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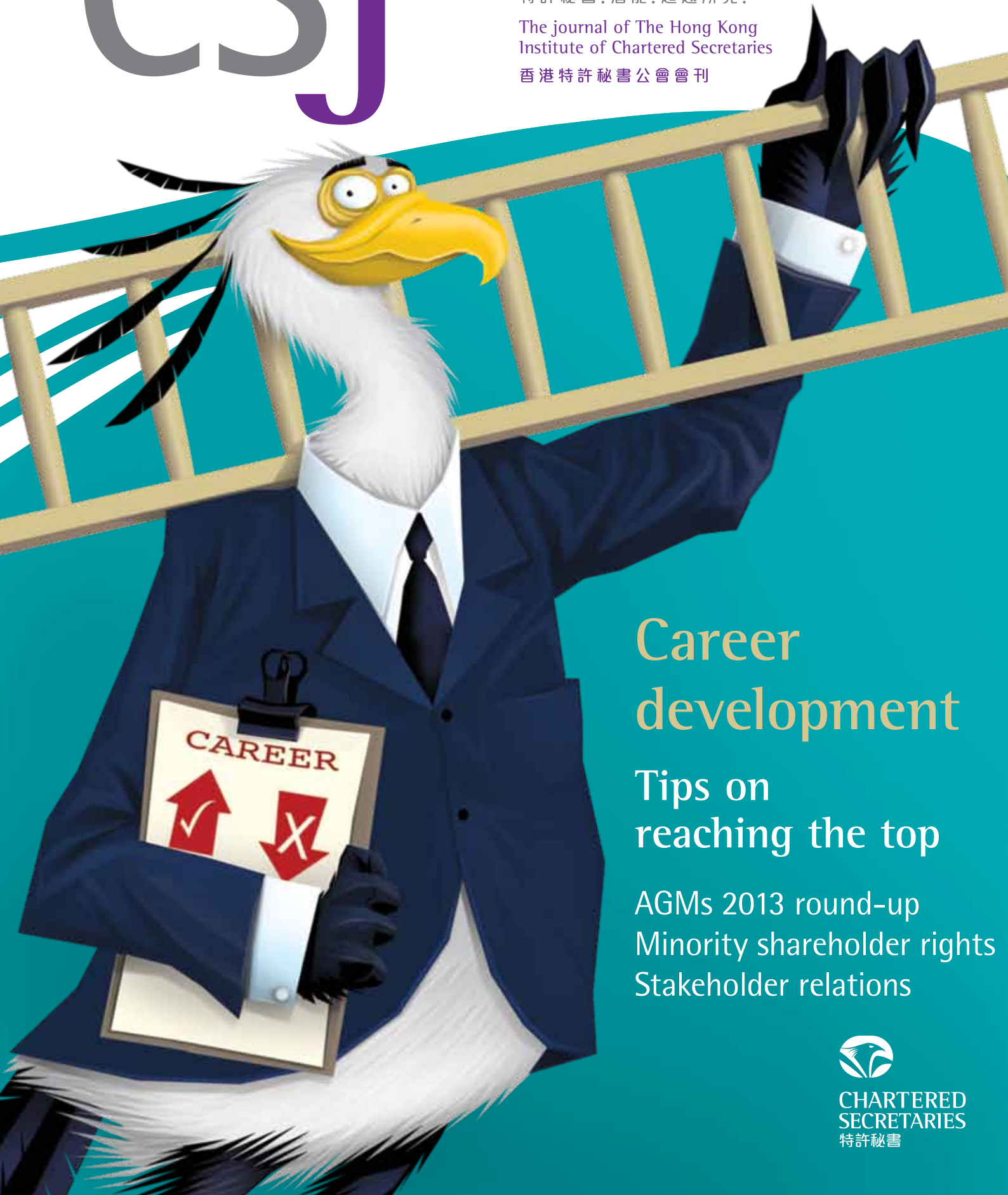
September 2013

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The Journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



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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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Graduates: 494

Associates: 4,773

Fellows: 478

The Hong Kong Institute of Chartered Secretaries

(Incorporated with Limited liability)

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

Tel: (852) 2881 6177

Fax: (852) 2881 5050

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

ecpd@hkics.org.hk (Professional Development)

member@hkics.org.hk (member)

student@hkics.org.hk (student)

Website: www.hkics.org.hk

Beijing Representative Office

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

Xicheng District, Beijing, 100031, China

Tel: (86) 10 6641 9368

Fax: (86) 10 6641 9078

Email: bro@hkics.org.hk

Institute of Chartered Secretaries and Administrators

Chartered Secretaries Australia

Level 10, 5 Hunter Street

Sydney, NSW 2000

Australia

Tel: (61) 2 9223 5744

Fax: (61) 2 9232 7174

Email: info@CSAust.com

Website: www.CSAust.com

The Institute of Chartered Secretaries & Administrators in Canada

202-300 March Road

Ottawa, ON, Canada K2K 2E2

Tel: (1) 613 595 1151

Fax: (1) 613 595 1155

The Malaysian Institute of Chartered Secretaries and Administrators

No. 57 The Boulevard, Mid Valley City, Lingkaran

Syed Putra,

59200 Kuala Lumpur, Malaysia

Tel: (60) 3 2282 9276

Fax: (60) 3 2282 9281

Chartered Secretaries New Zealand

PO Box 444

Shortland Street

Auckland 1015

New Zealand

Tel: (64) 9 377 0130

Fax: (64) 9 366 3979

The Singapore Association of the Institute of Chartered Secretaries & Administrators

149 Rochor Road,

#04-07 Fu Lu Shou Complex

Singapore 188425

Tel: (65) 6334 4302

Fax: (65) 6334 4669

Chartered Secretaries Southern Africa

PO Box 3146

Houghton 2041

Republic of South Africa

Tel: (27) 11 551 4000

Fax: (27) 11 551 4027

The Institute of Chartered Secretaries & Administrators

16 Park Crescent,

London W1B 1AH

Great Britain

Tel: (44) 20 7580 4741

Fax: (44) 20 7323 1132

The Institute of Chartered Secretaries & Administrators in Zimbabwe

PO Box CY172,

Causeway Harare

Zimbabwe

Tel: (263) 4 702170

Fax: (263) 4 700624

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Editorial Committee

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Illustrator (cover)

Images

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Contributors to this edition

Dave Bannister

Journalist

Lucy Newcombe

Computershare Ltd

Roy Lo

SHINEWING (HK) CPA

Gloria So

SHINEWING Risk Services

Richard Leung

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Kerby Lau

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ICSA Boardroom

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Integrated Reporting

Council

Ted Tyler,

Stefan Lo and

Natalie Wong

Department of Justice

HKSAR Government

Advertising sales enquiries

Paul Davis

Commercial Director

Ninehills Media

Tel: (852) 2982 0559

Email: paul@ninehillsmedia.com

Ninehills Media Ltd

PO Box 9963

General Post Office

Hong Kong

Tel: (852) 2982 0559

Fax: (852) 3020 7442

Internet: www.ninehillsmedia.com

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Governance and recognition

This month our journal returns to a theme which, for fairly obvious reasons, has an abiding fascination for us – the nature of the company secretarial role. More specifically, it asks what it takes to make a success of the company secretarial career.

This question has a well-rehearsed answer in the legal and accountancy professions, but the answer is by no means as straightforward for our chosen profession. The main reason for this is that the company secretary job description is not set in stone. Different companies utilise this role in sometimes subtly, sometimes dramatically different ways – our in-tray, so the joke goes, is everything the accountant and the lawyer can't handle. After all, we are there to provide practical advice and get things done.

So how do you train for such a role? How do you prepare young members of the profession for a career which, in addition to the core company secretarial functions, could see them working in a bewildering number of different areas such as risk, pensions, insurance, business continuity management and IT security?

Fortunately, as this month's journal makes clear, there are some very clear themes which emerge from the many different functions that company secretaries carry

out – the most obvious being, no surprises here, corporate governance. Dr Davy Lee, Group Corporate Secretary of Lippo Group, puts this very succinctly in this month's cover story, 'the company secretary's role is to ensure that all plans meet good corporate governance standards.'

As the importance attached to good corporate governance has risen, so has the status and recognition of our profession. This has led us to the point where the 'company secretary' job title has begun to seem like an anachronism. Is it time for us to consider changing this title to better reflect the value we bring to the companies we work for?

In some jurisdictions this process is already underway. Many companies in the US, for example, have now added 'chief governance officer' to the corporate secretary job title. We should also bear in mind that, outside the Anglo-Saxon sphere of influence, the company officers carrying out the core company secretarial functions of regulatory compliance, corporate governance advisory, board support, etc, often work under a variety of different titles such as 'compliance officer', 'board support officer', 'chief governance risk officer', 'business support manager', to mention a few.

I see as attractive the title now well-established in mainland China, namely 'board secretary' (董秘). No single term is ever going to encompass the

variety of the tasks company secretaries currently carry out within companies and my intention is not to try to tie the company secretarial function to one area. The ability to work across the sometimes rigid departmental divisions in companies is one of the great strengths of our profession. However, while we can certainly add value in many different areas of corporate administration and governance, we are, at the end of the day, the secretary to the board.

I encourage you to get involved in this debate. The company secretarial career is not one with an established and immutable career path, the job is very often what you make of it. This edition of CSj looks at the huge potential we have before us, particularly here in Hong Kong. We have the possibility to shape the destiny of the profession at a critical time in its evolution and the question only remains whether we have the courage to rise to this challenge.

Do you support a change of job title for company secretaries? If so, what title would you propose? Join this important debate by emailing the CSj editor at: kieran@ninehillsmmedia.com.

Edith Shih FCIS FCS(PE)

治理与认受性

本刊今期的主题是公司秘书角色的性质，我们对此必定会感到兴趣，原因很简单，因为具体来说，这就是发展公司秘书事业的成功因素。

就法律和会计专业而言，这问题的答案已是耳熟能详；可是公司秘书专业人士要回答这问题，就没有这么直接明显，当中主要的原因在于公司秘书的职责范围并没有公认清晰界定。在不同的公司里，公司秘书的角色不尽相同，有时甚至有巨大差异。有人打趣说，会计师和律师不能处理的事情，都来到我们的办公桌上了。毕竟，我们的作用是提供实际的建议，把事情做好。

这样的一个角色，该怎么培训？从事这个行业，除了要处理公司秘书的核心职务之外，还要广泛涉猎不同范畴的工作，包括风险管理、退休金、保险、业务持续性管理、资讯科技保安等。我们该怎样协助这专业的年轻成员做好准备？

幸好，正如本刊今期清楚指出，公司秘书肩负的纷繁职责中，有些重点是清晰的，当中最明显的自然是公司治理。力宝集团公司秘书李国辉博士在

今期的封面故事里简洁地道出这点：「公司秘书的角色，是确保一切工作计划均符合良好公司治理的标准。」

随着良好公司治理的重要性提高，公司秘书专业的地位和认受性也相应提升。发展至今，「公司秘书」这职称开始看似有点过时。现在我们是否应考虑更改这职称，好能更确切地反映我们为任职公司所带来的价值？

某些国家已在进行相应的更改过程，例如美国许多公司的公司秘书，已加上「首席治理官」的称号。我们也应留意，在不受英美影响的地方，肩负合规、公司治理咨询、董事会支援等核心公司秘书职务的高级人员，往往有许多不同的职称，例如「合规主任」、「董事会支援主任」、「首席治理风险官」、「业务支援经理」等。

我认为目前在中国内地通用的职称「董秘」不错。没有一个称谓可以全面涵盖公司秘书目前为公司所处理的多种不同工作，我就是不想把公司秘书的职能限于其中一个范畴。公司秘书专业的长处之一，是在处理事务时能跨越部门之间的界限。不过，纵使我们在公司行政管理和治理的多方

面工作都能为公司增值，我们终归是董事会的秘书。

我鼓励大家参与这场讨论。公司秘书行业没有既定不变的事业发展路线，工作内容往往是自己界定的。今期月刊探讨我们的巨大发展潜力，特别是在香港的情况。在这个演化过程中的关键时刻，我们能塑造公司秘书专业的命运，只差有没有勇气接受这项挑战而已。

你赞成公司秘书更改职称吗？你会建议改称什么呢？请电邮至本刊编辑（邮址：kieran@ninehillsmmedia.com），参与这场重要的讨论。



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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特許秘書

Ask the Expert

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

Q: *Do financial institutions in Hong Kong need to comply with FATCA?*

A: FATCA is a piece of US tax legislation designed to track US nationals who may be avoiding tax liabilities by holding assets (including shares) overseas. The US Internal Revenue Service (IRS) believes there is wide-scale tax evasion by US persons hiding assets abroad. Final FATCA regulations were released by the IRS on 17 January 2013.

FATCA legislation impacts organisations outside the US which operate and/ or have relationships with organisations that operate within the financial services industry and who have financial account holders.

FATCA will require foreign financial institutions (FFIs) to report information to the IRS about financial accounts held by US taxpayers, or held by foreign entities in which US taxpayers hold a substantial ownership interest. The legislation includes a provision for the deduction of a 30% withholding tax from all US-sourced income to FFIs that do not comply. The US Treasury Resource Centre site for FATCA can be viewed at www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

While US tax law has limited application outside the US, the FATCA rules achieve their purpose by placing the burden on the financial institutions – requiring them to contractually agree to the rules or face a withholding of 30% on the income and proceeds in respect of the sale of certain investments they may have either in the US or with other institutions outside the US that have agreed to apply the FATCA rules.

You should consult your tax adviser to determine if your company is affected by FATCA. Your registrar, share plan administrator and other parties will be in touch for clarification



on your FATCA status so they can amend their procedures accordingly. If you are an FFI you will be required to maintain records and report on them to the IRS; ask your service provider if they can help with this.

*James Wong ACIS ACS, Chief Executive Officer
Computershare Asia
james.wong@computershare.com.hk
www.computershare.com*

What is the compliance deadline?

On 12 July this year, the US Internal Revenue Service released *Notice 2013-43* providing a six-month extension for when the 30% withholding (mentioned above) will begin – namely for payments after 30 June 2014. Foreign financial institutions can already register, however, as participating foreign financial institutions under FATCA. *Notice 2013-43* also provides that financial institutions operating in jurisdictions that have signed an intergovernmental agreement (IGA) covering their financial institutions' compliance with FATCA will be treated as having an effective IGA.

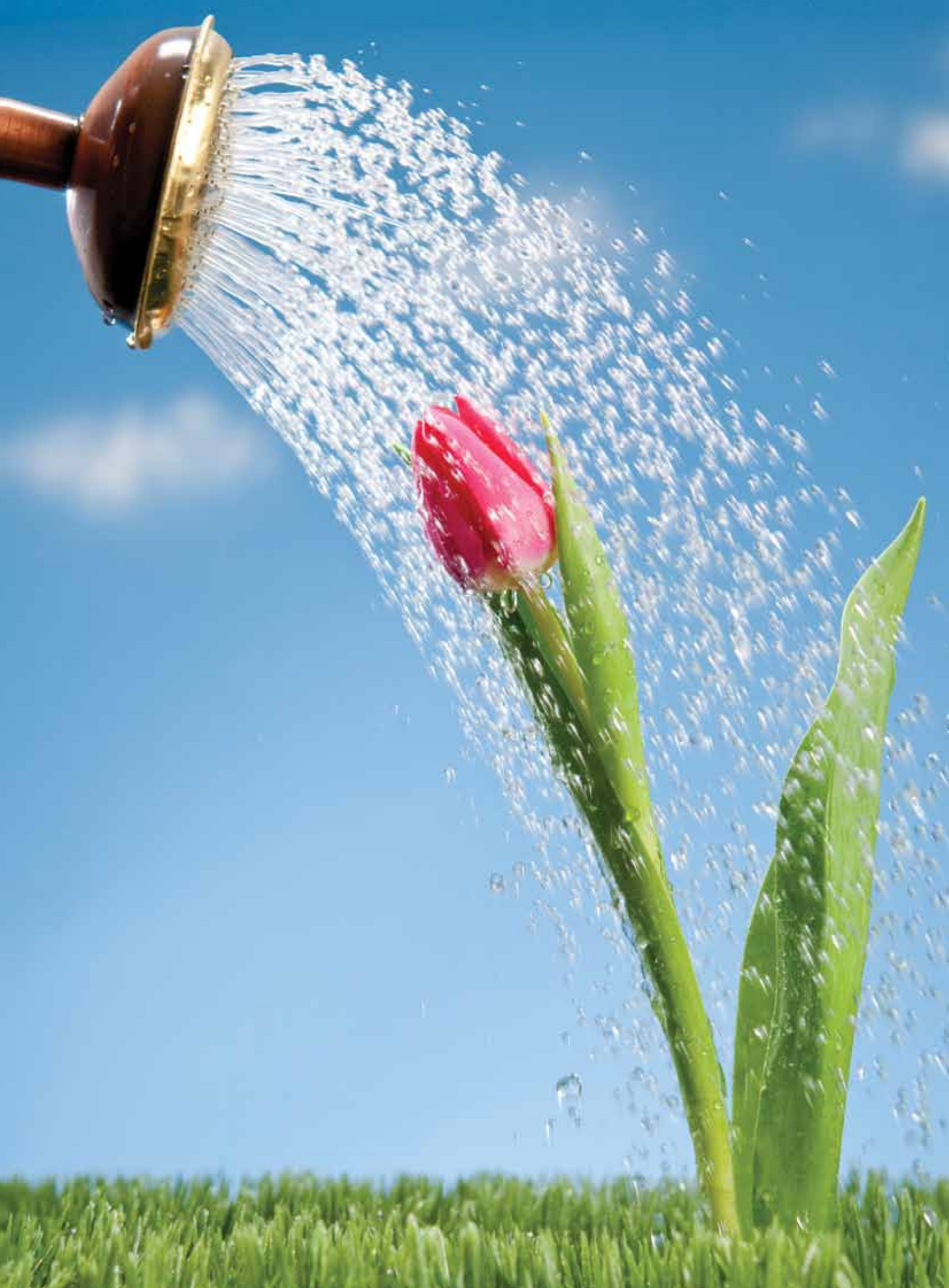
Your chance to ask the expert...

The challenges company secretaries face in their work tend to be much broader in scope than those faced by other professionals. Their remit goes from technical areas of corporate administration up to providing high-level corporate governance advice to the board. While this certainly adds to the variety of company secretarial work it does mean that practitioners need to be competent in a wide range of fields.

CSj's 'Ask the expert' column is designed with this in mind, providing you with the opportunity to ask our experts questions specific to the challenges you are facing.

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

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



How to grow your career

There are many routes into the Chartered Secretarial profession, but whatever route you take there are a number of key skills you will need to acquire. This month, senior Chartered Secretaries in Hong Kong give tips on how to reach the top of your chosen profession.

When Edith Shih, the top legal counsel and Company Secretary of Fortune 500-company Hutchison Whampoa Ltd, was at a dinner three months ago, she found herself sitting next to a university professor who seemed puzzled by her attendance. The scholar wondered why a secretary was at the VIP table. It took a while for the penny to drop that she wasn't a typist, but a very senior executive at Hutchison, he admitted to Shih during later conversation.

Such misunderstandings are common among those with little business knowledge, which is why Shih believes that 'board secretary' (the term used in mainland China) would be a more apt title than 'company secretary' for this position (see 'Time for a name change?' on page 12 for more on this issue). In addition to the need to address the misunderstandings referred to above, there is also the argument that the job title needs to better reflect the changing job description of the company secretary, since the clerical, 'secretarial' functions of the role have diminished and the corporate governance advisory functions have increased.

Expanding opportunities

The role of the company secretary has changed dramatically since Edith Shih, the current President of the HKICS, became Hutchison's Company Secretary in 1997.

'In those days, which wasn't long ago, a company secretary was more of a clerical, mechanical person dealing with the drafting of minutes, resolutions and a lot of form filling and filing,' says Shih. 'The listing rules were fairly simple. Now the relevant legislation and regulation have expanded to cover many more aspects, such as the Securities and Futures Ordinance, anti-corruption, anti-bribery, anti-money laundering and the environment and social responsibility requirements. They all come under the heading of governance and the company secretary is expected to be a governance expert.'

Grace Wong, Company Secretary for China Mobile, has also experienced the changes to the company secretarial function during her career. She moved into the role after working for years in investor relations. Dealing with investors is often a key part of the company secretary's portfolio. She organises road-shows, attends conferences and meets analysts, shareholders and institutional investors on a regular basis. That means Wong spends a lot of her time travelling, another change from the traditional company secretarial job description.

'The role has changed greatly. In the beginning it was more related to compliance and serving the directors. Gradually it has changed and it's

interesting that you are involved in many other things,' says Wong, who has been Company Secretary at the telecoms giant since 2005. 'It's now a senior role. We attend all the board meetings and work closely with the directors, including the independent directors. It's not just all about compliance, filling in forms and acting as company registrar as it used to be. We're involved in different things such as HR, accounts and even the sustainable development of the company.'

Highlights

- as the need for high corporate governance standards gains increasing recognition in the market, the opportunities for company secretaries have never been greater
- the role has gained status and recognition as company secretaries have increasingly taken charge of the governance agenda of their organisations
- the career requires you to have excellent interpersonal skills and the willingness to speak out when necessary

Wong received a postgraduate diploma in corporate administration from Hong Kong Polytechnic in 2000, a qualification which she studied for in her own time.

China Mobile is not listed on the mainland's exchanges, but is listed through ADRs (American Depositary Receipts) on the New York Stock Exchange, so she must ensure the company complies with requirements of the US Securities and Exchange Commission and prepare an annual report for the US, complying with that infamously onerous legislation – the Sarbanes-Oxley Act of 2002. She also has to file documents in Hong Kong, where China Mobile is listed and to various authorities in Beijing, where China Mobile's parent is based.

'It's difficult because, apart from your daily job, you do need to keep abreast

of what's happening outside,' she says. Young professionals must follow the media closely for changing regulations and trends, as well as attend seminars organised by the exchanges, legal and accounting firms and professional bodies such as HKICS.

'There are a lot of events so you need to select carefully what is most suitable for you and your company,' Wong says. Company secretaries must have a high awareness of confidentiality and also not be too timid since they will regularly face difficult issues which require them to speak out, she adds.

Since the career offers a wide variety of different aspects practitioners can focus on, Wong also recommends that aspiring company secretaries should identify and

pursue the aspects that interest them most. 'The job requires a lot of patience and if you are not interested in the work, it will be very difficult,' she says.

Choose your route

Passing the International Qualifying Scheme (IQS) examinations and becoming a qualified Chartered Secretary is not the only route into the profession. In Hong Kong, qualified lawyers and accountants can also take up work as company secretaries.

Edith Shih, for example, started as a lawyer in private practice, she joined an investment bank for two years and then moved into business development at Hutchison Whampoa. Shih says that her legal experience prepared her well for the challenge of being on top of

“
our profession demands a
person of good business ethics
”

Dr Davy Lee, Group Corporate Secretary of Lippo Group



corporate governance and compliance with ever-changing company rules and regulations. That said, however, she spent years working on the business side too, which helped equip her for her current role.

'Not all lawyers have the necessary knowledge of corporate compliance requirements or the relevant business perspective. You can learn on the job and grow into it,' she says.

Grace Wong's route into the career was atypical. An English Literature graduate, she was a news anchor earlier in her career, later joining China Mobile to work her way up through the firm. She believes a stint with a corporate services firm is a good way to join the profession.

'I didn't have that experience. Working with corporate services will give you experience of different companies but not in-depth knowledge,' she says. 'If you're determined and focus on one company, you need to learn a lot about the company and the industry and can prosper.'

Tricor Group employs some 700 people in their corporate services firm, servicing about 800 listed companies in Hong Kong, more than half of the city's public companies. Natalia Seng, Chief Executive Officer, China & Hong Kong, Tricor Group, recommends spending at least three to five years with a corporate services firm as a good foundation to learn about international governance standards as well as the relevant legislative and regulatory requirements. Young professionals at Tricor, for example, will handle a portfolio with multinational clients which will give them a broad knowledge and diverse experiences.

'You will have clients with different requirements so you learn. It's interesting because you have to have a very broad knowledge base,' Seng says.

April Chan, Company Secretary of CLP Holdings, agrees that a stint with a corporate services company is a good way for aspiring company secretaries to get broad experience. She cautions, however, that when practitioners seek work in the listed company sector, they should look for a company with good standing in corporate governance and a culture that is compatible with their own ethics.

'You have to persevere in resisting any temptation to depart from the governance standards that you want to uphold,' she says.

Stay informed

Respondents to this article emphasised that some form of Continuing Professional Development (CPD) training is essential for today's company secretaries. 'CPD will give you the basic nuts and bolts, the tools you need,' Edith Shih says.

This may seem to be an obvious point, but as Natalia Seng points out some company secretaries are so busy doing their jobs that they like to stay within their comfort zone and forget to keep up to date with the issues that affect their career. Seng took an executive MBA in 2004 to broaden her horizons.

'It's a lifetime of learning,' she says. Hong Kong, for example, has signed a lot of double tax treaties in recent years which need to be understood. 'You're not a tax professional but this is something you need to know,' she says. 'You have to understand on a continuous basis what are the changes in laws and regulations

that affect your industry and business, Taking reference from OECD principles and guidelines on corporate governance and the latest international standards about anti-money laundering issues helps me to devise prudent and ethical business guidelines/ practices within our corporate services firm to ensure sustainable business development.'

Seng started back in the late 1970s by taking a three-year higher diploma course at Hong Kong Polytechnic, then she took the ICSA exam. No universities in the city offered such courses then, but demand for governance professionals was rising as Hong Kong's economy morphed from manufacturing to services and the city established itself as an international financial centre.

CPD is now mandatory for all Chartered Secretaries in Hong Kong. The HKICS brought in its requirement for a minimum of 15 hours of CPD training for its members in August 2011 and this requirement has been backed up by a similar requirement in Hong Kong's listing rules since 1 January 2012. In both cases, the implementation of this requirement is subject to transition arrangements set out on the HKICS and Hong Kong Exchanges and Clearing websites (www.hkics.org.hk and www.hkex.com.hk).

The Institute's CPD programme has been expanding, particularly since the introduction of mandatory CPD. Last year (July 2012 to August 2013) the HKICS organised around 80 seminars, each with an average of 133 participants. The total number of participants attending HKICS seminars last year was 10,542. Moreover, the choices available to practitioners are not limited to the HKICS CPD offerings. Seminars run by the Law Society and

Time for a name change?

The opportunities for company secretaries in Hong Kong have never been greater, but some members of the profession argue that one issue holding practitioners back is the 'company secretary' job title. This issue, as you might expect, is being debated widely and there are strong feelings on both sides of the debate.

The report published in May 2012 by the All Party Parliamentary Corporate Governance Group (APPCGG) in the UK – *Elevating the Role of the Company Secretary* – indicates that there is frustration with the existing title. Some respondents to the report, for example, argued that the existing title emphasises the administrative functions of the role and is holding company secretaries back from the opportunity to extend their remit and really take ownership of the governance agenda in their organisations.

However, those in favour of retaining the existing title point out that it is well established and understood among the profession's closest stakeholders, and changing the title may be very divisive among members of the profession. They also point out that the term 'secretary' is attributed to very senior positions such as 'general secretary' or 'financial secretary', so it should not be assumed that 'company secretary' will be seen as synonymous with personal assistant. 'When the cabinet secretary, the foreign secretary and the secretary general of the UN go in for re-branding, I will think about changing my mind,' said one respondent to the APPCGG report.

Perhaps the greatest obstacle to the name change proposal is the lack of a consensus on an alternative. Some have suggested a title focused on the compliance function,

but 'compliance officers' are relatively common in organisations around the world and while their job description may overlap that of the company secretary in the area of compliance, it does not include other aspects such as board support, investor relations, etc.

Perhaps a more likely contender is a title focused on 'governance'. Suggestions in this vein include: 'corporate governance director', 'corporate governance officer' and 'chief governance officer'. This last title already has some traction in the US where many companies have adopted the term 'chief governance officer' for their dual corporate secretaries/ general counsels. Just as with the compliance themed titles, however, the title focuses exclusively on one aspect of the company secretarial role.

In Hong Kong this debate has its own local characteristics. Firstly, being outside of the Anglo-Saxon environment practitioners here may be less wedded to the existing title than in the UK. Secondly, the profession in Hong Kong has ever closer ties to the profession in mainland China where the title 'board secretary' (董秘) is well established.

'I think the title they use in mainland China is better,' Edith Shih says. 'People know where you are when you use the word "board", otherwise you are the girl that sits outside the office, but obviously we are open to other, better and more representative titles.'

Do you support a change of job title for company secretaries? If so, what title would you propose to replace it? Join this important debate by emailing the CSj editor at: kieran@ninehillsmmedia.com.



Hong Kong Institute of Certified Public Accountants, together with those provided in-house by employers, mean that practitioners have an impressive scope of CPD training available.

As CPD has become increasingly accepted as an essential part of any professional career, it has expanded to include many non-core topics to help professionals improve their skills in diverse areas. CPD is not only about keeping up to date with regulatory and legislative changes, it can help with improving essential 'soft' skills such as communication skills and even how to interview for a job. Respondents to this article point out that, while communication skills might be seen as a 'soft' skill, it can no longer be considered an optional extra for company secretaries since the job requires practitioners to be the point of contact for most of the company's stakeholders, as well as being responsible for good information flow between the board and management.

'The company secretary needs to connect different business functions internally and different stakeholders externally,' says Grace Wong. She points out that this means that company secretaries are continually dealing with questions raised internally and externally. 'We may not be the ones who can provide the answer to all of those questions,' she adds, 'but we know where and how to retrieve the answers.'

For these reasons, the career requires you to have excellent interpersonal skills and the willingness to speak out when necessary. 'In the old days, because it was mainly an administrative role, company secretaries could work comfortably in their offices', says April Chan, 'but these days you need a lot of communication

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it's a lifetime
of learning
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Natalia Seng, Chief Executive Officer,
China & Hong Kong, Tricor Group

with directors, managers and external parties. You need to go out and actively participate in the discussions and debates. If you are bold enough to go and speak at forums and public events, you can let your inner self out and dig deep into your own thinking.'

Going beyond the manual

While CPD is clearly central to staying informed and honing your soft skills, there will always be opportunities to learn on the job.

'There are a lot of things', April Chan points out 'that can't be learned from the books.' She believes that early in a career it's a good idea to get a mentor. 'You have to learn on the job. You come across a lot of scenarios on the job and it's good if somebody can point you in the right direction. Things can be dealt with in different ways, ending in different consequences. If they can help get you to the right destination at the right time, that helps a lot.'

There will also be times when the best guide will be your own conscience. 'The company secretary is the conscience of the company,' says Dr Davy Lee, Group Corporate Secretary of Lippo Group. He points out that company secretaries will



face many challenges which are far more demanding than ensuring compliance with the rules.

'A company secretary is not just a compliance officer, but a professional trained to look after the good corporate governance of a company,' he says. 'Company secretaries are trained to look after the interests of the stakeholders of the company, such as the shareholders, employees, customers and the investing public. Our profession demands a person of good business ethics.'

While CEOs may focus on profitability and performance, the company secretary's role is to ensure that all plans meet good corporate governance standards, he adds. Fulfilling this role, however, takes a significant degree of tact. 'Social skills' are rarely mentioned in the context of company secretarial work, but Davy Lee points out that it's always better to persuade rather than to confront company leaders on ethical issues, so learning how to advise on reputational and ethical risks is a skill that practitioners will need if they aim to reach the top of their chosen profession.

Dave Bannister
Journalist



**AGMs 2013:
a post-season
review**



It's the end of another busy AGM season, particularly notable this year for a marked increase in 'against' votes for some Hong Kong and mainland China-based companies, and for the 29 meetings valiantly held close to a black rain storm in Hong Kong. Lucy Newcombe, Director of Corporate Communications at Computershare, summarises the season both locally and globally, highlighting the key developments and future trends.

The 2013 AGM season has not captured as many global headlines as the 2012 season – when regulatory changes in the form of the 'two strikes rule' and 'say on pay' in Australia and the US respectively caught media attention, and CEO resignations over remuneration votes made dramatic news copy in the UK. The 2013 season stood out locally, however, for the realisation that shareholder behaviour across Hong Kong can often be disturbingly different to that in the rest of the world – with the potential for very worrying consequences.

Hong Kong and mainland China

Year on year attendance figures have risen yet again – with an overall increase of more than 5,000 attendees at the largest meetings across Hong Kong and mainland China.

A black rainstorm warning was in force on 22 May 2013; with around 29 companies in line to hold their meetings in Hong Kong that day. Following removal of the signal at 9:45am all the scheduled meetings went ahead without postponement – company members, registrar staff and shareholders alike picked their way around the debris to make sure it was business as usual! Two companies actually had their AGM while the black rainstorm signal was hoisted with a third of the number of attendees compared to last year turning up for one of them. It's clear that companies both in Hong Kong and mainland China

need to have in place tried and tested contingency plans for having to cancel a meeting in extreme circumstances, with particular emphasis on the channels of communication in such an event.

The dichotomy of attendance not corresponding with voting levels has been even more obvious in 2013, with average voting levels 7% lower year on year. While this may at least be partly due to the fact that AGM regulations for companies with a dual listing in both Hong Kong and the PRC require the number of shareholders attending, as well as the associated number of shares represented, to be announced before the meeting commences. This means that if shareholders turn up late to a meeting they are not entitled to vote but are classed as having 'attended'. Another, perhaps more salient, factor is that many people merely attend to get freebies and then leave even before proceedings have commenced.

Feedback from attendees in some cases indicates that they leave because they can see they will have to stand. Given the overall upward trend in attendance, if your venue is at capacity, it would be wise to look for a bigger one for future years, especially if you are interested in encouraging voting.

Overseas, the trend in attendance and voting levels has generally been going in the opposite direction, with many jurisdictions seeing reduced attendance but moderately increased voting, often prior to the meeting via online channels. If Hong Kong and mainland China want to stem a downward slide in voting then enabling and encouraging the appropriate legal channels for online voting could be a cost-effective and efficient opportunity.

Meetings during the year saw continued pressure from shareholders to offer refreshments – with MTR changing its

Highlights

- locally there was a greater focus on remuneration and board capabilities in shareholder questions
- the 2013 season stood out for a marked increase in poor shareholder behaviour at meetings in Hong Kong
- companies need to have in place tried and tested contingency plans for meeting cancellations, with particular emphasis on the channels of communication

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previous policy for 2013 and giving attendees responsibly-sourced drinks and cookies which were met with much pleasure.

While voting levels were down in general relative to attendance, companies found that the global trend for votes against resolutions reached AGMs in Hong Kong for pretty much the first time. Some big name companies in a variety of industries experienced increases in 'against' votes for resolutions, including the nomination of directors and share movements, encompassing both general mandates for allotments and the repurchase of shares. 'Against' votes reached as high as 32% in one case.

Shareholder questions spanned both historical themes and new topics of interest. As in previous years, common queries included requests for information on company business plans and development strategies, financial results and the share price, as well as, of course, the familiar requests for increased dividend rates, scrip dividends and better food and gifts for attendees.

Two relatively new topics which emerged in shareholder questions in this year's

season were remuneration and board capability. While these themes are commonly raised at meetings in the UK, US and Australia, neither have had much airtime in Hong Kong or mainland China previously. Shareholders asked about the standards or rationales used to determine directors' remuneration, and for information on the number of meetings directors attended during the year and the duration of each meeting. In some cases shareholders asked whether directors were too old to carry out their functions. The issue of equal female representation on boards also raised its head more frequently.

Around the globe

Australia

Computershare client companies experienced a two-speed voting pattern this season, where voting participation was up for the larger companies but down across the board. For most issuers, 90% of proxy votes were rushed through the door in the final days before cut-off. Very small numbers of security holders attended meetings in person (an average of 10% down year on year over the past four years) with record numbers lodging their proxy vote electronically. For meetings that offer online voting, nearly a quarter

of shareholders opted to use this channel. Mobile device voting accounted for 7.1% of total proxy votes lodged via all online channels in 2012. One company reported that 10.1% of its investors who voted online in 2012 lodged their proxy vote using a mobile device. This represented 57.8% of this company's total votes lodged online.

The 'two strikes' rule, designed to provide investors with a greater say on executive remuneration, was in its second season this year. The rule requires a company receiving a vote of 25 per cent or more against its remuneration report for two years running to implement a board 'spill' – putting all board positions up for re-election within 90 days.

This season saw the first group of companies face their 'second strike' and contemplate the practical implications in regards to communicating with their shareholders along with planning for a potential 'spill' meeting. Nearly a quarter of the companies who received a first strike in 2011 received a second strike in 2012. The highest percentage of votes against a remuneration report resolution for an individual company was 95%.

Denmark

In Denmark companies are putting an increased effort into planning an AGM that creates value for all stakeholders and that encourages open shareholder communication. Newly announced corporate governance recommendations will lead to even more focus on shareholder dialogue and active ownership at next year's AGMs.

Shareholder focus remains on executive compensation, though the local level of shareholder activism remains low,

with only a few banks experiencing shareholders verbally challenging their board.

Canada

Since 31 December 2012, the Toronto Stock Exchange (TSX) has implemented new rules on director elections designed

to improve corporate governance principles so that security holders can hold directors accountable. Among other things, the new rules require TSX listed issuers to elect all directors annually.

Shareholder activism and the number of proxy disputes have increased in

Canada and, as a result, Canadian issuers are either implementing or considering implementing an advance notice policy. Such policies are common for US issuers where they have been used for 20 years to guard against unexpected attacks from dissidents. Generally the policy requires an issuer to be advised of any additional

Shareholder behaviour

The 2013 season stood out for a marked increase in poor shareholder behaviour at meetings in Hong Kong. In one stand-out incident, an individual known for repeated rude behaviour went so far as to threaten to sexually violate a female member of meeting staff if she did not let him into a meeting. The man in question was attempting to enter a meeting on behalf of his wife without a proxy having been registered in his name. Several shareholders in close proximity expressed their dismay at the behaviour and went as far as to raise the issue while registering at other meetings held in the following days. We took specific action against this shareholder and were supported in doing so by numerous issuers.

However, the incident prompted us to conduct a wider review of the behaviour directed at meeting staff and the results do not make pleasant reading. While this is of course not indicative of the behaviour of all shareholders, it was found that most staff had experienced some form of rude behaviour, such as being sworn at, having papers or pencils thrown at them or having someone thump on the registration desk to make a point.

In the vast majority of cases this behaviour was sparked by discontent in the absence of a proxy being lodged, or over the rationing of free vouchers, gifts or refreshments. Staff said they regularly felt intimidated or frightened by shareholder behaviour.

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This requires pause for thought as, with the exception of Russia where frustration against issuers and company performance (not staff), is more marked than other jurisdictions, our enquiries show that Hong Kong seems to be the only place to have (and frankly to tolerate) this kind of behaviour from shareholders. Should we be content to let this kind of attitude continue to manifest itself at our AGMs? Should we take this behaviour quietly? Or should we take

a stance against rudeness, threats and violence to stem the tide before it escalates into something potentially more serious?

Meeting staff would prefer the latter and we think it should be a matter of pride for locally listed entities to set some benchmarks for behaviour which will not mark us out against the rest of the world and ensure meeting staff can provide excellent service without fear. We will be equipping our staff with more training on dealing with aggressive or abusive customers, and will continue to seek your support in dealing with such issues. I believe that there is also the possibility to educate investors on how their rights to attend meetings are affected when they are not the registered shareholders, including making the appropriate arrangements through their custodian or broker to facilitate their ability to attend.

James Wong *ACIS ACS*
CEO, Computershare Asia

Please do email us at: hkinfo@computershare.com.hk with your thoughts on how we can combat this disturbing issue.

nominees to the board of directors before the meeting and within a certain prescribed time-frame. An advance notice policy also ensures that shareholders who are not present at the meeting are advised of any additional director nominees and can therefore make an informed decision regarding all of the director candidates when casting their vote.

In Hong Kong, *ad hoc* resolutions related to the election of the chairman of the meeting or adjournment of the meeting can be proposed by shareholders holding enough interest. For Hong Kong and mainland China, other *ad hoc* resolutions proposed by shareholders, such as the re-election of a director, should not be voted in the same meeting. The company needs to send out a circular containing details of the resolution and notice of another meeting so that all shareholders can consider and vote.

Also in Canada, new 'notice-and-access' regulations came into effect in February 2013 whereby issuers can choose to mail a notice of meeting and include 'access' information that, in lieu of the customary full proxy package, details where the proxy materials are located on the internet. Issuers will benefit from reduced printing and postage costs by using the notice-and-access method for mailing proxy materials.

US

Some states now permit online-only meetings and as a result a degree of security holder scepticism has emerged. For example, security holders have expressed fears that their questions have been prioritised, rephrased and ignored, or responses have been delayed to be answered outside the meeting and are therefore not on public record. Concerns

have also been expressed regarding the transparency of security holder questions and management's answers, as well as whether or not security holder questions asked online are visible to everyone at the meeting.

The greatest change in the US AGM space was the ongoing impact of the 'say on pay' rule that gives shareholders a non-binding vote on executive compensation. This vote is mandatory for all public institutions within the US. This has encouraged greater shareholder and proxy advisory engagement, as well as better proxy statement explanations from issuers on their compensation programmes. There has also been more conformity among issuers across compensation policies and programmes, likely driven by the influence of proxy advisor firms and investor policies on pay that often use the advisory firm policies as a starting point for developing their own.

UK

The 2012 'shareholder spring' seems to have largely been a one-off – the 2013 AGM season was a lot quieter overall. We have continued to see some high opposition to executive pay in particular, but with no significant defeats or executive 'scalps' as a result. This is due to the fact that issuers took on board the lessons of 2012 and are determined not to be caught out again. There is evidence that many companies have worked to understand their shareholder base and to be more proactive in shareholder engagement, largely mitigating another round of resolution defeats – though shareholder activism remains a real threat and companies must continue to understand, plan and engage to avoid a return to the rollercoaster season of 2012.

While the UK currently has an advisory vote on pay policy, from year-end 30 September onwards listed companies will be required to give shareholders a binding vote on future pay policy at least once every three years. Shareholders will retain the existing (but entirely separate and non-binding) annual vote to approve the remuneration report. The new policy will also cover payments for loss of office. Any payment made by a company either needs to be within the parameters of the policy, or will need separate shareholder approval. Issuers will need to think about how they communicate this resolution to shareholders for approval, so that it is clear and stands a maximum chance of approval. They will also need to think about what happens if the binding vote doesn't pass and have contingency plans in place.

Social media

Finally, it is worth noting that social media continues to creep into the accepted communication channels for investor relations and shareholder communication. This can be seen both on the company side – for example the Securities and Exchange Commission in the US ruling that company announcements can be made via social media as long as shareholders are expecting to see them there, and on the activist side – recordings of AGMs and protests against resolutions are freely available on YouTube, and blogs and activist websites abound. Companies need to be attuned to both the positives and negatives which these new media channels bring to investor relations.

Lucy Newcombe

Director, Corporate Communications, Computershare Ltd

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Call for Nominations

The Hong Kong Institute of Chartered Secretaries (HKICS) Prize is open for nominations. Now in its fourth year, the Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretary profession over a substantial period.

Awardees are bestowed with the highest honour - recognition by their professional peers. We urge you to submit your nominations now!

The nomination deadline is Monday, 30 September 2013. Please visit www.hkics.org.hk or contact the Secretariat at 2881 6177 for more details.

Please
Act Now!

ESG reporting: your guide

Roy Lo, Deputy Managing Partner, SHINEWING (HK) CPA Ltd, and Gloria So, Manager, SHINEWING Risk Services Ltd, give a brief guide to environmental, social and governance reporting.

Environmental, social and governance (ESG) reporting is currently a major issue in the business world. Investors increasingly take ESG criteria as a key factor in making valuations and investment decisions, and there has been a global trend towards increased regulatory requirements relating to ESG disclosure. Many stock exchanges around the world, for example, have implemented measures in view of this trend. For instance, Bursa Malaysia has required ESG disclosure; the Shanghai and Shenzhen Stock Exchanges have published ESG guidance; and the Australian Securities Exchange has imposed a 'comply or explain' approach to ESG reporting.

Here in Hong Kong, Hong Kong Exchanges and Clearing Ltd (HKEx) published a

consultation paper on its proposed *Environmental, Social and Governance Reporting Guide (ESG Guide)* in late 2011, seeking comments from institutional investors, issuers, business associations, practitioners, non-governmental/ non-profit organisations, individuals and unlisted companies. The *ESG Guide* was generally welcomed by different parties. The consultation conclusions were released in August 2012 and the *ESG Guide* was added to Hong Kong's listing rules as a recommended practice, with effect from the financial year ending after 31 December 2012.

Why ESG reporting makes sense

Credibility and reputation

Comprehensive and continuous disclosure of ESG subject areas helps to enhance

an issuer's credibility and reputation. Moreover, if an issuer has achieved better ESG performance than its competitors, that creates a competitive advantage and adds value to the company's brand.

Management efficiency

The reporting process helps issuers review their ESG performance and identify areas for improvement such as workplace quality and environmental protection, etc. With better awareness, issuers can implement appropriate policies to increase management efficiency and stimulate employee loyalty.

Risk Management

Evaluating ESG matters helps issuers to analyse the potential risks to their business, which is clearly important for improving their internal process and strengthening risk management.

Attracting investors

Producing a highly informative report helps to attract investors, both institutional and retail, as it provides them with insights into how ESG factors influence the company's overall strategy and performance.

What to report

As proposed in the Exchange's *ESG Guide*, there are four key ESG subject areas to cover in your ESG reporting. These need to be supplemented with information regarding different aspects and key performance indicators (KPIs). Suggestions for the key information which should be included are set out briefly below.

1. Workplace quality

Working conditions – policies and compliance and material non-compliance on compensation and dismissal, recruitment and promotion, other benefits and welfare.

Highlights

- investors increasingly regard ESG criteria as a key factor in making valuations and investment decisions
- there has been a global trend towards increased regulatory requirements relating to ESG disclosure
- the involvement of the board in the reporting process is crucial since it makes the disclosure more accurate and credible

Healthy and Safety – policies and compliance and material non-compliance on providing a safe working environment and protecting employees from occupational hazards.

Development and training – policies on improving employees' knowledge and skills and information about training activities.

Labour standards – policies and compliance and material non-compliance on preventing child or forced labour.

2. Environmental protection

Emissions – policies and compliance and material non-compliance on air and greenhouse gas emissions, discharges into water and land, generation of hazardous and non-hazardous wastes.

Resource use – policies on use of resources including energy, water and other raw materials and the statistics of consumption.

The environment and natural resources – policies on minimising significant impact on environmental and natural resources.

3. Operating practices

Supply chain management – policies on risk management relating to the supply chain.

Product responsibility – policies and compliance and material non-compliance on health and safety, advertising, labelling and privacy.

Anti-corruption – policies and compliance and material non-compliance on bribery, extortion, fraud and money laundering.

4. Community involvement

Community investment – policies on understanding the community's needs where the company operates and meeting the long-term interests of the community.

How to report

Issuers are encouraged to state in their ESG reports which entities in the group and/ or which operations have been included. The issuer should also keep consistent the aspects and KPIs reported for each period. In addition, the report could cover the issuer's ESG management approach, strategies, priorities, objectives, opportunities, risks, challenges and remedies.

When to report

The reporting should be done regularly once started. The issuer could choose to disclose the ESG information in its annual report regarding the same period covered by the annual report, or in a separate report on any period, in print or on its website. Though the reporting period is not fixed, the issuer is encouraged to report regarding the same period as in the annual report.

Who is responsible for ESG reporting?

The board of directors is responsible for ESG reporting. The involvement of the board in the reporting process is crucial since it makes the disclosure more accurate and credible. However, the board may assign the task of compiling the ESG report to its employees or a committee, to assist in evaluating the issuer's performance and to draft the report.

Tips on getting started

Company officers, including company secretaries, starting out with ESG reporting should consider the following preparatory steps:

- review the key ESG subject areas, aspects and KPIs precisely, so as to identify the important areas which are relevant to your business and to determine the scope of reporting
- engage stakeholders periodically to examine material aspects and KPIs and understand their views through meetings, conferences, workshops, web-based forums, and
- assess whether your existing internal system are adequate to provide sufficient data for the evaluation of ESG issues and establish more effective procedures for collecting the data for such purposes.

It takes some time for issuers to fully adapt to ESG reporting. Recognising this, the Exchange has initially introduced its *ESG Guide* as a recommended practice and has put a lot of effort into educating issuers and promoting best ESG practices. The Exchange plans, however, to raise the obligation level relating to the *ESG Guide* to the level of 'comply or explain' by 2015. The adoption of best practice relating to ESG issues will help establish a more transparent and efficient capital market in Hong Kong, thereby underpinning the status of Hong Kong as a global financial hub.

Roy Lo

*Deputy Managing Partner,
SHINEWING (HK) CPA Ltd*

Gloria So

*Manager, SHINEWING Risk
Services Ltd*

*The authors can be
contacted by email at:
sw-risk@SHINEWING.com.hk.*

Protecting minority shareholders

Different actions for different wrongs

Corporate governance is based on majority rule, which although efficient, allows for possible abuse by the majority. The law has therefore provided various methods for the protection of minority shareholders. These methods are highly fact-sensitive and minority shareholders are reminded to choose the correct method for addressing the specific problems they face.

Like any collective organisation which makes decisions through its constituent members, corporate governance relies on majority rule heavily. While efficient, such reliance inevitably gives rise to the temptation of abuse, and it is therefore crucial that there are safeguards to protect shareholders who only hold a minority stake in a company.

The law has therefore provided an array of remedies available through different procedures, to protect the rights of minority shareholders. Each procedure is appropriate for a different situation. Minority shareholders must therefore be aware of the problem they are facing, and seek recourse through the appropriate channel. Broadly speaking, under the

existing legal framework, there are five main channels of recourse available to protect minority shareholders' rights. These protect minority shareholders by ensuring accountability on the one hand and transparency on the other.

Protections available under the existing legal framework

1. Unfair prejudice petition

Where a minority shareholder's interest has suffered prejudice, one common method of redress is to make an unfair prejudice petition. This is provided for under Section 168(A)(1) of the Companies Ordinance (Cap 32). The minority shareholder provisions referred to in this article are those in the existing Companies Ordinance (Cap 32), but these have been carried over and in some

cases extended in the new Companies Ordinance (Cap 622). See 'Changes brought by the new Companies Ordinance' on page 24 for information on the minority shareholder provisions of the new Companies Ordinance.

Under Section 168(A)(1), a member who complains that the affairs of the company are being, or have been conducted, in a manner unfairly prejudicial to the interests of the members generally, or of some part of the members (including himself), may make such a petition to the court for relief. The crucial requirements under Section 168A are that the relevant conduct must relate to the affairs of the company and the conduct must be both prejudicial and unfair. The test is of unfair prejudice, not of





unlawfulness, and the relevant interests are the interests of members.

The situations where such a petition is commonly made include:

- where a minority shareholder previously participating in the management of the company has been excluded from management
- mismanagement of the company by the directors
- where a majority shareholder takes steps to dilute or restrict the voting rights of a minority shareholder, and
- alteration of articles beyond any

bona fide purposes and so on.

Under such a petition, the court has wide remedial relief (although there is no jurisdiction to grant an order for winding up). The usual remedy is a buy-out order

Highlights

- minority shareholders must be aware of the problem they are facing and seek recourse through the appropriate channel
- if an inappropriate route is adopted, remedy may not be granted at all and the minority shareholder may even have to bear heavy legal costs
- the minority shareholder provisions of the existing Companies Ordinance (Cap 32) have been carried over and in some cases extended in the new Companies Ordinance (Cap 622)

for one party to buy out the shares of the other. It must be borne in mind, however, that this petition is not meant to provide a means for a 'no-fault' divorce: a minority shareholder cannot rely on this petition as a means of exiting the company, in the absence of any unfairly prejudicial conduct.

2. Just and equitable winding up

Where a buy-out offer is not feasible, or where there is such misfeasance by the directors warranting a full investigation by a liquidator, it is appropriate to petition for just and equitable winding up pursuant to Section 177(1)(f) of the Companies Ordinance.

There are no fixed categories or headings as to what amounts to 'just and equitable' and the court will invoke the same whenever justice and equity demands. The situations as developed in case law whereby such a petition is justified are very similar to those for unfair prejudice. The commonly known examples where just and equitable winding up is applicable include:

- a breakdown of trust and confidence in quasi-partnership
- an exclusion from management

- a management deadlock, and
- the need for an investigation.

However, liquidation is a drastic remedy, so generally speaking where unfair prejudice is available to provide an alternative remedy, the courts will not grant a petition for just and equitable winding up. This is especially where the company is healthy and profitable as a going concern. Hence minority shareholders should be aware that they should not join Section 168A and Section 177(1) (f) in a petition as a matter of course without justification by pleading winding up as an alternative remedy in an unfair prejudicial petition.

The courts generally speaking discourage such practice. In some cases, the majority shareholders may even succeed in striking out the winding-up prayer (and get a costs order against the minority shareholders as petitioner) by persuading the courts that, taking the complaints at their highest and given the fact that the company is profitable and healthy, the only appropriate remedy will be a buy-out instead of winding up the company: see

Wong To Yick Wood Lock Ointment Ltd [2003] 1 HKC 484.

3. Derivative action

When a company suffers a wrong, generally it is itself the proper plaintiff to take legal action for redress, rather than the individual shareholders of the company. This is known as the rule in *Foss v Harbottle (1843) 2 Hare 461*.

Yet companies are legal entities separate from their members and they cannot make decisions on their own. Where the majority shareholders in control are those who perpetrated or tolerated the wrongdoing in the first place, a minority shareholder may be forced to stand by without being able to do anything. In such situations, where the minority shareholder has suffered no loss personally but where the company has suffered loss and there is a corresponding diminution in the value of the minority shareholder's shareholding, the appropriate route for remedy is to bring a derivative action.

There are now two routes to begin a derivative action, the common law route

as an exception to the *Foss v Harbottle* rule and the statutory route under Section 168BA-BK of the Companies Ordinance which first came into operation in 2005. Although the principles of the two routes are similar, there are some practical differences in terms of requirements and procedures, hence minority shareholders should consult legal advice beforehand since it is inappropriate to proceed a derivative action through the two routes at the same time. They must make a choice, either the common law derivative action or the statutory one.

4. Inspection of books and records

Besides accountability, the other main limb of protection provided to minority shareholders is access to information. Under Section 152FA of the Companies Ordinance which also came into effect in 2005, minority shareholders can seek an inspection order of the company's books and records. Note, however, that this provision does not apply to publicly listed shares held through CCASS.

To be eligible to make such an application, the applicants must be:

- any number of members representing not less than 1/40 of the total voting rights, or
- any number of members holding shares in the specified corporation on which there has been paid up an aggregate sum of not less than HK\$100,000, or
- not less than five members.

Since, as a general rule, a shareholder has no right of access to books and records of a company, a minority shareholder must be able to show that the application

Changes brought by the new Companies Ordinance

Under the new Companies Ordinance (Cap 622), scheduled for commencement in 2014, Part 14 Sections 722-743 restate, with improved drafting and some extensions, the existing provisions in the current Companies Ordinance (Cap 32) relating to Section 168A (the unfair prejudice remedy), Sections 168BC 168BK (statutory derivative action), Sections 152FA-152FE (members' inspection of company records) and Section 350B (the statutory injunction remedy). In particular, the scope of the unfair prejudice remedy has been extended to cover 'proposed acts and omissions', so that a member may bring an action for unfair prejudice even if the act or omission that would be prejudicial to the interests of members is not yet effected. As for just and equitable winding up, no changes have been made under the new Companies Ordinance.



“ it is therefore advisable to seek professional legal advice at an early stage so as to determine which route is most suitable given a particular set of facts ”

is made in good faith and with proper purpose. These requirements are satisfied if there is a sufficiently reasonable case for investigation, and that the information is required to assist the minority shareholder in his capacity as member of the company. In seeking to understand the good faith and proper purpose test as required by this section, one can obtain some guidance from the case of *Wong Kar Gee Mimi v Raymond Hung* [2011] 5 HKLRD 241 which was probably the first case to discuss this particular section after it became effective in Hong Kong.

5. Requisition of meeting

Minority shareholders are not only entitled to information from the company if good grounds are shown: they are also entitled to receive information from and impart information to other shareholders. Section 113 of the Companies Ordinance allows members who own 5% of the company's paid up share capital to demand that the directors convene an EGM to discuss any matter notified to them in a written notice.

If the directors refuse to call the EGM, the members can convene a meeting themselves after giving proper notice to

pass special or ordinary resolutions as necessary. The directors may then have to pay personally the costs of such meeting.

Special challenges posed by foreign companies

A note must be made here as to the special considerations that apply to companies not incorporated in Hong Kong. For petitions for unfair prejudice, applications for inspection of books and records and derivative actions, it must be shown that the company has a 'place of business' in Hong Kong.

For petitions for just and equitable winding up, the court must be satisfied that the company has 'sufficient connection' to Hong Kong. Technically speaking, it is a three-stage test, as laid down in *Re Gottinghen Trading Ltd* [2012] 3 HKLRD 453, but the overriding theme is to establish sufficient connection in the broad sense with Hong Kong. Factors such as location of the company's assets, location of its business operations and whether there are any creditors in Hong Kong will be considered.

Failure to satisfy these requirements would mean that the court will find

that it has no jurisdiction to determine the dispute. This was the main reason why the petitioner lost in the recent shareholder dispute litigation *Re Yung Kee Holdings Ltd* [2012] 6 HKC 246 (currently under appeal), where an unfair prejudice petition and a petition for just and equitable winding up of unregistered companies were brought.

Conclusion

The situations where a minority shareholder's rights and interests may be infringed are varied. This gives rise to the need for different remedies to cater for different situations. However, if an inappropriate route is adopted, remedy may not be granted at all, and the minority shareholder may even have to bear heavy legal costs. It is therefore advisable to seek professional legal advice at an early stage so as to determine which route is most suitable given a particular set of facts.

Richard Leung *FCIS FCS(PE), MA, LLB*
Barrister-at-Law, former HKICS
President

Kerby Lau *BA, BCL*
Barrister-at-Law

New Companies Ordinance: your questions answered

The implementation of the new Companies Ordinance (Cap 622) early next year will have many compliance implications for company secretaries in Hong Kong. Ted Tyler, Stefan Lo and Natalie Wong, the Companies Ordinance Rewrite Team, Department of Justice, answer some practical questions raised at their recent ECPD seminar on the new Companies Ordinance.

Under the new Companies Ordinance a Hong Kong company can keep its company records in electronic form. If the records are kept in electronic form and the company requires a certificate of true copy, or notarisation of some of the records, would a Hong Kong notary and China-Appointed Attesting Officer be able to help?

The existing Companies Ordinance (Cap 32) allows for the keeping of specified company records in electronic form (see section 348C), so the new Companies Ordinance provisions (section 376 for accounting records and sections 654 to 656 for company records) are nothing

new. Also, the existing Companies Ordinance provides for copies or extracts from the Companies Registry certified by the Registrar to be admissible as evidence in legal proceedings (section 305(3)) and this is repeated in section 46 of the new Companies Ordinance.

Assuming someone requires a hard copy version of some company record not available from the Companies Registry, it would in our view be sufficient, unless otherwise specifically required, for the the company secretary to certify on the hard copy of the record that it was a true copy of the original.

We do not see why a notary or China-Appointed Attesting Officer need be involved in relation to such a copy. They are, of course, involved in the certification and witnessing of the execution of legal documents and of legal facts, such as particulars of a company, but to be involved in the certification of a copy of a company record they would need to be present when the hard copy was produced from the electronic record.'

If a company decides to keep its company records in electronic form after the implementation of the new Companies Ordinance, how should it deal with the existing records in hard copy? Should it scan all the records and shred the originals?

'In our view the existing hard copy form of company records should be retained as such. Schedule 11 Part 12 of the new Companies Ordinance contains transitional and savings provisions for existing company records. There is no reason why the existing hard copy records could not be scanned, but the original registers, books etc, must be retained.'

Highlights

- the existing Companies Ordinance provides for copies or extracts from the Companies Registry certified by the Registrar to be admissible as evidence in legal proceedings
- existing hard copy records should be retained regardless of whether companies opt to hold their records in electronic form
- notice of a director's resignation must be given in writing and an email notification without signature would not currently satisfy this requirement

Can a Hong Kong company amend its M&A to accept electronic signatures from directors and shareholders under the Electronic Transactions Ordinance?

'The Electronic Transactions Ordinance (ETO) provisions only apply in the company context if the electronic communications provisions in the Companies Ordinance are not incompatible (see section 16 of the ETO). Prior to the Companies (Amendment) Ordinance 2010, the Companies Ordinance assumed a paper filing system for communications with the Companies Registry. The 2010 amendments (sections 346A and 346B) permitted delivery of documents to the Registrar in the form of an electronic record with digital signature supported by a recognised certificate (importing section 2(2) of the ETO).

So even now it would be possible to amend Articles to deal with digital signatures in this context, if desired. When the new Companies Ordinance comes into operation, the gist of section 346A can now be found in section 32(5) which deals with delivery by electronic means and provides that the Registrar may specify requirements as to the hardware and software to be used (this may exclude the application of the ETO) and section 346B is not restated in the new Companies Ordinance.

If your question relates to electronic communications by directors or members to the company, the current Companies Ordinance does not make any provision for this. So the ETO would apply in this context and the Articles could deal with electronic signatures. The new Companies Ordinance does provide for electronic communications by a natural person to a company (see section 828) subject to the requirements of the section and, in particular, the requirements as to the

sender's identity in section 828(5) where authentication is required. This would exclude the application of the ETO with electronic signatures etc.'

If notice of resignation of a director of a company is required, the director has to give notice of the resignation in writing – can 'in writing' be simply an email notification without signature?

'Under the current Companies Ordinance, section 157D applies to the resignation of directors and section 157D(3) provides that where notice of resignation is required to be given by the articles, the resignation will not have effect unless it is given in writing. An email notification without signature would not satisfy that requirement.

Under the new Companies Ordinance, section 464(5) provides that if the articles require notice of the resignation to be given and to be effective, the notice must be in writing and sent to the company in hard copy form or in electronic form. Communication in electronic form is dealt with in Part 18 of the new Companies Ordinance in section 828. No signature is required and section 464(5) does not require authentication of the notice (as to which, see section 828(5)).'

Is a Hong Kong company required to keep a record of the history of changes of address and passport details of directors and shareholders? The Companies Ordinance seems to be silent on this. If a lawyer certified the register of directors of a company showing address A of a director in 2010 and the company now requests the lawyer to certify the register of directors showing address B of the same director in 2013 (without stating the change of address from A to B on the register), would the lawyer certify document?

'A company is not currently required to keep a separate record of changes in residential addresses and passport details. A change of residential address or passport number of a director has to be notified to the Registrar of Companies (Companies Ordinance section 158(4) and directors are required to inform the company of any change (section 158B)).

We understand that a copy of the change of particulars of directors sent by the company to the Registrar is usually kept with the company's Register of Directors and the entry in the Register as to the relevant director would be amended to reflect the new address.

We do not understand why a lawyer would be required to certify a copy of the relevant part of the company's register of directors. It is the same issue as in the first question above, namely, unless otherwise specifically required, it should be sufficient for the company secretary to certify the copy. The lawyer in your question would probably not recall the director's earlier address and certify the part of the register showing the new address, but we would have thought that, if the register did not show that there had been a change of address, the company secretary should have informed the lawyer about the change of address.'

Ted Tyler, Deputy Principal Government Counsel; Stefan Lo, Senior Government Counsel; and Natalie Wong, Senior Government Counsel – Commercial III (Companies Ordinance Rewrite) Department of Justice

The authors will be presenting another seminar on the new Companies Ordinance on 9 October 2013. Details are available on the HKICS website: www.hkics.org.hk.

Tablets for tyrannosaurs?

Are Hong Kong boards behind the curve when it comes to adopting the latest board support technology? Phillip Baldwin, Head – Hong Kong/ China, ICSA Boardroom Apps Ltd, investigates.



Hong Kong is a dynamic, push ahead, go-getting economic mini-powerhouse with a reputation for being business-savvy and the gateway to mainland China – right? Well, yes and no. Hong Kong companies are very savvy in terms of their focus on the bottom line, but in terms of creativity, not so much. The same, it would seem, applies to technology. Although we love our mobile phones here, we don't really create much content or new ways of using them beyond ringtones and a few amusing but not very useful Apps for Blackberry (*South China Morning Post*, 23 August 2013).

This is, after all, the city where the idea of scrippless shares was first proposed more than two decades ago in the Ian Hay Davison Report of 1988. The mainland has had scrippless shares for a long time, so there is a definite behavioural change that needs to take place in Hong Kong when it comes to implementing and using the latest technology.

This disconnect between boards of directors and technology has been noted before in this journal. As recently as May 2013, the CSj cover story 'Automation – Meet the cyborg company secretary' quoted the managing director of a leading compliance software provider as saying that the '...fixation with paper is deep in Hong Kong'. As reported in the same article, one year after the Companies Registry launched its e-incorporation service to great fanfare in March 2011, only 11 per cent of incorporations were processed using the digital route – compared with 96 per cent in the UK according to Companies House Annual Report 2011–2012.

Are Hong Kong boards behind the technology curve?

Hong Kong's digital infrastructure is

excellent. Wi-Fi hotspots abound in our city and we are voracious consumers of digital data so why is there a disconnect between the consumer and the boardroom? After all, isn't it boards that set the direction of companies so that they can sell us all of the digital goodies that we consume so ravenously?

Part of the problem may be the age and homogenous nature of Hong Kong company directors. According to the HKICS report *Diversity on the Boards of Hong Kong Main Board Listed Companies* (October 2012), most Hong Kong directors of listed issuers (at least those included in the HSI) are male and over 58 years old.

I came across this situation recently which rather sums up the situation in Hong Kong board rooms. Two elderly male directors of a large financial institution which has extensive retail operations in Hong Kong and is pushing its internet services hard, refuse to entertain the idea of using a paperless meeting solution for its board. Both of these directors sit on the board of another listed entity which does use a board portal so that all of the meeting papers are delivered to an iPad (in this particular case) except

theirs. Both directors refuse to give up their paper board packs and yet the very financial institution that they run is pushing more and more of its customers online. That is a massive disconnect, not only from their company strategy but also their customers. In addition they are impeding the operational efficiency of the other company's board they sit on. Their refusal to entertain the idea of using a paperless meeting solution while at the same time often forcing their customers online are so at odds with each other that it does bring into question their ability to understand the consequences and impact of technology beyond the financial.

1. The gender factor

Women are conspicuous by their absence in Hong Kong boardrooms, with 40% of HSI companies having no women on the board at all. Overall less than one-tenth of directors are women and there has been no substantial increase in women's representation over the past five years. While having female directors on a board is no guarantee of the adoption of technology, it does at least indicate that the board is open to change.

Highlights

- factors inhibiting the adoption of the latest board support technology in Hong Kong include the lack of diversity of Hong Kong boards and the lack of information getting to directors and senior managers regarding cyber security
- a board pack can be compiled and distributed within 10–30 minutes, rather than the three to eight hours needed for physical board packs
- there is no shortage of technological enhancements designed to improve the boardroom experience and effectiveness, the challenge for Hong Kong board members is to find the ones that will work for them

2. The age factor

According to the HKICS diversity report mentioned above, more than 10% of HSI directors are 70 years old or more. Their age does not, of course, mean that they cannot add value to the companies they direct – they clearly have the benefit of a great deal of experience to bring to this task. However, it is often the case that older directors are less enthusiastic adopters of new technology than their younger peers.

The reality is that directors over 60 rarely have the technological skills younger directors usually acquire from their business and/ or social life. They may not be 'Luddites' in the sense that they can recognise the importance of investing in technology to attract customers to buy products online, or to digitalise as much of their operations as possible, but when it comes to the boardroom, older directors tend to be less aggressive in adopting and/ or adapting technology that will make them more efficient and effective.

3. The knowledge gap

Another reason for the slow adoption of new technology by Hong Kong boards may be the lack of information that they receive, particularly about cyber security issues, and the subsequent fear of the unknown makes them more reluctant to adopt new technologies despite often obvious benefits. In this it would seem that Hong Kong directors are not alone.

According to the latest KPMG Global Audit Committee Survey (*Security in the Cyber Age*), one of the biggest concerns of senior management (which includes executive directors) is information on and about their company's IT – especially security. Only 26 per cent of those

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who responded are satisfied with the transparency of cyber security related information. In Hong Kong the situation was even worse with just 20 per cent of respondents satisfied. It gets worse. In Hong Kong only 10 per cent of those who responded were satisfied that audit committees hear views from different perspectives regarding their company's risk and control environment, the lowest rate amongst the 16 regions surveyed.

The report concludes by stating that 'In order for business leaders to set the right cyber security strategy, information transparency to senior management has to greatly improve.'

Further credence to this apparent knowledge gap was found in the *McKinsey on Business Technology* report (number 27, Fall 2013, 'Elevating Technology on the Boardroom Agenda'). While it deals mainly with the US and Europe, the conclusions seem valid for Hong Kong. It states that boards are beginning to take a more strategic view with regard to how technology trends will shape their future, but goes on to state that in a McKinsey survey of

directors, more than half reported that their boards had either just one or no technology-related discussions per year! Again, about half stated that they felt this insufficient. Later on in the same report a Spencer Stuart report is quoted as indicating that about 20 per cent of boards are actively looking for directors with an IT background; a sign that the knowledge gap has been acknowledged and a solution is being sought. I have no information as to whether this is also happening in Hong Kong.

Fast forward

Given the paucity of discussion, information and understanding of technology that seems to abound in boards, perhaps it is not such a surprise that technology and the boardroom have little 'interface'. Yet there is so much out there that can make directors' lives easier.

For example, board portals/ paperless meeting solutions allow the company secretary/ legal counsel to control the distribution of and access to information. Basically, they control who gets what and when and, by using a board portal, and do so far more efficiently and effectively,



not to mention securely, than using paper packs or email.

Using a board portal, a board pack can be compiled and distributed within 10–30 minutes, rather than the three to eight hours needed for physical board packs. Directors can have access not only to the board papers anytime and anywhere in a secure easy to use and searchable format, but also a whole host of additional information which might be useful when making decisions. In North America and Europe paperless meeting solutions are almost *de rigueur* for practically every Fortune 500 company and a good many of the Fortune 1,000.

Apart from paperless board packs, there are many technological solutions to help busy board members meet, share information and make decisions (and reduce the company's carbon footprint). Here are few of my favourites that might be worth a look.

Teleconferencing

Video conferencing is not a new innovation but the introduction of high definition and 'telepresence'

systems in the late 'noughties' along with its migration from complex telecommunications systems to the web did produce a boom in the sale and shipping of teleconference systems. And while it is difficult to find figures for the number of Hong Kong board users, according to Forrsights *Budgets and Priorities Tracker Survey* (Q2 2010), just under half of the IT decision makers surveyed put video technologies – video conferencing, video analysis and other technologies – as one of their top technology priorities. However, although I know a few blue chip companies that use telepresence in Hong Kong, it does not seem to be mainstream which, given the smallness of the city, may not come as a surprise until the China factor kicks in.

Digital paper

Digital paper is a digital pen and paper system that allows board members to make annotations directly onto a live MS PowerPoint. Surely this system should be given some consideration if for no other reason than sparing the board from another verbose and dry PowerPoint presentation!

AirPlay

This Apple product allows members to project content from their iPad, iPhone or even iPod onto a screen (and ties in nicely with a board portal).

MicroStrategy Mobile

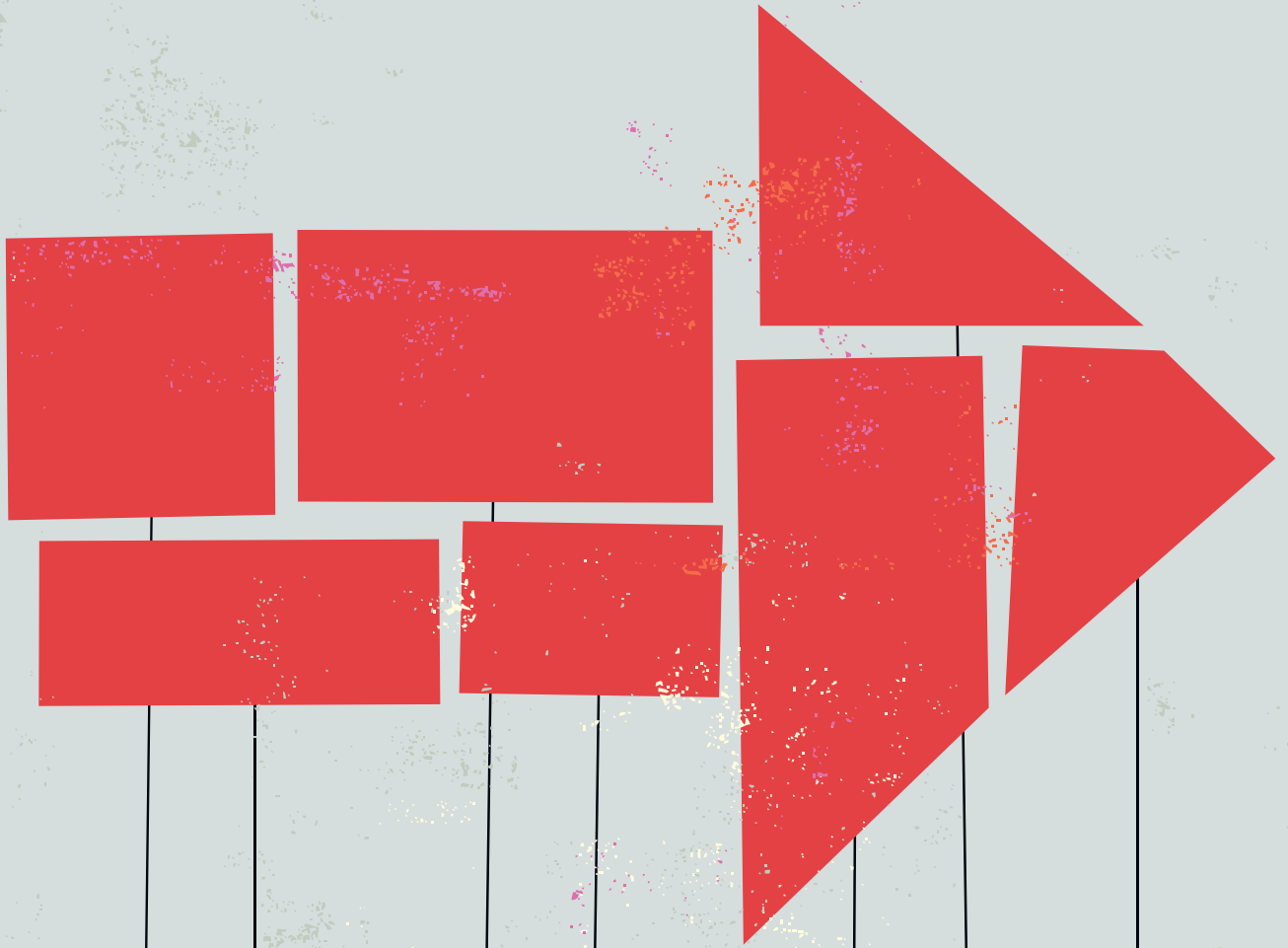
This offers an application that has been called 'PowerPoint on steroids'. It provides data (even live data if required) driven visualisations on screen, making for far more interactive and interesting presentations.

There are hundreds and probably thousands of applications, systems and technological enhancements of 'old-school' technologies which could improve the boardroom experience and effectiveness. The challenge for board members is to find the ones that will work for them. At present, I suspect that a few have some, none have all and most have none. What cannot be ignored is the growing disconnect between the business processes being used by companies to sell and market their services and products and the way the board works.

I suggest starting with a paperless meeting solution – a board portal – to manage board meetings and the distribution of board papers. I should point out, in a shameful attempt to appeal to readers of *CSj*, that this will reduce the hours a company secretary has to undertake the rather menial and unrewarding task of putting a physical meeting pack together. Surely your time can be better spent on governance and compliance issues?

Phillip Baldwin

*Head – Hong Kong/ China
ICSA Boardroom Apps Ltd*



Stakeholder relationship officers – coming to your company?

The company secretary is particularly well-placed to carry out the function of a corporate stakeholder relationship officer (CSRO), argues Professor Mervyn King SC, Chairman of the International Integrated Reporting Council.

Companies operate in a completely changed world in the 21st century. It is a world which has financial crises, a climate change crisis, the use by companies of natural assets faster than nature is regenerating them, radical transparency, greater expectations by stakeholders and population growth.

With the growing population the demand for product will increase and yet the natural assets which need to be benefited are finite and diminishing. In order to bring these two projections together it is clear that companies cannot carry on business as usual. They have to develop long-term strategic plans that will enable them to make more, but with less.

Analysis of companies listed on the world's great stock exchanges shows that, at least from the start of the 21st century, the majority of the market capitalisation of companies consisted of so-called intangible assets which would not be additives in a balance sheet according to the accounting standards set either by the International Accounting Standards

Board (IASB) or the Financial Accounting Standards Board (FASB).

This is a clear indication that responsible investment is making a difference. Some of the world's great asset owners have agreed to the United Nations Principles for Responsible Investments and a study done by the UNEP Financial Initiative and the UN Global Compact shows that 79% of asset owners and 95% of investment managers are now integrating environmental, social and governance (ESG) information into their investment decisions.

Responsible investment is changing the landscape

Integrated thinking is exactly the opposite to silo thinking. Every company is dependent on relationships with its key stakeholders and the resources which it uses. All companies use six main capitals or resources, (namely financial, manufactured, human, intellectual, natural and social). Companies consist of interacting, interrelated and interdependent operations, functions, relationships and resources. The board,

acting as a collective, has to take account of the connectivity between these factors.

In order for stakeholders – and particularly trustees of pension funds, which have become great shareholders of companies – to make an informed

Highlights

- company secretaries are well-placed to act as corporate stakeholder relationship officers as they are already informed about the strategic long-term goals of the company
- every company is dependent on relationships with its key stakeholders and the resources which it uses, and integrated reporting is vital for making information understandable to investors and other stakeholders
- boards today should add the agenda item 'stakeholder relationships' to every board meeting



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assessment of the sustainability of a company's business, they need clear and understandable reporting. To be accountable, reporting has to be understandable. One is reminded of the immortal words of TS Eliot in his poem 'The rock': 'Where is the knowledge we have lost in information?'

Annual reports were being issued between 300 to 400 pages in length and to the average user in incomprehensible financial and other reporting language. The financial report is essential and the standards set are more than adequate as are the assurance standards. But to the average user, who is a provider of capital indirectly through pension funds, the annual reports which have been issued over the last four decades have become incomprehensible. As already stated, to be accountable, that which we report has to be understandable.

Growing expectations for corporate responsibility

Consequently, all this led to a historic

meeting in St James' Palace, London, in 2010 where a who's who of corporate reporting agreed that the way companies report at present is no longer fit for purpose.

With integrated thinking the sustainability issues material to the business of the company are identified as water is to the beverage manufacturer. This is embedded into the long-term strategy such as plans to reduce the use of water, reuse it, replenish it and recycle it.

At the same time, stakeholders expect the company to act as a decent corporate citizen and not to profit at the expense of the environment, human rights, integrity or society. We have seen companies where, in the supply chain, a supplier may have used child labour which has affected the reputation of the purchaser company causing it to lose a large part of its market capitalisation overnight.

The essential question being asked today is how has the company made its money

and how will the company sustain value creation in the longer term in the very changed world in which the company now operates.

Assigning ownership of responsibility

In this regard, an ongoing communication is required with the key stakeholders of a company. Several companies have recently appointed a corporate stakeholder relationship officer (CSRO) whose job is to communicate with the company's key stakeholders, find out what their legitimate needs, interests and expectations are, and report that information to management. Management can then manage operations and develop strategy on a more informed basis.

Boards today should add the agenda item 'stakeholder relationships' to every board meeting. At the meeting the CSRO's written report on how the relationships with the key stakeholders are developing can be discussed. The board is thus informed throughout the 12-month

reporting period about the company's relationships with its stakeholders.

On 18 September 2012, the pilot programmers of the International Integrated Reporting Council (IIRC) – some 80-odd organisations who have now started the journey of integrated thinking and integrated reporting – shared their experiences with the working group and task teams of the IIRC.

Benefits for companies

Arising out of that meeting, Black Sun (a communications consultancy) did research on the benefits of integrated thinking and integrated reporting from a business point of view. Its findings are revealing. The research found that among these 80 iconic organisations, one of the most mentioned benefits of integrated reporting was the opportunity provided to connect teams from across an organisation, breaking down silos and leading to more integrated thinking. It improved internal processes leading to a better understanding of the business itself.

It also increased the focus and awareness of senior management and increased their interest and engagement in issues around the long-term sustainability of the business, which helped them gain a more holistic understanding of the business itself. It improved their ability to articulate the strategy and business model of the company. Also, they have started to identify ways to measure the value to stakeholders of managing and reporting on sustainability issues which have been embedded into long-term strategy.

A company may not be inclined to appoint another senior executive, the CSRO, but then management has to carry out this ongoing communication with

the key stakeholders. This will reduce management's time and focus on its role to implement the decisions of the board.

But what of the company secretary? The company secretary is particularly well-placed to carry out the function of a CSRO. Company secretaries are aware of the capital resources being used by the company and the identity of the key stakeholders of the business of the company. From attending board meetings and even executive meetings, they would know the strategic long-term thinking of the company.

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there could be a whole
new future awaiting
company secretaries
and it is an exciting one
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The company secretary can actually carry out this role in addition to the functionary role as company secretary fulfilling both statutory and other duties. This of course would place an additional burden on the company secretary which may result in the company secretarial department having to be strengthened by the addition, for example, of a general counsel. The attributes of the company secretary would have to include the ability to network, to be a business analyst, to communicate and to have boardroom presence to make presentations in the boardroom.

Not every company will be able to appoint a CSRO, but every company has a company secretary who knows

and understands the company's interdependency on the resources used by it and its stakeholder relationships. They can carry out that role already informed. There could be a whole new future awaiting company secretaries and it is an exciting one.

Professor Mervyn King SC

Chairman, International Integrated Reporting Council

Mervyn King is also a Senior Counsel and former Judge of the Supreme Court of South Africa. He serves as Chairman of the King Committee on Corporate Governance. He is Professor Extraordinaire at the University of South Africa on Corporate Citizenship; Honorary Professor at the University of Pretoria; Visiting Professor in the Rhodes Investec Business School; and has an honorary Doctor of Laws from the University of the Witwatersrand. He chaired the United Nations Committee on Governance and Oversight. He has been Chairman of the Global Reporting Initiative and is the author of 'Transient Caretakers' (with Teodorina Lessidrenska) and 'The Corporate Citizen'.

You can hear a podcast on this topic at www.CSAust.com/knowledge-resources/podcasts. This article was first published in the February 2013 issue of 'Keeping good companies', the journal of Chartered Secretaries Australia. Professor Mervyn King can be contacted by email at: Mervyn@mervynking.co.za.

A review of seminars: June – August 2013

Joint seminar with the Security Bureau – 'Be our gatekeeper'

The Institute held two joint seminars with the Narcotics Division, Security Bureau of the HKSAR government on the subject of anti-money laundering (AML) and counter terrorist financing (CTF). Under the banner of 'Be our gatekeeper' the seminars were held on 23 and 24 July 2013 in Cantonese and English respectively, and attracted a total audience of over 300.

The seminars promoted the awareness of AML and CTF issues relating to trust and company services providers with a practical overview of the latest international and domestic regulations. The seminars were divided into three parts:

1. anti-money laundering and counter-terrorist financing – alignment with international standards
2. suspicious transaction reporting – legal obligations and protection, statistics and case examples, and
3. experience sharing session.

Speakers and panellists at the seminars were: TC But, Inspector, Joint Financial Intelligence Unit; Mohan Datwani, Director, Technical & Research, HKICS; Winki Lam, Assistant Secretary for Security, Narcotics Division, Security Bureau; Eddie Liou *FCIS FCS(PE)*, Council Member, HKICS; and Ruby Look, Senior Inspector, Joint Financial Intelligence Unit.



At the seminar



*(From left to right) Winki Lam, Eddie Liou and TC But
(Cantonese session)*



*(From left to right) Winki Lam, Mohan Datwani and Ruby Look
(English session)*

26 June 2013



Polly Wong (Chair), Gloria So and Winnie Leung

From Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd, and chair of the seminar delivered by Gloria So, Risk Manager, and Winnie Leung, Assistant Manager, SHINEWING Risk Services Ltd, on **'IPO readiness – internal control systems (re-run)'**:

'Ms So and Ms Leung jointly delivered a concise and pragmatic seminar on IPO readiness from the perspective of internal control systems (ICS) and corporate governance (CG). They clearly explained various critical issues for pre-IPO companies, such as statutory requirements, due diligence inquiries, deficiency and infrastructure of ICS/ CG. With practical and precise case examples from Hong Kong and the mainland, the seminar was informative and well-thought-out.'

11 July 2013



Lily Chiong (Chair) and Terry Kan

From Lily Chiong FCIS FCS, Associate Director, Corporate Secretarial Division, KCS Hong Kong Ltd, and chair of the seminar delivered by Terry Kan, Partner of Specialist Advisory Services, SHINEWING (HK) CPA Ltd, on **'Corporate rescue in Hong Kong and the PRC – historical background and recent developments'**:

'Terry is highly experienced in this area and he was able to keep the audience's attention throughout the seminar. He provided practical and useful strategies for corporate rescue available in the US, the UK and mainland China, and updated us on the efforts to establish a statutory corporate rescue procedure in Hong Kong. In all, the seminar was well organised and provided great value to the audience.'

15 July 2013



Jack Chow (Chair) and Annie Lau

From Jack Chow FCIS FCS, Managing Director, Private Equities, VMS Investment Group, and chair of the seminar delivered by Annie Lau, Director – Tax Services, Deloitte Touche Tohmatsu, on **'PRC corporate tax update – cross-border operation and case sharing'**:

'Annie is very experienced in cross-border tax structuring. She provided an update on tax developments in mainland China and shared her practical experience through case studies. Her skillful presentation avoided technical jargon and so enabled the audience to gain a deep appreciation of tax rule applications in different circumstances. Attendees agreed that both their money and time had been well spent!'

A review of seminars: June – August 2013

16 July 2013



Roger Leung (Chair), Gloria So and Roy Lo

From Roger Leung FCIS FCS, Chief Legal and Compliance Officer, Shanghai Industrial Holdings Ltd, and chair of the seminar delivered by Roy Lo, Deputy Managing Partner, SHINEWING (HK) CPA Ltd, and Gloria So, Risk Manager, SHINEWING Risk Services Ltd, on 'Review of corporate governance code and associated listing rules (re-run):'

'This re-run seminar on a hot and important topic for our members was well-received by a large audience. The two speakers, Roy and Gloria, are experienced practitioners and presenters, and they delivered a well-organised and lively presentation which included practical and interesting case studies.'

1 August 2013



Eric Chan (Chair) and Dr Brian Lo

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Dr Brian Lo, DBA MBA MScIT MPA FCIS FCS HKPA CEng MIET, Vice-President and Company Secretary, APT Satellite Holdings Ltd, on 'Fiduciary duties.'

'Dr Lo delivered a very informative presentation on the subject of fiduciary duties. The combination of practical information together with interesting case studies made this a most useful event for attendees.'

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 following submission deadlines and the respective approval dates (subject to receipt of application and supporting documentation).

Submission deadlines	Approval dates
Saturday 7 September 2013	Tuesday 8 October 2013
Tuesday 5 November 2013	Late November 2013

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

New Graduates

The Institute is pleased to announce that 29 students successfully completed the HKICS International Qualifying Scheme (IQS) at the May 2013 examination. In addition, 14 students graduated via the Collaborative Course Agreement (CCA) programmes organised by The Hong Kong Polytechnic University, City University of Hong Kong and The Open University of Hong Kong.

Congratulations to our 43 new Graduates!

IQS graduates

Cai Haitao	Leung Pui Ying, Polly
Chan Lai Yin	Leung Shuk Ying
Chan Po Yu	Leung Wing Yan
Chan Shuk Ting	Ma Ka Ki
Chan Wai Fong	Mak Wai Yin, Alice
Chan Yun San, Paul	Mok Hiu Fai
Chau On Ting	Mok Wan Chi
Cheung Kin Chuen	Ng Yu Sei, Veronica
Fu Wing Yiu	Tse Kwan Kit
Ho Sze Man	Tse Yu Yan
Keung Yuen Fung	Wong Ching Lun
Ko Kay Bun, Kenny	Wong Yik Han
Lam Wing Yu, Myra	Yang Yuk Shun
Lau Yuen Chi	Yeung Yim, Ava

CCA graduates

Chan Nga Lai	Law Pui Yee, Amy
Chan Yin Man, Mingsy	Ma Man Yin
Chow Man Heung	Ng Tung Ching, Raphael
Fong Sin Yee	So Hiu Tung, Miranda
Ho Kwok Yan, Lydia	Tang Chung Yan, Suzanne
Ho Sheung Man, Abby	Tse Cheuk Kei
Lau Wing Yiu	Yeung Chi Ping, Oliver

New Fellows

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



Au Yeung Pui Lin, Hester *FCIS FCS(PE)*

Ms Au Yeung is currently the Regional Corporate Secretary of ING Bank NV where she is responsible for providing corporate secretarial support to Commercial Banking Asia of ING. Prior to joining ING, she was the Corporate Secretary of Citibank NA. Ms Au Yeung possesses extensive experience in the field of corporate secretarial and corporate governance in the banking industry and holds a master's degree in Corporate Governance and Directorship from Hong Kong Baptist University.



Cho Che Kwong, Alex *FCIS FCS*

Mr Cho joined Intertrust (Hong Kong) Ltd in 1990 and was appointed as Managing Director to the Hong Kong office in 2007. He has been participating in the setting up and management of Intertrust China since 2001, with offices in Beijing, Shanghai and Guangzhou. Mr Cho has over 29 years of experience in the Hong Kong financial industry. He holds a postgraduate diploma in Corporate Administration from The Hong Kong Polytechnic University, a master's degree in Business Administration from The University of Macau, and a master's degree in International Accounting from City University of Hong Kong. Mr Cho is a member of both The Society of Trust and Estate Practitioners and The Hong Kong Trustees' Association.



Helen Young *FCIS FCS(PE)*

Ms Young is currently the Joint Company Secretary of Kaisun Energy Group Ltd (stock code: 8203). She is responsible for providing company secretarial support and advising on regulatory compliance and corporate governance for the Group. She holds a master's degree in Business Administration from The University of Hong Kong, and a master's degree in International Economic Law from The Chinese University of Hong Kong. She is a Fellow of the Association of the Chartered Certified Accountants and a member of the Hong Kong Institute of Certified Public Accountants.

Other new Fellows:

Chiu Soo Ching, Katherine *FCIS FCS*; **Leung Siu Hong** *FCIS FCS*; **Ng Wai Man** *FCIS FCS*; **Yang Yan Tung, Doris** *FCIS FCS(PE)*; **Yim Siu Hung** *FCIS FCS*

Newly appointed company secretaries

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

Company secretary	Listed company	Date of appointment
Cheng Wing Sze <i>ACIS ACS</i>	KVB Kunlun Financial Group Ltd (Stock code: 8077)	3 July 2013
Wong Cheung Lok <i>FCIS</i>	Sun Innovation Holdings Ltd (Stock code: 547)	12 July 2013
Lei Kin Keong <i>ACIS ACS</i>	Longlife Group Holdings Ltd (Stock code: 8037)	17 July 2013
Wong Sau Mei <i>ACIS ACS</i>	MIE Holdings Corporation (Stock code: 1555)	19 July 2013
Tse Kam Fai <i>ACIS ACS</i>	Wai Chun Group Holdings Ltd (Stock code: 1013) Wai Chun Mining Industry Group Company Ltd (Stock code: 660)	23 July 2013
Chow Chi Wa <i>ACIS ACS</i>	China.com Inc (Stock code: 8006)	1 August 2013

2013/ 2014 Family-Friendly Employers Award Scheme

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

The Award Scheme, originally launched by the Family Council in 2011, aims to give recognition to businesses that have implemented family-friendly measures. The awards are made biennially, and the second Award Scheme will be launched in September 2013. This year the scope will be expanded to cover non-business sectors such as non-governmental organisations and social enterprises.

More information about the Scheme is available on the Family Council website: www.familycouncil.gov.hk.

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 Adrian Wong 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 opposite for details.

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

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.

Membership activities

Happy Friday for Chartered Secretaries

Eye care for professionals

This Happy Friday event was held on 19 July 2013 at the Club Lusitano and over 60 participants gained practical eye care tips from Western and Chinese medical experts:

- Mr Vincent Chui, Registered Optometrist (Part I) and Former Associate Consultant Optometrist, School of Optometry, The Hong Kong Polytechnic University, and
- Mr Edwin Wong, Registered Chinese medicine practitioner on eye care and Ophthalmology of Traditional Chinese Medicine (中医眼科).

Members enjoyed the sharing and dialogue with the two experts and fellow members at this light-hearted event with much laughter and amusement. Attendees also enjoyed the good wine, drinks and snacks in a relaxed environment.

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



Susie Cheung FCIS FCS(PE), Council Member and Membership Committee Chairman, welcoming members



Edwin Wong presenting



Members practicing eye care exercises



(Second from right) Terry Wan FCIS FCS, Membership Committee Member, meeting members



(Third from right) Vincent Chui meeting members

Members' Luncheon

A Members' Luncheon was held on 5 September 2013 at The Hong Kong Bankers Club. We were honoured to welcome The Hon Anna Wu *GBS, JP*, who is the Chairperson of the Mandatory Provident Fund Schemes Authority and the Competition Commission and a Non-Official Executive Council Member of the HKSAR, as the guest speaker presenting on the topic 'Reforming the MPF System'. A review with photos will be reported in a forthcoming issue of *CSj*.

Members/ Graduates fee structure 2013/ 2014

The Council has approved the following fee structure for the financial year 2013/ 2014 with a slight increase. The annual membership subscription and certain fees have remained unchanged for two financial years since 2011/ 2012. The current increment is necessary due to an increase in costs – mainly due to inflation.

In maintaining the growth of the Institute and the Chartered Secretarial profession, Fellows are crucial to the Institute. To encourage qualified members to apply for Fellowship, the Fellowship election fee remains at the special rate of HK\$1,000 while the Fellowship subscription fee is kept to a modest increment.

Please rest assured that Council will continue to find ways to increase non-subscription revenue and reduce costs in striving for the services that can best fit members' needs. Members and Graduates should have received the Membership Renewal Notice. For enquiries, please contact the secretariat at 2881 6177.

In an effort to support social enterprises, the Institute engaged SAHK Chaiwan workshop for the letter shopping services of the Membership Renewal Notice 2013/ 2014. SAHK is a non-profit rehabilitation organisation serving persons with physical or mental disabilities.

Members/ Graduates

Items	Amount (HK\$)
Annual subscription	
Fellows	2,510
Associates	2,150
Graduates (holding the status for less than 10 years, that is after 1 August 2003)	1,850
Graduates (holding the status for more than 10 years, that is on or before 1 August 2003)	2,510
Retired rate (note 1)	500
Election fee	
Fellows (note 2)	1,000
Associates	1,950
Graduate advancement fee	1,900
Re-election fee	
Fellows	3,150
Associates	2,610
Graduates	2,080
Other fees	
Membership card replacement	60
Certificate replacement	150
Membership confirmation	200

Note 1: Members are eligible to apply for the retired rate if they:

- are not less than 55 years of age and have been a paid-up member of the Institute for at least 25 years; however members who have reached the age of 60 may be exempted from the 25-year membership requirement at the discretion of the Membership Committee, and
- are retired from employment and not required to contribute to the Mandatory Provident Fund Scheme.

Applications will be subject to the approval of the Membership Committee.

Note 2: The special rate for Fellowship election of \$1,000 will continue for 2013/ 2014.

既在河边走，又要不湿鞋

就“内幕消息、内幕交易管控与企业有效规管”这一业界关注的话题，香港特许秘书公会5月底在西安举办第二十九期联席成员强化持续专业发展（ECPD）讲座。

值得关注的是，为配合境外上市公司贯彻实施于2013年1月1日开始生效的香港《证券及期货条例》有关“内幕消息”持续责任之修订新规，更好地服务于上市发行人的实务操作实践，香港特许秘书公会（公会）近期成立“内地联席成员‘内幕信息实务指引’研究小组”（研究小组）。三位研究小组的成员在本次讲座上就小组完成的指引和对内幕信息的理解进行了分别阐述。

研究小组顾问、年利达律师事务所合伙人植沛康律师比较了在内地与香港两个市场对内幕消息的不同理解，在香港市场，“内幕消息”是指符合以下说明的具体消息或资料：关于上市法团的股东或高级人员，或其证券或其衍生工具的及非普遍为惯常（或相当可能会）进行该法团上市证券交易的人所知，但若普遍为他们所知，则相当可能会对该等证券的价格造成重大影响。而在内地市场，内幕消息则指证券交易活动中，涉及公司的经营、财务，或者对该公司证券的市场价格有重大影响的尚未公开的信息；发生可能对上市公司证券及其衍生品种交易价格产生较大影响的重大事件，投资者尚未得知时，上市公司应当立即披露。针对两地差异，他介绍了识别内幕消息的三个元素与标准，如何把握披露时点及应对市场传言等。

不管在哪个市场，防控内幕交易均是上市公司面临的棘手难题。研究小组组长、公会理事、中国外运股份有限公司董事会秘书高伟博士对此专门发表了题为《内幕消息之防控体系的建立与有效管控》的演讲，提出了以企业内部控制系统和企业管理流程为基础、包含内幕

信息的收集与传递，内幕信息识别标准与全面预算管理和绩效考核（KPI）的结合，可能构成内幕信息的事项区分方法及其影响分析，公司经营状况的监控，披露委员会与内幕信息的判断与发布等环节的管控体系。他指出管理内幕信息应设定限制，只让少数有需要知道的雇员取得内幕信息，并开展有关保密责任与内幕信息披露法规的培训。列举内幕人士清单，建立内幕信息内部传递的限制，并向控股公司、政府部门报送财务、业务统计数据。

为了做好内幕信息的保密措施，则应对电子文档设置密码，建立纸面文档的分类系统，警示性提示，限制分发人数；通过公司的IT系统将含有内幕信息的文件与其它文件区别开来，并使用项目代码，分割处理内幕信息的员工与其他员工的办公区域。

“既在河边走，又要不湿鞋。从本质安全上管控董事、监事、高管本人进行内幕交易”，研究小组成员、中国神华能源股份有限公司董事会秘书黄清先生则在演讲中指出，防控内幕交易首先应该建章立制，他介绍了中国神华的经验：总体制定完备的内幕信息及其知情人的管理制度，并强制规定：神华集团和中国神华的董事、监事、高管不准拥有中国神华股票。

其次则是戮力管控，黄清指出，防止内幕交易工作的第一负责人是公司董事长，具体负责人是公司董事会秘书，具体落实部门是投资者关系部。公司秉持“严格做好保密工作、积极推动主动披露”的理念，采取多种措施规范有关证券交易行为，做好内幕信息保密工作，加强内幕信息知情人及外部信息使用者的管理，防止内幕交易。

具体措施包括：公司在年度业绩的敏感期开始前、重大事项工作启动时分别对

特定范围的内幕信息知情人通过邮件、短信等方式单独提醒及做好登记工作。在公司内部网站对潜在内幕信息知情人进行提醒，并要求对外报送信息部门做好外部信息使用人管理及防止内幕交易提醒工作，完善内幕交易防控工作。在不对业务造成影响的情况下，公司尽可能预先披露拟开展的市场关注的重要收购行动情况，以及预告公司年度业务情况。坚持在日常信息披露中主动披露每月主要运营数据和业务进展公告。上述主动披露行为有助于减少信息不对称、杜绝内幕交易。

此外，证监会并购重组委员会上市公司监管一部监管一处调研员高莉博士还在讲座上透露了证监会对下一步并购重组监管改革的思路：主要包括坚持放松管制、服务市场的原则，对“并购重组服务做加法，行政许可项目做减法，审核效率做乘法，并购成本做除法”，进一步完善并购重组法规及监管制度，提高和完善发行股份市场化定价水平明确换股吸收合并的股份定价及规范对象，作为特殊规定纳入《重组办法》。放宽发行股份购买资产的对象数量限制，对盈利预测问题以强化自愿性信息披露要求代替强制性信息披露要求，对上市公司差异化监管与并购重组监管相结合，减少、合并行政许可项目。

This article reviews the Affiliated Persons ECPD seminars held in Xian on 22 and 24 May 2013. The seminars were on the themes of 'Insider information, insider dealing control and effective corporate regulation and governance'. Speakers included members of the HKICS Affiliated Persons Research Group for the *Guidelines for Insider Information Practice of A+H-Share Companies*, and Dr Gao Li of the Acquisition and Reorganisation Committee of the China Securities Regulatory Commission.

IQS Examination results (May 2013)

Examination result slips were posted to candidates on 8 August 2013. Any students who have not received their result slips should contact the Education and Examinations section at 2881 6177. No examination results will be disclosed via phone or email.

The examination paper, suggested answers and examiners' reports on the May 2013 examination diet are available in the login area of the Institute's website.

Pass rate

Subject	Pass rate
Part One	
Strategic and Operations Management	28%
Hong Kong Corporate Law	18%
Hong Kong Taxation	31%
Hong Kong Financial Accounting	28%
Part Two	
Corporate Governance	21%
Corporate Administration	36%
Corporate Secretaryship	62%
Corporate Financial Management	10%

Subject prize winners

The Institute would like to congratulate the following students who were awarded subject prizes for achieving the 'distinction' grade for the respective subjects at the May 2013 examination.

Subject	Candidate
Corporate Secretaryship	Liu Jiong Mok Hiu Fai
Corporate Administration	Yang Yuk Shun Chan Sin Man Xing Jun

Merit certificate awardees

The Institute is pleased to announce that 42 students (listed opposite) were awarded Merit Certificates for achieving the 'merit' grade for the respective subjects at the May 2013 examination.

Merit certificate awardees

Subject	Candidate
Corporate Administration	Chan Chun Sing Chan Ho Wai Chow Kin Wing Fan Yuen Kwan Hon Chi Chung Lee Ka Man Li Chun Kit Liu Yin Lam Mok Hiu Fai Ng Wing Man, Cecilia Poon Wing Shuen Tse Yu Yan Wu Guokan Yeung Yim, Ava
Corporate Secretaryship	Chan Chiu Wing Chan Man, Grace Chan Nga Ling Chan Shui Yuen Chan Wai Kit, Ricky Chan Yik Lam Cheng Shing Yan Cheng Sze Wai Cheng Yue Ting Chung Yee Wah Feng Zhe Keung Yuen Fung Lam Kei Chun Lam Wing Yu, Myra Lam Yee Hang Li Ching Man Luk Ching Laam Ng Nga Wun Poon Wai Sze, Grace Sze Nga Ting Tsang Hiu Pan Wong Yu Sun
Hong Kong Corporate Law	Chan Lai Yin Chan Wai Fong Yeung Wai Yan
Hong Kong Taxation	Au Yeung Wing Man Liu Ka Man
Hong Kong Financial Accounting	Lam Yuen Yee

IQS examinations (December 2013)

The enrolment period will be from 1 to 30 September 2013. The enrolment form is available for download at the Institute's website. Candidates should note the following.

- a. Entries must be received by the secretariat either by hand before 18:00 on 30 September 2013, or by post with postmark on or before 30 September 2013. Late applications will not be accepted under any circumstances. To avoid postal errors or delays, candidates are recommended to submit the applications in person or by registered mail. No change can be made to the subject(s) and examination centre after the submission of the examination application.
- b. In order to facilitate students with their preparation for the IQS examination, the Institute has developed a study pack for the subject of Hong Kong Corporate Law. Purchase of this study pack is mandatory for students who enrol for the Hong Kong Corporate Law examination (with effect from the December 2013 examination).

The enrolment fee for Hong Kong Corporate Law (December 2013 examination) will include the study pack fee. Students who have already pre-ordered the study pack in July and enrolled for the subject at the December 2013 examination will only need to pay the examination fee.

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

HKU SPACE examination preparatory courses

Enrolment for HKU SPACE examination preparatory courses (Autumn 2013 intake) will commence in September 2013. Please refer to the timetable and enrolment form at the Institute's website.

For enquiries, please contact HKU SPACE at 2867 8478.

Student Ambassadors Programme (SAP) – Summer Internship Programme 2013

A total of 18 student ambassadors received summer internship offers from the following seven companies (in alphabetical order):

1. Companies Registry
2. EFA Secretarial Ltd
3. Hutchison Whampoa Ltd
4. Intertrust Resources Management Ltd
5. Reachtop Consulting Ltd
6. TMF Hong Kong Ltd
7. Tricor Services Ltd

The Institute would like to thank these companies for their support of the programme. Additional photos can be found in the August 2013 issue of CSj.



Tricor Services Ltd



EFA Secretarial Ltd

HKICS examination technique workshops

These workshops will be held from mid-October 2013. 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.

Upcoming activities

New Students Orientation

The Institute would like to invite students who have registered since March 2013 to attend a free New Students Orientation. This event aims to give new students up-to-date information on the Institute and also serves as a platform to meet with other students. Subject Prize winners of the May 2013 examination will receive their certificates and share examination preparation tips at the event.

Date	Wednesday 18 September 2013
Time	19:00 - 20:30
Venue	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
Enrolment deadline	Wednesday 11 September 2013

The enrolment form can be downloaded from the Institute's website. Please fill in the reply slip and return by fax at 2530 4278, or by email: student@hkics.org.hk.

Student fee structure 2013/ 2014

Effective from 1 September 2013, the following studentship fee structure applies:

Students

Items	Amount (HK\$)
Registration fee	1,200
Re-registration fee	1,200
Renewal fee	750
Late studentship registration administrative charge (note 1)	500
Examination fee	1,050 per subject
Examination postponement fee	700 per subject
Examination appeal fee	1,800 per subject
Exemption fee	1,050 per subject
Exemption re-application administration charge (note 2)	550 per application
Transcript application	80 per copy
Examination technique workshop	450 per subject
HKICS study outline	350 per copy
ICSA study text	800 per copy
HKCL study pack	450 per copy
CCA late registration charge	300 per month

Note 1: An administration charge will be applied to studentship registrations submitted within the specific periods given below for taking the corresponding examinations in June and December:

Studentship registration	Examination diet
1-15 August 2013	December 2013
1-15 February 2014	June 2014

Note 2: An administration fee per exemptions re-application will be charged to students who do not settle their exemption fees as approved within the due date.

Listing rule changes to complement new sponsor regulatory regime

The Stock Exchange of Hong Kong has published listing rule changes to complement the Securities and Futures Commission's new regulation on sponsors which will come into effect on 1 October 2013. The key features of the new regime are as follows:

- IPO candidates will need to publish an 'Application Proof' on the HKExnews website and the proof should be substantially complete when a listing application is submitted.
- There will be an eight-week moratorium on listing applications being returned on the grounds that the Application Proof is considered not substantially complete. When applications are returned, the names of sponsors and applicants together with the return date will be published on the HKExnews website.
- There will be an accelerated review process for listing applications returned on the grounds that the Application Proof is considered not substantially complete.
- There will be a streamlined regulatory commenting process

focusing on major issues such as eligibility, suitability, sustainability, listing rules, Companies Ordinance and Securities and Futures Ordinance compliance, and any material disclosure deficiencies.

The new requirements resulting from the rule changes will apply to listing applications submitted on or after 1 October 2013.

However, there will be transitional arrangements to enable market practitioners to familiarise themselves with all related requirements and procedures before the publication regime is implemented. For example, the Exchange will suspend the requirement for applicants to publish their Application Proofs on the HKExnews website from 1 October 2013 to 31 March 2014, both dates inclusive. Moreover, from 1 October 2013 to 30 September 2014, both dates inclusive, the Exchange will accept listing applications for detailed vetting only after completion of an initial three-day check of the Application Proof based on a prescribed checklist.

More information is available on the Hong Kong Exchanges and Clearing website www.hkex.com.hk.

SFC commences Market Misconduct Tribunal proceedings against Tiger Asia

The Securities and Futures Commission (SFC) has instituted proceedings in the Market Misconduct Tribunal (MMT) against Tiger Asia Management LLC (Tiger Asia) and three of its officers following the Court of Final Appeal's dismissal of the appeal of the Tiger Asia parties against legal proceedings brought by the SFC under section 213 of the SFO.

More information is available on the SFC website www.sfc.com.

Premature selling of placing shares may constitute illegal short selling

The Securities and Futures Commission (SFC) has warned that investors and intermediaries could face criminal prosecution for illegal short selling if they sell placing shares before completion of a placement. Recent SFC investigations revealed some misconceptions in the market on the selling of placing shares prior to completion of a placement. The SFC points out that, under the Securities and Futures Ordinance (SFO), a person shall not sell securities at or through a recognised stock market unless at the time he sells them:

- he has or, where he is selling as an agent, his principal has; or
- he believes and has reasonable grounds to believe that he has or, where he is selling as an agent, that this principal has,

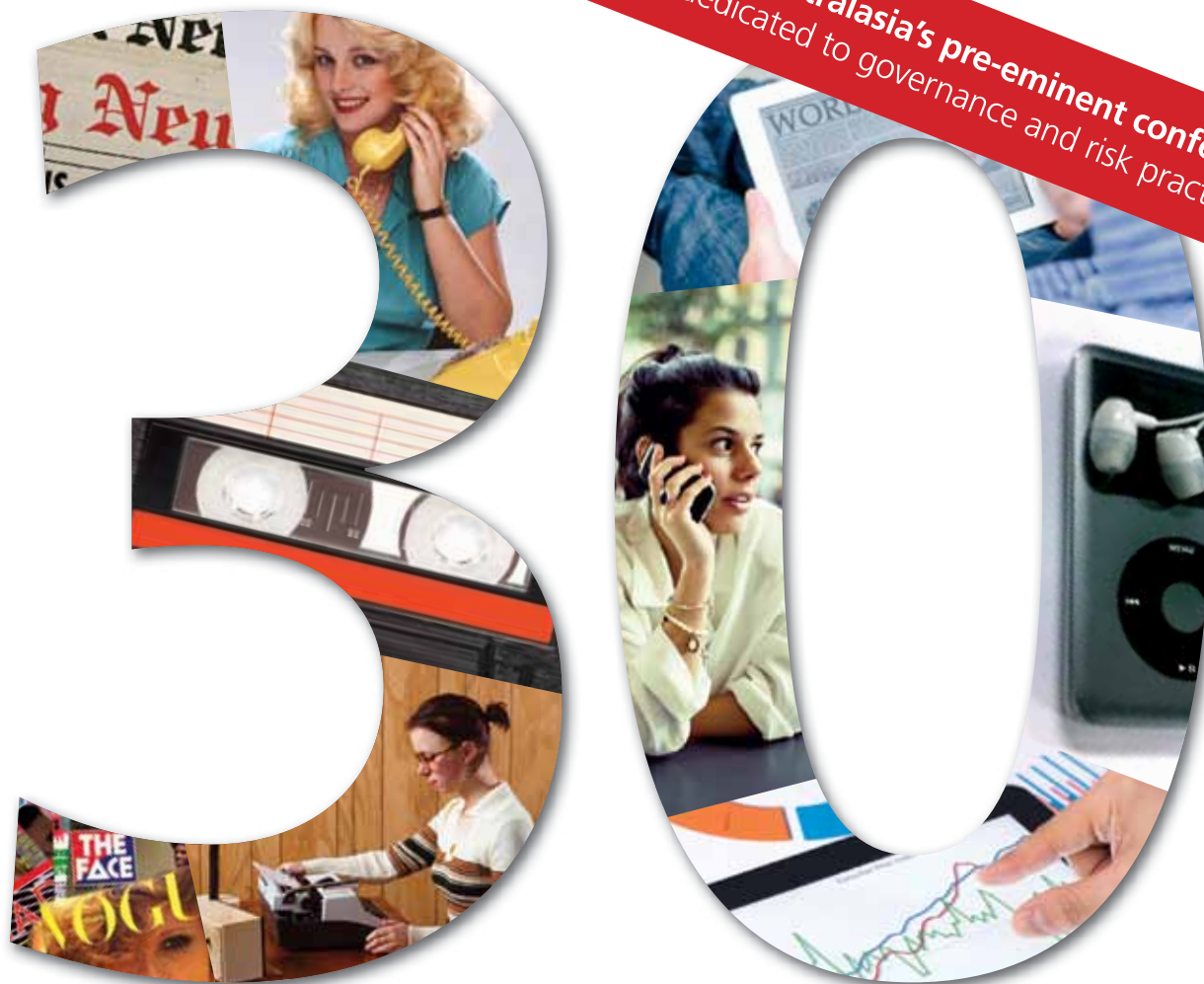
a presently exercisable and unconditional right to vest the securities in the purchaser of them.

It follows that anyone who sells these conditional placing shares before completion of a placement runs the risk of committing illegal short selling, contrary to the SFO, unless the person (or where the person is selling as an agent, his principal has) already held a sufficient number of shares to settle the trade.

Under the SFO (see section 170) illegal short selling is a criminal offence which carries a maximum penalty of \$100,000 fine and two years of imprisonment upon conviction.

More information is available on the SFC website www.sfc.com.

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