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October 2013

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Inside information

When and what
to disclose

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

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

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Membership statistics update

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October 2013

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Compliance matters

It sometimes takes a major compliance challenge to focus directors' minds on the value of the advice of their company secretaries. Just such a challenge came along on 1 January this year when amendments to the Securities and Futures Ordinance (SFO) brought in Hong Kong's new regulatory regime for the disclosure of inside information. Directors have to make a judgement call as to whether to disclose certain information and company secretaries are able to provide real input in helping to monitor and determine the disclosure decisions.

Taken at face value, the new disclosure requirements may seem relatively simple. A listed company, unless exempted by one of the safe harbours, must as soon as reasonably practicable after any inside information has come to its knowledge, disclose that information to the public. The devil, as always, is in the detail.

On a daily basis company secretaries deal with a large amount of information. To be considered 'inside information', the information must be relevant (that is, it must concern the company, a shareholder or an officer of the company, or the listed securities or their derivatives); it must not be widely known to the public; and it must be likely to materially affect the company's share price. Where information satisfies all three of these criteria, it needs to be deliberated by the board to determine whether it triggers a disclosure obligation under the SFO, under systems of control which the company secretary would have been intimately involved in.

The determinations are complex. Ken Chan, a member of the HKICS Professional Development Committee, points out in this month's cover story (see pages 8–13) that differences of opinion are likely on such judgement calls, and reinforces that this is where company secretaries add real value. Good decisions are based on good information and the directors may need to be advised of the company's obligations under Part XIVA of the SFO, the Securities and Futures Commission (SFC) *Guidelines on Disclosure of Inside Information*, the scope of their D&O policies and other relevant information in a practical manner.

Not all inside information needs to be disclosed. It may be covered by one of the safe harbours outlined in the revised SFO. If this is the case, the directors' compliance challenge will be to keep the information confidential, which is at least as challenging, if not more so, than disclosing the information. There needs to be a clear identification of who knows what, and regular briefing of directors on what they can and cannot disclose. If the information is not covered by a safe harbour, it needs to be disclosed in a formal announcement 'as soon as reasonably practicable'. As our latest Annual Corporate and Regulatory Update seminar made clear, you cannot wait for the next scheduled board meeting, or for remedial actions to be taken, before making this announcement.

All of this is clearly no small undertaking and the consequences of getting it wrong are rather intimidating. The revised SFO has transferred enforcement of inside information disclosure from the stock exchange to the SFC, thereby increasing

the sanctions available to the regulator. This, after all, was the original intention of the strategy to give statutory backing to key listing rules. The SFC is empowered to bring cases of non-compliance with the SFO before the Market Misconduct Tribunal which may impose a HK\$8 million regulatory fine for breaches against directors personally. This fine will only be imposed where there is evidence of 'intentional, reckless or negligent' conduct resulting in the breach, but it has concentrated directors' minds wonderfully on the importance of compliance.

So, while the new inside information disclosure regime represents a major compliance challenge for directors, and hence company secretaries in Hong Kong, it has also resulted in some impressive benefits – both for members of our profession and the companies we work for. For us, it has provided a timely reminder of the value of a company secretary's advice as governance professionals. For our companies, it has improved transparency and has boosted the effectiveness of the internal controls needed to ensure that inside information is identified and escalated to the board and that confidential information stays confidential.

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

Edith Shih FCIS FCS(PE)

合规事宜

在合规工作上，要董事看重公司秘书的意见，有时确是一项重大的挑战。今年1月1日，《证券及期货条例》的修订条文生效，香港就内幕消息的披露实施新的规管制度，正正构成上述的挑战。董事须决定是否披露某些资料，而公司秘书则可提供实质的意见，帮助监察和作出是否披露的决定。

表面看来，新的披露规定看似相对简单。除获安全港豁免的情况以外，上市公司在知悉任何内幕消息后，必须在合理地切实可行的情况下尽快向公众披露。可是，魔鬼总出现在细节中。

公司秘书日常处理大量资料。要符合「内幕消息」的定义，该资料必须是有关的（亦即必须与公司、公司股东或高级人员、或公司的上市证券或其衍生工具有关），必须未经公众广泛知悉，而且必须有可能对公司的股份价格有重大影响。有关资料若符合这三项条件，董事会要慎重决定该资料是否触发《证券及期货条例》之下的披露责任；这过程须在公司秘书密切参与制定的管控制度下进行。

决定的过程相当复杂。公会专业发展委员会成员陈家健在今期的封面故事（见第8至13页）中指出，在作这类判断时，往往有不同意见；这正是公司秘书的真正价值所在。良好的决策须有充份的资料作为根据；董事有可能须听取意见，从实务的角度了解《证券及期货条例》第XIVA部所规定公司

的责任、证监会《内幕消息披露指引》的内容、公司的董事与高级人员政策的范畴，以及其他有关资料。

并非所有内幕消息均须披露。有些资料可能是新修订的《证券及期货条例》列明的安全港涵盖范围内。在这情况下，董事在合规问题上所面对的挑战，就是把资料保密；这与披露有关资料一样困难，甚至比披露有关资料更具挑战性。我们须认清谁人知道什么，并定期向董事解说什么可以披露，什么不可以。假如有关资料不受安全港保护，便须「在合理地切实可行的情况下，尽快」以正式公告的方式披露。正如公会最近期举办的公司规管最新发展研讨会所清楚说明，我们不可留待下一次董事会会期后，或留待补救措施实行后，才发出有关公告。

这一切显然都不是易事，若有失误后果也很严重。经修订的《证券及期货条例》把披露内幕消息条文的执法人由交易所改为证券及期货事务监察委员会（证监会），从而加强监管机构可采取的制裁手段。毕竟，为《上市规则》主要条文提供法定依据的策略，原意正是如此。证监会有权把不遵守《证券及期货条例》的个案提交市场失当行为审裁处，审裁处可就违规事项向董事及行政总裁个人处以800万港元罚款。只有在有证据显示有「故意、鲁莽或疏忽」的行为导致违规的情况下，才可以施加上述罚款；然而这已足以让董事注意合规的重要性。

因此，新的内幕消息披露制度一方面为香港董事及公司秘书带来重大的合规挑战，另一方面则为专业公司秘书和我们任职的公司带来极大裨益。对我们来说，这及时提醒我们，公司秘书作为治理专业人员，其意见实在有其价值。对我们任职的公司来说，新规定提升了透明度，并且提高了内部管控措施的效力，以确保有效辨别内幕消息，提出让董事会考虑，并确保机密资料得到保密。



施熙德

A bird's eye view

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

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls



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Have Your Say

If you would like to comment on issues covered in this journal, please contact the CSj editor: kieran@ninehillsmmedia.com.

Time for a name change?

CSj publishes a reader's letter about a hot topic for company secretaries locally and globally – whether it is time for practitioners to trade in the 'company secretary' title for something a little more inspiring.

Dear Sir/ Madam,

I refer to the debate regarding a name change for company secretaries. I totally agree that we have to 'upgrade' our title in listed companies in order to reflect the real governance function of company secretaries. The current title is often assumed to refer to a junior secretarial role and no one understands our function, which creates unnecessary barriers to discharging our functions.

Since most Hong Kong listed companies have core businesses in China, we cannot reflect our function and gain respect unless we have a title along the lines of: 'chief xx officer' or 'xx officer' (for example, 'chief secretarial officer' 秘书长). This is because most senior management positions have a similar title, such as 'chief financial officer' (财务长).

The argument that the term 'secretary' is used for many senior positions in the West (for example, 'secretary general') is not relevant here since, while the use of this term may be well-

known in the West, this is not the case in China. In fact the term used when 'secretary general' is translated into Chinese is '司' or '长' which means the 'chief' or 'senior manager' of the relevant department (for example '财政司长').

The title 'board secretary' (董秘) is a bit better but still cannot fully reflect our function because our duties relate to the company, the shareholders and the board, not the board alone.

I strongly recommend a change of title for company secretaries as soon as possible. I am working as the named company secretary in a leading Taiwanese company which carries out its main business in China. The existing title is an obstacle to the discharging of my duties on a daily basis.


Best Regards,

Angus Pang ACIS ACS

Editor's note:

The 'name change' debate has become a high-profile issue for corporate secretaries globally in recent years and Mr Pang's letter demonstrates that it has a particular resonance here in Asia where the existing title has much less recognition than in the Anglo-Saxon business environment. This is particularly true in jurisdictions which do not have legal requirements for companies to appoint a named corporate secretary. This is the case for Mr Pang since his company's parent group is based in Taiwan and it has no in-house named company secretary.

It seems that there is a gathering momentum for a name change in Asia. At a General Meeting last month, 81% of Chartered Secretaries Australia (CSA) members voted in favour of renaming the CSA as the 'Governance Institute of Australia' to reflect the changing profile of the institute's membership. The CSA calculates that only 14% of its membership is

dedicated solely to company secretarial practice. 'We now represent a much broader church of professionals and our new name Governance Institute of Australia captures this,' CSA Chief Executive Tim Sheehy said. The CSA emphasises that the name change will not mean any change to the international recognition of the Chartered Secretarial qualification and designation. Those members who are also members of ICSA will still be entitled to use their 'ACIS' and 'FCIS' postnominals in addition to the CSA's new postnominals: 'AGIA' as an Associate or 'FGIA' as a Fellow. 

More information on the rebranding of the CSA can be found on its website: www.csaust.com.

Join this important debate by emailing the CSj editor with your views at: kieran@ninehillsmmedia.com.



Rising to the challenge

Tips on compliance with Hong Kong's inside information disclosure regime

Company secretaries have been in the frontline of the battle to advise on compliance with Hong Kong's inside information disclosure regime and this month they share with *CSj* some of the experience they have gained.

Compliance challenges don't come much harder than the inside information disclosure regime currently in force in Hong Kong. Under the new requirements brought in on 1 January this year by the Securities and Futures (Amendment) Ordinance of 2012, a listed company, unless exempted by one of the safe harbours, must as soon as reasonably practicable after any inside information has come to its knowledge, disclose that information to the public.

That may seem straightforward enough, but the first hurdle companies have encountered in their compliance programmes has been the tricky question of defining inside information. What is and what isn't inside information often requires a difficult judgement call by directors. Moreover, the consequences of getting this judgement call wrong are serious – directors face potential personal liability to the tune of a HK\$8 million fine for breaches of the amended Securities and Futures Ordinance (SFO), disqualification and follow-on civil liabilities for damages, amongst other consequences. If all of that is not enough, this is one decision which directors cannot outsource to external advisers.

Small wonder then that the services of company secretaries have been more than ever in demand in Hong Kong since the beginning of this year. Company secretaries have been closely involved in:

- establishing procedures for monitoring and escalating potential inside information to the board

- advising the board on the obligations for disclosure
- ensuring that undisclosed inside information is kept confidential
- reviewing publicly available information and information disclosed to analysts, the media or in conference calls to determine whether confidentiality has been breached, and
- maintaining channels of communication with outside advisers and regulatory bodies.

The SFC has urged companies to ensure that they have effective internal controls to ensure that inside information is identified and escalated to the board to determine whether it triggers a disclosure obligation under the SFO. Boards must debate and arrive at a consensus before making a disclosure.

In the case of split opinions, the role of the company secretary could be pivotal.

Highlights

- company secretaries need to make sure that any inside information finds its way up to the board and that the board understands the obligations for disclosure
- companies should not rely on the SFC or external parties to give specific advice about whether a particular piece of information is inside information
- company secretaries should review all relevant directors' and officers' insurance (D&O) policies in light of the new inside information disclosure regime

Should the company secretary uphold the majority rule not to disclose despite the objections of a minority? Can the dissenting minority be insulated from liability?

'When a company considers whether a piece of information is price sensitive, it needs to forecast the influence to the share price when the information is published,' says Ken Chan, a member of the HKICS Professional Development Committee. 'But that forecast is quite subjective and based on personal perception, knowledge and experience. One may think a piece of information, based on the forecast of share price movement, counts as price-sensitive information, but others may not.'

What to disclose

The HK\$8 million dollar question in executive offices and boardrooms in Hong Kong is how to define inside information. This term is used in the legislation because the provisions are concerned with information that is known to an officer, or

'insider', of a company but not generally known to the market. The definition of 'inside information' in Part XIVA of the SFO is the same as that of 'relevant information' used in section 245 in Part XIII of the SFO in connection with insider dealing.

To fall under this definition, the information:

- must concern the listed company, a shareholder or an officer of the listed company, or the listed securities or their derivatives, and
- must not be known to the public likely to deal with the listed company's securities, but would, if known to them, be likely to materially affect the price of the listed securities.

Further complicating the picture is the fact that, even where information matches the above criteria for inside information, a disclosure obligation is not inevitable since it may come under one of the safe harbours outlined in the SFO. Basically there are three categories of disclosure exemption in the SFO:

1. A listed company is not required to disclose inside information if, and so long as, the disclosure is prohibited under, or would contravene, a restriction imposed by Hong Kong legislation or an order of a Hong Kong court.
2. The SFC may, on an application by a listed company, waive a disclosure requirement if disclosure is prohibited under, or would contravene, any restriction imposed by legislation outside of Hong Kong, or any order of a court outside Hong Kong, or would contravene any restriction imposed by any law enforcement agency or other government authority outside of Hong Kong.
3. A listed company is not required to disclose inside information if the information concerns an incomplete proposal or negotiation or the information is a trade secret.

It is important to point out that, to qualify for the above exemptions, the company must keep the information confidential.

“the forecast [of whether a piece of information will materially affect the share price] is quite subjective and based on personal perception, knowledge and experience”

Ken Chan *FCIS FCS*, HKICS Professional Development Committee member

Since no enforcement cases have yet been brought before the Market Misconduct Tribunal, it is too early to know whether the safe harbours will prove effective in protecting listed companies in practice. The broad consensus appears to be satisfaction with the safe harbours provided. Hong

When word gets out

The word 'secretary' comes from the Latin word for 'secret' and, as the company's 'keeper of secrets', the company secretary plays a critical role in keeping information confidential. Maintaining confidentiality, however, is no easy task and company secretaries need to be prepared for the worst case scenario – what should they do when they find that their jealously guarded secret is being freely discussed in newspapers, on web forums and in the company canteen?

While generally a company is under no obligation to respond to media speculation, market rumours or analysts' reports, the SFC's *Guidelines on Disclosure of Inside Information* warn that, where inside information is involved, action is required. If a company has inside information and relies on a safe harbour to withhold disclosure subject to the preservation of confidentiality, the existence of speculation in the market might indicate that the matters intended to be kept confidential have leaked. Where the market speculation is largely accurate and the information underlying the speculation constitutes inside information, public disclosure is required.



Kong listed companies are not looking for more exemptions.

When to disclose

The SFO requires companies to disclose inside information 'as soon as reasonably practicable', but there has been some confusion about what this means in practice. For example, can a company delay disclosure while working on rectification measures, or while waiting for the board to confirm the relevant inside information announcement? Can a company delay disclosure to check the accuracy of the figures to be cited in the inside information announcement?

These questions received a clear 'no' from the SFC at the Institute's latest Annual Corporate and Regulatory Update (ACRU) seminar held in May this year. Jennifer Lee, Director of Corporate Finance, SFC, clarified that the obligation to disclose is triggered as soon as companies become

aware of any inside information not exempted by one of the safe harbours. She said that, so long as the figures within the inside information announcement are reasonably accurate, publication should not be delayed to get an exact figure. Moreover, if a company wants its board to approve an inside information announcement, it should get the necessary written resolution.

Check your D&O policy

Mark Johnson, Asia Head, Herbert Smith Freehills, points out that the new inside information disclosure regime has not substantially raised price-sensitive information disclosure standards in Hong Kong. 'Fundamentally, the obligation on directors is pretty much the same as before; what has changed are the sanctions if they get it wrong,' he says.

The question of the personal liability of directors has been another area company

secretaries need to consider. This is not only because they generally handle directors' D&O cover, but also because they are themselves explicitly included in the liability net – though they are not liable to the HK\$8 million fine which may be imposed on directors, along with other sanctions like disqualifications to serve as director for up to five years and follow-on civil consequences.

According to Part 1 Schedule 1 of the SFO, an 'officer', in relation to a corporation, means 'a director, manager or secretary of, or any other person involved in the management of, the corporation'. The SFC's *Guidelines on Disclosure of Inside Information* confirm that 'secretary' here means 'company secretary' as described in the Companies Ordinance.

Such officers have liability under section 307G(2)(a) of the SFO if:

- the listed corporation is in breach of a disclosure requirement, and
- the officer's intentional, reckless or negligent conduct resulted in the breach.

Johnson recommends that company secretaries should review all relevant D&O policies. At the moment, these do not seem to be taking the new disclosure regime into consideration. While D&O policies cannot cover the fines levied by the Market Misconduct Tribunal (this would be contrary to the principle that illegal activity cannot be covered by insurance), there is an issue as to whether the investigation and litigation fees are covered.

'Sometimes we see situations where there are D&O policies but the company

does not have parallel coverage,' says Johnson, warning that this may expose the company to further costs in the case of Market Misconduct Tribunal action if the legal and investigative fees have to be borne by the company. 'This is not limited to issues around price-sensitive information; in an environment of increasing regulation, company secretaries would do well to ask whether their policies have adequate coverage.'


Outsourcing is not an option

Given the difficulty of defining inside information and the personal liability directors face for breaches of the SFO, many companies have been eager to seek outside help with their compliance efforts.

The most obvious port of call is, of course, the SFC. The SFC continues to provide a consultation service to assist companies

“
fundamentally,
the obligation on
directors is pretty
much the same as
before; what has
changed are the
sanctions if they
get it wrong
”

Mark Johnson, Asia Head
Herbert Smith Freehills



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to understand how to apply the disclosure provisions and this service has been popular with issuers. The SFC confirmed in an April 2013 press release that issuers' questions have covered a broad range of issues such as the application of safe harbours, the confidentiality requirements and the liability provisions.

Companies have also turned to outside advisers for guidance on compliance with the SFO. One respondent to this article noted that the huge personal liability directors face has led to a reluctance to take responsibility for inside information disclosure decisions – the prospect of getting a definite answer from a lawyer is therefore appealing to give legal certainty to any subsequent decision.

The SFC has been keen to emphasise, however, that companies should not rely on the SFC or external parties to give specific advice about whether a particular piece of information is inside information. Its *Guidelines on Disclosure of Inside Information* point out that identifying inside information will depend on the specific circumstances of the company in question. 'Every case turns on its own facts', the guidelines state. 

Reporting by Sebastian Bitticks, Journalist

More information on the new disclosure regime is available on the SFC website www.sfc.hk. See in particular the 'Guidelines on Disclosure of Inside Information' and the 'Frequently asked questions on disclosure of inside information'. The SFC continues to provide a consultation service on the inside information disclosure provisions of the SFO.

Hong Kong's governance scorecard

Hong Kong's new inside information disclosure regime became effective on 1 January 2013 with the implementation of the Securities and Futures (Amendment) Ordinance of 2012. This journal began 2013 with a review of the amended SFO (see CSj, January 2013, pages 14–19), and promised to track the ordinance to get feedback on how it is received by the market and how effectively it is implemented and enforced.

So what is the picture 10 months on? A key objective of the new regime is to cultivate a 'disclosure culture' by listed companies and, judging by the number of inside information announcements that listed companies have made since 1 January this year, the legislation would appear to be having the desired effect. Such announcements increased by 43% during the four-month period ending 30 April 2013 compared with the same period last year.

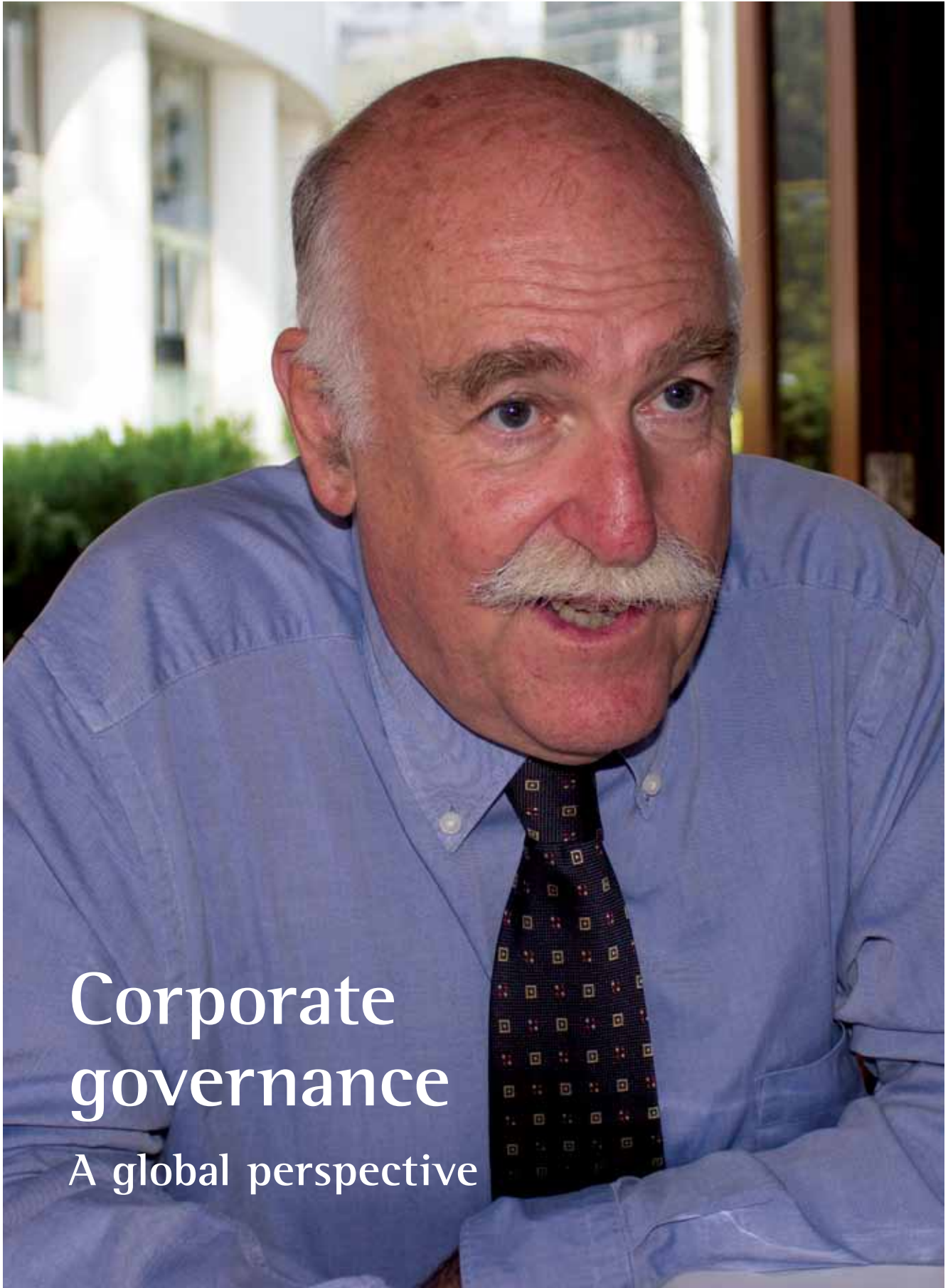
However, the response of the market to the new inside information disclosure regime has generally been to take a 'better safe than sorry' approach and to publish anything that might remotely be considered inside information. We should be cautious, therefore, in interpreting the surge in inside information announcements as conclusive proof that the new regime has improved the quality of price-sensitive information disclosure in Hong Kong.

In fact, earlier this year the SFC reminded issuers of the need

for *quality* disclosure in inside information announcements. The frequently asked questions (FAQ) section of its website reminded issuers that inside information announcements should be clear, informative and comprehensible in order to enable investors to make well-informed decisions. In particular they should:

- be factual, clear and expressed in a balanced and objective manner
- convey key messages that are clearly visible to, and readily understandable by, investors
- contain sufficient background information so that an announcement can be read without undue reference to other documents
- avoid boilerplate statements that tend to lengthen the document without providing meaningful information, and
- contain sufficient quantitative information which has come to the knowledge of the listed corporation, the omission of which may cause the information disclosed to be false or misleading under section 307B(3) of the SFO.

The frequently asked questions (FAQ) section is available at www.sfc.hk, see FAQs/ Listings & Takeovers/ Disclosure of Inside Information.



Corporate governance

A global perspective

Few people have had a career as varied and itinerant as economist and corporate governance consultant Dr Grant Kirkpatrick. In interview with *CSj*, he shares some of the experience he has gained while rescuing banks in Japan, helping to launch a market economy from scratch in Poland and developing the OECD's corporate governance principles into the most widely used benchmark for corporate governance standards across the globe.

Thanks for giving us this interview, can we start with some background about yourself – how did you first become involved in corporate governance?

'Via a very circuitous route. After school and a term in the army, I ended up in a chartered accountant's office in Adelaide, Australia. I didn't go to university until quite late, I was already in my mid-20s. At that stage to be a chartered accountant in Australia you had to do economics but I started off studying politics, this was the Vietnam war period and people's political sensitivities were somewhat different then. I later converted to economics as my interest was in development economics and in particular rural development. The majority of the world's population at the time lived in rural villages but we didn't know much about village economies and how they work, so I spent some time looking at that and working in an international labour office project in the pacific islands, Papua New Guinea and Indonesia looking at rural villages.

Then, by another accident of fate, I ended up teaching macro and development economics at Brunel University in the UK. From there I moved to Germany where I did my PhD. The OECD was starting to get into structural economic policy at the time and I was hired to bring a German-style approach to the issues. I arrived in Paris in 1988 and that started me off on an entirely different line. In 1989 I was called across to 'the Chateau' [OECD headquarters] to meet a delegation from Poland. They were planning to switch from the centrally-planned economy of the former communist government to a market economy and they wanted to make the switch in just one day – 1 January 1990.

So that started me on my work with transition economies in Eastern Europe. This was interesting because we had a clean sheet of paper – this simply hadn't been done before! There is a link here to my later interest in corporate governance as the first thing we had to do in Poland (and then later in Hungary and Czechoslovakia) was to decide what we were going to do with all the companies. How should they be run? We couldn't privatise them overnight, we didn't even have enough businessmen to sit on boards.

I worked on a number of European transition economies but in 2003 I had the chance to move to the OECD's corporate governance division. I'd already done some work on corporate governance while working with banks in Japan and East Germany. Their bad debts could be written off, but dealing with the bad debtors was much more difficult because you've got to start changing how those companies are run or you end up in the same trouble a year later. In Japan and Germany the question was how to make sure that this didn't happen and that meant ensuring that the companies were upgrading fast enough to hold their position. So that's how I got into the area of corporate governance.'

Incidentally... do you think Poland's transition to a market economy worked?

'It did. It's interesting to compare two countries – Czechoslovakia, as it was then, and Poland. The Czech Republic also went for a big bang transition but they decided to distribute vouchers in the hope that everyone would become a shareholder. That led to a banking crisis since the vouchers were bought up very cheaply by

Highlights

- the first draft of the OECD corporate governance principles was written for companies with a diverse shareholder base, whereas most companies globally are dominated by controlling shareholders
- the principles have subsequently been revised to address the issues of interest to countries around the world and have become the most widely used benchmark for corporate governance standards across the globe
- cultural factors have a huge influence on countries' corporate governance regimes

a couple of funds. It was a real mess. In Poland they wanted to have real owners with a stake in the economy and they were the first Eastern European country to recover from the transition. By the end of 1990, Poland was growing again!

China has taken a very different route towards a market economy – perhaps because of the negative example of Russia's transition?

'Russia also went for the voucher system and you had billionaires acquiring all these vouchers and converting them to real assets. The theory was that everybody would become a shareholder and would start demanding shareholder protections, but actually most people just sold up and shareholder protection and improvements to corporate governance didn't start happening until it was far too late.'

You mentioned that you transferred to the OECD corporate governance division in 2003, is that when you started work on the OECD corporate governance principles?

'Yes, the first set of principles were issued in 1999 but I was tasked with the first revision of the principles in 2004. The OECD had been getting feedback globally on the principles and invariably the response was that they were too Anglo-Saxon. In other words, they were written for companies with a diverse shareholder base whereas most companies globally were dominated by controlling shareholders. So we set about revising the principles and the set now in circulation I think addresses many of the issues of interest to countries around the world. They are much more oriented to the corporate governance challenges associated with the presence of controlling shareholders.'

Could we talk about some of those specific challenges? In particular, should controlling shareholders be excluded from voting independent directors onto the board?

'That is certainly an issue. Will directors be "independent" if they have been voted in by the controlling shareholder? Different countries have taken different approaches to this. Italy, for example, has introduced a voting system for non-controlling shareholders to elect at least one director. Similarly in Israel, where there are about five families who control most of the economy, they have a system for non-interested shareholders to vote in at least one person to the board. Also, the major shareholder has fiduciary duties to other shareholders, even in subsidiaries. More importantly they now have a mechanism where they support minority shareholder actions. They've established a

“
The OECD had been getting feedback globally on the principles and invariably the response was that they were too Anglo-Saxon
”

commercial court so the judges know what they are talking about and there is even a mechanism to pay some of the costs.

So each country is edging their way towards a solution. Of course, we should bear in mind that minority shareholders are sometimes institutions, such as pension funds, with more resources, more clout and more information than retail investors. In Chile, for example, they've got six big pension funds which can invest in up to 10% of the shareholding in companies. They can get together and vote in their own guys so that provides a counterbalance – the owner still runs the company but there is a counterbalance.

Another thing to bear in mind is that a lot of this is going to be culturally-based. I remember asking independent directors in Belgium whether they would ever block proposals by the controlling family which elected them to the board. Their reaction was interesting. They said that Belgium is a very, very moral place and if they voted for something which was later exposed as malpractice they may as well leave the country. They cited the case of a CEO who was pilloried in the newspapers because of an outrageous remuneration contract – he had to leave the country. In other countries this might not apply. In Italy, for example, it might just have been seen as a demonstration of his manliness!

Do you think the OECD corporate governance principles are encouraging a global convergence in governance standards?

'The world has changed since the establishment of the G20. For example, over the last few years I have spent more time in Saudi Arabia, Indonesia, India and China than I have in OECD countries. These countries, by virtue of being in the G20, have joined the Financial Stability Board (FSB). They have to accept the basic standards of the FSB when they join the G20 and among those standards are the OECD principles of corporate governance. So they have formally accepted these basic principles and can be assessed against them.

The OECD view is that they therefore should be part of the committee that oversees the development of the principles to ensure political legitimacy and they have been integrated into the committee's work. For China this process has been very effective – it has been involved, for example, in the OECD's Regional Corporate Governance Roundtables in Asia and recently did a self-assessment against the corporate governance principles. They went through each principle and identified the rules or regulations addressing those issues. The principles therefore have effectively been taken as their reference point for governance.

The other countries (with one exception I will not mention) have also really taken this up and have participated. In many ways I think the fact that China has moved very quickly on this has helped other countries get a move on, which has been quite useful!

What is your view generally about corporate governance in mainland China? For example, its relatively slow transition to a market economy, in contrast to the big bang approach adopted in Russia and Eastern Europe, has led to some

governance anomalies such as party appointees to boards.

'One of the interesting things about China is that it requires us to adjust our ways of thinking about many corporate governance issues. First of all, we're not used to having the party around and having to deal with the party makes many of us distinctly uncomfortable. However, we should be careful about drawing a black and white picture – there are a number of European companies where corporate governance issues are very closely related to the ruling party.

China, though, is extraordinary in the sense that it has a clear cut direction it is going in. It wants to be, and will be, a major financial and commercial power in the world. It wants to have a major blue chip market in Shanghai and the China Securities Regulatory Commission (CSRC) has said a number of times that it wants to see 55 Chinese blue chips companies in the world in 10-15 years time – there are about five or so at the moment. China's view is that – if this transition requires good corporate governance then so be it. This should be contrasted with Russia. The interesting thing is that China wants Chinese companies

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“one of the interesting things about China is that it requires us to adjust our ways of thinking about many corporate governance issues”



to be important in the world economy. They talk about M&A often, although the 'mergers' part of that probably less so. They want Chinese companies to go out there and purchase other companies. They're not always going to be able to do that with cash and so will have to do it with their own equity. They therefore need to persuade people to hold that equity. That raises questions about RMB transferability and convertibility, but that is where they are going.


Career notes

Dr Grant Kirkpatrick, economist and corporate governance consultant, was the Deputy Head of the OECD's Corporate Affairs Division from 2003–2012. In this capacity, he was responsible for the revision of the *OECD Principles of Corporate Governance* in 2004 and worked on the OECD's Regional Corporate Governance Roundtables in Asia in cooperation with the World Bank. Prior to this post, he worked in the OECD's Economics Department, directing work in Japan, Ireland, Germany, Austria and most of the European transition economies. Dr Kirkpatrick has published widely on corporate governance issues. He has been a member of the Basel Committee's working group preparing the guidance on corporate governance matters for banks and bank supervisors. He has also published three papers on the role of corporate governance in the financial crisis. Before joining the OECD, Dr Kirkpatrick worked at universities and research centres in Germany, the UK and Australia.

China's first expedition into the world economy was China National Offshore Oil Corporation (CNOOC) trying to take over a Californian company called Unocal Corporation but they were immediately confronted with a challenge – they were asked “what's your cost of capital?” They would not accept the state subsidising a company to buy the US company. China has been quite quick at realising that this is a problem for their ambitions so now when a Chinese company turns up in Australia buying a coal mine, for instance, they declare their cost of capital and produce the evidence. So they have adapted and changed.

But you raise the issue of party appointees to boards and, certainly, that gets a bit hard to deal with. You would be less than pleased to wake up one morning to find that the party has moved your CEO to be the CEO of another, potentially rival, company. However, once again, that scenario is not unknown in the West too. It happens in market economies!

Can we come back to yourself – you have just left the OECD, what's next for you?

'I would like to do two things: teaching and consulting. Actually, I think you need to do some consulting otherwise you don't know what's going on, that's the academic in the tower scenario. So if you're going to be teaching or lecturing in corporate governance it's vital to be out there in the economy.' 

More information on the work of the OECD, including its Asian Corporate Governance Roundtables, is available at www.oecd.org.



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Reforming the MPF

In a presentation to HKICS members last month, Anna Wu, Chairman, Mandatory Provident Fund Schemes Authority, discussed her wish list for reforms to Hong Kong's MPF system.



Since its creation in 2000, Hong Kong's Mandatory Provident Fund (MPF) pension scheme has never been far from the media spotlight. In particular, the MPF has been criticised for its administrative complexity, for not providing adequate retirement protection and for charging high fees. At a recent HKICS Members' Luncheon, held on 5 September at the Hong Kong Bankers Club, Anna Wu, Chairperson, Mandatory Provident Fund Schemes Authority (MPFA), discussed some of these issues and some of the long-term structural reforms she hopes will address them.

Does the MPF provide adequate retirement protection?

Ms Wu said the MPFA recognises that the current MPF contribution rate is low and the system's adequacy for retirement remains a serious concern. She pointed out, however, that the MPF system was never meant to be the only financial provision for retirees. The government's strategy is based on a three-pillar approach to protect the aged as set out in the World Bank report of 1994, *Averting the Old-Age Crisis: Policies to Protect the Old and Promote Growth*:

1. a publicly managed, tax-financed social safety net
2. a mandatory, privately managed, fully funded contribution scheme, and
3. voluntary personal savings and insurance.

Ms Wu said that the MPF was designed to form the second pillar of this approach, but all three pillars are needed to provide sufficient protection for the community. For example, the MPF is an employment-based retirement protection

system. It covers anyone in employment (except exempt persons) between the ages of 18 and 65, but there are many categories of people who are not in formal employment, and this is why the establishment of the first and third pillars is critical.

Another adequacy issue concerns 'leakage' – the pre-retirement withdrawal of MPF benefits. As you might expect, this is only allowed under very limited circumstances since the MPF is designed to ensure adequate benefits are in place after retirement. However, a widely discussed problem here is the 'offsetting' arrangement which permits employers to withdraw the MPF benefits derived from their contributions to make up for severance or long-service payments. This loophole can result in major leakage from the MPF and has been targeted for reform for some time.

The restrictions on pre-retirement withdrawal of MPF benefits have also been criticised as being overly rigid and the MPFA is working on allowing scheme members to withdraw their MPF benefits early on the grounds of terminal illness. This proposal gained 92% support in a consultation in 2011. The MPFA is also working on giving scheme members

the option to withdraw their accrued benefits upon retirement in stages rather than as a lump sum payment. This proposal gained 89% support from consultation respondents.

Are MPF fees too high?

This issue has attracted public concern and Ms Wu said the MPFA has been looking for ways to drive trustee fees down. She confirmed that the MPFA has looked at the option of capping trustee fees, but this poses major technical and policy challenges. Less invasive reform options currently being implemented, or on the drawing board, include the following.

- **Increasing automation.** The MPFA is encouraging trustees to use electronic means for enrolment, contributions and transfers between schemes. This would reduce administrative costs but there are challenges involved – some employers and employees, for example, may not be computer literate.
- **Enabling portability.** The MPFA proposes to give employees the chance to transfer benefits derived from their mandatory contributions

Highlights

- the MPF has significantly increased the number of people with some form of retirement provision in Hong Kong
- the high fees charged by MPF funds has attracted public concern and the MPFA has been looking for ways to drive those fees down
- The MPFA is considering introducing a standardised, low-cost default investment option, possibly run by not-for-profit operators

from the scheme chosen by their employer to one of their choice once every calendar year. Ms Wu said that the goal is to give full control back to employees over all their benefits, but the 'offsetting' arrangement discussed above is clearly an obstacle. The government has invited the MPFA to map out the implementation of full portability by early 2016.

- **Introducing low-cost investment options.** The MPFA is also considering introducing a standardised, low-cost default investment option, possibly run by not-for-profit operators. This would provide non-financially-literate members a default option which could help them minimise their investment risks in the long term.

The future of the MPF

The MPF system has been in operation for over 13 years. Since 2008, the financial global crisis has 'tested' retirement provision systems around the world. The MPF is particularly vulnerable to market downturns since the equity content of the MPF system is higher than comparable retirements systems globally. That percentage is currently about 60% and




Ms Wu conceded that this is a concern – 'Hong Kong people really are gamblers', she quipped. Nevertheless, the overall annualised rate of return of the MPF over the past 12 years has been 4 per cent, which is above the 1.4 per cent inflation rate over the same period.

Ms Wu said that the MPFA is committed to the long-term reform of the system, but she pointed out that the MPF is designed to address a very real challenge for Hong Kong. Like many jurisdictions globally, Hong Kong has a rapidly ageing population. The percentage of the population over the age of 65 (currently at 13%) is predicted to grow to 30% by 2041. This means that the working

“
the MPFA recognises that the current MPF contribution rate is low and the system’s adequacy for retirement remains a serious concern
”

population will have a much larger number of retirees to support – where each retiree is currently supported by six working age adults, by 2041 each retiree will be supported by just two working age adults.

The risks that the MPF was designed to address are therefore very real and Ms Wu said that the system has had some success in mitigating these risks. It has, for example, significantly increased the number of people with some form of retirement provision in Hong Kong. Before the implementation of the MPF only about one-third of the Hong Kong workforce had some form of retirement protection – that figure is now around 84% (including both the MPF schemes and other statutory pension or provident fund schemes). This, she said, is a measure of the MPF's success. 

Career notes

Anna Wu, is the Chairperson of the Mandatory Provident Fund Schemes Authority and the Competition Commission, and a member of the International Advisory Board of the Hong Kong International Arbitration Centre. She previously served as a member of the Legislative Council and as the Chairperson of the Equal Opportunities Commission, the Consumer Council and the Operations Review Committee of the Independent Commission Against Corruption. Ms Wu was also a member of the Law Reform Commission and the Hospital Authority. She was a director of the Hong Kong Mortgage Corporation Ltd and a non-executive director of the Securities and Futures Commission.

This article is based on the presentation given by Anna Wu, Chairperson, Mandatory Provident Fund Schemes Authority, at the HKICS Members' Luncheon held on 5 September at the Hong Kong Bankers Club. Details of future HKICS events are available on the HKICS website: www.hkics.org.hk.

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China's new growth order

China is searching for a new growth order for its restlessly expanding cities, suggest Andrew Sheng and Xiao Geng of the Fung Global Institute.

Between 1978 and 2012, China's GDP grew at an average annual rate of about 10% – from US\$341 billion to US\$8.3 trillion (at 2012 prices) – lifting more than 500 million Chinese out of poverty in the process. Much of this was due to an export-led industrialisation and urbanisation strategy that opened up new opportunities in the rapidly expanding cities, where labour, capital, technology, and infrastructure came together to form supply capacities for global markets.

Highlights

- China's urban-based, export-led growth model has created more challenges than it can handle
- a new consumption-based growth model – one that emphasises stability, inclusiveness and sustainability – is at the top of China's agenda
- striking the right balance between market-based product innovation and state-led institutional innovation will be the main challenge that China faces in the years ahead

According to the McKinsey Global Institute, by 2025, 29 of the world's 75 most dynamic cities will be in China.

But this urban-based, export-led growth model also created more challenges than it can now handle: property bubbles, traffic jams, pollution, unsustainable local government debt, land-related corruption and social unrest related to unequal access to social welfare. As a result, a shift toward a new consumption-based growth model – one that emphasises stability, inclusiveness and sustainability – is at the top of China's agenda.

The current economic-growth model considers the configuration of key factors of production – land, labour, capital, and total factor productivity (a measure of efficiency). But this narrow focus on output neglects the economy's human dimension – that is, how growth affects ordinary Chinese citizens' lives.

A growth order, by contrast, implies an emphasis on the configuration of sociopolitical and economic institutions – including norms, procedures, laws, and enforcement mechanisms – to achieve social objectives, such as improved living standards, a healthier natural environment, and a harmonious and innovative society.



The growth order's stability will depend on institutionalised and effective coordination between the state, the market, and society – a major challenge, given the divergent interests within and among these groups. But, more important, much of the growth order's effectiveness will depend on the relationship between the central and local governments in the delivery of public services for the market.

Indeed, contrary to popular belief outside China, the Chinese state is not monolithic; it is a highly complex bureaucracy with many layers of government and quasi-government institutions that do not always conform to central directives. The central government is in charge of national or systemic interests, deploying legal, regulatory, and broad monetary and fiscal policies to achieve its ends. But the state interacts with private enterprises, individuals, and civil society mainly through local governments and local offices of national regulatory agencies.



A distinctive feature of the Chinese growth order is that local governments compete actively against each other for jobs, revenue, investment, and access to fiscal and human resources. This is because local governments' leaders are appointed centrally, and, until recently, promotion has been based largely on the ability to generate GDP growth at the local level, leading to over-investment in the economy as a whole.

Hence, the interplay between local and central governments is complex, particularly in terms of revenue sharing and responsibility for providing public services. Although the central government may be committed to reforms, implementation at the local level can be very uneven, owing to parochial and vested interests.

For example, since 2008, when the central authorities tried to boost growth to combat the global crisis, local governments expanded their investment capacity through shadow-banking

vehicles that sought to circumvent restraints on bank credit.

Because local governments receive 50% of total national fiscal revenue, but account for 85% of total fiscal expenditure, they try to supplement their budgets through land sales. In 2012, Chinese local governments received RMB2.9 trillion (US\$475 billion) in revenue from land and property sales, compared with RMB6.1 trillion in other local revenue.

Compared to the private sector, local governments and state-owned enterprises tend to have access to significantly cheaper funding, with the gap between official interest rates and shadow-banking borrowing costs reaching as much as 10 percentage points. Cheap funding and land revenue have led to excess infrastructure and industrial capacity without adequate market discipline. From 2008 to 2012, fixed-asset investment in China amounted to RMB136 trillion, or 2.6 times more than the country's 2012 GDP.

Rebalancing the economy by shifting toward domestic consumption and avoiding over-investment will require major fiscal and monetary reforms, as well as structural reforms to delineate land-use rights more clearly. It will also require revising the framework for revenue sharing between central and local governments, as well as transparency in local-government finance.

These reforms stand at the center of the state/ market debate, because the private sector, caught in the complex interplay between central/ local power sharing, can easily be crowded out. Thus, creating a new growth order requires the central government to align institutional structures and incentives so that local governments and the market can play to their strengths. The market must be allowed the space to innovate, while the state must implement the necessary institutional and procedural reforms. Striking the right balance between market-based product innovation and state-led institutional innovation will be the main challenge that China faces in the years ahead.

Andrew Sheng

President, Fung Global Institute

Xiao Geng

Director of Research, Fung Global Institute

The Fung Global Institute (www.fungglobalinstitute.org) is an independent think-tank based in Hong Kong producing research on global issues from Asian perspectives that are relevant both to business leaders and policymakers.

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中国需要新的增长秩序

经纶国际经济研究院的沈联涛和肖耿认为，中国正为其躁动不安地扩张中的城市探索新的“增长秩序”。

香港——从1978到2012年，中国GDP从3410亿美元增长至83000亿美元（按2012年价格计算），年均增长10%左右，5亿人口因此脱贫。在很大程度上，这应当归功于以出口为导向的工业化及城镇化战略，为快速扩张的城市开辟了新的机遇。正是在城市中，劳动力、资金、技术和基础设施的汇聚，形成了面向全球市场的供给能力。据麦肯锡全球研究院统计，到2025年，全球75个最具活力城市中将有29个在中国。

但这种城市驱动、出口导向的增长模式也带来了中国难以应对的挑战：房地产泡沫、交通拥堵、污染、不可持续的地方政府债务、与土地相关的腐败，以及社会福利分配不均导致的社会动荡。因此，中国领导人将其首要任务定为向（基于消费而非投资的）稳定、包容、可持续的新型增长模式转型。中国正在为快速发展的城市探索新的增长秩序。

当前的GDP-目标增长模式更多考虑了土地、劳动力、资金和全要素生产率等关键生产要素配置问题。然而，单纯重视产出却忽视了以人为本，即经济发展如何影响普通中国民众的生活及他们的互动行为。

与增长模式不同，增长秩序意味着为了达到提高生活水平、改善自然环境、鼓励创新和建设和谐社会等目

标，需要强调社会政治和经济的体制与制度安排，包括规范、程序、法律和执法机制。

增长秩序的稳定与否将取决于制度安排的合理性，以及国家、市场及社会协同合作的有效性，考虑到这三者间的利益冲突，他们的协调合作往往不容易。重要的是，增长秩序的稳定将在很大程度上取决于为市场及社会提供公共服务时中央和地方政府间的关系及职能分工。

事实上，与国外多数人的看法相反，中国政府并不是严格遵守中央指令的铁板一块，而是由不同层级的地方政府和中央部门及监管机构组成的高度复杂的官僚体系。中央政府负责国家或全局利益的事务，通过法律、法规及货币财政等宏观政策来实现目标。但国家主要通过地方政府和国家监管机构的派出机构，与民营企业、个人和社会之间进行接触互动。

中国增长秩序的显著特点是，地方政府为争夺就业机会、收入、投资、财政资源、人力资源等积极展开竞争。但地方政府的首脑由中央任命。到目前为止，地方官员的升迁与否主要取决于其所在地区GDP增长的情况，导致地方经济整体出现投资过热。

尤其在财税收入分享和公共服务责任分担方面，地方和中央政府的关系非



常复杂。尽管中央政府可能致力于改革，但由于地方保护主义和既得利益作祟，改革在地方层面的落实情况可能很不平衡。

例如2008年以来，当中央政府试图刺激经济增长以抵御全球金融危机，不少地方政府却借助影子银行扩大地方投资规模，以规避宏观经济政策对银行信贷的约束。

由于地方政府只能拿到50%的全国财政总收入，却要负担85%的财政支出，所以，他们试图通过销售土地弥补预算的不足，以满足社会公共服务与发展性支出的资金需求。2012年，全国地方政府通过销售土地及物业实现总收入2.9万亿人民币，而地方政府其它来源的财政收入总和才不过6.1万亿人民币。

相比于私营企业，地方政府和国有企业往往能获得更低利率的资金——官方利率和影子银行借贷成本之差往往高达十



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个百分点之多。廉价融资和土地出让收入导致地方基础设施和产能过剩，缺乏市场约束。仅2008年至2012年间，中国固定资产投资总额达136万亿人民币，比2012年中国的GDP多2.6倍。

实现经济结构调整，转向国内消费及避免过度投资，需要进行重大的财政

和货币改革以及结构转型，这包括更清晰地界定土地使用权，重新平衡及界定中央与地方政府的财政收入及支出责任，并提升地方政府财政及资产负债的透明度。

上述改革是有关政府与市场关系辩论的核心议题。私营企业往往被卷入中

央与地方复杂的权力分配博弈当中，并很容易被挤出资金、人才、土地、及资源市场。因此，建立全新的增长秩序需要中央政府调整体制结构和激励机制，以使地方政府和市场能够发挥各自的优势。必须给市场留出创新的空间，同时政府必须进行必要的制度创新和程序改革。这些制度层面的改革创新只有政府能做。

因此，为实现中国梦，中国面临的主要挑战将是在以市场为基础的产品创新和以政府为主导的制度创新之间取得平衡。关键是让政府职能到位或补位，而不是越位、错位、或缺位。

沈联涛

院长, 经纶国际经济研究院

肖耿

研究总监, 经纶国际经济研究院

翻译: Xu Binbin

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摘要

- 由城市驱动、出口导向的增长模式，带来了中国难以应对的挑战：房地产泡沫、交通拥堵、污染、不可持续的地方政府债务、与土地相关的腐败，以及社会福利分配不均导致的社会动荡
- 中国领导人将其首要任务定为向（基于消费而非投资的）稳定、包容、可持续的新型增长模式转型
- 中国面临的主要挑战将是在以市场为基础的产品创新和以政府为主导的制度创新之间取得平衡



New IPO sponsor regulatory regime

From the beginning of this month (1 October 2013), all listing applications will need to comply with Hong Kong's new IPO sponsor regulatory regime. Law firm Mayer Brown JSM discusses seven major changes under the new sponsor regime and gives practical tips on compliance.

A material milestone of the Hong Kong IPO process, the new IPO sponsor regulatory regime was implemented on 1 October 2013. The new requirements under the regime will apply to all listing applications subject to certain exceptions. There are two major limbs to the regime.

1. Pursuant to the *Consultation Conclusions on the Regulation of IPO Sponsors* published by the Securities and Futures Commission (SFC) on 12 December 2012 to implement the new sponsor regime, the key obligations of IPO sponsors will be consolidated and centralised in a new paragraph 17 of the *Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct)*.

2. To cope with the implementation of the new sponsor regime, Hong Kong Exchanges and Clearing (HKEx) has implemented various measures including amending the listing rules, streamlining the listing vetting process, issuing/ revising various guidance letters on logistics, disclosure and other requirements and revising certain IPO sponsor rules, undertakings and declarations.

This legal update discusses seven major changes under the new sponsor regime.

1. Appointment of sponsor(s)

Under the new regime, sponsors need to be appointed at least two months before the filing of a listing application.

Moreover:

- a written engagement letter containing prescribed provisions is required, and
- once appointed (regardless of whether an application will be or has been submitted), the IPO sponsor must notify HKEx with a copy of the engagement letter.

To avoid delays, a listing applicant should consider carefully which sponsor and how many sponsor(s) are to be appointed beforehand, as the two-month period starts to run when the replacement sponsor (if the sole original sponsor resigns or is being terminated) or last sponsor (for multiple sponsors), as the case may be, is formally appointed.

If an IPO sponsor has already been appointed or will be appointed before the effective date of the new regime (1 October 2013), it should still notify HKEx of its appointment as soon as practicable to facilitate processing of an application when it is submitted. The engagement letter submitted as a means of notification must contain the prescribed provisions of paragraph 17.11(b) of the *Code of Conduct* and listing rule 3A.05.

If an application lapsed on or before 30 September 2013 is re-submitted on or after 1 October 2013, the two-month notification is not applicable if there is no change in the IPO sponsor and the IPO sponsor is only required to submit a copy of its engagement letter to HKEx when the application is re-submitted. It is not clear whether the two-month notification exception applies to an application submitted before 1 October 2013 but lapsed on or after 1 October 2013 and resubmitted thereafter, and the IPO sponsor should notify HKEx of its appointment pursuant to listing rule 3A.02 as soon as practicable.

2. The Application Proof

Under the new sponsor regime, the draft prospectus (the 'Application Proof') and all other relevant documents to be submitted with listing application Form A1 should be substantially complete except for information which, by its nature, can only be finalised and included at a later date. HKEx has issued/ revised various guidance letters to explain the extent of disclosure required for an Application Proof to be considered 'substantially complete'. These are available on the HKEx website (www.hkex.com.hk).

The working parties should assist the applicant to review the Application

Proof and the application accompanying documents referred to in the amended listing rules 9.11(1) to 9.11(17c) carefully and check against the guidance letters as any non-compliance may result in the application Form A1 being returned. It is recommended that, as a minimum, the working parties should carry out a check based on the three-day checklist (See Table B in guidance letter HKEx-GL56-13) immediately prior to Form A1 submission.

Disclosure of material non-compliance incidents in the Application Proof, such as the reasons, charges/ penalties and rectification actions taken, is also required. For material non-compliance matters identified during the due diligence process and which may be caused by systematic defects of an applicant's internal controls, an internal control consultant should be engaged to carry out an initial review of the internal control system. A follow-up review should be conducted to confirm the implementation and effectiveness of the enhanced internal control measures recommended by the internal control consultant. The IPO sponsor(s) should be closely involved in the internal control review as their opinion on the applicant's enhanced internal control measures will be required to be disclosed in the prospectus.

An expert (other than reporting accountants) giving an expert opinion must provide a confirmation to the applicant (with a copy to the IPO sponsor, HKEx and SFC) when the Application Proof is submitted to state that no material change is expected to be made to the expert opinion in the Application Proof based on the work done. A suggested template of an expert's confirmation is attached as an appendix to the HKEx guidance letter HKEx-GL60-13.

A signed copy or an advanced proof of each of the accountants'/ reporting accountants' reports on historical financial information, *pro forma* financial information and profit forecast (if any) are also required when the Application Proof is submitted. If only an advanced form is available, the reporting accountants must provide a confirmation to the IPO sponsor, HKEx and SFC to state that no significant adjustment is expected to be made to the advanced draft report based on the audit procedures and/ or reviews done. A suggested template of the

Highlights

- sponsors need to be appointed at least two months before the filing of a listing application and, when appointed, regardless of whether an application will be or has been submitted, the IPO sponsor must notify HKEx with a copy of the engagement letter
- where material non-compliance incidents are identified during the due diligence process, an internal control consultant should be engaged to carry out an initial review of the internal control system
- Application Proofs will not be subject to any pre-vetting or clearance from HKEx or the SFC before publication and so the working parties should ensure that they are satisfied with the Application Proof before the submission of the listing application Form A1

reporting accountants' confirmation is attached as the appendix to guidance letter HKEx-GL58-13.

HKEx has issued guidance letter HKEx-GL6-09A specifying a new set of revised administrative practices on accepting early filings of applications and the expected financial information in the Application Proof at different times of the year.

Effective from 1 October 2013, guidance letter HKEx-GL6-09A will supersede guidance letter HKEx-GL6-09. IPO sponsors should be aware of the differences in the revised administrative practices and work with the applicants and their reporting accountants to ensure that financial information for the relevant period will be included in the Application Proofs for applications submitted on or after 1 October 2013.

3. Vetting and publication of the Application Proof

A set of the Application Proof documents (English version only) will be submitted to HKEx for vetting, and another set of the Application Proof (both English and Chinese versions) will be submitted to the HKEx for publication on the HKEx website at the same time the applicant files A1 with HKEx.

From 1 October 2013 to 30 September 2014, the Vetting Application Proof will be subject to a three-day check according to the three-day checklist (see Table B, HKEx-GL56-13). Only limited qualitative assessment will be carried out – HKEx will then decide whether to return the application or accept it for detailed vetting.

Exceptions:

1. During the suspension period

(1 October 2013 to 31 March 2014), applicants will not need to submit a Chinese version. The names of the applicant and the IPO sponsor and return date will not be published in the event of a returned application.

2. Confidential filing will be available if the applicant has already been listed on a recognised overseas exchange for not less than five years and has a market capitalisation of not less than US\$200,000,000.

Waivers will be considered on a case-by-case basis for cases such as spin-offs. For spin-offs from an overseas listed parent, upon application by an applicant two months before A1 filing, HKEx or the SFC will consider a waiver of the publication requirements on a case-by-case basis taking into account the non-exhaustive list of factors set out in HKEx-GL57-13. For spin-offs from an HKEx-listed parent, upon application by an applicant two months before A1 filing, HKEx or the SFC will only consider a waiver in light of the relevant application of the inside information requirement as applicable to that case.

Information in the Vetting Application Proof and the Publication Application Proof should be the same, except that some information in the Vetting Application Proof should be redacted to the extent necessary for the Publication Application Proof not to constitute a prospectus or an advertisement under the Companies Ordinance or an invitation to the public in breach of the Securities and Futures Ordinance (the Prospectus and Offering Provisions).

Application Proofs will not be subject to any pre-vetting or clearance from HKEx

or the SFC before publication and so the working parties should ensure that they are satisfied with the Application Proof before A1 submission. Table A of HKEx-GL56-13 sets out the disclosure requirements for a Vetting Application Proof and the information which can be redacted for a Publication Application Proof.

IPO sponsors must first obtain a company case number from the Listing Division IPO team by filing a request at least one business day before A1 filing.

4. Document submission

Under the new sponsor regime, document submission has been accelerated and 15-day document submission is no longer applicable. A majority of the documents previously required to be submitted in stages will now have to be submitted together with Form A1, such as finalised or advanced drafts of the profit forecast and cash flow forecast memoranda and advanced draft of the IPO sponsor's letter on working capital statement sufficiency.

Acceleration of document submission means more preparation work before the submission of an application. An applicant should commence preparation of the profit forecast and cash flow forecast in communication with its IPO sponsor and reporting accountants well in advance to produce the documents required after management due diligence while they have an understanding of the business nature and financial status of the applicant.

5. The eight-week moratorium

All returned applications will be subject to an eight-week moratorium. An applicant can only submit a new application together with a new Application Proof



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document submission
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of an application
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eight weeks after the date of return of the application by the Listing Division (the Return Decision). The expiry dates of the relevant documents such as the expert opinion and the accountants'/ reporting accountants' reports should be checked carefully before resubmission to avoid breaching the listing rules.

6. The right to request a review

An applicant and/ or its IPO sponsor(s) have the right to request a review of the Return Decision and the Listing Committee's decision that endorses the Return Decision Review. Upon request, a Return Decision will be reviewed by the Listing Committee. If the Listing Committee endorses the Return Decision, upon request, it can be further reviewed by the Listing (Review) Committee. The decision of the Listing (Review) Committee is conclusive and binding.

A Return Decision can be made during the three-day check or after the application has been accepted for detailed vetting following the period and so passing the three-day check does not mean that the application is

safe. A written review request (including grounds and reasons for the review) and payment of review fee must be submitted within five business days after receipt of the Return Decision.

A review by the Listing Committee could potentially take place within a week of submission of the written review request. The eight-week moratorium starts from the date of the Return Decision, not from the date of the review decision.

7. The Post-Hearing Information Pack

The requirement to publish a Web Proof Information Pack will be replaced with a new requirement to publish a Post-Hearing Information Pack (PHIP) (both English and Chinese versions) on the HKEx website. An applicant should submit a PHIP for publication after receipt of a post-hearing letter from HKEx together with a publication request, and after the material comments from the regulators have been addressed, but before the first occurrence of:

- the distribution of red herring documents

- the commencement of the book-building process, and
- in case of dual listing, *simultaneously* with any overseas publication of similar information.

A PHIP must not contain any information regarding the proposed offering or other information that would result in the violation of the Prospectus and Offering Provisions. If a PHIP complies with the relevant guidelines (in relation to warning and disclaimer statements and redactions of documents) set out in HKEx-GL57-13, then it would not be regarded as breaching the Prospectus and Offering Provisions.

To the extent practicable and except for offer-related information, bracketed or omitted information in an Application Proof should be updated or included upon the publication of the related PHIP.

James Fong, Jeckle Chiu, Juliana Lee and Jeremy Hsu – Mayer Brown JSM

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Seminars: July – August 2013

4 July 2013



Ernest CH Lee ACIS ACS, Partner, Professional Practice, Ernst & Young (chair), and Dicky To, Partner, RSM Nelson Wheeler Tax Advisory Ltd, at the seminar 'Offshore RMB bond – a hot dim sum'

8 July 2013



YT Soon FCIS FCS, Director, Tricor Services Ltd (chair), and Grace Ma ACIS ACS, Senior General Manager, BVI Technical Services, Offshore Incorporations Hong Kong, at the seminar '2012 amendments to the BVI Business Companies Act: an overview (re-run)'

13 August 2013



Dr David Ng FCIS FCS, Director, Lippo Asia Ltd (chair), and Timothy Loh, Principal, Timothy Loh, Solicitors, at the seminar 'Crisis management: preventing and handling a regulatory investigation'

15 August 2013



Dr Davy Lee FCIS FCS(PE), Group Corporate Secretary, The Lippo Group and HKICS Past President (chair), and Jenkin Suen, LLB (HKU), PCLL (HKU), BCL (Oxon), Barrister-at-Law, Des Voeux Chambers, at the seminar 'Shareholder rights and remedies in Hong Kong'

20 August 2013



Mohan Datwani, LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS (chair), and Ludwig Ng, Senior Partner, ONC Lawyers, at the seminar 'Corporate insolvency law and practice for officers (re-run)'

22 August 2013



Dr Davy Lee FCIS FCS(PE), Group Corporate Secretary, The Lippo Group and HKICS Past President (chair), and Wang Jianxue, Partner, King & Wood Mallesons, Guangzhou at the seminar 'Foreign mergers & acquisitions and corporate governance in China (re-run)'

Seminar review: Directors' induction – an overview

The quality of board decisions depends on the quality of information directors have at their disposal and company secretaries play a crucial role in ensuring that directors stay well informed. One key element in this endeavour is the company secretary's duty to ensure that directors receive an effective induction on joining the board.

Judging by the attendance at the recent HKICS ECPD seminar 'Directors' induction – an overview' presented by Mohan Datwani, HKICS Director of Technical and Research, company secretaries in Hong Kong are well aware of the importance of this function. The seminar, a re-run of Mohan's first seminar on this topic, received full attendance. It provided participants with a very useful summation of the issues company secretaries need to consider when carrying out inductions. This time around, Mohan expanded the introduction section to include certain company law developments following the enactment of the new Companies Ordinance, expected to come into force in March 2014.

At the outset, Mohan identified the objectives of the seminar – to provide participants with practical help in discharging their duties as company secretaries of listed issuers in accordance with Section F of the Corporate Governance Code which requires them to be responsible for directors' induction and their continuous professional development.

Mohan adopted an interactive approach basing his presentation on simple and facilitative questions and answers. He also adopted a methodical approach building from the simple to the complex in the following areas.

Company law developments. This included a recap of the basic concepts relating to the ring-fencing of liabilities through the use of corporate entities, the concept of fiduciary duties and the implications of the new Companies Ordinance.

Directors' duties. Mohan reviewed the basic requirements for directors; their continuous professional development obligations; the standards of duty of care and the basic requirement for directors to act in good faith and the consequential duties flowing therefrom.

Types of directors and committees. The seminar outlined the different types of directors; the due diligence required prior to

their appointment; the concept of a unitary board; the various board committees; and the role of the chairman of the board.


Listing and other rules. The seminar reviewed the roles of regulators in preserving an orderly and informed market, and the undertakings of directors to comply with the listing rules and applicable securities regulations and other compliance matters.

Disclosure of interests. Mohan explained the application of the complex requirements relating to directors' disclosure of interests.

Insider dealing. The seminar looked at the Du Juan case, where the former managing director of Morgan Stanley was sentenced to a substantial term of imprisonment, and the remedial powers of the Securities and Futures Commission (SFC) under section 213 of the Securities and Futures Ordinance (SFO).

Inside information and recent reforms. The seminar reviewed the new disclosure requirements of the SFO.

Notifiable and connected transactions. Mohan gave a brief introduction to the compliance requirements for notifiable and connected transactions.

Takeovers Code. The seminar explained the non-binding nature of the Code; its application to mandatory takeovers; whitewash waivers and certain other applicable situations. 

'Directors' induction – an overview' was held on 30 September 2013. Look out for future ECPD seminars on the HKICS website (www.hkics.org.hk). The HKICS 'Guide on Directors' Induction: An Overview' (published on 19 March 2013) is also available in the publications section of the HKICS website.

This month CSj launches a new format for seminar reviews in the journal, comprising a listing of recent seminars together with a full review of a selected seminar. Feedback on this new format is very welcome. Please email any comments to the CSj editor at: kieran@ninehillsmmedia.com.

HKICS president visits Beijing

On 6 September 2013, an HKICS delegation visited the China Securities Regulatory Commission (CSRC) and Ministry of Finance of the People's Republic of China (MoF). The delegates comprised: Institute President Edith Shih *FCIS FCS(PE)*; Vice-President Dr Maurice Ngai *FCIS FCS(PE)*; Chief Executive Samantha Suen *FCIS FCS*; General Manager & Company Secretary Louisa Lau *FCIS FCS(PE)*; and Chief Representative of Beijing Representative Office Kenneth Jiang *FCIS FCS*.

The delegates were warmly welcomed by Deputy Director Dr Lu Zefeng and Deputy Division Head Dr Tu Xianqun of Section One of Listed Company Supervision and Administration Department of the CSRC. Dr Lu and Dr Tu spoke highly of the Institute's continuing efforts to promote good corporate governance and the professionalisation of board secretaries. Dr Tu indicated that CSRC welcomed professional bodies such as the Institute to provide training and qualified corporate governance professionals to the mainland capital market. At the meeting, the two parties discussed the development of board secretary professionalisation and possible cooperation on training for board secretaries and the top management of listed companies in mainland China. Chen Xiang, Deputy Director of Training Department of China Association for Public Companies (CAPCO) also participated in the meeting and provided updates on CAPCO's recent developments.

During the visit to the MoF, Institute delegates met with Ouyang Zongshu, Deputy Director of Accounting Regulatory Department

and other MoF officials. The two parties gave updates on recent developments and discussed possible cooperation on training in terms of internal control and corporate governance for professionals.

During the visit on 6 September, Institute delegates also took the opportunity to meet with members and students as well as Affiliated Persons stationed in Beijing.

The visits were constructive in establishing and maintaining an effective dialogue with the regulators and government officials. The Institute also benefited from getting updates from the regulators in mainland China. The Institute would like to express its sincere thanks to the officials from the CSRC, CAPCO and MoF for sharing their valuable views with the Institute delegates during the visits. Also, a special thanks to Beijing Tongrentang Ltd for sponsoring the dinner gathering.



Group photo of the Institute's delegates and Affiliated Persons



Group photo of the Institute's delegates and CSRC officials



Group photo of the Institute's delegates and MoF officials

New Graduates

Au Pui Yee	Hung Tun Hoi	Leung Lam	Shum King Ki
Chan Ka Ki	Kho Polien	Li Ho Yan	Sin Lai Sheung
Chan Sin Man, Nico	Lam Nga	Li Kwok Fong	Tsang Yee Wah
Chow Pui Yin	Lee Ki Wai	Liu Wai Kuen	Tsui Sum Yi
Chu Kin Fung	Lee Kin	Ng Fong Kuan	Wong Yuen Ting
Fung Way On, Sharon	Leung Kit Wai	Shek Yuen Ting	Yim Dan Ling

Newly appointed company secretaries

The Institute would like to congratulate the following members on their appointments as company secretaries of listed companies:

Company secretary	Listed company	Date of appointment
Ma Wai Man, Catherine <i>FCIS FCS</i>	21 Holdings Ltd (Stock code: 1003)	1 August 2013
Lam Kit Sun <i>ACIS ACS</i>	Universe International Holdings Ltd (Stock code: 1046)	2 August 2013
Mok Ming Wai <i>FCIS FCS</i>	Advanced Semiconductor Manufacturing Corporation Ltd (Stock code: 3355)	7 August 2013
	Zhaojin Mining Industry Company Ltd (Stock code: 1818)	26 August 2013
	China Datang Corporation Renewable Power (Stock code: 1798)	30 August 2013
Yip Zodia Wang <i>ACIS ACS</i>	China Eco-Farming Ltd (Stock code: 8166)	9 August 2013
Leung Wai Chuen <i>ACIS ACS</i>	Grand Ming Group Holdings Ltd (Stock code: 1271)	9 August 2013
Chan Chiu Hung, Alex <i>FCIS FCS</i>	China Asean Resources Ltd (Stock code: 8186)	15 August 2013
Chui Kark Ming <i>ACIS ACS</i>	Gamma Logistics Corporation (Stock code: 8310)	22 August 2013
Ng Yee Man <i>ACIS ACS</i>	Golden Wheel Tiandi Holdings Company Ltd (Stock code: 1232)	26 August 2013
Lee Hung <i>ACIS ACS</i>	Cafe de Coral Holdings Ltd (Stock code: 341)	27 August 2013
Lai Tin Yin, Fion <i>FCIS FCS</i>	Pacific Textiles Holdings Ltd (Stock code: 1382)	1 September 2013

Fellows-only benefits

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

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

Luncheon talk by the HKSAR Chief Executive on 'Long term housing strategy'

The Institute was pleased to collaborate with other member organisations of the Hong Kong Coalition of Professional Services and various professional bodies to co-organise a luncheon talk by the HKSAR Chief Executive on 'Long term housing strategy' on 11 September 2013. At the luncheon, the Honorable Leung Chun-ying shared with the participants the content of the consultation report recently announced by the Long Term Housing Strategy Steering Committee.



The Honorable Leung Chun-ying



At the luncheon

Membership activities

Members' Luncheon

A Members' Luncheon was held on 5 September 2013 at the Hong Kong Bankers Club. We were delighted to have the Honorable Anna Wu GBS, JP, the Chairperson of the Mandatory Provident Fund Schemes Authority and the Competition Commission as well as Non-Official Member, Executive Council, as the guest speaker presenting on 'Reforming the MPF system'. More than 50 members attended and enjoyed this valuable opportunity to understand Ms Wu's perspectives on the pressures and key challenges facing the MPF system and the way forward on reform initiatives. Our thanks also go to Ascent Partners and Lippo Group who sponsored this event. More photos are available at the gallery section on the Institute's website.

Ms Anna Wu's presentation at this Members' Luncheon is reviewed on pages 20-22 of this month's journal.



Edith Shih, HKICS President, presenting a souvenir to the Honorable Anna Wu



Susie Cheung, HKICS Council Member and Membership Committee Chairman and Anna Wu during the Q&A session



At the Luncheon



HKICS/ HSF - Compliance Guide launch & cocktail reception

The Institute jointly organised this event with Herbert Smith Freehills (HSF) on 7 October 2013 at the American Club. Copies of the new edition of HSF's *Hong Kong Compliance Guide* as well as the *Guide on Directors' Induction: An Overview* published by the Institute were distributed at the event. Details with photos will be reported in the next issue of CSj.

The 30th Affiliated Persons ECPD Seminars in Qingdao

The Institute's 30th Affiliated Persons (AP) ECPD seminars were held in Qingdao on 18 and 19 July 2013 on the theme 'Internal control and corporate governance practice.' Over 110 delegates attended, including 35 from A+H-share companies, 31 from H-share companies, 10 from red-chip companies, six from to-be-listed companies and three from A-share companies.

Institute President Edith Shih *FCIS FCS(PE)* offered her congratulations on the 20th anniversary of the first H-share listing in Hong Kong. Ms Shih shared her views with participants on achieving good corporate governance through a system comprising market supervision, enterprise self-discipline, intermediary service and board secretary professionalism. She called upon all board secretaries to link forces and promote professionalism in the board secretary role.

Two officials from the China Securities Regulatory Commission (CSRC) gave an analysis of the disclosures in internal control reports made by listed companies in 2012 and discussed the effective governance and supervision of listed companies. HKICS Chief Executive Samantha Suen *FCIS FCS* presented the Institute's research report on board diversity. Institute Council Member and Professional Development Committee Vice-Chairman, Dr Gao Wei *FCIS FCS* shared on disclosure of inside information and internal control systems. They and the other six speakers (senior professionals and senior board secretaries from China Petroleum & Chemical Corporation, Computershare Hong Kong Investor Services Ltd, Deloitte China Enterprise Risk Service, Equity Financial Press Ltd, PwC Risk & Controls Assurance Practice, and Tsingtao Brewery Co Ltd) also shared their

views and experience and discussed related topics with the attendees.

A dinner was held on 17 July to celebrate the 20th anniversary of H-share companies listing in Hong Kong at which Ms Suen presented a welcome address. A review of this seminar (in Chinese) follows below.

The Institute would like to express its sincere thanks to the following companies for supporting and sponsoring the seminars and the dinner:

Associate organiser: SHINEWING CPA Ltd

Sponsors: Equity Group and Computershare Hong Kong Investor Services Ltd

Supporting organisers: Tsingtao Brewery Co Ltd and SITC International Holdings Co Ltd



At the seminar



香港特许秘书公会召开“内控与公司治理实务”讲座 披露缺陷意愿不强 公司治理形似神不至

为满足A、H股公司建立企业内部控制制度和准备内控披露报告的需要，提高境内外上市企业的风险控制能力与治理水平，香港特许秘书公会于7月18-19日召开了主题为“内控与公司治理实务”的联席成员讲座。这也是香

港特许秘书公会主办的第30期讲座。为纪念H股在港上市20周年，会议地点特意选在了首只H股——青岛啤酒的所在地青岛。香港特许秘书公会会长施熙德在致辞中指出，经过20年的发展，内地企业不仅市值占比高达

56.5%，品质也发生了实质的飞跃，这对中港两地资本市场发展产生了深远影响。公会自青啤在港上市前，已开始为内地公司境外上市提供辅导与培训服务，20年来见证了内地证券市场的崛起与董秘行业的成长。

而如主题所示，讲座的主题涵括了内控与公司治理实务业务的方方面面，而且直指实务。来自一线监管部门人士指出，上市公司普遍存在不愿自暴家丑、公司治理形似而神不至等诸多问题有待解决。

内控报告：不愿自暴的家丑

来自中国证监会的一位演讲嘉宾披露了监管部门针对2012年度上市公司实施内部控制规范体系的情况和统计数据。该嘉宾表示，目前上市公司在内控评价披露方面存在诸多问题，如披露缺陷的意愿不强（披露存在内部控制缺陷的公司不足3成，且95%的公司披露的缺陷为一般缺陷）；超过3成公司未披露内部控制缺陷的认定标准；上市公司内控评价报告存在明显的不愿“暴丑”倾向，评价结论的客观性存疑；内控评价范围披露不充分、评价范围不当；缺陷认定标准披露不充分、认定标准不恰当；回避缺陷分类或未按照缺陷认定标准进行缺陷认定，缺陷认定的裁量权大，随意性强，缺陷认定含糊不清；对缺陷整改的理解偏差，导致评价结论不当，遗漏缺陷整改的相关披露。

对于证监会指出的内控中存在的问题，与会讨论嘉宾并不讳言，在最后的小组讨论环节，中国远洋控股股份有限公司证券事务部总经理明东代表小组发言，他说，企业做好内控，要防止制度形式化，防止“两张皮”，关键要做的是制度与执行的结合。他指出两大问题，一是内控手册过于笼统、庞杂，未来做内控应重实质而不重形式，“不要为了做内控而去内控”，二是片面强调制度，忽略了执行的有效性。

“从法律上讲，责任主体首先是公司”，中国外运股份有限公司董事会秘书高伟在谈及内控时指出，公司是很多人组成的一个系统，每个人都有责任，责任主体不能仅仅指向董秘或董事长，

比较可取的模式则是“董事长引领一个文化，建立一个好的文化氛围，董秘提供一些专业咨询意见”。

上海锦江国际酒店（集团）股份有限公司董事会秘书康鸣在代表小组发言时更多关注内控文化，“如果内控文化从上到下渗透到这个企业，我相信内控风险就会降低”。但这需要分清责任，仅把压力积累到董办及相关工作人员身上，风险会越来越大。他表示，未来计划研究压力传导系统是否合理，探索建立自上而下、可以共同分担的机制，具体举措包括成立信息披露委员会、吸收境外独立董事等。

形似而神不至

中国证监会的另一位演讲嘉宾则专门就“上市公司的有效治理与监管”这一议题发言，该嘉宾直言，我国的公司治理一直存在“形似而神不至”的现象，虽然治理架构基本完备，相关制度基本健全，但是治理的执行性亟待加强。这一困扰多年的痼疾性问题仍然遗留，而且某些问题在新环境下更加突出，说明了制度移植的艰难。该嘉宾表示，公司治理实际上要受一国独特的历史、政治、经济、文化甚至地理条件和语言习俗的影响。公司治理的本土化，除了移植以外，还要强调公司治理的内生性，充分尊重、挖掘和利用本国的制度资源，对其加以改造吸收，创造出适合本国实际、具有中国特色的治理模式。

针对内地公司治理存在的问题，施熙德会长认为良好的公司治理环境对资本市场的健康发展非常重要，也是董秘专业发展的基石。她透露公会曾建议内地监管机构从制度设计入手，构建一个由市场监管、企业自律、中介服务业与董秘执业资格认证四个层次组成的公司治理新体系：一是监管者的治理角度。监管要从行政性治理转为法制化、制度化和市场化治理，做到监管既不缺位又不越

位；二是企业的态度。企业要转变被治理者的消极应对态度，主动承担自我治理责任，成为自律治理的主体；三是中介机构应维护其专业水准与社会公信力，发挥专业治理作用；四是内地要像当年引进注册会计师制度那样，引入董秘资格认证制度，规范行为准则。

目前公会正积极从国际及国内不同层面推动内地董秘的专业化进程，在国际上，公会积极推动提升全球公司治理人士的地位。游说将“公司治理、合规与秘书顾问”服务纳入WTO服务分类目录。在国内，公会将积极配合证监会和中国上市公司协会，着力推进内地董秘的专业认证进程。此外，公会也将持续加强对内地上市公司的服务，为大家提供培训与研究支援，切实为提升董秘地位及工作品质发挥专业的专业作用。

董事会成员多样化

值得关注的是，香港交易及结算有限公司上市规则作出专门规定：董事会或提名委员会应该订有涉及董事会成员多元化的政策，于企业管治报告内披露其政策或政策摘要，包括为执行而制定量化目标及提供达成目标的进度报告。

针对这一董事会成员多样化的问题，香港特许秘书公会行政总裁孙佩仪在会上作了专题介绍，香港特许秘书公会针对香港主板上市公司的董事会多样化专门进行了研究，选取了48家恒生指数公司以及11家H股公司、37家非H股公司作为样本，发现样本公司的女性董事数量少于十分之一，百分之四十的恒生指数公司在2011年时没有女性董事，董事平均年龄为58岁，超过四分之三的董事年龄大于50岁，超过百分之五十的董事的任期不超过5年，独立非执行董事的比例有所提高，财务专业人员担任董事是专业的选择，董事会成员职业经验真正大幅度地实现多元化。

China affairs

Shanghai Stock Exchange (SSE) and HKICS annual joint training seminars

On 27 and 28 August 2013, the Institute and the Shanghai Stock Exchange (SSE) jointly held a two-day board secretaries training seminar on the topic of 'Market value management' in Harbin, which attracted over 400 participants from A-share and A+H-share companies. This is the third training event held in cooperation with the SSE since the signing of an HKICS/ SSE MoU in 2011.

Institute Council Members and Vice-Chairmen of the Professional Development Committee, Dr Gao Wei *FCIS FCS* and Jack Chow *FCIS FCS(PE)*, spoke at the event on 'Insider information disclosure of A+H-share companies and practices relating to inside information management and control' and 'Market value management and corporate valuation' respectively. They also discussed and shared their views and experience on the topics with participants and the other four speakers from the China Research

Centre for Market Value Management of Listed Companies; Huatai United Securities Co Ltd; Qilu Securities Co Ltd; and Eastern China Business centre, People.com.cn.



2013 Board Secretary Conference hosted by the Insurance Association of China (IAC)

Institute Chief Executive Samantha Suen *FCIS FCS* spoke at the 2013 Board Secretary Conference hosted by the Insurance Association of China (IAC) on the topic 'Overview of international

corporate governance and key roles of a company secretary'. An annual event for board secretaries and heads of board secretary offices from insurance companies in mainland China, the 2013 Board Secretary Conference was hosted by the IAC in Rongcheng, Shangdong Province on 29 and 30 August 2013. Over 270 delegates from around 200 insurance companies and 34 local Supervisory Bureaus of China Insurance Regulatory Commission (CIRC) attended.



Membership application deadlines

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).

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

Submission deadline

Tuesday 5 November 2013

Approval date

Late November 2013

中国境外上市公司企业规管高级研修班2013

本会于2013年9月10至14日成功举办了「中国境外上市公司企业规管高级研修班」。

是次研修班有超过30位来自内地境外上市公司的董事、董事会秘书与高管人员出席，他们透过这四天的研修课程及考察更加了解香港上市的条例及其更新，并加强了学员对公司治理实务操作及实践方面的理解。

主讲者分别有香港交易所、香港证券及期货事务监察委员会、香港廉政公署的代表及市场资深专业代表，包括德勤·关黄陈方会计师行、信永中和（香港）会计师事务所、贝克·麦坚时律师事务所、毕马威会计师事务所及瑞生国际律师事务所的演讲嘉宾。

公会亦特别感谢皓天财经集团对本次研修班的慷慨赞助与大力支持。

更多有关相片请浏览公会网页。



研修班现场



(由左至右) 香港特许秘书公会专业发展总监简育德女士; 香港特许秘书公会北京办事处首席代表姜国梁先生; 香港交易及结算所有限公司上市部高级经理许晶女士; 香港特许秘书公会专业发展委员会主席黄爱仪女士; 香港交易及结算所有限公司上市部副总监彭京玲女士; 香港特许秘书公会会长施熙德律师; 香港交易及结算所有限公司上市部副总监黄振宁先生; 香港特许秘书公会总经理兼公司秘书刘翠薇女士



参观香港立法会



毕业午宴 - 香港特许秘书公会行政总裁孙佩仪女士致辞



毕业午宴 - 姜国梁先生, 孙佩仪女士, 香港特许秘书公会副会长魏伟峰博士一同颁发证书予中国机械设备工程股份有限公司副董事长李太芳女士



中国太平洋保险(集团)股份有限公司董事会秘书方林先生代表全体学员发表课后感想

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 – Scholarship and Bursary Awards Presentation Ceremony 2013

Winnie Li ACIS ACS, Education Committee member, attended the Scholarship and Bursary Awards Presentation Ceremony at The Open University of Hong Kong on 28 August 2013.



Winnie Li receiving a souvenir from Professor John Leong (President), and Dr Eddy Fong GBS, JP (Council Chairman) both from The Open University of Hong Kong

Collaborative Course Agreement (CCA) – Students Orientations

The Institute gave a briefing to CCA students about the Institute as well as the studentship registration requirements at The Hong Kong Polytechnic University and City University of Hong Kong on 24 August and 28 August 2013 respectively.



Meeting with the students at The Hong Kong Polytechnic University



Presenting at the City University of Hong Kong

Collaborative Course Agreement (CCA) – new policies

CCA graduates whose study period is shorter than the normal programme duration (see Note 1), where they have not yet maintained the two-year studentship requirement for applications for full IQS exemption, should make their exemption application within a period of six months *after* the fulfillment of the two-year studentship requirement. Students who have fulfilled the two-year studentship requirement should apply for full exemption within a period of six months after graduation.

Note 1: The normal timeframe for completion of CCA programmes is as follows:

- City University of Hong Kong – Master of Science in Professional Accounting and Corporate Governance (Corporate Governance Stream) – two years
- The Hong Kong Polytechnic University – Master of Corporate Governance – two years
- The Open University of Hong Kong – Master of Corporate Governance – three years

New Students Orientation

The Institute organised a New Students Orientation on 18 September 2013. Students learned about the International Qualifying Scheme (IQS) examination, exemptions and student support services. There was also a book counter displaying IQS study materials.

Subject Prize winners of the May 2013 examination received their certificates from Bernard Wu *FCIS FCS*, Education Committee member. Two subject prize winners in Corporate Secretaryship, Mok Kiu Fai and Yang Yuk Shun, shared their experiences and advice for fellow students in preparing for the IQS examination.



Bernard Wu and the awardees



At the orientation

Tips from the top

Subject Prize winners from the May 2013 examination share their study experiences and tips for success with students of the Institute

Chan Sin Man, Mandy
Subject Prize winner - Corporate
Administration

Mandy is a practising accountant and holds a bachelor's degree in Accountancy from The Hong Kong Polytechnic University. She achieved the distinction grade on her first attempt at the Corporate Administration examination.

'Accounting work is not just about numbers. Your ability to analyse and make appropriate decisions about the best accounting methods is important. The Chartered Secretarial qualification has enhanced my knowledge of business operation. This also facilitates my analytical skills and understanding of the real business environment and operation.'

'I spent a lot of time revising the past examination papers which is very useful for examination preparation! She says that it is important to keep up to date with rules and regulations. 'As the rules and regulations keep on changing, I usually get to know the latest changes via the internet regularly.'

Mandy says that making good use of the 15-minute reading time before the examination is critical. In addition to the case study questions, she went through all the exam questions and selected three long questions in Section B.

Liu Jiong
Subject Prize winner - Corporate
Secretaryship

Ms Liu holds a bachelor's degree and a master's degree from the China University of Political Science and Law (中国政法大学) and the University of Hertfordshire. Through acquiring the Chartered Secretarial qualification, she has become more familiar with the rules and regulations in Hong Kong. She found this qualification useful in broadening her career development.

Ms Liu took the examination preparation course, and studied the past papers and suggested answers. She also found the study outlines useful and searched for relevant regulatory updates on the regulators' websites.

Ms Liu started her revision two to three months before the examination focusing on the specific topics. During the last month, she concentrated on the past papers. She also prepared summaries and study notes which were useful for memorising the key information. She believes that good time allocation (70 to 80 minutes per question) is one of the key success factors at the examination.

Mok Hiu Fai, Ernest
Subject Prize winner – Corporate
Secretaryship



Mr Mok holds a BBA in Professional Accountancy from The Chinese University of Hong Kong and he currently works in a listed company. He achieved the distinction grade on his first attempt at the Corporate Secretaryship examination.

'I started the preparation two months before the examination. I reviewed the past papers of the previous five years in order to know more about the subject. I also made key notes during my study. This assisted me to memorise the main points when I started a more thorough revision later on. I also browsed the websites of Hong Kong Exchanges and Clearing Ltd and the Companies Registry regularly to update myself on relevant rules and regulations.'

He adds that the main difficulty he had in tackling this subject was due to his lack of company secretarial experience. Therefore, he discussed relevant issues with his company secretarial colleagues. Furthermore, time management at the examination is important. He picked the three questions from Section B during the 15-minute reading time. Once the examination started, he completed the case study question in Section A first.

Yang Yuk Shun, Clare
Subject Prize winner – Corporate
Secretaryship



Ms Yang is a bachelor's degree holder in Economics and Finance from The Hong Kong University of Science and Technology. She is also a member of the Association of Chartered Certified Accountants (ACCA). She is currently working at a listed company.

In previous roles, Ms Yang has handled company secretarial duties, such as setting up special purpose vehicles; share transfers; change of directorships; convening extraordinary general meetings (EGMs), etc. Studying the subject equipped her with the requisite knowledge to manage her daily duties.

She usually spent weekends studying from April to mid-May 2013. She also took a week's leave for studying and practising past papers. Through revision of the past papers and answers, she gained a better understanding of the core topics. Furthermore, she checked the text of relevant Ordinances and regulations (such as the Companies Ordinance, the Securities and Futures Ordinance, the Listing Rules, etc). When she found it hard to remember all the details of these regulations and the detailed requirements (such as the filing or registration deadlines and the required documents), she would write down the key information after revision.

She also encouraged her colleagues, friends and family members to check on her study progress. This created a positive pressure to follow her study plan. During the reading time, she advises students to read the questions carefully in order to understand the issues before skimming through the case study question. Then she recommends answering those questions you are more familiar with. While reading the case study, she says one has to pay attention to 'limitations' such as time, location, personal preferences in the question before preparing key points for organising the answers.

Student Ambassadors Programme 2013 – Tea Reception

This Tea Reception, a kick off event of the Student Ambassador Programme (SAP), was held on 7 September 2013. Mentors met with the new mentees at the event. Alberta Sie *FCIS FCS(PE)*, Education Committee Chairman, presented souvenirs to the mentors to acknowledge their contribution and certificates to mentees of the previous year. Student ambassadors also shared their experiences in the programme.

The Institute would like to thank the following members (in alphabetical order of surname) for their valuable contribution as mentors of the programme.

Angel Chan *ACIS ACS*
Chan Bing Kuen, Eric *ACIS ACS*
Chan Chun Hung, Eric *FCIS FCS(PE)*
Elly Chan *FCIS FCS*
Douglas Chanson *ACIS ACS*
Cavan Cheung *ACIS ACS*
Edmond Chiu *ACIS ACS*
Nelson Chiu *ACIS ACS*
Sherman Chong *FCIS FCS*
Ho Tak Wing *GradICSA*
Eddy Ko *ACIS ACS*

Wellman Kwan *FCIS FCS*
Ricky Lai *ACIS ACS*
Timothy Lam *ACIS ACS*
Katrina Lam *ACIS ACS*
Louisa Lau *FCIS FCS(PE)*
Alan Lee *ACIS ACS*
Simon Lee *ACIS ACS*
Anna Leung *ACIS ACS*
Eddie Liou *FCIS FCS(PE)*
Kitty Liu *FCIS FCS*
Edmond Pang *FCIS FCS*

Edith Shih *FCIS FCS(PE)*
Patrick Sung *FCIS FCS*
Maggie Sy *ACIS ACS*
Wilson Toe *ACIS ACS*
Jerry Tong *FCIS FCS*
Lindsay Wong *FCIS FCS*
Michael Wong *ACIS ACS*
Bernard Wu *FCIS FCS*
Rebecca Yu *FCIS FCS*

The Institute would also like to welcome Queenie Ho *ACIS ACS(PE)*, Wendy Kwan *FCIS FCS*, Bruce Li *FCIS FCS(PE)* and Marius Wong *ACIS ACS*, who are new mentors for 2013-2014.



Group photo of mentors



Group photo of mentees



At the tea reception



Sharing by Jason Liu from The University of Hong Kong



Alberta Sie welcoming the mentors and mentees

Upcoming activities

‘PRC Corporation Administration 中國公司行政’ by HKU SPACE

The programme series ‘PRC Corporation Administration’ has commenced in collaboration with the College of Business & Finance, HKU SPACE. This advanced training programme aims to strengthen professionals’ understanding of PRC corporate practices and its legislation. Up to 18 HKICS ECPD points will be awarded to participants who have attained 75% attendance.

For details, please contact Ms Wong (Tel: 2867 8481) or Ms Chung (Tel: 2867 8407) of HKU SPACE.

Date	26 October, 2 November, 9 November & 16 November 2013 (Saturdays)
Time	14:00 - 17:00 & 18:00 - 21:00
Venue	One of the HKU Space learning centres on Hong Kong Island

HKICS examination technique workshops (December 2013 examination)

These three-hour workshops will commence on 19 October 2013 priced at HK\$450 per workshop per person. They are designed for students who have substantial knowledge of the respective examination subjects, but who wish to improve their examination technique. Mock questions will be given to enrolled students in advance. Students are advised to answer the questions before attending the workshops and to run through their answers with the tutors during the workshops.

For details, please refer to the Institute’s website or contact the Education and Examinations section at 2881 6177.

International Qualifying Scheme (IQS) Information Session

This free seminar will include information on the International Qualifying Scheme (IQS). A member of the Institute will share his/ her experience in preparing for the examinations and discuss career prospects of the Chartered Secretariat 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	Wednesday 18 November 2013
Time	19:00 - 20:30
Venue	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen’s Road, Central
Enrolment deadline	Monday 11 November 2013 [on a first-come-first-served basis. Participants will receive an email confirmation.]

New registration measures for company secretaries in Zhuhai, PRC

Companies in the Zhuhai Special Economic Zone are now required to appoint company secretaries and have them registered with the business registration authorities. The requirement is part of the business registration reform in Zhuhai that comes with the introduction of the *Regulations on Business Registration of the Zhuhai Special Economic Zone* with effect from 1 March 2013.

According to the *Implementation Measures of the Regulations on Business Registration of the Zhuhai Special Economic Zone*, which took effect on 14 June 2013, a limited liability company should have a company secretary, who may be a natural person or a secretarial company set up in accordance with the law. The appointment should be registered with the business registration authorities within 30 days of the formation of the company. The particulars to be registered include the name, status, address and contact number of the company secretary and the duties of the company secretary as set out in the articles of association of the company. Any changes to the registered particulars must be reported to the business registration authorities within 30 days after the

decision on the changes is made. The registered particulars are made available by the business registration authorities for public inspection.

A person meeting any of the following descriptions cannot act as a company secretary:

1. a shareholder, legal representative or supervisor of the company or any other person specified in the articles of association of the company
2. persons without the capacity for civil action or with restricted capacity for civil action
3. persons penalised for corruption, bribery, appropriation or misappropriation of property, or undermining the socialist economic order, and where less than five years have passed since the completion of the term of their sentences, and
4. persons deprived of their political rights for committing a crime, and where less than five years have passed since the expiration of the term of their sentences.

Company secretaries to whom, during their term of office, any of the situations in (2), (3) or (4) above applies should be removed from their office.

The company secretary of a limited liability company has the following duties:

- filing discloseable company information with the Zhuhai business registration authorities through its business registration platform
- answering enquiries from relevant government departments
- organising shareholders' meetings and board meetings of the company, and
- managing shareholder information and company documents and files.

The 'Regulations on Business Registration of the Zhuhai Special Economic Zone' and the 'Implementation Measures of the Regulations on Business Registration of the Zhuhai Special Economic Zone' are available in simplified Chinese on the website of the business registration platform of Zhuhai: <http://ssgs.zhuhai.gov.cn>.

The Trust Law (Amendment) Bill 2013

The Trust Law (Amendment) Bill 2013 was passed on 17 July 2013 and will come into force on 1 December 2013. The Amendment Ordinance enables settlors to establish perpetual trusts in Hong Kong. It also enhances the protection of beneficiaries by imposing statutory control on clauses in trust deeds which seek to limit trustees' liability. For trustees who are remunerated and are acting in a professional capacity, nothing in the terms of trust deeds shall relieve them from liability for breach of trust arising from trustees' own fraud, willful misconduct or gross negligence. The statutory control on trustees' exemption clauses will take effect on 1 December 2013 for new trusts established on or after that date. For pre-existing trusts, the statutory control will take effect one year thereafter (on 1 December 2014) to allow time for the relevant trusts to make transitional arrangements.

More information is available on the Financial Services and the Treasury Bureau (FSTB) website: www.fstb.gov.hk.

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UPCOMING CPD SESSIONS IN 2013

SEPT	A general understanding of the principles and application of HKFRSs Speakers: Professionals from PwC Hong Kong
OCT	The common pitfall of listed company's annual/interim financial statements Speakers: Professionals from PwC Hong Kong
OCT	Update and Recap on HKFRS13 Fair Value Measurement Speakers: Ms. Janet Cheung, Partner, Head of Valuation and Financial Modelling, KPMG China
OCT	Merger and Acquisition Workshop - Outline for the part of valuation Speakers: Mr. Eugene Liu/ Mr. Joe Yan, RSM Nelson Wheeler
NOV	HKFRSs on Merger and Acquisition Speaker: Mr. Joel Chan, Partner, Technical Department, RSM Nelson Wheeler
NOV	An update on shareholder rights and remedies with case study Speakers: Professionals from Baker Mckenzie
NOV	What is the common tax dispute with IRD under the current IFRS model? Any remedial action to mitigate the risk? Speakers: Professionals from PwC Hong Kong
DEC	HKFRSs Updates 2013/2014 Speaker: Mr. Nelson Lam, Nelson Consulting Limited / Nelson and Company, CPA

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