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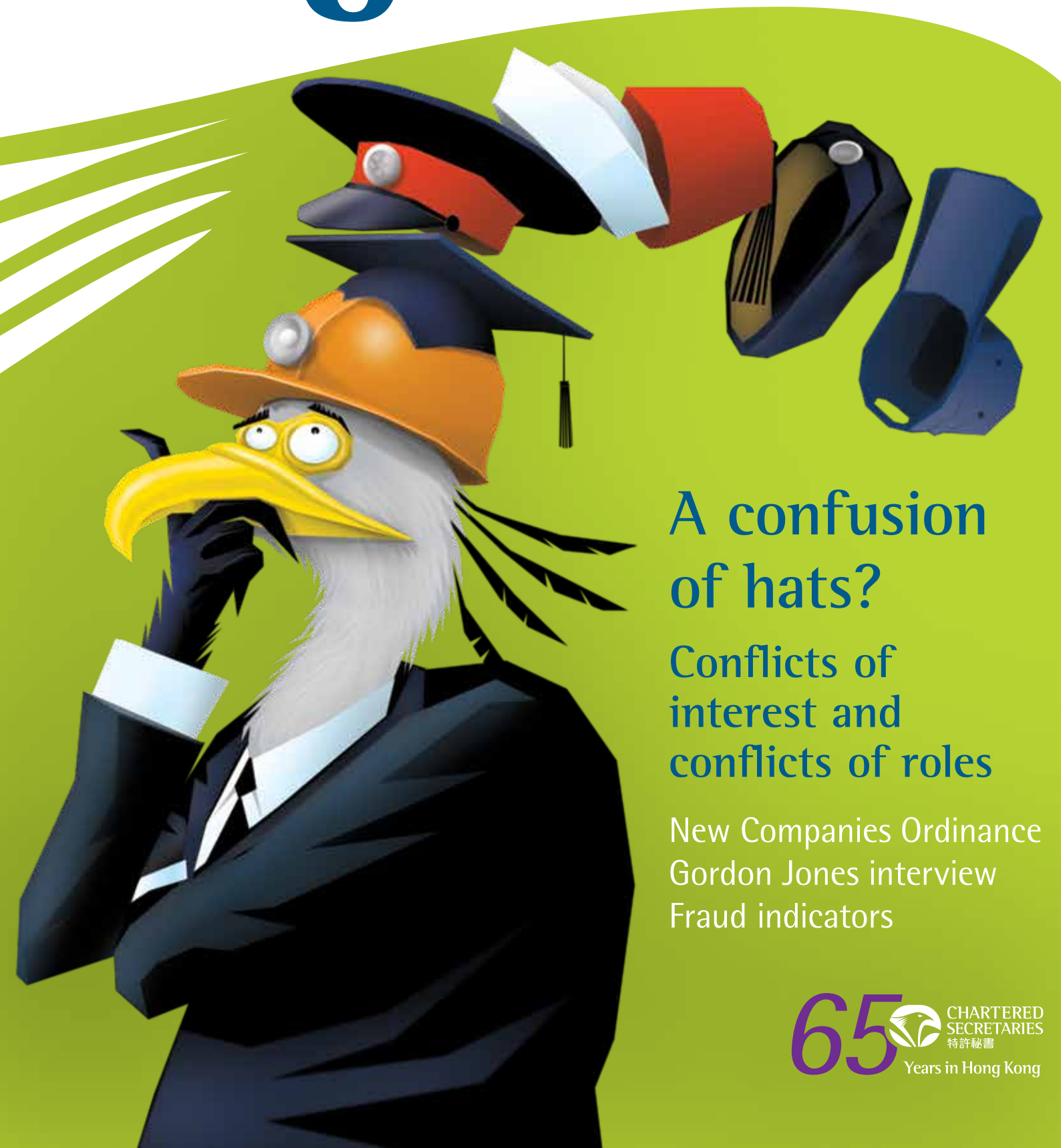
April 2014

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



A confusion of hats?

Conflicts of
interest and
conflicts of roles

New Companies Ordinance
Gordon Jones interview
Fraud indicators

65  CHARTERED
SECRETARIES
特許秘書
Years in Hong Kong



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Time : 2:30pm

Venue : WLB918, School of Business,
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Renfrew Road, Kowloon Tong

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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 over 5,800 members and 3,300 students.

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Membership statistics update

As of 10 March 2014, the Institute's membership statistics were as follows:

Students: 3,301
Graduates: 532
Associates: 4,755
Fellows: 499

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April 2014

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CSj is online!

The HKICS is pleased to announce that *CSj* is now available online at: <http://csj.hkics.org.hk>. You can access the current and previous editions of the journal – the archive currently goes back as far as March 2012 (Volume 22, Number 3) – via the link which has been added from the HKICS website; just click on the cover image on the HKICS home page at www.hkics.org.hk.



Managing conflicts of interest

The theme of our journal this month is 'managing' rather than 'avoiding' conflicts of interest. We hear a lot about the need to 'avoid' conflicts of interest. While there are measures that can be taken to minimise the potential for conflicts of interest – public officials resigning from corporate boards before taking office, for example – avoiding these situations altogether is virtually impossible.

A conflict of interest can arise whenever the private interests of individuals compete or conflict with their fiduciary duties. Similarly, a conflict of roles can arise when different roles carried out by a single individual compete or conflict with each other. I am sure most readers of this journal will at some point in their professional or personal lives have encountered just such a conflict. It is important to bear in mind that there is nothing intrinsically wrong with finding yourself in such a situation; the key is to know how to manage the conflict in an honest, open and ethical manner.

The basic principles for dealing with a conflict of interest are relatively simple. You need to disclose the interests you have; refrain from taking part in the discussion of, and more importantly voting on, issues relevant to those personal interests; and seek disinterested shareholders' approval of any resulting corporate actions. Our companies

legislation and listing rules are unusually detailed in the area of conflicts of interest and connected transactions, but what these rules boil down to is an attempt to ensure that the above principles are followed in practice.

So what, you may well ask, is the role of the company secretary in all of this? Our cover story this month (see pages 8–12) offers a very detailed answer to this question. It will hardly come as a surprise to find that the company secretary role is heavily utilised in managing conflicts of interest. Such conflict management ranges from administrative tasks such as managing conflicts of interest issues in board meetings to advising the board on the compliance risks in this area. But the cover story also looks at an issue which gives this whole topic a very personal relevance for company secretaries – the potential role conflict for company secretaries who join their own board as a director.

Once again, it is important to state that it isn't unethical for company secretaries to take on such a dual role. Indeed, there are many potential benefits for companies who recruit company secretaries to their board – members of our profession often have a skill set which makes them ideal candidates for a director's position. Moreover, both the director and the company secretary roles owe the same fiduciary duties to the

company as a whole. As Peter Greenwood, a Fellow of the Institute and former Company Secretary of CLP Holdings, stresses in the cover story this month, making a success of a dual company secretary/ director role will depend a lot on the qualities of the individual involved and the quality of the relationships he or she has with the other board members.

That is why I think the focus of the cover story this month is quite rightly on managing, rather than avoiding, potential conflicts of interest. Conflicts of interest and conflicts of roles are pervasive in markets, as they are in society. While there are sensible measures professionals can take to minimise their exposure to this risk, most of us will at some point have to address the challenge such conflicts present. When your turn comes, bear in mind that, however complex or nuanced the conflict might appear, the basic principle you need to adhere to is very straightforward – be open and honest about any personal or conflicting interests which may, or may be seen to, cloud your judgement.

Edith Shih FCIS FCS(PE)

管理利益冲突

今期的主题是如何管理利益冲突，而非如何避免利益冲突发生。有关避免利益冲突的需要，我们都常有听闻。尽管我们可采取若干措施，尽量降低潜在利益冲突，例如公职人士履新前先行辞去其公司董事职务，但要完全避免这种情况似乎不太可能。

当个人利益与其受信责任相互抵触或存在冲突时，利益冲突的情况便会出现；同样，当个人所扮演的不同角色相互抵触或存在冲突时，角色冲突的情况便会出现。在我们的读者当中，想必大多数人都曾在其专业或个人生活中经历过这种冲突。然而，我们当谨记身处这种情况本身无可厚非；重要的是，我们应以坦诚、开明和秉持操守的态度来处理所面对的冲突。

管理利益冲突的基本原则并不复杂。我们需要披露自身个人利益；遇有议题涉及自身个人利益时不参与相关讨论，更重要的是不参与表决；对于可能导致企业行动的议案，应寻求没有利益关系的股东同意。关于利益冲突和关联交易，香港的公司法及上市规则中载有特别详细规定，其纲领就是确保在实务中履行上述原则。

你也许会问：在种种情况下公司秘书的角色是什么呢？本期专题报道（见

第8-12页）对这问题提供了详尽说明。不足为奇的是，公司秘书在管理利益冲突的问题上担起非常吃重的角色。公司秘书范畴内的冲突管理，涵盖与董事会利益冲突事宜相关的行政工作，乃至向董事会提交有关合规风险的意见。本期专题报道的另一个讨论课题—公司秘书担任董事所涉及的潜在角色冲突，跟不少公司秘书都息息相关。

再次重申，公司秘书同时担任董事和公司秘书两个角色，本身并非不符操守。事实上，一家公司委任公司秘书担任董事，对公司确有裨益—我们业界成员所拥有的专业技能，令其成为担任董事职务的理想人选。此外，董事与公司秘书对公司所承担的受信责任雷同。正如林英伟 (Peter Greenwood) (本公会资深会员及中电集团前公司秘书) 在本期专题报道中所强调的，要成功扮演公司秘书与董事的双重角色，视乎当事人的自身素质，以及与其他董事之间的关系。

这阐明了我何以提出本期专题报道的焦点，是如何管理、而非如何避免潜在利益冲突发生。利益冲突与角色冲突普遍存在于市场中，在社会上亦如此。即使专业人员采取明智做法尽量避免利益冲突的发生，但我们大多数人总会于某些情况下，面临此等冲突

所带来的挑战。当你遇上这情况时，无论它的挑战看来多复杂或隐晦不明，令人难以掌握，我们所持守的基本原则其实相当直截了当—遇有涉及个人利益或利益冲突的情况，以致我们的判断力可能（或让人感到可能）变得模糊时，最重要的是抱持开诚布公的态度。



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
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- corporate social responsibility
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- risk management, and
- internal controls



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**CHARTERED
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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@ninehillsmidia.com

Q: *The workload for company secretaries seems to be increasing – how will utilising a board portal simplify and streamline our processes?*

A: The role and level of responsibility held by company secretaries in Hong Kong is ever increasing. Similarly the workload of boards and board committees has also been increasing in recent years. One piece of evidence of this is quite literally the number of pages which directors are required to review in a year, and the responsibility for producing these additional pages falls, of course, to the company secretary department. Moreover, many companies have also seen an increase in the geographic distribution of directors, both in terms of their primary location and travel schedules.

Against this background there are a number of ways in which a board portal can assist company secretaries to simplify and streamline their processes. A board portal provides company secretaries with the option to go 'paperless', that is, to remove the burden of having to prepare and distribute many hundreds of pages to directors who frequently travel or who live abroad.

A board book creation wizard is used to link each of the topics for discussion to the agenda. The board book is effectively put in order through the use of this wizard, replacing the need to sort pages and insert tabs into the physical board book. Documents prepared by the company secretariat or provided by business units are added to the board book by a simple drag and drop upload. The links already added to the agenda mean that the pages automatically fall into the correct order. The files uploaded to create the board book can be in Word, Excel, PowerPoint or PDF – just as with the creation of a physical board book.

BoardVantage

When agenda items are provided late, or last-minute changes are made, one-click updates allow the company secretary to update the board book easily and distribute those changes to directors regardless of the time of day or the location of directors.

Given the sensitive nature of materials included in a board book, company secretaries must always be conscious of ensuring that information is only shared with the appropriate persons. An example of this could be where a conflict of interest has arisen and a director must be recused from a particular discussion. As the board portal utilises permission-driven access, effectively allowing or disallowing access down to the individual document level, the company secretary can easily manage conflicts of interest or other situations where document access needs to be limited.

Pervasive branding of the board portal provides users with a sense that the application is tailor-made for their board or board committee, assisting with the transition from paper to paperless. As the company moves forward with a paperless solution, the board portal can be utilised for unlimited storage of archive materials. Both company secretaries and directors can then use the archive to help prepare for future meetings and as a record of past meetings.

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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@ninehillsmidia.com.

For information about how your company can join our expert panel, please contact Paul Davis at: paul@ninehillsmidia.com, or telephone: (852) 3796 3060.



A confusion of hats?

What does the new Companies Ordinance have to say about conflicts of interest? What should you do if your chairman has declared an interest in a matter under consideration by the board? Does the practice of 'wearing different hats', as a method of segregating an individual's various roles, actually work? This month *CSj* looks at the management of conflicts of interest and conflicts of roles.

The listing rules and Companies Ordinance in Hong Kong have a lot to say about conflicts of interest and connected transactions. This makes a lot of sense in a relatively small jurisdiction where most companies are majority shareholder controlled. Given this highly developed regulatory regime, the management of conflicts of interest is firmly entrenched in the company secretary's compliance function. Peter Greenwood FCIS FCS, former Company Secretary of CLP Holdings, points out that company secretaries can play a central role in ensuring that this area of risk is effectively addressed and managed.

'No-one should be better placed than the company secretary, by virtue of his/her role, training, professionalism and objectivity, to promote the effective management of conflicts of interest. An effective and trusting partnership between the company secretary and the chairman is the bedrock of conflicts management,' he says.

But in addition to assisting in the management of conflicts of interest, company secretaries also need to keep tabs on a related area of risk – conflicts of roles. This is particularly relevant for the company secretary where he or she

doubles up in another official capacity within the same company.

Conflicts of interest

Step one: disclosure

The principle for managing conflicts of interest is relatively simple. 'Fortunately, conflicts of interest are extremely sensitive to light – in this case in the form of transparency and disclosure,' says Greenwood.

With the implementation of the new Companies Ordinance (Cap 622) last month, the statutory controls in this area have just been upgraded. In particular, Cap 622 widens the application of the provisions on the disclosure of directors' interests. Directors now have an obligation under the Companies Ordinance to declare the nature and extent of their interests in any transaction, arrangement or contract to the board. These disclosure requirements have also been extended to shadow directors.

In practice there may be some doubt, however, as to when this disclosure obligation is triggered. Sometimes conflicts of interest are glaringly obvious: directors awarding a lucrative contract to a company owned by a connected party, or favouring a close friend or relative in a recruitment exercise, for example.

But conflicts of interest do not always come so conveniently caparisoned with flashing red lights and warning bells. A conflict of interest can arise whenever the private interests of individuals conflict with their fiduciary duties – clearly not an uncommon scenario.

Highlights

- if you are in doubt as to whether the statutory obligation to disclose a potential conflict of interest has been triggered, the best policy is to disclose anyway
- an effective and trusting partnership between the company secretary and the chairman is the bedrock of conflicts management
- the code provision (A.2.1) in Hong Kong's Corporate Governance Code calling for the chief executive and chairman roles to be performed by separate individuals has the lowest compliance rate of the whole code

The ICAC's *Good Governance and Internal Control – A Corruption Prevention Guide for Listed Companies* points out that it is impossible to list all of the situations that would trigger a disclosure obligation; 'directors are themselves the best judge of their circumstances which warrant declaration at board meetings,' the guide says.

Ultimately, an individual's personal ethics play a central role in conflicts management. 'Conflicts of interest are highly possible in an environment where there is a predominance of large family or state ownership,' said one respondent to this article, 'but a strong moral compass will mitigate such conflicts. Absent that, a good grounding on the duties of directors coupled by adequate enforcement would be the absolute minimum. Thus a "carrot and stick" approach may be necessary. The new provisions on directors' standard of care in the Companies Ordinance should be helpful in this regard although much depends on the judicial interpretation when implemented.'

If you are in doubt as to whether the statutory obligation to disclose has been triggered, Greenwood believes, the best policy is to disclose anyway. 'As soon as you think you might have a conflict, you do have one and you should disclose early and fully. In practice, there is rarely, if ever, a substantive downside to disclosing a conflict of interest (and recusal from board discussion on the conflicted issue). And this will always be outweighed by the material risks of non-disclosure,' he says.

Step two: recusal

It is important to bear in mind that disclosure of a conflict of interest is only step one in the process. Jeffrey Kaplan, Partner of US law firm Kaplan & Walker LLP,

pointed out in the February 2013 edition of this journal (see 'Behavioural ethics', page 9) that disclosure of a conflict of interest may not always have the mitigating effect you might expect. Firstly, those who disclose conflicts may feel that they are therefore released from the moral restraint that the conflict should impose on them. Secondly, those to whom a conflict has been disclosed may feel the need to accept the conflict out of concern that they would otherwise be suggesting immorality on the part of the conflicted party.

The all-important second step in the process is recusal of the conflicted director from any board discussion and voting on the conflicted issue. This is often where the company secretary becomes closely involved in the process since it requires some key adjustments to the usual board meeting practices. The ICAC's *Good Governance and Internal Control – A Corruption Prevention Guide for Listed Companies* has some useful recommendations in this area. Companies should:

- ensure directors abstain from voting for resolutions in which they or any of their associates have a material interest
- ensure that, if the chairman has declared an interest in a matter under consideration, the chairmanship is temporarily taken over by a vice-chairman
- ensure that, if a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, a physical board meeting is held – the matter should not be dealt with by way of circulation of resolutions

- withhold circulation of the relevant papers to a director who has a declared conflict of interest, and
- record all cases of declaration of interest in the minutes of the meeting.

Regarding the last point above, company secretaries often have the task of maintaining a confidential register of directors' declared interests.

In addition to these administrative tasks, company secretaries also need to consider conflicts of interest in their advisory role. This will usually involve:

- advising the board on conflicts of interest risks
- keeping directors informed of the statutory and internal requirements regarding conflicts of interest (at induction and on an ongoing basis), and
- ensuring directors are kept informed about the effectiveness of the company's internal controls and any breaches of the company's code of conduct/ ethics in this area.

Step three: disinterested shareholders' approval

Where corporate actions are involved, companies need to consider this third stage in the management of conflicts of interest and this is another area where the statutory requirements have been tightened by the new Companies Ordinance. Cap 622 attempts to close a number of loopholes in the old Companies Ordinance (Cap 32) relating to shareholder approval of corporate actions where connected parties and potential conflicts of interest are involved.



“
as soon as you think you
might have a conflict,
you do have one
”

For example, Cap 622 now requires disinterested shareholders' approval for many such corporate actions of public companies and their subsidiaries. The old Companies Ordinance (Cap 32) required shareholders' approval, but where the directors proposing, and the shareholders approving, such transactions were one and the same, as was the case in some majority shareholder controlled companies, such an 'approval' process was in form only.

Conflicts of roles

The statutory and regulatory requirements relating to conflicts of interest tend to focus on directors, but the underlying principles of transparency and recusal should be applicable to all employees – company secretaries included. A related area of risk – conflicts of roles – is particularly relevant for the company secretary where he or she doubles up in another official capacity within the same company.

'Segregation of duties of similar key positions in a company, such as internal auditor, company secretary, chief financial

officer, treasurer and so on, is one of the methods to manage role conflicts effectively. This will ensure an effective check and balance within the company,' says Ken Chan, Company Secretary and General Manager of the Board Office, China Aerospace International Holdings Ltd.

It used to be relatively common in Hong Kong for company secretaries to undertake dual executive roles, often doubling up as the chief financial officer, but the workload of a company secretary is now so extensive, and has increased so significantly in recent years, that it has become very difficult for individuals to combine the company secretary role with another senior executive position.

'On balance it is difficult to see how a company secretary's role can be genuinely and effectively combined with any senior executive role,' says Greenwood, 'other than one which has some functional link, such as head of the legal department.'

There has been an increasing trend, however, for company secretaries to join their own board as a director and this

arrangement can result in role conflicts. While both the director and the company secretary roles owe the same fiduciary duties to the company as a whole, the roles are far from being identical. In particular, will a dual director/ company secretary be in a position to provide independent advice to the board?

'There is definitely a conflict between the company secretary's role in serving the board and the chairman, including through the provision of objective and independent advice on all aspects of governance, and his or her role as a director with individual rights and responsibilities,' says Greenwood.

He adds, however, that this type of conflict exists for every executive who also serves as a director and is particularly acute for any executive, such as the company secretary or chief financial officer, who reports to the chief executive. He believes that the only way the company secretary can manage this is through an excellent working relationship with the chief executive and chairman.

'You can scarcely disagree with your own boss at a board meeting, but as a director you are entitled, possibly obliged, to offer your own view,' he says. 'It helps of course if there is an awareness on the part of the chief executive that, in the last resort, the company secretary's highest duty is to the chairman and the board.'

Does 'wearing different hats' work?

Conflicts of roles are difficult to avoid, particularly in smaller companies with fewer resources, and the most common method individuals in this situation adopt is to 'wear different hats' depending on which function they are performing. Respondents to this article point out that the success of this gambit relies on the ability and willingness of others, be they executive or board colleagues, to recognise and respect the differences between the two functions.

'The role conflict cannot be solved unless there is an awareness of the importance of corporate governance by each of the directors,' says Ken Chan. He adds that there can be advantages where company

secretaries join their own board as a director. 'If company secretaries act as directors simultaneously, it will enhance their seniority in the company and may strengthen the corporate governance of the entire company.'

Another relatively common practice in Hong Kong is for companies to have a dual chief executive/ chairman. While this practice is now discouraged and sometimes prohibited in jurisdictions outside the US, it is still not uncommon. This is certainly true in Hong Kong – the code provision (A.2.1) in Hong Kong's Corporate Governance Code calling for the chief executive and chairman roles to be performed by separate individuals has the lowest compliance rate of the whole code.

According to the *Analysis of Corporate Governance Practice Disclosure in 2012 Annual Reports* issued by Hong Kong Exchanges and Clearing in November 2013, the most common reason listed companies gave for non-compliance with code provision A.2.1 was that one person performing the roles of both chairman

and chief executive can provide strong and consistent leadership, and can enable more effective planning and better execution of long-term strategies.

Respondents to this article point out, however, that having a separate chairman provides independent oversight of the chief executive. Having a dual chief executive/ chairman, Ken Chan says, deprives the company of an important check and balance on the chief executive's power.

'The root of the issue is the inherent conflict between the board's vital role in overseeing management and the chief executive's role in leading, speaking for and embodying that management,' says Greenwood. 'Solutions such as having a senior independent director are palliative or cosmetic, given the scale of that conflict,' he adds.

Kieran Colvert

Editor, CSj

The ICAC's 'Good Governance and Internal Control – A Corruption Prevention Guide for Listed Companies' is available online at: www.icac.org.hk.

The 'Analysis of Corporate Governance Practice Disclosure in 2012 Annual Reports' issued by Hong Kong Exchanges and Clearing (HKEx) in November 2013 is available on the HKEx website: www.hkex.com.hk.

Jeffrey Kaplan's CSj article can be found online at: <http://csj.hkics.org.hk> (see the cover story 'Behavioural ethics' in the February 2013 edition).

Managing conflicts of interest: checklist

- Do you have effective internal controls for the management of conflicts of interest?
- Are conflicts of interest dealt with by your company's code of conduct/ ethics?
- Does your company offer training to ensure that employees and directors understand the issues and follow procedures?
- Does your company have a designated officer tasked with managing conflicts of interest and to whom employees and directors can address queries?
- Does your company take effective disciplinary action in cases of non-compliance?

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Rewriting Hong Kong's companies law

Gordon Jones FCIS FCS, former Registrar of Companies, gives *CSj* a behind-the-scenes account of the most ambitious and complex law reform process in Hong Kong's recent history – the Companies Ordinance rewrite.

Thanks for giving us this interview, what are your feelings now that the new Companies Ordinance has been implemented?

'An enormous sense of relief and great personal satisfaction because, as you know, I was very heavily involved in the rewrite exercise from the beginning. There is also a rather nice symmetry to the fact that it has been implemented in 2014 because the Ermanno Pascutto consultancy study of the Companies Ordinance, which was the genesis of the rewrite exercise, was commissioned in 1994. So it has been exactly 20 years between the time when a rewrite was first suggested and the implementation of the new Companies Ordinance. The current rewrite exercise was launched in 2006 and has taken eight years, but there was a very considerable amount of reform work before that over the previous 12 years which should be acknowledged.'

Do you think Hong Kong's law reform process is too slow – particularly in contrast to the speed with which Mainland China has brought in legislative reforms?

'The Mainland can implement reform quickly because they have a very authoritarian government which can push things through very quickly. This is why, in a number of corporate governance areas, the Mainland is more advanced than Hong Kong. But, at the end of the day, I think it is better to consult the market and the public who will be affected by the proposed reforms before trying to push the legislation through the legislature. If the market and the public are not happy with what is being proposed, you are going to have a problem on your hands.'

We were criticised on a number of occasions on the basis that the reform process was taking far too long – this was a constant refrain whenever I attended LegCo bills committee meetings on Company Ordinance amendments – but you need to break the

20 years down into various component parts to get the process into perspective.

Ermanno Pascutto's study lasted for about three years from 1994 to 1997. When his report came out, many of the recommendations were not widely welcomed. As a result, the Standing Committee on Company Law Reform initiated its own review exercise from 1997 to 2000 which provided the blueprint for a series of major companies amendment bills in 2002 and 2003.

The government grouped the Standing Committee's proposals into four phases. The first of these comprised a number of

Highlights

- while the Companies Ordinance rewrite exercise was launched in 2006, a huge amount of reform work had been undertaken before that dating back to the consultancy study commissioned in 1994
- despite the slow pace of Hong Kong's legislative reform process, it is better to consult the market before trying to push legislation through the legislature
- all listed companies, irrespective of their domicile, will have to follow the significant provisions of the Companies Ordinance since they will be repeated in the listing rules – there may be an issue, however, with enforcement since the listing rules are not a statutory document

stand-alone and largely unrelated amendments which could be incorporated in an amendment bill and dealt with fairly quickly. The second phase concerned corporate governance reforms. The third phase concerned other major reforms such as the issue of par value and the investigation and punishment provisions which would require further research and consultation. Finally, the fourth phase included structural reforms to the whole ordinance including a rewrite.

We covered the first phase reform in the Companies (Amendment) Ordinance 2003. The second phase amendments were subsumed by the government's own corporate governance review which was launched in 2000. Many of the reforms which came out of that review, such as strengthening shareholders' remedies, were the subject of the Companies (Amendment) Ordinance 2004.

In 2002, the government and the then Hong Kong Society of Accountants (HKSA) established a Joint Working Group to review the accounting and auditing requirements of the Companies Ordinance which subsumed the recommendations on financial reporting that had emerged from the Corporate Governance Review and the work of the HKSA's working party, which was reviewing the 10th Schedule of the Companies Ordinance.

Parallel with all these developments in Hong Kong, the UK was having a major review of its own Companies Act which, in many ways, provided the basis for Hong Kong's Companies Ordinance. In view of this, it was considered that it made sense to capitalise on those efforts wherever appropriate. That is not to say that we should blindly copy what the UK did, but that it would not be very sensible to reinvent the wheel. So the decision was taken in the course of 2005 that we should have a major rewrite of the Companies Ordinance which would, of course, sweep up all the other recommendations of the Standing Committee's review.

You mention the fact that the UK Companies Act was a model for Hong Kong's Companies Ordinance – was PRC companies law also looked at as a potential model?

'It would have been inappropriate for us to adopt Chinese company law since it comes from a very different judicial tradition. China's company law is based on German civil law which is very unlike British common law since it sets out broad principles which are interpreted by the courts. The common law is far more detailed as it draws on centuries of case law. Having said this, we did keep an eye, of course, on what was happening

A 20-year history

1994 – The Hong Kong government commissions a consultancy study to conduct a comprehensive review of the Companies Ordinance.

1997 – The consultants deliver their *Consultancy Report of the Review of the Hong Kong Companies Ordinance*.

2000 – The Standing Committee on Company Law Reform publishes its report on the *Consultancy Report of the Review of the Hong Kong Companies Ordinance*. The government commissions the Standing Committee to undertake a wide-ranging Corporate Governance Review.

2001 – The Standing Committee publishes a consultation paper on proposals made in phase one of its Corporate Governance Review.

2002 – The Joint Working Group is formed by the government and the then Hong Kong Society of Accountants to look at the accounting and auditing provisions of the Companies Ordinance.

2003 – The Standing Committee publishes a consultation paper on proposals made in phase two of its Corporate Governance Review. LegCo passes the Companies (Amendment) Bill 2002.

2004 – LegCo passes the Companies (Amendment) Bill 2003.

2006 – The Companies Ordinance rewrite is launched. The Companies Bill Team and Advisory Groups 1–4 are established.

2010 – The draft Companies Bill is submitted for public consultation.

2011 – The Companies Bill is introduced into LegCo.

2012 – LegCo passes the Companies Bill.

2014 – The new Companies Ordinance is implemented.

The Hong Kong Institute of Chartered Secretaries

15th Annual Corporate and Regulatory Update 2014

Date:	Thursday, 5 June 2014
Time:	8.45 a.m. - 6.20 p.m.
Venue:	Hall 5G, Hong Kong Convention and Exhibition Centre
Co-sponsors & speakers from:	<ul style="list-style-type: none">• Companies Registry• Official Receiver's Office• Securities and Futures Commission• The Hong Kong Exchanges and Clearing Limited

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Ms Kelly Chow at 2233 9321 or event@hkics.org.hk





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the philosophy behind setting up the advisory groups was to ensure there would be the widest possible representation of different sectors and as diverse a spectrum of views as possible in the discussions
”

on the Mainland, and they are ahead of us in several areas of corporate governance, at least on paper.’

Can we turn to your own involvement in the Companies Ordinance rewrite?

‘I became Registrar of Companies in 1993, so I was involved in the whole review process from its genesis in the Pascutto report through to the rewrite exercise itself.

One of the things that the Pascutto report highlighted was the fact that, for such a major reform to proceed, you need to have a dedicated team in place. As the Standing Committee comprised very busy professionals meeting once a month, it was in no position to undertake a reform of that size.

I was closely involved in the discussions with the Financial Services and Treasury Bureau (FSTB) in the course of 2005 and 2006 on drawing up the *modus operandi* of the Companies Ordinance rewrite exercise. I drew up the master-plan for the rewrite covering issues such as how we were going to undertake the rewrite, the staff and accommodation resources required, the formation of advisory groups and many other practical aspects such as the expansion of the professional legal literature in the Companies Registry’s law library.

The key proposal was to set up a Companies Bill Team, comprising 14 administrative officers and lawyers, drawn from the FSTB, Companies Registry and Department of Justice, most of whom

would be accommodated in the Companies Registry. The team would be formed through the redeployment of existing posts and the creation of new posts. In the event, we had some difficulties persuading LegCo’s Finance Committee of the need for some of the new directorate-level posts but were able to overcome these objections.

The Companies Bill Team was headed by John Leung Chi-Yan [who was Deputy Secretary of the FSTB at the time]. Its remit was to prepare policy papers covering a very wide spectrum of issues in the Companies Ordinance, in particular looking at reforms in the UK, Singapore and Australia, but also in the US, Canada and other jurisdictions as appropriate. After analysing the policy and legal aspects of all these issues, the papers made recommendations on possible options for amending the Companies Ordinance which were then considered by the relevant advisory group.

We decided to form four advisory groups, each tasked with looking at specific areas of companies law. These new advisory groups were in addition to the existing Joint Working Group which was reviewing the accounting and auditing provisions of the Companies Ordinance.

The philosophy behind setting up the advisory groups was to ensure there would be the widest possible representation of different sectors and as diverse a spectrum of views as possible in the discussions. I was a member of each of the advisory groups and the Joint Working Group.

After the advisory groups had decided which policy recommendations should be adopted, their recommendations went to the Standing Committee for approval. Consequently, by the end of this process, we had a fairly good idea of how the new Companies Ordinance would look. These policy recommendations formed the basis for detailed drafting instructions which were then sent to the Law Draftsman's Office in the Department of Justice for drafting the Companies Bill.

Are you happy with the new companies law which has emerged from this process – do you think the reforms it introduces go far enough?

'I believe that what we have now is a great improvement on the old Companies Ordinance in terms of structure and content. As regards the structure, we did not consider the prospectus and insolvency provisions as the former will be transferred at some stage to the Securities and Futures Ordinance while the latter will be subject to a separate review. For the time being, these provisions, along with several other parts which do not form part of 'core' company law and, in practice, are largely administered by the Official Receiver's Office, remain in the old Companies Ordinance. Looking into the future, as the law governing

insolvency is very different from that governing live companies, I would be opposed to reincorporating the insolvency provisions back into the new Companies Ordinance at a later date once they have been reformed. They should be the subject of a separate statutory vehicle.

However, there are quite a few areas where we could and should have gone further. We codified directors' duties of care and skill, but I don't see that there would have been a problem with enacting directors' core fiduciary duties into statutory law. However, the government consulted the public on this in 2008 and, given the diversity of views expressed, the feeling in the FSTB was that it would not be appropriate to codify them.

The UK enacted a new statutory duty for directors in the Companies Act 2006 to promote the success of the company for the benefit of the shareholders as a whole under the 'enlightened shareholder principle'. This is a completely new fiduciary duty and a potentially very controversial area of law as it means that directors have to take account of a very wide spectrum of stakeholder interests. Subsequent to the government's public consultation on codifying directors' duties, the published

The advisory groups

- Advisory Group 1, chaired by David Stannard, looked at the provisions relating to arrangements, takeovers and mergers; share capital and debentures; distribution of profits and assets; and registration of charges.
- Advisory Group 2, chaired by Mike Scales, looked at the provisions relating to beneficial shareholders' rights; electronic communications; shareholder voting and proxies; registration provisions and the powers of the Registrar of Companies; company formation and the re-registration of companies; deregistration and striking-off; company names; company administration and meetings; and table A and other tables.
- Advisory Group 3, chaired by Patrick Wong, looked at the provisions relating to directors' duties, directors' conflicts of interest, directors' and auditors' liabilities, indemnities and insurance, directors' residential addresses; shadow directors; and the appointment of, and miscellaneous provisions regarding, directors and secretaries.
- Advisory Group 4, chaired by Godfrey Lam, looked at the provisions relating to inspections, investigations, offences and punishments.
- The Joint Working Group, chaired by Roger Best, looked at the accounting and auditing provisions.

A full list of the members of these advisory groups, together with members of the Standing Committee on Company Law Reform (current and for the period of the Companies Ordinance rewrite), is available on the Companies Registry website: www.cr.gov.hk (see 'New Companies Ordinance/ Publications and Press Releases/ Books and Papers/ Annex 1').

consultation conclusions stated that about half of the respondents agreed with the proposal to codify directors' duties with the exception of the new duty to promote the company's success, although a 'slightly larger' number disagreed.

Unfortunately, the controversial new duty may have, arguably, played a role in influencing the final decision not to codify the other fiduciary duties. I don't see that there would have been a problem with enacting directors' core fiduciary duties, like avoiding conflicts of interest and acting in the best interests of the company, into statute law as they have been settled law for a very long time as the result of well-established common law cases. Furthermore, if the formulation in the Companies Act 2006 had been adopted, these statutory duties would be interpreted and applied in the same way as the equivalent common law rules and equitable principles which they replaced. This is an area where the government could and should have shown a greater degree of firmness and direction.

From the corporate governance angle, other significant omissions from the new Companies Ordinance include the statutory disclosure of individual directors' remuneration and provisions regarding members' approval of directors' substantial property transactions and giving shareholders the ability to inspect directors' service contracts, although these had been endorsed by the Joint Working Group, the relevant advisory group and the Standing Committee. The latter two provisions were deleted at a very late stage in the proceedings after the new Companies Bill had been published in the government Gazette, but the reasons for this eleventh hour *volte-face* are not known.

One of the reforms which has been generating a lot of interest has been the requirement for larger companies to include a 'business review' in their annual reports – could you say a few words about that?

'Yes, this was one of the things which I was really pushing very hard for. There were members of the Standing Committee who felt that it was a bridge too far, but I pointed out that all major commercial jurisdictions were enacting corporate social responsibility disclosures in their company law. I argued that we had to make a similar move in Hong Kong or we would be left very badly behind. So I'm very glad we've got that on the statute books.'

How much influence do you think the new Companies Ordinance will actually have – particularly since the majority of our listed companies are incorporated overseas?

'Over 80 percent of Hong Kong's listed companies are not subject

to the Hong Kong Companies Ordinance and are regulated primarily through the listing rules. However, we should bear in mind that the listing rules repeat very large parts of the Companies Ordinance with which all listed companies are expected to comply. The problem arises because the listing rules are not a statutory document so there are no sanctions. This is why the whole issue of statutory backing is so important and at the moment, as you know, the only listing rules that have statutory backing are those on the disclosure of price-sensitive information.

The previous recommendations in 2005, that were at that time widely welcomed by the market, to extend statutory backing to financial disclosure and directors' connected transactions as well as price-sensitive information, seem to have vanished into a black hole. There was a significant delay of five years between the recommendations in 2005 and the very watered-down proposals in 2011 which limited statutory backing to the disclosure of price-sensitive information.

However, we should bear in mind that listed companies comprise a very small proportion of the companies incorporated in Hong Kong. The new Companies Ordinance will apply to private companies, guarantee companies, unlisted public companies and about 20 percent of the listed companies. Moreover, as the new provisions in the new Companies Ordinance will be repeated, where appropriate, in the listing rules, all listed companies, irrespective of their domicile, will have to follow these provisions such as those on financial reporting. There will, however, be an issue if a non-Hong Kong incorporated listed company fails to comply with one of these provisions.'

How do you think companies law and regulation will change in the years ahead?

'We are in a very globalised commercial environment and there will inevitably be increasing pressure for company laws to converge. Ultimately, of course, there cannot be complete convergence because the economic, regulatory and social conditions in each jurisdiction are different, but in areas such as financial reporting, audit regulation, corporate social responsibility and sustainability reporting, it is desirable and should be possible to achieve a high degree of convergence between developed jurisdictions.'

Look out for our interview with the current Registrar of Companies Ada Chung in next month's journal.



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The new Companies Ordinance: your guide

Ada Chung, Registrar of Companies, and Karen Ho, Deputy Principal Solicitor, Companies Ordinance Rewrite Team, Companies Registry, continue their series of articles looking at the major changes introduced by the new Companies Ordinance (Cap 622).

In last month's CSj, we highlighted the major changes introduced by the new Companies Ordinance (NCO) to enhance corporate governance and modernise the law. This month we take a look at the major changes introduced to facilitate business and ensure better regulation.

Facilitating business

Streamlining procedures

With the aim of facilitating business certain procedures have been streamlined.

An alternative court-free procedure based on the solvency test has been introduced for reduction of capital. This is faster and cheaper than the procedure under the old Companies Ordinance (Cap 32), which involved filing an application to the court. Under the NCO, all companies, not just private companies, are allowed to fund share buy-backs out of capital subject to the solvency test, and the restrictions on a company or any of its subsidiaries providing financial assistance for the purchase of shares in the company are streamlined and relaxed. All types of companies may provide financial assistance, provided that the solvency test and one of the three procedures set out in the NCO are complied with.

A uniform solvency test has been introduced. A company can satisfy the solvency test in relation to a transaction if, immediately after the transaction there will be no ground upon which the company would default on debts; and either:

- i. if it is intended to commence winding up within 12 months, the company will be able to pay its debts in full within 12 months of the winding up, or

- ii. in any other case, the company will be able to pay its debts as they fall due during the 12 months after the transaction.

Every company was required to hold AGMs under the old Companies Ordinance.

However, a company is not required to hold an AGM if everything required to be done at the meeting is done by written resolutions and a copy of the documents which would be required to be laid before the meeting is provided to each member. To simplify the decision-making process, under the NCO, apart from retaining the written resolution procedure, a single member company is not required to hold AGMs and a company may dispense with

the requirement to hold AGMs by passing a resolution of all members. In such a case, the financial statements and reports which would otherwise be required to be laid before an AGM will need to be sent to members. To safeguard the interests of members, any member may request the company to convene an AGM. Members may also revoke the resolution to dispense with AGMs by passing an ordinary resolution to that effect.

Under the old Companies Ordinance, companies could only amalgamate with court sanction. A new court-free regime for amalgamations is introduced in the NCO. The new regime is confined to amalgamations of wholly-owned

Highlights

The new Companies Ordinance has brought in a number of measures designed to:

- facilitate business, including:
 - o simplified reporting has been extended to a greater number of companies
 - o a single member company is not required to hold AGMs and a company may dispense with the requirement to hold AGMs by passing a resolution of all members
 - o general meetings can be held at more than one location using electronic technology
 - o a court-free regime has been introduced for a number of corporate actions (such as the reduction of capital and amalgamations)
- ensure better regulation, including:
 - o a new power of enquiry is given to the Registrar of Companies to obtain documents or information where there is reason to believe any conduct relating to an offence of providing false or misleading statements has taken place
 - o the investigatory powers of inspectors appointed to investigate the affairs of companies have been enhanced
 - o the threshold for breach of any provision of the new Companies Ordinance by an officer of the company has been lowered through the introduction of a new definition of 'responsible person'

intra-group companies where minority shareholders' interests would normally not be an issue. Under the new regime, an amalgamation may either be vertical (that is, between the holding company and one or more of its wholly-owned subsidiaries), or horizontal (that is, between two or more subsidiaries of the same holding company).

Where specified conditions are met, the NCO introduces a new administrative restoration procedure for a company which has been struck off by the Registrar of Companies without the need for recourse to the court.

Facilitating simplified reporting

Previously, a private company (not being a member of a corporate group) could, with the written agreement of all its shareholders, prepare simplified accounts and directors' reports. Under the NCO, simplified reporting is extended to more companies. The types of companies that are qualified for simplified reporting, or fall within the reporting exemption, are:

- a small private company/ holding company of a group of small private companies which meets two of the following conditions in a financial year:
 - o total revenue/ aggregate total revenue not exceeding HK\$100 million
 - o total assets/ aggregate total assets not exceeding HK\$100 million
 - o employees/ aggregate employees not exceeding 100
- an eligible private company/ holding company of a group of eligible private

companies which meets a higher size criteria (that is two of the following conditions) in a financial year:

- o total revenue/ aggregate total revenue not exceeding HK\$200 million
- o total assets/ aggregate total assets not exceeding HK\$200 million
- o employees/ aggregate employees not more than 100

provided that there is 75 percent approval from members and no objection from the remaining members.

- A small guarantee company/ holding company of a group of small guarantee companies with total revenue/ aggregate total revenue not exceeding HK\$25 million in a financial year.
- The exemption under the old Companies Ordinance is also retained, namely, a private company (not being a member of a corporate group) with unanimous members' written agreement may opt for simplified reporting.

Facilitating business operations

The old Companies Ordinance stipulated that every company shall have a common seal with the company name engraved in legible characters. Further, having an official seal for use outside Hong Kong was subject to restrictive requirements. Under the NCO, the mode of execution of documents is simplified by making the use of a common seal optional and relaxing the requirements to have an official seal for use abroad.

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under the new
Companies Ordinance
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is extended to more
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To keep up with technological developments, the NCO permits a general meeting to be held at more than one location using electronic technology. A company may set out rules and procedures for holding such a meeting in its articles.

The NCO sets out the rules governing communications that are authorised or required under the NCO to be made to or by companies. For instance, such communication in electronic form to or by a company can be made only with the recipient's consent or deemed consent. Existing companies may wish to amend their articles, instruments creating debentures or any other agreements, as appropriate, to specify the period for the deemed receipt of documents or information in electronic form or communicated by means of the company's website. If the period is not so specified, the period is 48 hours pursuant to the NCO except where the contrary is proved.

Ensuring better regulation

To ensure that the NCO enhances regulation, measures have been introduced on various fronts.



Improving the enforcement regime

To improve enforcement, a new power of enquiry is given to the Registrar of Companies to obtain documents or information where there is reason to believe any conduct relating to an offence of providing false or misleading statements has taken place. The investigatory powers of inspectors appointed to investigate the affairs of companies are also enhanced.

The threshold for breach of any provision of the NCO by an officer of the company has been lowered through the introduction of a new definition of 'responsible person', which targets intentional and reckless conduct other than willful conduct as under the old Companies Ordinance.

To encourage compliance and to optimise the use of judicial resources, the NCO introduces a new power for the Registrar of Companies to compound specified offences as set out in Schedule 7 to the NCO. Compoundable offences are generally confined to straightforward and minor regulatory offences committed by

companies. In compounding an offence, the Registrar will give a notice in writing to a company in breach to offer it an opportunity to rectify the default. If the company pays the compounding fee and complies with the terms of the notice, no prosecution will be initiated by the Registrar for that offence.

Companies limited by guarantee

Under the NCO, companies limited by guarantee come under a specified category of companies and they are required to comply with the following requirements:

- at least two directors are required
- no corporate director is allowed, and
- the annual returns must be delivered together with certified copies of the financial statements, directors' reports and auditor's reports.

An escalating scale of annual registration fee is introduced for the filing of annual returns by companies limited by guarantee to encourage compliance

with statutory filing requirements. In the case of late filing, substantially higher registration fees are payable. The escalating fee scale is set out in the Companies (Fees) Regulation (Cap 622K) and is the same as the one applicable to private companies.

Clarifying the rules on disclosure of company names and liability status

The opportunity has also been taken to clarify the rules on disclosure of company names. The types of company documents on which the registered name and liability status are to be stated remain the same as those set out in the old Companies Ordinance. Unofficial publications of a company will not be covered. The NCO clarifies that the disclosure rules apply to electronic communications and any website of the company. The requirement under the old Companies Ordinance to paint or affix the company name on the outside of every office or place in which the company's business is carried on has been relaxed. Under the NCO, a company would have complied with the requirement if it displays its registered name and liability status at the registered

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the threshold for breach of any provision of the new Companies Ordinance by an officer of the company has been lowered through the introduction of a new definition of ‘responsible person’
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office and every business venue, and the company's name is so positioned that it can be easily seen by any visitor to the premises. The new requirement provides flexibility and allows a company to display its registered name either inside or outside the registered office and business venue. In addition, the requirement only applies to business venues which are open to the public.

Improving the registration of charges

To improve transparency, the period for submitting charges for registration has been shortened from five weeks to one month. Further, a certified copy of the instrument documenting the charge will have to be filed and registered for public search. Third parties will be deemed to have constructive notice of the terms of the charge as registered.

Ensuring the accuracy of information on the Companies Register

To enhance the accuracy of information on the Companies Register, the NCO clarifies the powers of the Registrar of Companies in relation to the following:

- **registration of documents** – the Registrar is expressly empowered to specify the requirements for the authentication of documents to be delivered to the Companies Registry and the manner of delivery,

and to withhold the registration of unsatisfactory documents pending further particulars, and

- **keeping of the register** – the Registrar may rectify typographical or clerical errors, make annotations, and require a company to resolve any inconsistency or provide updated information.

The NCO provides a statutory basis for applications to court for removing information from the register that is inaccurate, forged or derived from anything invalid, ineffective or done without the authorisation of the company.

A statement of capital is required to be delivered for registration whenever there is a change in a company's share capital, including an allotment of shares or a permitted alteration of share capital, to ensure the disclosure of up-to-date share capital information.

Refining the scheme for deregistration of companies

The old Companies Ordinance provided that the Registrar may, on the application of a defunct company or its director or member, and subject to certain conditions, deregister the company to the effect that the company be dissolved upon deregistration

without going through the winding-up process. To minimise any potential abuse, the NCO enhances the regulation of voluntary deregistration by imposing additional conditions to be met, that is, the applicant must confirm that the company is not a party to any legal proceedings and that neither the company nor its subsidiary has any immovable property in Hong Kong.

Ada Chung, Registrar of Companies, and Karen Ho, Deputy Principal Solicitor, Companies Ordinance Rewrite Team, Companies Registry

Ada Chung is a Fellow of the ICSA/ HKICS.

This series concludes in next month's CSj when the Registrar of Companies will further elaborate on the abolition of the memorandum of association and the abolition of the par value of shares.

For enquiries, email: cr.nco@cr.gov.hk, or call the new Companies Ordinance hotline at the Companies Registry: 3142 2822 (available from Monday to Saturday 9:00 a.m. to 8:00 p.m. excluding public holidays).

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最新
課程

行政人員文憑/證書《中國企業管理》 Executive Diploma / Executive Certificate in PRC Corporate Administration

*學生亦可報讀個別學科單元

行政人員文憑《中國企業管理》有四個單元，學員只要成功完成單元一至單元四，並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國企業管理》。學生如成功完成單元一(中國公司行政)及其他任何一個單元，並在持續評估中的個案分析取得合格成績，將獲發行政人員證書《中國企業管理》。具體如下：

單元一 中國公司行政 Corporate Administration in PRC

單元三 中國稅務 Taxation in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元四 中國公司法律 Corporate Law in PRC

行政人員文憑《中國公司治理》 Executive Diploma in PRC Corporate Governance

*學生亦可報讀個別學科單元

學生如成功完成核心單元一至三及任何一個非核心單元(即四或五)，並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國公司治理》。具體如下：

核心單元：(必須全部修讀)

單元一 中國董事會秘書實務 Corporate Secretaryship in PRC

非核心單元：(可選單元四或五)

單元四 中國稅務 Taxation in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元五 中國公司法律 Corporate Law in PRC

單元三 中國公司行政 Corporate Administration in PRC

中國稅務

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上課時間及地點	<p>每單元課程為期一個月</p> <p>授課時間：4堂，每堂6小時，共24小時</p> <p>上課時間：逢週六或日上課一堂，下午(2:00-5:00)及晚上(6:00-9:00)</p> <p>授課地點：港島區其中一所教學中心</p>
授課日期	2014年(逢週六)4月12日、4月26日、5月3日及5月10日
每單元課程學費	港幣3,850元

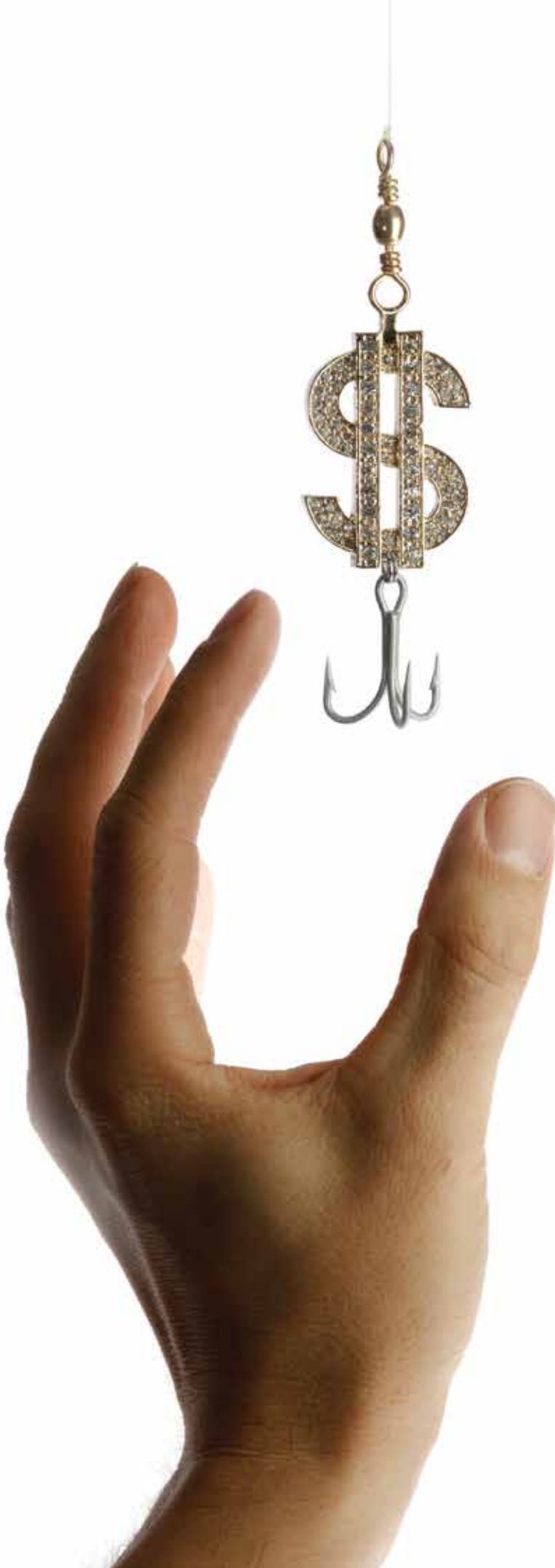
* 學生如報讀個別單元，成功完成該學科單元，並在持續評估中的個案分析取得合格成績，出席率達75%或以上，可獲發修讀證明書。

課程查詢

電話：2867 8317 (許小姐) / 2867 8481 (黃小姐) 電郵：prcprogramme@hkuspace.hku.hk

每個單元課程出席率達75%或以上之香港特許秘書公會會員，可以獲得18個ECPD學分，但有關實際可帶往下一年之ECPD學分詳情，請個別與公會聯絡。

電話：28816177 電郵：ecpd@hkics.org.hk



Fraud indicators for company secretaries

James Ratley, President and CEO of the Association of Certified Fraud Examiners, gives advice to company secretaries on understanding and identifying the red flags of potential fraud.

Over the last several years, major global economic events have brought the concept of risk to the public eye and to the forefront of many business operations worldwide. Although the particular risks threatening an organisation's success depend on many factors specific to its operations, the risk of fraud is present in every company. Additionally, the failure to effectively manage fraud risk can have significant compliance implications. Consequently, compliance professionals must be acutely aware of, and proactively dedicated to, preventing, detecting and responding to this risk.

The truth is that fraud occurs in all organisations, of every size, in every industry, and in every region; no entity is immune to this risk. The fundamental reason for this pervasiveness is that, at its core, fraud is a human problem, not an accounting problem. As long as organisations employ individuals to carry out business operations, the risk for fraud exists.

And this universal risk can be devastating if not given adequate attention. According to the Association of Certified Fraud Examiners (ACFE) 2012 *Report to the Nations on Occupational Fraud and Abuse*, the typical organisation loses an estimated five percent of its revenue to fraud each year. Like other risks, proactive

risk management initiatives are necessary to mitigate the threat and its associated potential losses. Companies whose management is least attentive to the potential for fraud are at the greatest risk of being victimised.

The four pillars of managing fraud risk

Addressing fraud risk involves a continual process of assessing the specific risks related to fraud and enacting focused initiatives to address the identified violations before, during and after their potential occurrence. Figure 1 (next page) provides an illustration of the anti-fraud initiatives that form the pillars of the fraud risk management programme.

1. Fraud risk assessment

In the simplest terms, conducting a fraud risk assessment involves looking at what

has happened in the past – both at the organisation and at other organisations – and identifying where the opportunity still exists for individuals to commit fraud. In doing so, management must consider the risk of fraud from both internal and external sources, as well as the increased risk that stems from collusion between parties. While most fraud schemes, in their essence, fall within a known spectrum, a fraud risk assessment involves identifying and evaluating the likelihood and significance of each of these risks based on the specifics of the organisation.

To be effective, the fraud risk assessment must be an ongoing process, and should be revisited frequently to ensure the organisation is remaining ahead of the risks. Further, the results of the assessment should be used to focus

Highlights

- to effectively fight fraud in their organisations, compliance professionals must understand and focus on known fraud indicators
- companies whose management is least attentive to the potential for fraud are at the greatest risk of being victimised
- implementing a hotline that provides employees and other parties with an easily accessible means of coming forward with information is among the most effective anti-fraud defences an organisation can have

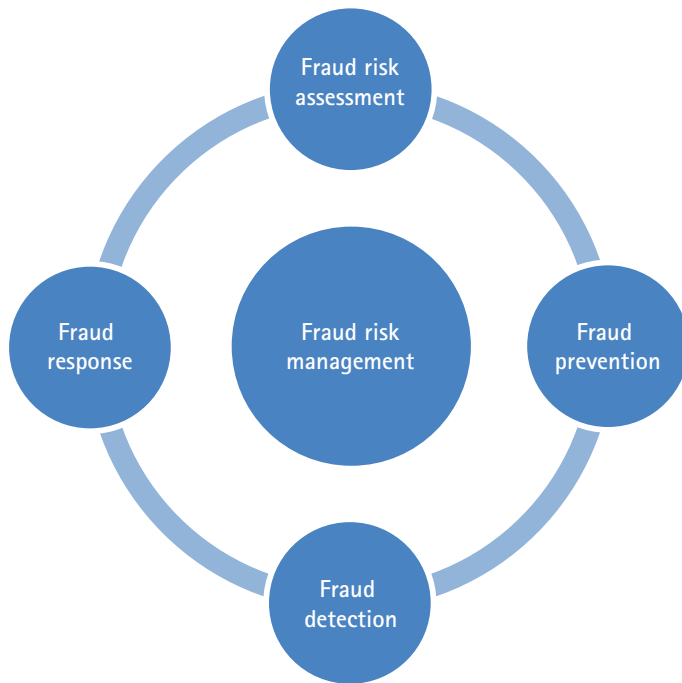


Figure 1: the four pillars of managing fraud risk

“
the truth is that
fraud occurs in all
organisations, of every
size, in every industry,
and in every region;
no entity is immune
to this risk
”

the organisation's fraud prevention and detection efforts on those areas assessed to be of the greatest risk.

2. Fraud prevention

When asked about their schemes, many fraudsters state that the most difficult violation is the first one; once they have stolen once, it becomes much easier to continue their fraudulent activity. Consequently, fraud prevention activities should be designed to stop employees from engaging in the first instance of fraud. Among the most important organisation-wide mechanisms that can effectively deter employees from engaging in fraud are:

- an ethical tone at the top and a corporate culture that clearly illustrate the value of honesty and provide employees with visible examples of leaders doing the right thing

- employee fraud awareness training programmes that educate staff members on what fraud is and what it is not; the types of behaviours that are expected of employees; how fraud hurts both the organisation and every employee on staff; common warning signs to watch for; and how to report suspected wrongdoing
- employee support programmes, such as addiction, financial and family counselling services, that help address the pressures that can lead otherwise honest individuals to resort to fraud
- background checks (where legally permissible) of potential employees to ensure that the company is hiring honest and ethical staff members

and not letting known thieves in through the front door

- mechanisms that increase the perception of detection in employees' minds – that is, tools that convince employees that, if they attempt fraud, their actions will certainly and swiftly be detected.

3. Fraud detection

Even the most robust fraud prevention programme will not curb all instances of fraud. Consequently, anti-fraud programmes must also include controls designed specifically to detect fraud as soon as possible after it has begun.

ACFE research shows that tip-offs are consistently the most common method by which frauds are uncovered. According to the ACFE 2012 *Report*

to the Nations on Occupational Fraud and Abuse, more than 40 percent of occupational frauds are detected by tip-offs, and over half of those tip-offs come from company employees. Implementing a hotline that provides employees and other parties with an easily accessible means of coming forward with information is among the most effective anti-fraud defences an organisation can have.

Additionally, an internal audit function, particularly one that undertakes periodic fraud audits that incorporate an element of surprise, can help bolster management's ability to identify potential instances of fraud. Within these audits – or as part of other proactive measures – the use of data mining and data analysis to look for anomalies and data patterns that indicate fraud or manipulation can be an excellent fraud detection tool.

Process-specific internal controls, such as segregation of duties and management review of processes and transactions, provide further layers of oversight and additional checks-and-balances that make it less likely that fraud will be able to remain undetected for long.

4. Fraud response

The fraud risk management programme must include protocols for responding when potential fraud is uncovered. The fraud response mechanism should include clear, formalised procedures to facilitate:

- investigating the allegations
- taking action against the perpetrator, such as employment sanctions, criminal prosecution, or a civil lawsuit

- recovering amounts lost through legally available means, and
- correcting any internal control deficiencies that allowed fraud to occur.

Focus on fraud indicators

While the anti-fraud controls above are a necessary part of combating fraud, addressing fraud risk involves more than just implementing internal control mechanisms. To be effective, the fraud risk management process must be anchored in understanding and identifying the red flags of potential fraud. Throughout all anti-fraud activities, as well as while conducting daily operations, compliance professionals and other involved staff members must focus on recognising fraud indicators, and those charged with managing this risk must consider such indicators while designing and implementing the fraud risk management programme components.

The red flags of fraud typically fall into the following broad categories.

Internal control weaknesses

Strong internal controls help protect against potential fraud. The opposite is also true: weak or absent controls provide potential fraudsters with the opportunity to profit personally at the expense of the organisation. Common internal control weaknesses that can indicate fraud symptoms include:

- lack of segregation of duties – the responsibilities for authorisation, custody, and recording of assets and transactions should be separated among different staff members as much as possible; the ability of an employee to perform more than one

of these functions can result in the ability to commit and conceal fraud

- lack of physical safeguards over assets, such as surveillance systems, security personnel, and restricted access to warehouses, computers, and sensitive or proprietary information
- lack of independent checks and reviews of employees' work by management and auditors
- lack of proper authorisation on documents, records and transactions
- an inadequate accounting system that lacks authority designation or enforcement, or does not create an effective audit trail of transactions, and
- the ability of management or other staff members to override existing controls.

Accounting anomalies

Accounting anomalies are unusual deviations from the standard financial recording or reporting practices, which result in irregularities in the accounting system. Examples include missing documents or transactional information, stale items on reconciliations, alterations on documents, photocopied documents when the original should be present, and increased past due accounts. Other symptoms might be ambiguous or unexplained journal entries, inaccuracies in the ledger accounts, and unexplained changes in financial statements. Such irregularities might be the result of unusual business occurrences or human error, but they could also signify fraud. Consequently, organisations should enact



initiatives to identify such anomalies for further investigation and, where appropriate, to prevent them from occurring without an appropriate level of approval.

Operational anomalies

Anomalies in the organisation's operations – particularly deviations from what would appear reasonable or strategically sound – can be a warning sign of fraud. Such anomalies include unusual relationships, procedures, and events concerning the company's operations, as well as transactions or situations involving unexpected times, places, people, amounts or frequencies. The following are some examples of operational anomalies that merit monitoring and scrutiny for potential fraud:

- insufficient capital for continuing operations
- unexpected overdrafts or declines in cash balance

- dependence on only one or two products
- frequent changes in legal counsel
- frequent changes in executive management and directors
- high employee turnover, especially in areas that have a high risk of fraud
- continuous rollover or refinancing of loans
- a compensation programme that is out of proportion to company profits
- unusual organisational structure (for example, having the internal audit department report to the finance department)
- severe obsolescence of assets that are integral to the organisation's business strategy
- recurring or significant problems with government regulators
- company assets sold under market value
- excessive number of banking accounts
- frequent changes in banking accounts
- use of several different banks, and
- significant downsizing in a healthy market.

Effective management oversight provides the foundation for monitoring the occurrence and appropriateness of such anomalies. However, staff members at all levels should be trained in the importance of raising concerns over operational irregularities. If employees know that both their supervisors and their peers are encouraged to report any suspicious

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At its core, fraud is a human problem, not an accounting problem. As long as organisations employ individuals to carry out business operations, the risk for fraud exists.
 ”

transactions or circumstances, they will be less likely to believe they can engage in such conduct without being detected.

Behavioural anomalies

The vast majority of fraudsters display some sort of behavioural symptoms of their scheme – symptoms that co-workers or supervisors might have picked up on without realising that they were connected to fraudulent actions. According to the ACFE 2012 *Report to the Nations on Occupational Fraud and Abuse*, at the time of their frauds:

- 35 percent of perpetrators are living beyond their means
- 27 percent of perpetrators are experiencing financial difficulties
- 19 percent of perpetrators have an unusually close relationship with a vendor or customer
- 18 percent of perpetrators display

control issues or are unwilling to share their job duties

- 15 percent of perpetrators are going through a divorce or experiencing other family problems
- 15 percent of perpetrators display a wheeler-dealer attitude, and
- 13 percent of perpetrators act noticeably irritable, suspicious or defensive.

It is important to note that the presence of these behaviours does not, in itself, mean that fraud is occurring. Nonetheless, compliance professionals and managers should be educated about their frequent connection to fraud and advised to take note of them or other unexpected changes in employee behaviour that might be consistent with a pressure or opportunity to engage in wrongdoing.

Addressing fraud indicators

Studies of fraud cases consistently show that, in nearly all schemes, some indicators, such as those previously discussed, were present but not recognised, or were recognised but not acted upon, by anyone. Consequently, once such an anomaly has been identified, action must be taken to determine its implications and its effects.

Financial analysis can help determine the scope of the situation's financial impact on the business: how much, if any, has already been lost as a result of the anomaly? What is the potential future loss? What is the cost to prevent a potential loss from occurring? What will it cost to recoup the loss identified? In addition, simple observation can be an extremely effective means of analysing a fraud indicator, particularly when behavioural anomalies are noted.

Whether the cause of the anomaly is legitimate, erroneous or fraudulent, compliance professionals should use the results of the analysis to determine the appropriate action to take – if any – to prevent the act from reoccurring. At a minimum, educating employees in the affected area is a prudent thing to do; if the affected individuals are not trained how to identify and report an indicator of potential fraud, then such occurrences might go undetected, with costly consequences.

Conclusion

The risk of fraud is universal and potentially devastating. Managing this risk requires proactive mechanisms that address fraud before, during and after it occurs. To effectively fight fraud in their organisations, compliance professionals must understand and focus on known fraud indicators and must closely examine and effectively respond to situations in which such anomalies are identified. Only by doing so can they successfully support the organisation in preventing, detecting and minimising the impact of fraud.

James Ratley

President and CEO, Association of Certified Fraud Examiners

James Ratley CFE, serves as President and CEO of the Association of Certified Fraud Examiners (ACFE), where he works to promote the ACFE to the public and other professional organisations. He also continues to assist in the development of anti-fraud products and services to meet the needs of ACFE's members.

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Board diversity

Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd, and Gloria So, Manager, Shinewing Risk Services Ltd, discuss ways to enhance corporate performance through board diversity.



There has been considerable discussion globally about the value of diversity on corporate boards. The general consensus is that board diversity forms an important part of the initiative to enhance corporate governance standards. Governments and exchanges around the world have been increasingly promoting board diversity in recent years either by legislation or by voluntary, or 'comply or explain' based, regulation.

International trends

In the US, the Securities and Exchange Commission requires public companies to disclose if diversity has been considered during the board nomination process. In the UK, listed companies should explain the board's policy on diversity in the

annual report that describes the work of the nomination committee. In Singapore, the Code on Corporate Governance stipulates that the board and board committees should comprise directors who achieve appropriate balance and diversity in terms of skills, experience, gender and knowledge of the company.

The new provision set by HKEx

In view of this global trend, Hong Kong Exchanges and Clearing Ltd (HKEx) also introduced in 2012 amendments to the Corporate Governance Code to include measures to promote board diversity. The Code states that issuers should formulate policies relating to board diversity and should disclose their policies, or a summary of their policies, in their corporate

governance reports. This recommended best practice has been implemented since 1 September 2013, aiming to enhance board effectiveness and corporate governance.

Gender and age

The gender and age of board members are explicit indicators of diversity. As seen from the figures provided by HKEx, the total number of directors sitting on the boards of Hong Kong issuers as at 31 May 2012 was 13,397, of which 1,380 were women, representing only 10.3 percent of the board members of all issuers. Some 40 percent of listed companies have no female directors on their boards. Moreover a majority of directors, amounting to 67 percent, fall between the ages of 41 and 60, and the average age of directors is 53.2 years old.

Highlights

- listed companies should formulate policies relating to board diversity and should disclose their policies, or a summary of their policies, in their corporate governance reports
- people with different qualifications, experiences and cognitive approaches on the board are likely to offer a wider range of perspectives and solutions to corporate issues
- listed companies should consider many different diversity criteria and develop their own policies and disclosure systems based on the nature of their businesses and practical needs



A broad definition of diversity

In fact, diversity encompasses more than simply gender and age. It includes many elements including professional experience, educational background, skills, race and nationality, etc. Listed companies should consider many different diversity criteria and develop their own policies and disclosure systems based on the nature of their businesses and practical needs.

Better decision-making

In general, board diversity collectively benefits the organisation and the business as a whole. People with different qualifications, experiences and cognitive approaches on the board are likely to offer a wider range of perspectives and solutions to corporate issues. Creativity and innovation could also be cultivated during the discussion process, resulting in effective decision-making in the boardroom.

Strengthening networks and relations

A diverse board would also find it easier to connect with a wide range of stakeholders including customers, suppliers, investors and employees across gender, age and cultural orientation. The board would have a better understanding of multiple stakeholders' opinions and could more actively respond to their needs and concerns. This allows the board to identify more new opportunities or risks for the company and retain better relations with various stakeholders.

Access to the widest pool of talent

A corporation which adopts an effective policy would select or promote the best talent solely based on their capabilities, regardless of other factors. This would favourably promote higher productivity and efficiency and stimulate employees' loyalty and belonging.

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Parity with men should not be blindly advocated. We believe more emphasis should be placed on the combination of capabilities and skills when addressing the issue of board diversity.
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Enhancing corporate image

By working proactively to improve diversity and aligning with international practices and standards, a corporation could demonstrate its commitment to equality and progressive management, which would substantially help to enhance its corporate image.

Developing a diversity plan

The value of board diversity should not be underestimated. It is worth considering the following points when devising your board diversity plan.

- Form a working group or committee involving those key members in the company who would be responsible for establishing diversity policies, monitoring the processes and making timely and accurate disclosure.
- Review your board composition regularly, evaluate the competencies of existing board members, and examine and fill any gaps.
- Set a comprehensive training programme for directors, incorporating different knowledge areas and skills essential to your specific business needs to help build individual and collective strengths and improve areas of weaknesses.

- Establish proper nomination procedures and criteria adopted by the nomination committee or the board members regarding recruiting and recommending the most suitable candidates for directorship.

Moving forward

As the need for board diversity is increasingly appreciated in the business world, more women will take up directorships. However, gender equality is not the only issue. Certainly, more women nowadays are equipped with higher educational qualifications and professional skills and increasing numbers of them will be selected to join boards, but parity with men should not be blindly advocated. We believe more emphasis should be placed on the combination of capabilities and skills when addressing the issue of board diversity; these factors will have a more direct influence on corporate performance.

Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd, and Gloria So, Manager, Shinewing Risk Services Ltd

The authors can be contacted at: sw-risk@shinewing.com.hk.

Anti-Money Laundering and Counter Financing to Terrorist (AML/CFT) Workshop Series:

“Risk and Methods of Money Laundering and Terrorist Financing”



Date:	Wednesday, 28 May 2014
Speakers:	Mr Cyril Mak, Superintendent, Joint Financial Intelligence Unit, The Hong Kong Police Mr Patrick Rozario, Director, Head of Risk Advisory, BDO
Time/CPD:	6.30 p.m. – 9.15 p.m. (2.5 ECPD points)
Fee:	HK\$250 (member) / HK\$350 (non-member)
Target participants:	Company Secretaries, Accountants and Business Consultants
For enquiries:	Ms Lisa Lee at 2830 6069 or Ms Ivy Chow 2830 6011, or email to ECPD@hkics.org.hk

Funding Organisation:



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SPECIAL ADMINISTRATIVE REGION

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Seminars: February to March 2014

13 February

Understanding the new no-par value share capital regime (re-run)



Chair: Jack Chow FCIS FCS, Managing Director, VMS Investment Group

Speaker: Catherine Morley, Partner, Department of Professional Practice, KPMG China

17 February

An introduction to investor relations



Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd

Speaker: Raymond Yuen, CFA, FCPA, MHKSI, PhD

18 February

Share buy-back under the new Companies Ordinance (re-run)



Chair: Lydia Kan ACIS ACS, Director of Professional Development, HKICS

Speaker: Susan Lo FCIS FCS(PE), Executive Director and Head of Learning & Development, Tricor Services Ltd

19 February

New Companies Ordinance in practice – lecture 1



Chair: Edith Shih FCIS FCS(PE), Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd

Speaker: Wendy Yung FCIS FCS, Executive Director and Company Secretary, Hysan Development Company



Left to right: Lydia Kan ACIS ACS, Director of Professional Development, HKICS; Samantha Suen FCIS FCS, Chief Executive, HKICS; Edith Shih FCIS FCS(PE), President, HKICS, Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd; Elsie Leung FCIS FCS; Wendy Yung FCIS FCS, Executive Director and Company Secretary, Hysan Development Company; and Mohan Datwani FCIS FCS, Director of Technical & Research, HKICS

25 February

Review of Corporate Governance Code and associated listing rules (re-run)



Chair: Grace Wong FCIS FCS, Company Secretary and Deputy General Manager, Investor Relations, China Mobile Ltd

Speakers: Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd; and Gloria So, Risk Manager, Shinewing Risk Services Ltd

27 February**Corporate risk, internal control and risk management framework**

Chair: Dr Davy Lee FCIS FCS(PE), Group Company Secretary, Lippo Group

Speaker: Dr Brian Lo, DBA MBA MScIT MPA LLB (Hons) FCIS FCS HKPA CEng MIET, Vice-President and Company Secretary, APT Satellite Holdings Ltd

4 March**2013 AGM season review (re-run)**

Chair: Lily Chiong FCIS FCS, Associate Director, KCS Hong Kong Ltd

Speaker: Stephanie Cheung, Vice-President, Client Services, Computershare Hong Kong Investor Services Ltd

Mainland activities**PRC officials visit the BRO**

Three PRC government officials visited the Institute's Beijing Representative Office (BRO) on 19 February 2014. Zhao Chengbo, Corporate Governance Department, China Insurance Regulatory Commission and Xu Zhongshu and Zhao Dandan, Corporate Governance Department, Insurance Association of China, met with Kenneth Jiang FCIS FCS, BRO Chief Representative, who shared the corporate governance practices of the Institute.

In addition to the experience sharing, the officials agreed to set up regular communication conduits with BRO for further sharing and possible cooperation with an aim to enhance the professionalisation of the board secretarial profession in Mainland China.

CAPCO Board Secretary Committee meeting

Institute representatives – Dr Gao Wei FCIS FCS, Institute Council member and Vice-Chairman of Professional

Development Committee, and Kenneth Jiang FCIS FCS, BRO Chief Representative – attended the first Board Secretary Committee meeting of the China Association for Public Companies (CAPCO) as honoured guests in Jinan, Shandong province, on 1 March 2014.

At the meeting, Dr Gao introduced the joint research project of CAPCO and the Institute in relation to the proposed amendment of the 'Pre-requisite Clause for the Articles of Association for Companies Seeking Overseas Listing'.

Dr Gao and Mr Jiang also participated in the discussion session on CAPCO's initiatives and shared their views on the professionalisation of board secretaries in Mainland China. The meeting was attended by over 100 board secretaries in addition to officials from CAPCO; the Shandong Regulatory Bureau of China Securities Regulatory Commission; the Financial Services Office of Shandong Province; and the Shandong Association of Listed Companies.

Visiting MTR maintenance facility

Chief Executive Samantha Suen FCIS FCS attended an MTR Society Link gathering on 15 March. At the gathering, MTR Corporation representatives discussed the customer service procedures during incidents. Participants were also given a tour around the MTR's Ho Tung Lau Depot to view behind-the-scenes work on train and infrastructure maintenance.



ECPD

What you should 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 (mcpcd@hkics.org.hk) by the applicable deadline – see table below for details.

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

Members who do not work in the CS sector and/ or for TCSPs have the discretion to select the format and areas of MCPD learning activities most appropriate for 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.

CPD Year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Submission deadline
2013/ 2014	1 January 2000 - 31 July 2013	15	31 July 2014	15 August 2014
2014/ 2015	1 January 2000 - 31 July 2014	15	31 July 2015	15 August 2015
2015/ 2016	1 January 1995 - 31 July 2015	15	31 July 2016	15 August 2016

ECPD seminar enrolment

Thanks to members' support for the Institute's ECPD activities, the demand for seats at ECPD seminars has significantly increased. In order to achieve a fair enrolment procedure, the Institute's first-come first-served policy and the practice of allowing seat reservation only upon receipt of payment have to be strictly applied.

New Graduates

Congratulations to the following new Graduates.

Chan Chung Hin
 Chan Ka Yan
 Chin Kwan Mei
 Chiu Tsz Woon
 Chung Lai Ha
 Chung Wai Mei, May
 Hon Hoi Lun, Helen
 Lee Pui Yi
 Leung Sin Yu
 Leung Suet Ching
 Leung Wing Ki
 Limuran, Bernice
 Lo Pik Yin
 Ng Ying Yi
 Wong Yu Kit
 Yu Zheng

Newly appointed company secretaries of Hong Kong listed companies

The Institute invites Associates and Fellows to provide notification of their latest appointments as company secretaries of listed companies in Hong Kong for inclusion in this CSj column.

Don't be left out – email us your new appointment with supporting documentation at member@hkics.org.hk. The Institute retains all discretion as to publication of such information.

For enquiries, please contact Ken Lai or Jaymee Pernet at 2881 6177, or email member@hkics.org.hk.

Fellows-only benefits

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

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

- complimentary attendance at two Institute events – the annual convocation and annual dinner following Fellowship election
- eligibility to attend Fellows-only events
- priority enrolment for Institute events with seat guarantee (registration at

least 10 working days prior to the event required), and

- speaker or chairperson invitations at ECPD seminars (extra CPD points are awarded for these roles).

Application requirements:

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

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

Institute reprimands Ma Mei Yuk ACIS ACS for MCPD non-compliance

The Institute's Disciplinary Tribunal (DT) recently considered a case brought against Ma Mei Yuk ACIS ACS regarding non-compliance with the Mandatory Continuing Professional Development (MCPD) requirement for 2011/ 2012.

As referred by the Investigation Group, the DT met on 20 June 2013 to consider various MCPD non-compliance cases. It was decided that members involved in those non-compliance cases be given an extended deadline of 31 December 2013 to comply with the MCPD requirement for 2011/ 2012 and be required to sign an undertaking.

Ms Ma did not sign and return the undertaking. A DT hearing was held on 10 December 2013 and Ms Ma did not attend, nor did she provide any written explanation. The DT resolved that Ms Ma be reprimanded with publicity to be given in the Institute's journal.

Membership activities

Members' networking – Visit to China Aircraft Services Ltd

A visit to China Aircraft Services Ltd (CASL) was held on Friday 28 March 2014. Members enjoyed this rare opportunity to visit CASL, one of the two maintenance, repair and overhaul service providers with its own aircraft maintenance hangar in Hong Kong.

Details with photos will be reported in the next issue of CSj.

Board readiness series – preparing for board directorships

The Institute is pleased to launch a new series of 'Board readiness' workshops. These workshops aim to provide practical advice from experts on how to get well prepared to take on board directorships as board diversity brings new opportunities.

The first workshop 'Preparing for board directorships' will be held on Wednesday 9 April 2014. We are honoured to have Elsie Leung FCIS FCS, GBM, JP, and Alice Au, Head, Private Equity Practice, Asia, and Co-Head, CEO & Board Practice, Asia, Spencer Stuart, to speak at the workshop.

Details with photos will be reported in the next issue of CSj.

ICSA update

Charter and bye-laws

The Institute of Chartered Secretaries and Administrators (ICSA) royal charter was granted in 1902 and has been subject to a number of revisions over subsequent years. Further to the passing of the resolutions in relation to the amendments to the royal charter and adoption of new bye-laws at the general meeting held on 11 December 2013 in London, the charter and bye-laws were subsequently passed by the UK Privy Council on 5 March 2014. The Council of HKICS/ Committee for China has noted and endorsed the appointment of Institute President, Edith Shih FCIS FCS(PE) as an additional representative of the China Division of ICSA International Council according to the new charter and bye-laws. The current ICSA representative of the China Division is HKICS Past President, Natalia Seng FCIS FCS(PE). A meeting of the International Council will be held in May 2014 in London. We shall keep members updated with developments.

New ICSA address

With effect from 24 March 2014, the Institute of Chartered Secretaries and Administrators (ICSA) address has been changed. The ICSA telephone numbers and email addresses remain the same. The updated contact details for the ICSA are set out below.

Address: Saffron House
6-10 Kirby Street
London EC1N 8TS
United Kingdom
Phone: (44) 020 7580 4741
Fax: (44) 020 7323 1132
Website: www.icsa.org.uk

Birthday celebration

Council members celebrated the 80th birthday of Doug Oxley during the Council Meeting held on 24 March 2014. All the best wishes and blessings to Doug from the Council and secretariat.



Initiatives on corporate social responsibility

The Institute will be rolling out a number of corporate social responsibility (CSR) initiatives this year. As part of these initiatives, the Institute participated in the Earth Hour lights-off for one hour on Saturday 29 March 2014 from 8 p.m. to 9 p.m., celebrating our commitment to the planet with millions of participants around the world. The secretariat also sourced green material desktops in its recent technical upgrade for service enhancements to Members and Students.

Summer Internship Programme 2014

Launched in 2005, the Institute's summer internship programme for undergraduates registered under the Student Ambassadors Programme aims to promote the corporate secretarial profession to local university students. The internship period will run from June to August 2014 for a maximum period of eight weeks.

Members interested in offering summer internship positions this year, please contact the Education and Examinations section at 2881 6177, or student@hkics.org.hk for details.

Examination timetable – June 2014 diet

The June 2014 examination timetable is set out below.

	Tuesday 3 June 2014	Wednesday 4 June 2014	Thursday 5 June 2014	Friday 6 June 2014
9:30 a.m. – 12:30 p.m.	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2 p.m. – 5 p.m.	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

IQS information session

The upcoming 'IQS information session' seminar will include information on the International Qualifying Scheme (IQS) and an Institute member will share his valuable experience and advise attendees on the career prospects for Chartered Secretaries.

Members and students are encouraged to recommend friends or colleagues interested in our profession to attend the information session. For details, please contact the Education and Examinations section at 2881 6177, or student@hkics.org.hk.

Date	Wednesday 16 April 2014
Time	7 p.m. – 8:30 p.m.
Venue	Joint Professional Centre Unit 1, G/F, The Centre 99 Queen's Road, Central
Speaker	Davis Lau ACIS ACS Manager, Computershare Hong Kong Investor Services Ltd
Cost	Free of charge

Professional seminars

Caritas Institute of Higher Education (CIHE)

Winnie Li ACIS ACS, Director of CWCC, delivered a talk on the 'Corporate Secretarial Profession' at the CIHE Symposium on Youth Career Development on Friday 28 February 2014. She also shared her work experience in the profession with the attending 60 students.

Networking Day 2014 at Lingnan University

At the Lingnan University Networking Day on Wednesday 5 March 2014, the Institute introduced the Chartered Secretarial profession and the Institute's Student Ambassadors Programme to the attending students.



Winnie Li at the seminar



At the promotion booth

Policy – payment reminder

Studentship renewal

Students whose studentship expired in February 2014 are reminded to settle the renewal payment by Tuesday 22 April 2014.

Exemption fees

Students whose exemptions were approved via confirmation letter in January 2014 are reminded to settle the exemption fee by Thursday 24 April 2014.

Tips from the top

Subject Prize winners from the December 2013 IQS examination share their study experiences and give tips to fellow students on the best way to prepare for the examinations.

Lee Yu Ting, Scarlett
Subject Prize winner (Corporate Administration) and Merit Certificate winner (Corporate Secretaryship)

Scarlett is the General Manager, Finance & Human Resources of Asia Airfreight Company Ltd. She graduated with a BBA degree in Accounting from The Hong Kong University of Science and Technology.

This was Scarlett's first attempt at the Corporate Administration examination and she achieved distinction grade. 'Developing an efficient study plan was the first thing I did,' she says. She recommends students study past examination papers of the last decade. 'Along with the study outline provided by HKICS, I allocated 90 percent of the time to study and analyse the past papers,' she says. She studied at least 30 minutes every day for two months before the examination. She allocated additional hours to study during weekends. The broadness of the subject matter did overwhelm Scarlett at the beginning due to the numerous topics to cover, including the Mandatory Provident Fund, intellectual property and data protection. She recommends that candidates draw a simple tree diagram or mind map to classify the major topics and subtopics in order to understand the key points effectively. 'Do not try to memorise the materials without understanding them. Try your best to make sense out of the study materials,' she says.

She also attended the examination preparatory courses and the examination technique workshops organised by

the Institute. She also browsed the information available on relevant websites on a regular basis. She found the information very useful, especially for topics such as intellectual property and discrimination. After taking the IQS examinations, she has been more confident when giving advice to her employer. 'Although it is tough to study after work, it has been an amazing learning journey for me,' she says.

Sze Nga Ting, Cecelia
Subject Prize winner (Corporate Administration)

Cecelia holds a bachelor's degree in Professional Accounting from The Hong Kong University of Science and Technology. She is currently working as a Company Secretarial Assistant for a multi-jurisdictional listed company.

Like Scarlett above, Cecelia achieved distinction grade at her first attempt of the Corporate Administration examination. 'I attended the examination preparatory course organised by HKU SPACE. Since the examination syllabus is broad, the preparatory course provided useful material and guidance for my exam preparation. In addition, I also studied the examination past papers,' she says.

Cecelia believes that it is important to devise one's own revision strategy. 'Start to prepare early for the examination. Having a well-organised revision schedule is helpful. As the coverage of the examination is pretty broad, I browsed (without attempting to memorise) the relevant reading every

weekend in order to get myself familiar with the subject,' she says.

She is delighted to have been able to apply what she learnt from the IQS to her daily work. 'The contents of the examinations, especially the Corporate Secretaryship and Corporate Governance papers are practical and highly related to my day-to-day company secretarial work,' she says. Cecelia acknowledges that the Chartered Secretarial qualification is highly recognised among employers and a prerequisite for pursuing further career development in the company secretarial field.

Ho Sum Yi, Anna
Subject Prize winner (Corporate Administration)

Anna graduated with a bachelor's degree in Marketing from The Chinese University of Hong Kong. She is currently working in the Office of the Commissioner of Insurance as an Assistant Insurance Officer.

'I studied the past examination papers and materials recommended by the HKICS. I also browsed the relevant regulators' websites and news for revision,' she says. Anna also organised study groups with other students for examination revision. She believes the key to passing the examination is to read the question carefully and answer precisely and concisely. It is a good idea for students to summarise the key facts in table format to identify the important concepts.

The IQS examinations equipped her with the relevant knowledge to handle

duties related to compliance, such as administration, regulation and the operation of companies. She concedes that examination preparation means adding extra work to an already hectic working life. However, she believes that good time management and proper prioritisation of duties are important in planning revision. This both enhances work efficiency and reduces the stress from work.

Wong Pui Yin, Kristy
Subject Prize winner (Hong Kong Corporate Law)

Kristy holds a BBA degree in Professional Accounting from The Hong Kong University of Science and Technology. She is

currently working as a Senior Associate at PricewaterhouseCoopers.

'I am always eager to learn more about the regulatory environment for companies. The Chartered Secretary qualifying examination has provided me with core skills and equipped me well for any business role,' she says.

When preparing for the IQS examinations, Kristy took the examination preparatory courses. She also studied the Institute's study outlines and past examination papers. 'I had a study plan for examination preparation,' she says. She believes that having an effective and realistic timetable

helped her to strike a balance between work, study and personal life. Exercising also allowed her to be physically prepared for the examination. 'Do not study selectively as all chapters are of equally important weighting for the examinations,' she says. She suggests students complete a review of all chapters a few months prior to the examinations.

'Don't let the examination overwhelm you', she insists, 'adequate sleep is vital because it will keep you stress-free and refreshed. Maintaining a work/ life balance is important to give your mind a break from studying.' The above factors all contributed to her success in the examination.

New students orientation

A group of new students joined the 'New students orientation' on Tuesday 11 March 2014. Information on the International Qualifying Scheme (IQS) examination, exemptions, and an array of student support services offered by the Institute, were provided to the participants. The IQS study materials were also displayed. Students who would like to purchase the study materials should contact the Education and Examinations section at 2881 6177.

In addition, the subject prize winners of the December 2013 IQS examination received their certificates from Patrick Sung FCIS FCS, Education Committee Vice-Chairman. Two subject prize winners, namely Scarlett Lee Yu Ting (Corporate Administration) and Kristy Wong Pui Yin (Hong Kong Corporate Law), shared their examination preparation tips at the event.



Patrick Sung and the awardees



Scarlett Lee and Kristy Wong sharing at the event

New headline categories for announcements

Hong Kong Exchanges and Clearing Ltd (HKEx) has published amendments to the listing rules to introduce new headline categories enhancing the classification of issuers' announcements and facilitating investors' access to the information published on the HKExnews website (www.hkexnews.hk).

Issuers' announcements published on the HKExnews website are classified by headlines based on the content of the announcements. Currently, there are a large number of announcements under the headlines 'overseas regulatory announcement' and 'other'. To better classify these announcements and facilitate investor access, HKEx will introduce new headline categories for announcements related to, among others, business and trading updates, corporate governance related matters, litigation and board resolutions.

The rule amendments relating to new headline categories became effective on 1 April 2014. They can be downloaded from the HKEx website: www.hkex.com.hk, see the 'Rules & Regulations/ Rules and Guidance on Listing Matters/ The Rules and Procedures' section.

New 'frequently asked questions' relating to the selection of headline categories and titles for announcements can be downloaded from the HKEx website: www.hkex.com.hk, see the 'Rules & Regulations/ Rules and Guidance on Listing Matters/ Interpretation and Guidance' section.

Regulating dark pools

The SFC proposes to strengthen the regulation of alternative liquidity pools (ALPs). ALPs, also commonly known as 'dark pools' and 'alternative trading systems', are electronic systems operated by licensed or registered persons through which the crossing or matching of orders involving listed or exchange traded securities are conducted with no pre-trade transparency.

The SFC proposes to enhance and standardise the regulatory obligations imposed on Hong Kong licensed corporations that operate ALPs by including within the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission comprehensive requirements governing their operation. The SFC will cease its current practice of imposing conditions on the licences of ALP operators on a case-by-case basis. The SFC proposals would also restrict access to ALPs to institutional investors and enhance the level of disclosure to ALP users.

The SFC's proposals are set out in a consultation paper available on the SFC website: www.sfc.hk. The consultation closes on 25 April 2014.

SFC amends Codes on Takeovers and Mergers and Share Repurchases

The Securities and Futures Commission (SFC) has amended the Codes on Takeovers and Mergers and Share Repurchases to bring them in line with the new Companies Ordinance which came into force last month. The amendments change the terminology used in the Codes from share 'repurchases' to share 'buy-backs'. As a result, the Codes have been renamed the Codes on Takeovers and Mergers and Share Buy-backs.

The Takeovers Executive (the Executive Director of the Corporate Finance Division of the SFC or any delegates of the Executive Director) has also made the following housekeeping amendments to the Codes:

- changing references to the 'Telecommunications Authority' to the 'Communications Authority' to reflect changes to the Telecommunications Ordinance
- reducing the number of copies of a document that must be filed with the Takeovers Executive under Rule 12.1 of the Takeovers Code from six to two to promote environmentally friendly practices, and
- deleting Rule 26.6 and Note to Rule 26.6 of the Takeovers Code as they are no longer applicable.

The amendments to the Codes have immediate effect. More information is available on the SFC website: www.sfc.hk.



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Named Company Secretary

- › Sizable listed PRC property developer
- › 8 – 10 years of experience

This is a newly appointed position with a recently acquired PRC property developer. Our client has businesses across areas such as residential properties, commercial properties, shopping outlets and hotels in various cities across the PRC region. There are several exciting new projects which are expected to kick off towards the later part of 2014, which provides you with a wide range of exposure and career prospects. Candidates must be proficient in English and Chinese, and should be an Associate Member of HKICS and above. You will be independently responsible for the setting up and management of the company secretarial function of the group.

Ref: H2173790

Company Secretarial Manager

- › Leading Financial Institution
- › 7+ years of experience

You will lead the Company Secretarial team providing a full range of company secretarial services to ensure compliance of statutory filing requirements for the entities set up in the relevant markets. You will handle the preparation of minutes and necessary SFC forms for all transaction documents for investment projects, coordinate both SFC and MPFA license application, statutory updates and relevant enquiries. You should be an Associate Member of HKICS or possess at least 7 years of experience. Exposure in a regulated financial institution will be highly regarded. You must have the ability to respond and be flexible to client demands, whilst adhering to firm policies and group practices.

Ref: H2164950

Company Secretarial Officer

- › Listed manufacturer and retailer of fine jewelry
- › 2 – 4 years of experience

Our client is an established listed manufacturing company within the fine jewelry retail industry. As part of the growing team, you will gain exposure in a full spectrum of listed company secretarial matters, assisting in the drafting of announcements, preparing annual and interim reports, arrangement and preparation of a variety of meetings. In this role, you will also need to maintain statutory records, assist in ad-hoc projects and corporate transactions. The successful candidate will also have the opportunity to gain experience in trademark matters. The ideal candidate must be proficient in English and Chinese. Candidate who has membership with HKICS is preferred.

Ref: H2178670

PRIVATE COMPANIES

Assistant Manager, Corporate Department

- › Non-listed ship owner with excellent financials
- › 4 – 8 years of experience

Our client is a boutique ship owner based in Hong Kong, having been in business for nearly a century. The company has a fleet of around 20 bulk carriers and tankers, all of which are wholly owned by the company. The company is extremely stable, and an energetic and enthusiastic candidate is needed to replace the current staff who will be retiring. You will be responsible for handling a full spectrum of company secretarial duties, as well as assist in document and contract review. You must be fluent in English and Cantonese. Candidates with law degree and legal knowledge on top of company secretarial experience are strongly preferred.

Ref: H2032760

Corporate Secretarial Officer

- › International Law Firm
- › HKICS Graduate Member

In this position, you will specifically assist the lawyers handling a full spectrum of company secretarial matters including but not limited to formation and on-going transactions of exempted limited partnership in the Cayman Islands, provide technical advice in respect of corporate secretarial services to clients and maintain good client relationships. You must have a minimum of 4 years relevant company secretarial experience and you should be familiar with overseas compliance requirements. The ideal candidate must be organised, systematic and proficient in English, Cantonese, and Chinese. Immediate availability will be an advantage.

Ref: H2177600

Senior Manager, Trustee Services

- › Professional Firm
- › 9+ years of experience

In this new role, you will primarily handle Trust Administration work and occasional Trust Relationship Management. Reporting to the MD, you will be working with a team of 4, being responsible for the establishment of new trusts, preparing fee proposals, incorporation and activation of offshore companies, drafting and reviewing trust deeds and various related trust documents, etc. You should be familiar with administration work of all fiduciary related functions at trust and underlying company levels. You must have excellent leadership and communication skills in both English and Chinese. You should be an Associate / Fellow member of the HKICS or ICASA.

Ref: 2178810

To apply, visit www.michaelpage.com.hk/apply quoting the reference number or contact the following consultants:

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Carolyn Woo

Manager, Michael Page Legal
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Date : 11 Jun 2014 (wed)

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“Spring is the time of plans and projects”

Leo Tolstoy

一年之計在於春。

- 托爾斯泰



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