwan, Partner, Tax & China Business Advisory Services Division, PwC.

26 September 2013

Corporate governance – with a particular focus on listed companies

Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers (seminar chair), presenting a souvenir to the speaker, Paul Westover, Partner, Stephenson Harwood, FHKIoD.

30 September 2013

Directors' induction – an overview (re-run)

Mohan Datwani LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS, presenting his seminar.

Forthcoming ECPD Seminars (November – December 2013)

Date	Seminar topic	Speaker(s)
14 November 2013 18:45 – 20:15	Corporate governance developments and issues	Matt Emsley, Partner, Herbert Smith Freehills
18 November 2013 18:45 – 20:15	Directors' duties under Cayman law	Richard Spooner, Of Counsel, Maples and Calder
21 November 2013 18:45 – 20:15	Potential compliance risk and ways to manage the risk – what company secretaries should know	Martin Tolar, Managing Director, ACI
3 December 2013 18:45 – 20:45	Financial modelling for beginners	Raymond Yuen, *CFA, FCPA, MHKSI*
4 December 2013 18:45 – 20:15	Common employment disputes	Samuel Li, Solicitor & Notary Public, Samuel Li & Co
10 December 2013 18:45 – 20:15	2013 AGM season review	Stephanie Cheung, Vice-President Client Services, Computershare
12 December 2013 18:45 – 20:45	Tips for managing IT security risks and case studies – what officers should know	Ester Ip, *MBus(IT), MSc(ECom&IComp), CPA, FCCA, CGA, CTA, CIA, CISA*, Director, IT Audit & Consultancy, Crowe Horwath (HK) CPA Ltd Den Wong, Chief Superintendent, Hong Kong Police (Retired), Senior Corporate Security Specialist, Crowe Horwath (HK) Transaction & IT Advisory Services Ltd

For details please refer to the HKICS website: www.hkics.org.hk.

Visit of Deputy Secretary-General of Beijing Broker Association

On 15 September, Li Yinglin, Deputy Secretary-General of Beijing Broker Association (BBA) visited the Institute's Beijing Representative Office (BRO) and met with Kenneth Jiang *FCIS FCS*, BRO Chief Representative and Carrie Wang, Senior Manager. The parties shared views on corporate secretarial services and the role of Chartered Secretaries in fostering good corporate governance, compliance and secretarial services within different types of corporation.

Founded in 2003, BBA, under the supervision of Beijing Administration for Industry and Commerce, is committed to conducting research in the business registration sector in Mainland China.

The Institute will continue to share with BBA knowledge and experience from Hong Kong, Mainland China and the international arena relating to corporate secretarial services, compliance and corporate governance matters.

Group photo with Li Yinglin, Deputy Secretary-General, Beijing Broker Association

New Graduates

Chan Chung Yan	Mak Yuk Kiu
Cochrane, Sherry Anne	Ng Fong Kuan
Feng Hui Dan	Poon Ka Cheuk
Kwan Wai Yan	Wong Yue Yan, Teresa
Law Shuk Wah	Yeung Lai Man, Sandy
Ma Wai Chi	

Hyperlink to Companies Registry website

The Companies Registry website is an important information resource for company secretaries. In particular, it provides a wealth of information on regulatory changes and administrative requirements relating to company formation. As a service to our members we have sought and obtained consent to build a hyperlink to the Companies Registry website from our homepage (www.hkics.org.hk).

The hyperlink to the Companies Registry website is now live. Readers can access the link on the HKICS homepage: www.hkics.org.hk.

Newly appointed company secretaries

Company secretary	Listed company	Date of appointment
Au Man Wai *ACIS ACS*	Legend Strategy International Holdings Group Company Ltd (Stock code: 1355)	4 September 2013
Kwong Chun Chung *ACIS ACS*	Great China Holdings Ltd (Stock code: 141)	17 September 2013
Kwok Siu Man *FCIS FCS*	Far East Hotels and Entertainment Ltd (Stock code: 0037)	23 September 2013
	OTO Holdings Ltd (Stock code: 6880)	30 September 2013
Chan Lai Ping *ACIS ACS*	Hao Tian Resources Group Ltd (Stock code: 474)	27 September 2013
Wong Po Ling, Pauline *ACIS ACS*	Far East Holdings International Ltd (Stock code: 0036)	30 September 2013
	China Assurance Finance Group Ltd (Stock code: 8090)	30 September 2013
Chan Kwong Leung *ACIS ACS*	Dingyi Group Investment Ltd (Stock code: 508)	30 September 2013
Au Shiu Kee *ACIS ACS*	South China Land Ltd (Stock code: 8155)	2 October 2013

Membership activities

HKICS/ Herbert Smith Freehills – compliance guide launch and cocktail reception

The Institute jointly organised with Herbert Smith Freehills (HSF) a relaxing and informative cocktail reception on 7 October 2013 at The American Club attended by over 120 members. At the event, HSF launched the new edition of their *Compliance Guide for Companies Listed on the Hong Kong Stock Exchange – Key Obligations for Hong Kong Listed Companies*. Two HSF partners, Matt Emsley and Jason Sung, gave a presentation on the new regulatory compliance regime and the importance of good corporate governance. The attendees enjoyed the presentation and networking as well as the mouth-watering refreshment.

The Institute also distributed copies of one of its key publications: *Guide on Director's Induction: an Overview*, at the event. An online version of this guide is available on the HKICS website (www.hkics.org.hk) under 'publications'.

(From left to right) Edith Shih, HKICS President, with the two speakers: Jason Sung and Matt Emsley of HSF

Opening remarks by Edith Shih

At the cocktail reception

At the cocktail reception

Membership activities

Convocation 2013

The Institute's annual Convocation was held on 3 October at Jardine Matheson Ltd's penthouse. We were very honoured to welcome Anthony Neoh *FCIS FCS*, Former Chief Advisor of China Securities Regulatory Commission, as our Guest of Honour. Over 80 newly elected Fellows, Associates and Graduates for 2012/ 2013 joined and celebrated their achievements.

Mr Neoh presented certificates to newly elected Fellows. Associates received their certificates from HKICS President Edith Shih, Vice-President Dr Maurice Ngai *FCIS FCS(PE)* and Council Member & Membership Committee Chairman Susie Cheung *FCIS FCS(PE)* Membership Committee Vice-Chairman Eddie Liou *FCIS FCS(PE)* presented Graduates with their certificates.

Other Council members attending the event included Jack Chow *FCIS FCS* and Alberta Sie *FCIS FCS(PE)*. Past President Neil McNamara *FCIS FCS*, Membership Committee members including Gloria Ma and Stella Lo also took part. We would like to express our sincere gratitude and appreciation to Jardine Matheson Ltd for their generous sponsorship of the event.

Please refer to page 20 for the preface written by Mr Neoh for the Convocation booklet, which was distributed at the event.

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

Edith Shih, HKICS President, presenting a souvenir to Anthony Neoh

Group photo of Fellows

Anthony Neoh giving his speech

(From left) Dr Maurice Ngai, Neil McNamara, Susie Cheung, Guest of Honour Anthony Neoh, HKICS Chief Executive Samantha Suen, and HKICS General Manager & Company Secretary Louisa Lau

Edith Shih giving her welcoming speech

At the event

Group photo

Susie Cheung, HKICS Membership Committee Chairman, giving her closing speech

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

The Institute was pleased to hold a new workshop on 30 October in the 'Grooming for Leadership' series. These workshops provide members the opportunity to learn practical tips from experts on different work-oriented topics in preparation for their career advancement. Details with photos will be reported in the next issue of *CSj*.

Zhuhai Study Tour

This one day tailor-made study tour for our members is scheduled for Friday 29 November 2013. Accompanied by fellow members, we will visit Shenhua Guohua Wind Energy (a wind farm project developed by China Shenhua) and Zhuhai Municipal Administration for Industry and Commerce. The tour will include tasty local cuisine and sightseeing. Please mark your diary. For details, please refer to the flyer on page 49. For enquiries, please contact Regina Chan, Membership section, at 2830 6048.

Members' Networking – Geo Park Visit

The Institute is pleased to organise a Hong Kong Geo Park visit on Saturday 23 November 2013. The Park became a National Geopark and Global Geopark in 2009 and 2011 respectively. November is the best month to pay a visit to this unique natural area with special geological significance and serves the three objectives of conservation, education and sustainable development. Please mark your diary and check for details on the Institute's website.

Mandatory CPD

What should you know about the MCPD requirements?

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

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

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

Exemption from mandatory CPD requirements

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

MCPD programme in-house training policy update

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

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.

Qualification	MCPD or ECPD points required	Point accumulation deadline	Submission deadline
1 January 2005 - 31 July 2012	15	31 July 2013	15 August 2013
1 January 2000 - 31 December 2004	15	31 July 2014	15 August 2014
1 August 2012 - 31 July 2013	15	31 July 2014	15 August 2014

2013/ 2014 Family-Friendly Employers Award Scheme

The 2013/ 2014 Family-Friendly Employers Award Scheme organised by the Family Council has been officially launched. Samantha Suen *FCIS FCS*, HKICS Chief Executive, as a representative of the Hong Kong Coalition of Professional Services, has joined the Organising Committee of the award scheme.

The award scheme aims to enhance the importance of family core values, foster a pro-family environment, and recognise companies and organisations that have implemented family-friendly employment policies and practices. The deadlines for employees' nominations and employers' applications are 17 December 2013 and 17 January 2014 respectively. The results will be announced in 2014.

More information about the scheme is available on the Family Council website: www.familycouncil.gov.hk/2013_14family-friendlyemployers.

At the launching ceremony

Annual Subscription 2013/ 2014

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

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). For details of card benefits and application form, please refer to the Institute's website.

2. Failure to pay the subscription on or before 31 January 2014 may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle the outstanding subscription fees plus the re-election fee in order to reinstate their membership.

3. Please update the latest employment information by completing the 'Personal Data Update Form' and returning it to the Institute together with the annual subscription and cheque for payment of subscription (if paying by cheque) by using the return envelope.

Members and Graduates who have not received the Membership Renewal Notice for the financial year 2013/ 2014 should contact the Membership section at 2881 6177.

Membership application deadline

Members and Graduates are encouraged to advance their membership status once they have obtained sufficient relevant working experience. Fellowship and Associateship applications will be approved by the Membership Committee on a regular basis. If you plan to apply, please note the final submission deadline and the respective approval date for 2013 (subject to receipt of application and supporting documentation).

Submission deadline	Approval date
Saturday 16 November 2013	Mid-December 2013

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

Chinese Cross-Border M&A Forum hosted by CEBEX Group

On 16 October, members of the Institute joined the Chinese Cross-Border Forum, which was hosted by CEBEX Group in Beijing. The forum brought together experts to share their expertise on cross-border merger and acquisitions. It attracted over 150 participants from mainland and foreign companies, as well as intermediary organisations. The Institute for the first time was a supporting organiser of the event.

Dr Gao Wei *FCIS FCS*, Council member and Vice-Chairman of the Professional Development Committee of the Institute, and six senior Affiliated Persons attended the event as honoured guests. Kenneth Jiang *FCIS FCS*, Chief Representative, Beijing Representative Office (BRO) of the Institute, and Carrie Wang, Senior Manager of BRO, also attended the event and networked with the speakers and participants.

At the Chinese Cross-Border Forum

Annual Dinner 2014

The Institute's Annual Dinner 2014 will be held on 7 January 2014 at the JW Marriott Hong Kong. Sir C K Chow, Chairman, Hong Kong Exchanges and Clearing Ltd, will be the guest of honour at the event. For details, please refer to the flyer on page 23, or contact the Membership section at 2881 6177.

IQS examination timetable (December 2013)

	Tuesday 3 December 2013	Wednesday 4 December 2013	Thursday 5 December 2013	Friday 6 December 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

The Open University of Hong Kong – orientation of the Master of Corporate Governance programme

The Institute organised an orientation for Master of Corporate Governance students from the Open University of Hong Kong on 2 October 2013. The Institute and its studentship requirements were introduced and Queenie Ho *ACIS ACS(PE)* and Johnny Leung *ACIS ACS* shared work and career experiences with the students.

At the orientation

Student Ambassadors Programme (SAP) – visits

In order to assist student ambassadors to familiarise themselves with the company secretarial field, the Institute organised the following visits during October 2013:

1. Securities and Futures Commission (7 October)
2. Tricor Services Ltd (23 October)

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

At the Securities and Futures Commission

At Tricor Services Ltd

Corporate Governance Paper Competition and Presentation Award 2013

To promote good corporate governance awareness among local undergraduates, the Institute has organised the 'Corporate Governance Paper Competition and Presentation Award' since 2006. This year's topic is **'Corporate governance means more reports and disclosure?'** The six finalist teams attended the Paper Presentation Competition on 26 October to compete for the Best Presenter Award.

Group photo at the Paper Presentation Competition

Team One
The University of Hong Kong
Chen Hoi Kei and So Wing In - Faculty of Business and Economics

Team Two
The Chinese University of Hong Kong
Chan Chui Ying - School of Accountancy

Team Three
The University of Hong Kong
Lam Lock Yee - Faculty of Social Sciences
Li Po Hing - Faculty of Business and Economics
So Wai Kwan - Faculty of Law

Team Four
The University of Hong Kong
Lau Lai Kang - Faculty of Business and Economics

Team Five
The Chinese University of Hong Kong
Adrian Fong - Faculty of Law

Team Six
The University of Hong Kong
Tam Suet Yan, Sharon - Faculty of Law
Wan Yuk Yi, Kiko - Faculty of Arts

Details and the winning paper will be available in the next issue of CSj.

Upcoming activities

International Qualifying Scheme (IQS) Information Session

This free seminar will include information on the International Qualifying Scheme (IQS). Chow Wing Man *ACIS ACS* will share her experience in preparing for the examinations and discuss career prospects of the Chartered Secretarial qualification.

Members and students are encouraged to recommend this information session to any friends or colleagues who may be interested to learn more about the IQS and the Chartered Secretarial qualification.

For enquiries, please contact the Education and Examinations Section at 2881 6177 or student@hkics.org.hk.

Date	Monday 18 November 2013
Time	19:00 - 20:30
Venue	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Speaker	Chow Wing Man *ACIS ACS*, Assistant Company Secretary, KWG Property Holding Ltd
Enrolment deadline	Monday 11 November 2013 [on a first-come-first-served basis. Participants will receive an email confirmation.]

Independent Insurance Authority

The government is finalising the enabling legislation to establish an independent Insurance Authority (IIA) in Hong Kong. The IIA is intended to modernise the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policyholders, and align with international practice that financial regulators should be financially and operationally independent of the government.

In July 2010, the Financial Services and the Treasury Bureau (FSTB) launched a public consultation on the broad framework for establishing an IIA, the outcome of which indicated general public support for the proposal. In June 2011, the FSTB published the *Proposed Establishment of an IIA Consultation Conclusions and Detailed Proposals* and started the next phase of engagement with the industry and relevant stakeholders. Based on the detailed proposals and comments received during the engagement process, the government issued the draft key legislative proposals for a three-month consultation from 26 October 2012 to 26 January 2013.

The current legislative proposals would add the following additional functions to the existing functions of the Insurance Authority. Commensurate with its role as a statutory independent regulatory authority, the IIA would:

- regulate the conduct of insurance intermediaries through a licensing regime
- assist the financial secretary in maintaining the financial stability of Hong Kong
- promote understanding of insurance products by the public, and
- facilitate sustainable market development of the insurance industry.

These legislative proposals will be introduced into the Legislative Council within the 2013/ 2014 legislative year.

The consultation conclusions on the 'Consultation on Key Legislative Proposals on Establishment of an Independent Insurance Authority' are available on the FSTB website: www.fstb.gov.hk.

Companies Ordinance commencement date

The Secretary for Financial Services and the Treasury has appointed 3 March 2014 as the day on which the new Companies Ordinance (CO) will come into operation. Some provisions of the CO, however, will be implemented at a later date. The provisions of the CO which will come into operation on 3 March 2014 are given below.

- Parts 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19 and 21
- Part 2, except:
    - i. section 27(3), (4), (5) and (6) in so far as it relates to a director or reserve director, and
    - ii. sections 47, 49, 50, 51 and 52 and Subdivision 2 of Division 7
- Part 12, except:
    - i. section 643(1)(a)(ii), (2)(b) and (3)(b) in so far as it relates to a correspondence address, and
    - ii. sections 643(5), 644, 645(5), 647(4) and (5), 651 and 657(2)(g)
- Part 16, except sections 791(4) and 802(4) and (5)
- Part 20, except section 908
- Schedules 1, 3, 4, 5, 7, 9 and 10
- Schedule 2, except section 3(1)(a)(iii) and (2)
- Schedule 6, except sections 3 and 4, and
- Schedule 11, except section 115.

Further information on the new Companies Ordinance can be found on the Financial Services and Treasury Bureau and Companies Registry websites: www.fstb.gov.hk and www.cr.gov.hk.

CHARTERED SECRETARIES
特許秘書
More than meets the eye.
潛能．超越所見．

香港特許秘書公會
珠海交流團(Zhuhai One-day Study Tour)
2013年11月29日（星期五）

強制持續專業發展學時：待定
(CPD Points: TBC)

獨家安排精彩行程：

- 了解珠海商事登記制度改革新規例及有關公司秘書的規定與要求
- 考察中國神華 － 風力發電公司設施，開闊會員的眼界
- 增進會員間的互動與交流
- 特色午膳及加遊珠海漁女像

費用：
港幣 680 元 － 會員/畢業學員/學員
港幣 750 元 － 非會員
（名額有限，報名從速!）

參觀珠海企業及政府機關

中國神華：橫琴島風電場

(Visit to Shenhua Guohua Wind Energy – wind farm project developed by China Shenhua in Zhuhai)

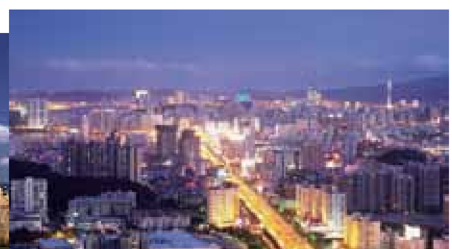
會員可親臨風機下聽取講解：

- 了解風電場如何實現了橫琴島能源的可持續發展，加深對新能源的認知和節能環保的意識，改善珠三角地區的大氣環境
- 工程總投資約 1.28 億元人民幣，共安裝 21 台風機
- 風電場年發電量可滿足 2 萬個家庭的用電
- 與傳統火力發電相比，實現碳減排 2.5 萬噸

珠海市工商行政管理局
(Visit to Zhuhai Municipal Administration for Industry and Commerce)

- 了解珠海市商事登記制度改革及其公司法律實務
- 《珠海經濟特區商事登記條例實施辦法》有關公司秘書的規定與要求
- 擔任公司秘書的個人或企業資質要求
- 香港公司秘書從業人員或機構從事公司秘書服務業的政策規定

了解珠海人文景觀 (Sightseeing)



註：
1. 早上 8 時尖沙咀中港城一樓離境大堂集合，晚上 7 時 15 分返抵上環港澳碼頭。
2. 團費已包括行程內交通、午餐、香港及國內導遊小費、香港旅遊業議會印花基金、十萬元平安保險。
3. 香港特許秘書公會保留隨時更改、調動或取消活動之權利。如有任何爭議，本會之決定為最終。
4. 以上圖片轉載自互聯網。

有關詳情可瀏覽公會網頁：www.hkics.org.hk 。如有查詢，歡迎致電2881 6177聯絡會籍服務部。
有興趣者，請填妥報名表格，並於 2013 年 11 月 18 日或以前傳真至 3421 1071。

請與會員分享！