

CSj

August 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



Compliance update

Your guide to the
new regulatory
environment

Anna Wu interview
CGC 2014 preview
Corporate rescue

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Years in Hong Kong

*HKICS presents:
9th Biennial
Corporate Governance
Conference 2014*



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Changing Roles –
Managing It All**

19–20 September 2014
Ballroom, JW Marriott Hong Kong

Day 1 (Friday, 19 September 2014)

Keynote Address

Mr Carlson Tong JP, Chairman, SFC

Long Arm of the Law

Anthony Neoh FCIS FCS QC SC JP, Senior Counsel & Former Chief Adviser to China Securities Regulatory Commission

Competing to Win

Honourable Anna Wu Hung-yuk GBS JP, Chairperson, Competition Commission

Board Shoulders, Broad Shoulders

Mr Ashley Ian Alder CEO, SFC
Ms Ada Chung FCIS FCS JP, Registrar of Companies, CR
Mr Michael Duignan, Senior Director, Corporate Finance, SFC

Winds of Reporting Changes

Mr David Graham, CRO & Head of Listing, HKEx
Mr Mark Dickens, CEO, Financial Reporting Council

and many others

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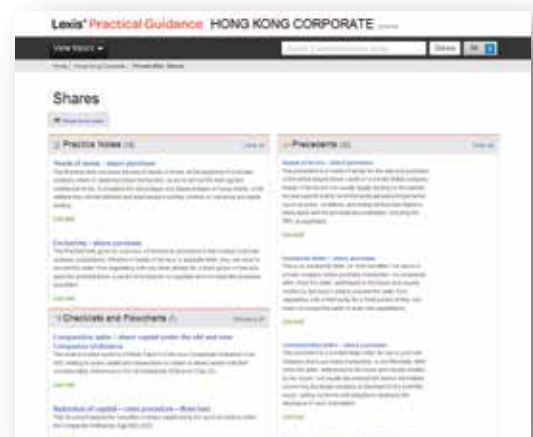
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, 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 3,200 students.

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Membership statistics update

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Associates: 4,862
Fellows: 510

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August 2014

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

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Circulation: 9,100

Annual subscription: HK\$2600 (US\$340)

To subscribe call: (852) 3796 3060 or

email: enquiries@ninehillsmedia.com

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ISSN 1023-4128

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本文是就本年 7月9日至11日在大连举行的「中国A+H股上市公司董事会秘书高级研修班暨香港特许秘书公会第三十三期联席成员强化持续专业发展讲座」所作的报导,主要论及中国的并购重组增长迅速,监管部门正在修改和制定相关规则以配合形势的发展;并同时论及公司治理新趋势,以及董秘在并购重组中所扮演的角色。

This article reviews the Affiliated Persons (AP) ECPD seminar series in Dalian, co-organised by the HKICS and the Shanghai Stock Exchange. This seminar series is also reviewed in English on page 39.

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Periscope up

One of the main challenges of the job we do as company secretaries is keeping pace with a fast-changing regulatory landscape, both locally and globally. This last year in Hong Kong we have had to come to terms with the new price-sensitive information disclosure requirements of the revised Securities and Futures Ordinance, together with the many legislative and regulatory changes brought in by the new Companies Ordinance – including new share capital arrangements, directors' duties and obligations, and corporate reporting requirements. In addition there have been new connected transaction rules, data privacy and board diversity requirements, and, a little further off on the horizon, there are the competition rules about to be implemented under the Competition Ordinance next year.

Moreover, in the current regulatory environment, company secretaries need to keep tabs on a growing body of overseas legislation with extra-territorial reach. Most recently we have seen the Foreign Account Tax Compliance Act (FATCA) from the US which requires financial institutions around the world to provide the US Internal Revenue Service (IRS) with information on any US persons who have accounts with them. FATCA was preceded in this category by the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA).

Enough, then, to keep us busy. But our cover story this month (see pages 8–11) points out that keeping pace with regulatory changes is only part of the deal. The fact is that legislation and regulation have been overtaken to some extent by stakeholder expectations, so company secretaries need to be much more proactive in keeping up to date, not only with the changing rule book, but also with what is happening in the wider market and society as a whole.

There can be little doubt, then, that the job we do has become a lot more challenging in recent years. Fortunately, however, help is at hand. April Chan FCIS FCS(PE), HKICS Past President and Company Secretary of CLP Holdings, mentions in the cover story this month that one of the main benefits of membership of a professional body like the HKICS is the opportunity this gives practitioners to share experience about the challenges on the horizon.

As you no doubt know, we organise a high-level forum every two years – our corporate governance conference (CGC) – which brings together company secretaries and corporate governance experts and professionals from Hong Kong and overseas to share insights and deliberate on the main challenges on the horizon for everyone involved in the corporate governance and corporate secretarial fields.

This is the Institute's flagship event – there is simply nothing else like it in our calendar – and it just so happens that our ninth CGC is coming to the JW Marriott Hotel next month (19 September). Details about the topics to be covered and the speaker line-up can be found in the conference preview (see pages 18–21) in the journal this month.

This is our opportunity to step back from our busy working life, put our periscope up and take a look at what's on the horizon for members of our profession. I should add that we will be doing so along with the best thought leaders of the corporate governance and corporate secretarial world. If you haven't already done so, I urge you to book your place now.

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

Edith Shih FCIS FCS(PE)

极目观察

我们作为公司秘书所要面对的其中一项重大挑战，就是如何掌握本地及全球瞬息万变的监管变化。香港于过去一年刚熟习了经修订的《证券及期货条例》对股价敏感资料披露的新规定，还有随着新《公司条例》生效而实行的众多法例与监管变革，当中包括新股本安排、董事职责与义务，以及企业报告规定等。此外，还包括新关连交易规则、资料私隐及董事会成员多元化等方面的变革，以及根据《竞争条例》将于明年实施的竞争规则。

在目前的监管环境下，公司秘书还必须注意日益增加并具有域外效力的海外法律。例如：美国近期所颁布的《外国帐户税收遵从法》(Foreign Account Tax Compliance Act)(FATCA)。其内容要求全球金融机构向美国国税局(IRS)提供美国人在其机构开设的帐户资料。此外，还包括在FATCA之前的同类立法的《英国反贿赂法》(UK Bribery Act)及《美国反海外腐败法》(US Foreign Corrupt Practices Act)(FCPA)。

以上所述足以令我们忙得不可开交，但本期的封面故事（见第8-11页）指出，紧随监管变革的步伐，只是整个进程的一部分。事实上，利益相关者的期望，

在一定程度上已超越立法和监管的发展被。因此，公司秘书必须更主动和积极地了解最新的形势发展，这不单指法例的变革，更关乎整个市场、甚或整个社会所发生的变化。

毫无疑问，近年我们工作上的挑战已大为提高。幸好，帮助垂手可得。香港特许秘书公会前会长兼中电控股公司秘书陈姚慧儿女士FCIS FCS(PE)在本期封面故事中提到，作为香港特许秘书公会等专业组织会员的主要好处是，从业者有机会就即将面临的挑战分享经验，互相交流。

众所周知，公会每两年举办一次具甚高层次的论坛—公司管治会议(CGC)。该会议汇集了来自香港及海外的公司秘书、企业管治专家及专业人士，以及所有参与企业管治及公司秘书工作的人士，就所面对的主要挑战交流心得，深入讨论。

CGC可说是公会的旗舰活动，在我们的行事历中，没有任何其他活动可与其比拟。适逢公会第九届CGC将于下月（9月19日）假JW万豪酒店举行，其会议主题与讲者阵容详列于本刊今期的会议预览专栏内（见第18-21页）。

这是一个让我们从繁忙工作中歇下来，放眼四周，并为我们的专业各成员观察未来境况的难得机会。还有一点我需要补充的是：与我们一起观察的，包括在企业管治及公司秘书领域中最优秀的思想领袖。所以，倘若阁下仍未报名，我邀请阁下尽快报名，预留席位。



施熙德

Ask the Expert

Q: *We have many board committees and subsidiary companies with varying degrees of overlap amongst directors; how can we address this segregation of information and duties with a board portal?*

A: Access to the right content at the right time is key to effective board processes. A big part of board communication is about who sees what and when they see it. A board portal can be used effectively to target content to one set of users, say a particular subsidiary company, while simultaneously restricting access to a second set, perhaps if a conflict of interest arises. This is a matter of control and if you're in a paper process, you have that control. It may be inefficient and slow, but it works. Understandably, companies want assurance that they won't lose that control when moving to a board portal. If we expect customers to go paperless, online control has to reasonably replicate paper control. This is done through:

- a 'control matrix' that can produce an online equivalence to paper
- content segregation for overlapping board structures, and
- self-sufficiency for real-time responsiveness and administrative efficiency.

Control matrix

The control matrix maps all users against all assets. It lets us capture the process distinctions and nuances of paper. It doesn't matter if that's a document, message, discussion post, or anything else for that matter. For example, today you might print and assemble multiple versions of the boardbook and then send unique versions to the different recipients. A board portal handles this process, not by constructing multiple versions, but by creating a single version that aggregates all the content. Then, with the control matrix, particular sections of the book are blacked out depending on the viewing rights of the recipient. As part of the paper process, you might also print a preliminary copy of the boardbook for gathering the chairman's feedback. With a board portal you do that by temporarily screening out the rest of the board until the chair approves it electronically, at which time you grant viewing rights to the full board, cutting the review cycle time dramatically.

BoardVantage

Content segregation

It's not just boards that long for a combination of online access and control over their content. So do fund trustees, subsidiary boards and leadership teams in a wide range of industries. In these scenarios, we often encounter overlapping board structures. It's for that purpose that a multi-board architecture exists which segregates content between portals, effectively creating communication focal points. It lets directors switch back and forth between different portals seamlessly. Each one is configurable with its own functionality and customisable with branding that corresponds to the board's identity.

Self-sufficiency

The creation and distribution of paper boardbooks is a notorious time sink. Depending on scope, the process can occupy a staff of several administrators for well over a week, sometimes longer. Capturing this process online reduces this time commitment from weeks to days, or from days to hours – an order of magnitude improvement. From a director's perspective, instead of having to wait for the arrival of the overnight shipment, the boardbook is available within minutes. It can even be 'pushed' to the director's 'briefcase' so it's simultaneously available offline, without any action on the director's part. This results in a scale improvement in responsiveness, in this case from hours to minutes, which is particularly useful in the event of last-minute changes.

A board portal enables the company secretary to manage board support with a short learning curve. This process involves editing documents in native form, then saving them directly into the online repository's folder tree structure. A similar approach exists for systems administration. Users may be added or removed on short notice when, for example, a new director joins, a lawyer is added into the review process, or an entire new work space needs to be formed to collaborate around a special project. In these circumstances the administrator has the self-sufficiency to make any changes without assistance from IT or third parties.

Erin Ruck, Regional Director

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Q: *Is there any update about the latest developments on FATCA?*

A: The Foreign Account Tax Compliance Act (FATCA) is a piece of US tax legislation designed to track US nationals who may be avoiding tax liabilities by holding assets overseas. It requires foreign financial institutions (FFIs) to report information directly to the US Inland Revenue Service (IRS) about financial accounts held by US taxpayers, or held by foreign entities in which US taxpayers hold a substantial ownership interest. FATCA took effect on 1 July 2014. Further to our Ask the Expert column about FATCA last September (see *CSj*, September 2013, at: <http://csj.hkics.org.hk>) we cover the latest developments for sharing.

On 31 December 2013, Hong Kong Securities Clearing Company Ltd issued a circular advising, among other things, that it would review and consider whether it may be necessary to make any rule changes to require FATCA compliance by CCASS participants who are FFIs and alert the participants of the potential withholding tax on US source payments.

On 21 March 2014, the Securities and Futures Commission (SFC) issued a circular to remind issuers to critically assess the potential implications of FATCA on their business operations and to ensure their offering documents provide FATCA information and risk disclosures. If an SFC-authorized investment product is likely to be subject to the withholding tax under FATCA, the SFC expects issuers to provide at least one month's prior written notice to investors stating the potential impact.

On 9 May 2014, the HKSAR government issued a press release stating that it had substantially concluded discussions with the US government on a 'Model 2 Intergovernmental Agreement' (IGA). Financial institutions were reminded to assess the relevant FATCA compliance implications for their operations and clientele. The government also published an FAQ to explain more about FATCA and the IGA.

If you are an FFI, you need to appoint a 'Responsible Officer' and register with the IRS to get a 'Global Intermediary Identification Number'. The determination of whether your company is impacted by FATCA is complex. You should consult your tax adviser to determine if your company is affected by FATCA and, if it is, ask your share registrar or other agents to help in the collection of information for reporting to the IRS.

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Online resources

The online resources mentioned in this article are available on the following websites:

- the Hong Kong Securities Clearing Company circular (www.hkex.com.hk – see Market Operations/ Participant and Member Circulars/ Hong Kong Securities Clearing Company Ltd)
- the Securities and Futures Commission circular (www.sfc.hk – see 'Regulatory Information/ Circulars' in the banner at the bottom of the home page)
- the HKSAR government frequently asked questions (www.fstb.gov.hk/fsb/info/doc/fatca-faq_e.pdf)

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 to providing high-level corporate governance advice to the board. This means that practitioners need to be competent in a wide range of fields.

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

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

If you would like information about how your company can join our expert panel then please contact Paul Davis at: paul@ninehillsmmedia.com, or telephone: +852 3796 3060.

Please note that the identity and contact details of questioners will be kept confidential.



Compliance update

Company secretaries in Hong Kong assess the new demands on, and demand for, compliance professionals in the emerging regulatory environment.

Compliance work is at the core of what company secretaries do. The Institute's latest research report on the roles and responsibilities of company secretaries in Hong Kong's listed companies found that regulatory compliance takes up the highest proportion (33%) of practitioners' time (*The Significance of the Company Secretary in Hong Kong Listed Companies*, at www.hkics.org.hk, Publications/ Research Papers).

Keeping up to date with the latest regulatory changes, therefore, occupies

a central place in company secretaries' working lives. This is borne out by surveys of practitioners. In February this year, for example, the US journal *Corporate Secretary* published a survey of governance professionals in the US and Canada which found that keeping pace with regulatory change had been the number one challenge over the past 12 months for respondents (*Governance Practices Survey: Top Governance Challenges* at www.corporatesecretary.com, Articles/ Regulation and Legal/ 11 February 2011).

Since the global financial crisis of 2008, of course, many new regulations have been implemented in the West, but here in Hong Kong regulatory reform has been just as busy and as a result regulatory risk has climbed the corporate agenda. Respondents to this article feel that these developments have made this a very interesting time to be a company secretary – while the unrelenting pace of regulatory change has meant that practitioners' workloads have increased, the value they bring to an organisation is also much better recognised.

“
brand and value issues have a long-term
impact on your reputation in the investment
community and the general public and are
just as important as your quarterly results
”

Bill Wang, Head of Group Listings, Asia, and Head of Subsidiary Governance,
Greater China, Standard Chartered Group

exciting to be in that space, but it is also very scary as the bar is rising constantly.’

Mr Wang, who is also Head of Group Listings, Asia, and Head of Subsidiary Governance, Greater China, for Standard Chartered Group, adds that regulators need to get the balance right between too much and too little regulation. ‘I work for a bank which is in a very heavily regulated industry. I can’t speak for other sectors but certainly in the financial sector, there have been increasingly heavy regulatory requirements since the 2008 financial crisis,’ he says.

He believes the challenge going forward is to decide what things can be left to the

market and what things need to be subject to regulation. ‘We have seen over and over again that having too little regulation does not work, but on the other hand if you overreact and go to the other extreme that won’t work either. This is not the first time we have faced a financial crisis and you can see the cycle – the easiest reaction is to say we need more regulation, but to put more rules out there might not solve the problem. It’s like having a sick patient, if you deliver heavier and heavier medication, this may help with some of the symptoms but the side effects may lead to unintended consequences,’ he says.

A demanding role

The changing regulatory environment

‘Ten years ago if you introduced yourself as a company secretary,’ says Bill Wang, Company Secretary for Standard Chartered Bank (HK) Ltd, ‘people would probably associate that role with record filing and minute-taking work. While there are still very important technical aspects of the job, over the years the role has developed into a more trusted advisory role to the board, the board chairman and the executives. Sometimes the company secretary and the chairman may be fronting issues before the board has even started to discuss them. So it is very

Highlights

- the unrelenting pace of regulatory change has meant that practitioners’ workloads have increased, but the value they bring to an organisation is also much better recognised
- in the current environment, companies need to be a lot more self-reliant when it comes to compliance
- stakeholder expectations have become just as powerful a force as regulation in terms of shaping governance requirements

“
**you need to be watching for what’s coming
 round the corner... and one of the main
 benefits of being a member of the HKICS is
 that you can get a sense of what’s coming up**
 ”

April Chan, FCIS FCS(PE), Company Secretary, CLP Holdings

has meant that compliance professionals, and company secretaries in particular, need to stay unusually vigilant. ‘You need to be watching for what’s coming round the corner,’ says April Chan, FCIS FCS(PE), Company Secretary of CLP Holdings. ‘You can do that, not just by reading, but by talking to people and that is one of the main benefits of being a member of the HKICS,’ she adds, ‘you can get a sense of what’s coming up.’

Chan cites two global trends – the need for higher levels of corporate disclosure and for genuine independence of independent non-executive directors (INEDs) and auditors – that company secretaries need to be preparing for. ‘These trends are already evident in the West and they are blowing East,’ she says. ‘We should be proactive and address these areas rather than waiting for regulators to bring in tougher rules. As company secretaries we will need to facilitate the nomination and audit committees in their assessment of the independence of INEDs and auditors.’

Edith Shih FCIS FCS, Head Group General Counsel and Company Secretary of Hutchison Whampoa Ltd and HKICS President, adds that the company secretary also has a key role in

communicating the implications of new regulations throughout the organisation. She regularly makes presentations about new regulatory requirements to the board, to her colleagues in the legal, company secretarial and finance departments, and to her colleagues in business units in Hong Kong and around the world. ‘You need to devise appropriate policies and procedures that will be accepted by your colleagues and you need to ensure that you have buy in from them as to what you would like them to do.’

Ms Shih also recommends a continuing monitoring and improvement cycle. ‘The rules and laws will change so you have to look at the entire process again from time to time,’ she says.

Exercising judgement

In addition to the increasing pace of regulatory change, compliance professionals have also had to contend with the changing nature of the regulatory environment. A number of different trends have meant that companies need to be a lot more self-reliant when it comes to compliance. The Stock Exchange has moved to the post-vetting of corporate announcements, for example. Moreover, regulators have placed greater reliance on

a principles-based approach. This is not only evident in the Corporate Governance Code, but also in legislation such as revised Securities and Futures Ordinance (SFO), which involves directors, and the company secretaries advising them, in complex judgement calls.

‘Initially, I was sceptical about the move to post-vetting,’ says Edith Shih, ‘but this is being adopted by most of the stock exchanges all over the world so why not Hong Kong?’ She adds that the switch to post-vetting has not been accompanied by a rise in the number of problematic corporate announcements and there have been benefits for company secretaries. ‘It has helped company secretarial work tremendously,’ she says, ‘since we no longer have to fit in with the stock exchange schedule when preparing disclosures.’

Ms Shih still has some reservations about principles-based regulation in Hong Kong, however. ‘I would love to say that companies can self-regulate and there are companies who will be diligent, but there will always be those who don’t know what they should be doing. We need to strike the right balance here. I don’t have a problem with the principles-based approach, but in addition you need to have clear laws and regulations that draw attention to what is required. When it comes to corporate regulation, the majority of companies in Hong Kong need clear guidance. Once something has become compulsory it becomes internalised and companies will do it on their own.’

Bill Wang believes that this process of internalising the rules is the key to effective compliance. ‘You need to internalise the regulations as part of your daily conduct,’ he says. ‘Unless you

fully embrace the rationale behind the regulations their purpose will be lost.'

He points out that the weakness with the rules-based approach is that companies can always find a way to circumvent the rules. 'There are a lot of smart minds out there and if their purpose is to get around the regulations, they can. The point is that good regulations need to be followed both in the spirit and the letter.'

April Chan points out that stakeholder expectations have become just as powerful a force as regulation in terms of shaping governance requirements and this is changing the compliance philosophy of both regulators and companies. 'Regulators encourage companies to think about the benefits of going beyond the compliance requirements and practitioners have a role to promote this,' she says.

Bill Wang believes that companies will be increasingly focused on 'brand and value' issues in the future. At the group level, Standard Chartered has a 'brand value committee' whose job is to monitor and oversee these issues. 'Brand and value issues have a long-term impact on your reputation in the investment community and the general public and are just as important as your quarterly results,' Mr Wang says. 'Standard Chartered has been around for 150 years and we hope we'll be around for another 150 years and beyond. So the question is, in a very competitive environment, how do we balance the pressure for financial performance versus our long-term goals? That certainly needs to be considered by the board and our board does take that very seriously.'

Shaping the future

As we have seen, the emerging

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

regulatory environment has increased the demand for, as well as the demands on, compliance professionals. Company secretaries in particular have found that they are increasingly relied on as a trusted adviser to the board and to executives on all corporate governance matters.

This development has launched a debate in the corporate secretarial profession globally about whether practitioners should eventually specialise solely in corporate governance advice. 'The ICSA Australia Division recently changed its name to "The Governance Institute of Australia" and there has been quite a bit of discussion about this in the profession,' says Edith Shih. 'I personally don't think we will want to give up our basic company secretarial functions and call ourselves governance experts only; the job has to cover both types of responsibility.'

Bill Wang points out that there are advantages to having the two types of responsibility joined in one role. 'It means that you don't lose touch,' he says. He adds that it would be a mistake to see the administrative tasks as trivial. 'If you get

it wrong directors will get in trouble for a very stupid mistake – they could even face jail time or a fine,' he says.

April Chan points out that it is not only directors who are seeking the advice of company secretaries about the emerging regulatory environment – regulators increasingly rely on input from the profession about the likely effect of proposed regulatory reforms. 'We have a role in making sure that regulatory changes can be practically implemented and will achieve their intended goals,' she says.

'Company secretaries have a good sense of which regulations really do achieve their goals and those regulations which end up just generating a tick the box scenario,' says Bill Wang. He welcomes the willingness of regulators to consult the market. 'I have participated in many consultations – such as those on board diversity, price-sensitive information disclosure and connected transactions – and I think Hong Kong regulators are pretty good at listening to the market,' he says.

Kieran Colvert, Editor, CSj



On the level

In 2013 Anna Wu Hung-yuk was appointed Chairperson of the Competition Commission which will oversee the implementation of the Competition Ordinance next year. In an interview with CSj, she talks about her aspirations for the Competition Commission and looks back over her career in public policy law making in Hong Kong.

Thanks very much for giving us this interview. Before we discuss your current work with the Competition Commission, could we start with your early career in Hong Kong?

'Certainly, I was born and grew up here in Hong Kong. I practised as a lawyer until I got into the Legislative Council in 1992. As you may know, I was the last appointment to LegCo made by the British administration in Hong Kong. That was a very odd situation for me because I have never accepted that the government should be an appointed government. The legislature and the government itself should be representative of the community, but of course I had to accept that we had a long history of colonialism in Hong Kong which meant that the vast majority of Hong Kong people didn't have their own representative.

Once I had accepted the appointment to LegCo, I had to consider how useful I could be in that position. The first thing I decided was that I would go for the most representative form of government I could vote for. The second thing I decided was to use my skills as a lawyer to create laws which would touch on social policy concerns. That was interesting because it was the creativity of the law that induced me to continue in public affairs and public policy.'

Creativity in the sense...?

'Creativity in the sense that I was not using laws to resolve the problems of clients, I was making new laws to resolve social issues. The law-making process is a very creative process. You have to define your policy objectives and then you have to work out a way of capturing that through law making.

I felt that I could push for a new kind of law. At that time it was possible to push for a private member's bill as long as the bill had no money considerations. A private member's bill had never been attempted before to change social policy. My interest in human rights and my interest in political development in Hong

Kong led me to initiate the Equal Opportunities Bill and that was done with very specific reasons in mind.

Firstly, we had the Bill of Rights enacted in 1992 but that was only applicable to the public sector. It was originally going to cover discrimination in the private sector, but due to the controversy surrounding the bill the government decided to make it applicable only to government and public bodies and not to private sector employers and employees.

Secondly, there was a very strong economic mandate behind the Bill – it was not just a matter of rights. There was a recognition that we should have a fair entry point for everybody because we needed to capture the best talents for Hong Kong. After all, we don't have minerals in Hong Kong; it is the human capital that has been significant for Hong Kong throughout history and certainly now.'

Highlights

- the Competition Commission, along with other civil society institutions such as the ICAC, the Consumer Council and the Equal Opportunities Commission, seeks to ensure a level playing field in Hong Kong
- company secretaries need to advise directors about the purpose of the new competition law and about the changes that will be needed in the company to ensure compliance
- liability for offences under the competition law can extend to directors, managers and company secretaries if they consent to the offence, or if the offence was attributable to their neglect

What reception did your Equal Opportunities Bill receive?

'It was difficult, partly because it had never been attempted before so the government wasn't expecting it and went into defensive mode. But the government was pressured into devising its own laws – that was why we got the sex discrimination, the disability discrimination, and the family status and race discrimination laws.

It was a very interesting and challenging time and I learned a lot through the process. I turned the appointment system into an advantage because, as an appointee, I didn't have to run my office for constituents. I also made it clear that I would not be seeking to return to LegCo; this was a window I would not use as an election platform. That meant I didn't have to worry about votes for the future and it helped me in terms of good faith and credibility.'

You subsequently became the Chairperson of the Equal Opportunities Commission.

'Yes, things go away but they also come back – you think that they are concluded, but then years later they come back.'

You have also been closely involved in the work of the Independent Commission Against Corruption (ICAC), the Hong Kong Consumer Council and now the Competition Commission – what impact do you think these institutions have had, and in the case of the Competition Commission will have, on Hong Kong's culture and economy?

'The ICAC certainly changed our culture. Corruption was endemic in Hong Kong; anywhere you turned you would have people paying one another big and small and this was corrupting not just the government but our economy too. The fact that the ICAC was set up and succeeded in changing the mindset and the culture in Hong Kong was a huge breakthrough. This is an institution I support wholeheartedly and I would like to keep it independent and strong. Fortunately for us, we do have a lot of recognition worldwide for the ICAC.

The Consumer Council is the institution that I have been involved with for the longest time. I was involved in Consumer Council work in the 1990s and this work has a lot of relevance for the Competition Commission today. In the early 1990s, the Consumer Council worked on a number of studies on competition issues relating to fuel, telecommunications, broadcasting, real estate and later supermarkets. Following these studies the Consumer Council position was very simple –

it would dent consumer interest if there were no competition framework that would allow new entrants to come in and compete upwards in terms of quality and downwards in terms of price.

At that time we also witnessed the liberalisation of the telecommunications industry. The monopoly for telephone was creating a number of problems in Hong Kong – for example it was holding back the introduction of new technology into the telecoms market. So in 1992 the government took back the telephonic monopoly and introduced new players into the field. But the fact that we had new players would not have meant a thing if the telephone grid continued to be monopolised, so that led to the policy of interconnectivity. This meant that the grid had to be available to other operators' needs and there was a format for how much you had to pay for using someone else's grid.

That was followed in 1999 by number portability. Because the numbers belonged to the operator, customers wouldn't be able to take the numbers with them if they wanted to change operator. This was clearly an obstacle to change and competition so number portability was given to consumers as a right.

Those two measures liberalised the market and enabled consumers to make a choice. I use this story today because it illustrates why competition is necessary in Hong Kong. The barriers such as the lack of connectivity and number portability were very much like the barriers the competition law seeks to remove today. Once they have been removed the market can move up on services and down on prices.'

Many of the public policy areas you have been involved with attempt to create a level playing field for Hong Kong – do you think these initiatives will create a fairer and more just society?

'I am optimistic that changes will be made and that cultural norms will change. I can't say it will lead us to a fair and just society, but I can say that it will make society less unfair and less unjust, and it will create a little more opportunity for everyone, whether you are a small business or an individual.

You have to set a benchmark for behaviour before you can change things – that was a very valuable lesson I learned. When you are trying to change deep-seated cultural practices that

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 way, you have to start with
 the law as a tool for change
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go back a long way, you have to start with the law as a tool for change. People often feel that existing practices are part of their life and they are reluctant to change. At the time of my Equal Opportunities Bill, there was no concept of people having rights to education, or getting a job, or improving their livelihood – these concepts were completely alien to the community. Some in the business community argued that the law would distort the free economy.

It took quite a while to explain what the international covenants say, to explain the economic mandate behind the law and why, as a community, allowing people to develop was far better than creating a welfare economy. After all, if you can encourage people to be self sufficient, the money you have to fork out for welfare should reduce.

We had an even tougher time with gender equality. I had a lot of vested interests coming against me, in particular people who benefited from the old Qing dynasty laws which gave women almost no rights at all. We came up against a lot of stereotypical assumptions that girls shouldn't go into the sciences, engineering or medicine; that women should stay at home to take care of the kids while the problem solvers should be the men.

There were textbook pictures, to my distress, that depicted mothers and homemakers as people who eat obsessively and who cry whenever a problem surfaces. Given that kind of perception you really have to come up with a law as a tool to state clearly that this is not desirable behaviour. Generally people want to obey the law and be a law-abiding citizen but unless you have a law to say that such behaviour is now illegal things won't change.'

Can we turn to your current work at the Competition Commission – what's the main message you'd like to get across about the new competition law?

'My overall message is – act fairly and compete on a level playing field. The law is about allowing business entities, particularly SMEs, to get into the market and it is also about cutting costs. In Japan, when bid rigging was successfully attacked, they had a 20% drop in tender prices. So the message is clear, when you create a competitive environment costs should come down.

We do have to manage expectations, though, since the competition law may not necessarily drive down cost or price. In some cases, such as the break-up of Bell Telephone in the US, you actually have an increase in price temporarily. There was an increase in the rates for local calls when the subsidy from the long-distance calls was removed. Choice was to be made on the efficiency of operators based on proper reflection of cost. In the long run the entrance of new players makes the market a healthier environment for consumers.

Of course, in terms of the competition law, we are just at the beginning of the process. The law was wrestled out of the legislature and government after a lot of lobbying. I expect the differences of views to still be there, but what has changed is that the law is now there and, as I said, people don't generally want to be in violation of the law.

Apart from anything else, there is a cost to non-compliance. You could have the stock exchange coming after you, you could have the banks coming after you for non-compliance with loan documents, and you would certainly have risks with your suppliers and business partners. If you are found to be non-compliant with the competition law that may mean some of your contracts fail; counterparties may not honour contracts that are in violation of the law.'

How challenging do you think compliance with the new Competition Ordinance will be for businesses in Hong Kong?

'For SMEs, provided that they don't fix prices, don't allocate markets, don't restrict output and don't bid rig – these are serious anti-competitive practices under the First Conduct Rule – they should have a low risk of contravening the law.

For larger businesses who might have substantial market power they will have to ensure that they don't abuse that

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**I can't say it will lead us
 to a fair and just society,
 but I can say that it will
 make society less unfair
 and less unjust**
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power. Naturally they will also need to avoid seriously anti-competitive conduct under the First Conduct Rule. Many of the larger businesses will be active outside the territory and should therefore be familiar with the general principles of competition law. Our approach in Hong Kong will be consistent with international best practice. For some, compliance with the law will merely mean extending an existing culture of compliance to their Hong Kong operations.'

Do you think businesses are sufficiently aware that some common business practices could potentially breach the law?

'Judging by the feedback we have received so far, yes, many businesses are aware of this. My message is very simple – we haven't started the law yet so if there is anything you can do for risk reduction do it now while there is still time; you shouldn't wait for the day the law starts. We will be providing more detailed guidance on business practices that could potentially breach the law both in our formal guidelines and in our educational material.'

Who will be liable in cases of breaches of the law?

'The law places principal liability on undertakings for contraventions. However, if the offence is committed by a body corporate, there can be liability for directors, managers, company secretaries and other persons if they consent to the offence or the offence was attributable to their neglect. This is set out in section 175 (1) of the law.'

Do you have a message for company secretaries as they prepare for the new competition law?

'I rely heavily on the intermediaries – such as lawyers, auditors and company secretaries – because they have no vested interest

in the profit generally. They are professional people who are paid to spot problems and be objective and that's where their value comes in. So it is crucially important to have those elements on the board and in the management of the company.


Company secretaries will have a role in advising directors about the purpose of the law and about the changes that will be needed in the company; that might involve looking at the company's contracts and establishing a whistleblowing structure. This advice will be extremely valuable because it will reduce companies' future problems.'

What will be the relevance of companies' whistleblowing procedures?

'Companies should be encouraging people to report malpractice rather than penalising them for it. It is better to have culture where wrongdoing can be reported, otherwise you're back to a situation like before the ICAC where people couldn't tell the police about the police asking them for money.'

But you need a process that people have confidence in. I have a lot of sympathy for whistleblowers because they put their whole careers at stake. Companies need to have something in place for those who want to speak to a non-regular channel, that means not their boss a layer up, they may want to go straight to an independent body like the independent audit body. It is better for a company to have employees talking to a top in-house contact than for them to take it ex-house and come to us.'

Many thanks for speaking to us today, one final question – do you think there is widespread support in Hong Kong for legislation like the new Competition Ordinance?

'Yes, overall I think the people of Hong Kong understand that the introduction of the Competition Ordinance is an important step to protect and nourish our shared value of competition. While there may be some initial concerns amongst the business sector about having to comply, I think that they can also understand the benefits the law will bring.' 

Anna Wu was interviewed by Kieran Colvert, Editor, CSj, joined by Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS. She will be a speaker at the Institute's upcoming corporate governance conference. For more details, see the conference website link on the HKICS homepage: www.hkics.org.hk.

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

“AML Compliance Policies/ Programme within a company”



- Date:** Thursday, 28 August 2014
- Speakers:** Mr Patrick Rozario, Director, Head of Risk Advisory Services, BDO
Mrs Natalia Seng, Chief Executive Officer - China & Hong Kong,
Tricor Group/ Tricor Services Limited
- Time/ CPD:** 6.30 p.m. – 9.15 p.m. (2.5 ECPD points)
- Fee:** HK\$250 (HKICS member/ target participant)
- Target participants:** Company Secretaries, Accountants and Business Consultants
- Venue:** Admiralty Conference Centre, 1804A, Tower 1, Admiralty Centre,
18 Harcourt Road, Admiralty, Hong Kong
- For enquiries:** Ms Lisa Lee at 2830 6069 or email to ECPD@hkics.org.hk

Funding Organisation:



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CGC 2014: join the debate

CSj previews the Institute's ninth biennial corporate governance conference which gets underway next month in Hong Kong.



The Institute's biennial corporate governance conferences (CGCs), first launched in 1998, have established a reputation for their very practical approach to emerging corporate governance issues. Next month the ninth conference in this series gets underway in Hong Kong. True to form, the CGC 2014 has set itself some hard questions to answer. Peter Greenwood FCS FCIS, who will be the Conference Chair, worked closely with Mohan Datwani FCS FCIS, the Institute's Director of Technical and Research, to devise a theme which is topical, relevant to the work of practitioners, but also forward-looking.

'Over the years we have always tried to have an orientation for the conference which is forward-looking; preparing our members and attendees for things that are likely to come up in the years to come, rather than things that they have already had to deal with,' Greenwood says. He adds that the Institute's conferences like to take aim at a theme with broad relevance to corporate governance and corporate secretarial professionals.

'We have the advantage of a very wide range of speakers, giving us a wide perspective both in terms of profession and in terms of their local and international

outlook. So what we have tried to do with the conferences is to bring together broad perspectives to look at things that are coming in and that are likely to impact the way our profession moves and upgrades.'

At a time of intensive, ongoing legal, regulatory and market change, the rules or practices which impact corporate governance professionals are developing rapidly, and with that the roles of those professionals are similarly evolving and expanding. The theme this year – 'Changing rules, changing roles, managing it all' – will address this rapidly changing environment.

'It is no longer a matter of performing our duties in new ways,' says Greenwood, 'the nature of those duties and the scope of our responsibilities is changing, especially for company secretaries, but also for all engaged governance professionals.'

Keep it relevant

Covering the changing regulatory environment and the changing roles of governance professionals in a single day – the second day of the conference will be devoted to site visits (see the conference programme on pages 20–21) – will be no small undertaking, but the four sessions of the conference have been designed to

focus on specific aspects of this overall theme as outlined below.

Session one: the long arm of the law

Corporate governance codes started life as guidance to directors on best practice – today many areas of corporate governance are subject to mandatory regulation or legislation – is this the right approach? The first session of the conference will consider the extent to which the law now applies to areas of governance which hitherto might have been left to regulation, market practice or even individual choice. 'The law is reaching into the governance of companies, deeper and further than it previously has,' says Greenwood.

Session two: competing to win

The second session will look at the potential impact of Hong Kong's new competition law, bearing in mind that this is an area where many companies will have little or no practical experience. 'Companies in Hong Kong are going to have to be highly sensitive about the competition implications of what they do,' says Greenwood, 'and the company secretary is probably as well placed as anyone to bring in a degree of awareness to the board about the potential implications of what the board is discussing in terms of anti-

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Although corporate governance can be a dry and dusty subject, we don't let that deter us from spending an enjoyable and fast-moving day. The necessary seriousness and discipline of our discussions is usually tempered by a fair degree of good humour and occasional anarchy.
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competitive behaviour'. No one expects the company secretary to be an instant expert anti-trust lawyer, he adds, but the company secretary needs to have 'red flag sensitivity – a finely tuned nervous system that twitches when the board is moving into areas that might be delicate or problematic'.

Session three: board shoulders, broad shoulders

We have seen in recent years increasing expectations being placed on directors via both regulation and legislation. The third session of the conference will consider how the duties and responsibilities of company directors, together with those of the corporate governance professionals who serve as their 'minders', are evolving and expanding. In Hong Kong directors are often appointed by, and are often associates of, the majority shareholder, but the duties now being placed on them by law and by the regulators require them to act on behalf of all the shareholders, and in many cases the minority shareholders in particular.

Session four: winds of reporting changes

The fourth and final session of the day will consider the trend towards wider disclosure of corporate information beyond the traditional scope of

accounting and financial data as companies are called upon to explain the social and environmental aspects of their activities, not just to shareholders, but to a wider, less definable, stakeholder group. A Hong Kong listed company needs to be just as committed to, and expert at, reporting on its environmental and social performance as it is on its financial performance, Greenwood points out. That demands new skills and it requires the company secretary to ensure that the board is discussing the environmental and social aspects of the business.

Keep it lively


The theme is not, of course, the only thing a successful corporate governance forum needs to get right. Over the years, the Institute's CGCs have learned that approaching a serious subject with a degree of humour and with a healthy dose of iconoclasm results in a livelier and much more successful exchange of views. Peter Greenwood is determined to keep that tradition very much alive.

'Although corporate governance can be a dry and dusty subject, we don't let that deter us from spending an enjoyable and fast-moving day. The necessary seriousness and discipline of our discussions is usually tempered by a fair

degree of good humour and occasional anarchy,' he says.

The liveliness of the debate also depends on the extent of the direct interaction between attendees, speakers and panellists. The Institute's CGCs have therefore adopted a format of relatively short speaker presentations followed by extended panel discussions and Q&A sessions. Another very successful innovation which will continue this year is the use of an electronic voting system enabling every member of the audience to express his or her view on the topics under discussion. The 'topics' to be put to a vote in this way usually include some 'curve balls' thrown in to liven up the proceedings. 'We use this feature in a largely spontaneous fashion and find it often takes our discussions in quite unexpected directions,' says Greenwood.

Join the debate

The Institute's latest corporate governance conference comes at a particularly interesting time for corporate governance professionals – how is the regulatory environment changing and how will these changes affect your job and your profession? The forum represents a rare and valuable opportunity for attendees to participate in this frontier debate. With barely a month left before the conference gets underway, book now to avoid disappointment. 

The Institute's ninth biennial corporate governance conference will be held 19–20 September in the JW Marriott Hotel, Hong Kong. More information and the conference booking form can be found via the CGC link on the HKICS website: www.hkics.org.hk.

Day 1 Conference programme

Friday 19 September 2014

Time	Rundown and topics	Speakers/ panellists
8.15 a.m.	Registration	
8.45 a.m.	Opening address	Edith Shih FCIS FCS(PE) <i>President, The Hong Kong Institute of Chartered Secretaries</i>
8.55 a.m.	Keynote address	Carlson Tong JP <i>Chairman, Securities and Futures Commission</i>
Session one: long arm of the law		
9.10 a.m.	Dampers on business?	Anthony Neoh FCIS FCS QC SC JP <i>Senior Counsel & Former Chief Adviser to China Securities Regulatory Commission</i>
9.40 a.m.	Session one – panel discussion and Q&A Event Chair: Peter Greenwood FCIS FCS	Anthony Neoh FCIS FCS QC SC JP Anthony Rogers FCIS FCS GBS QC JP <i>Former Vice-President, Court of Appeal & Former Chairman, Standing Committee on Company Law Reform</i> Stephen Brown <i>Deputy Chairman, Listing Committee, The Stock Exchange of Hong Kong & Director, Corporate Affairs, Noble Group</i>
10.30 a.m.	Networking break	
Session two: competing to win		
10.50 a.m.	Levelling the playing field?	Anna Wu Hung-yuk GBS JP <i>Chairperson, Competition Commission</i>
11.10 a.m.	EU and China experiences	Clara Ingen-Housz LL.M. <i>Partner, Linklaters</i>
11.30 a.m.	Session two – panel discussion and Q&A Panel Chair: Professor Mark Williams Founder, Asian Competition Forum, Professor of Law, University of Melbourne Law School	Anna Wu Hung-yuk GBS JP Clara Ingen-Housz LL.M. Kala Anandarajah LLB MBA <i>Partner, Rajah and Tann, Singapore</i> Stephen Crosswell <i>Consultant, Head of Antitrust Hong Kong, Clifford Chance</i>
12.10 p.m.	HKICS Corporate Governance Competition Award Presentation & lunch	
Session three: board shoulders, broad shoulders		
1.10 p.m.	Hong Kong's corporate landscape: regulatory issues	Ashley Ian Alder <i>CEO Securities and Futures Commission</i>
1.30 p.m.	More directors' duties?	Ada Chung FCIS FCS FCPA LLB JP <i>Registrar of Companies, Companies Registry</i>
1.50 p.m.	Session three – panel discussion and Q&A Event Chair: Peter Greenwood FCIS FCS	Ada Chung FCIS FCS FCPA LLB JP Dr Kelvin Wong <i>Executive Director & Deputy Managing Director, COSCO Pacific Ltd</i> Michael Duignan <i>Senior Director, Corporate Finance, Securities and Futures Commission</i> Teresa Ma <i>Partner, Linklaters</i> Wendy Yung FCIS FCS <i>Executive Director and Company Secretary, Hysan Development Company Ltd</i>
2.30 p.m.	Networking break	

Time	Rundown and topics	Speakers/ panellists
Session four: winds of reporting changes		
2.50 p.m.	Trends in ESG reporting?	David Graham Chief Regulatory Officer and Head of Listing, The Hong Kong Exchanges and Clearing Ltd
3.10 p.m.	ESG reporting: shaping your future business?	John Barnes Partner, Risk Assurance, PricewaterhouseCoopers
3.30 p.m.	Session four – panel discussion and Q&A Panel Chair: Professor CK Low FCIS FCS, Associate Professor in Corporate Law, CUHK Business School	David Graham John Barnes Dr Jeanne Ng <i>Director, Group Sustainability, CLP Power Hong Kong Ltd</i> Jeremy Hobbins <i>Executive Director, Fung Holdings(1937) Ltd</i> Mark Dickens <i>Chief Executive Officer, Financial Reporting Council</i>
Closing remarks		
4.10 p.m.	Event Chair's closing colloquy	
4.40 p.m. - 6.30 p.m.	Cocktail reception	<i>The Lounge, Lobby Level JW Marriott</i>
ECPD = 7 Points Speakers and panellists are listed by name in alphabetical order		

Optional site visit

Capacity for each visiting site is 35-50 persons; please book early!

Day 2 ESG in action

Saturday 20 September 2014

9.00 a.m.	Assembly (Central Post Office)	
10.15 a.m. - 12.15 p.m.	Facilities visit: discussions and site visit (In alphabetical order)	
	Group 1 – ElectriCity (Castle Peak Power Station)/ Bus Tour Black Point Power Station	CLP Holdings Ltd
	Group 2 – Hongkong International Terminals	Hutchison Whampoa Ltd
	Group 3 – Hong Kong International Airport	Airport Authority
	Group 4 – Nuclear Resources Centre	CLP Holdings Ltd
Group discussions		
1.00 p.m.	Return (Central Post Office)/ programme ends	
ECPD = 3 Points		

Who should attend

- Company directors, INEDs
- Senior officers
- Company secretaries
- Governance, legal and accounting professionals
- Academics

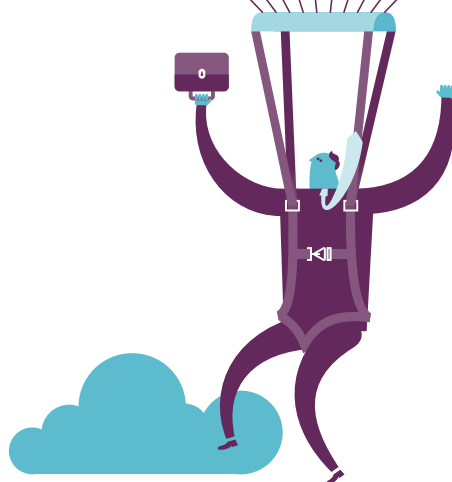
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Corporate rescue in Hong Kong: time for change



Andrew Kinnison, a solicitor and partner with Howse Williams Bowers, argues that it is time to enact legislation in Hong Kong to support a corporate rescue culture.

Corporate rescue is a means by which the directors of an ailing company can seek to nurse it out of its financial difficulties, back to financial health. The management do so with the assistance of appropriately qualified professionals – usually licensed insolvency practitioners.

A cornerstone in any legislation facilitating corporate rescue procedures is invariably a moratorium (or stay of proceedings). This protects the company from creditor claims or winding up petitions and preserves the company's assets for a given period. The moratorium gives a breathing space to formulate rescue proposals. Without it, any 'rogue' creditor could present a winding-up petition and frustrate the potential rescue.

Hong Kong does not facilitate corporate rescue through legislation despite recommendations first having been made that it do so as long ago as 1996 – nearly 20 years ago.

Other jurisdictions have corporate rescue cultures – examples include Singapore, Australia, Canada, England and Wales, and the US. On 12 March 2014, the European Commission issued a recommendation to ensure that viable enterprises in financial difficulty within the European Union 'have access to national insolvency frameworks which enable them to restructure at an early stage with a view to preventing their insolvency'.

It is now time for Hong Kong to introduce legislation to facilitate corporate rescue.

This is important, not least to ensure that Hong Kong remains competitive with other jurisdictions that have corporate rescue legislation.

Why bother with corporate rescue?

In October 1996, the Law Reform Commission of Hong Kong recognised the need for corporate rescue in its *Corporate Rescue and Insolvent Trading* report. It said that it is better for a viable business to survive than for it to 'decline and die'.

It therefore recommended a form of provisional supervision, similar to the 'administration' mechanism used in England and Wales. It said that 'the ideal procedure would be cheap, quick, simple and effective'. It recommended provisional supervision with a view to keeping court involvement to a minimum and ideally achieving a rescue in 30 days. Subject to exceptions in relation to the banking, insurance and securities and futures industries, it said that provisional

supervision should apply to both listed and unlisted companies.

There can be no serious dispute with such an approach. If a viable business is able to survive, that will encourage and develop investment. It will save the company, jobs and other businesses that might otherwise decline and die as part of a 'domino effect' as the liquidation of one company has a knock-on effect in causing difficulties for its suppliers and the like. It ensures that enterprises in financial difficulties would have recourse to a restructuring regime, limiting the risk of a formal and expensive insolvency becoming inevitable.

If a company is instead allowed to 'die' through the process of liquidation its assets will effectively be sold for scrap when they might otherwise have been used more profitably for the rehabilitated business. In its *Corporate Rescue and Insolvent Trading* report, the Law Reform Commission cites the collapse of Barings

Highlights

- Hong Kong does not have a statutory regime for corporate rescue and the limited range of formal insolvency procedures means that businesses are only able to restructure at a relatively late stage
- a statutory corporate rescue procedure in Hong Kong would ensure that enterprises in financial difficulties would have recourse to a restructuring regime, limiting the risk of a formal and expensive insolvency becoming inevitable
- Hong Kong needs to introduce legislation to facilitate corporate rescue to ensure it remains competitive with other jurisdictions that have corporate rescue legislation

Bank as a graphic example of how corporate rescue can be particularly useful for large companies with international operations. Barings Bank in the UK went into administration under the Insolvency Act and was sold off, with the approval of the court, within two weeks of going into administration.

'If Barings had not had the benefit of the moratorium imposed under the administration procedure, it would have proved more difficult to achieve the sell off as other parties could have taken proceedings and disrupted the negotiations,' the Law Reform Commission report stated.

Corporate rescue is therefore good for:

- **unsecured creditors** who may be able to maximise their recoveries and get a better level of payment on their bills, and keep a customer, rather than a small (and otherwise possibly negligible) dividend following a liquidation
- **employees** who keep their jobs
- **shareholders** whose shareholdings may become more valuable rather than being lost in a liquidation, and
- **directors and management** who can thereby ensure that they act in the best interests of creditors, employees and shareholders.

As the Law Reform Commission states in its *Corporate Rescue and Insolvent Trading* report: 'This has implications for government both in revenue and social terms'. To put it another way, it is good social governance (people have jobs and pay tax), as well as good corporate

governance (directors and management ensure that they act in the best interests of creditors, shareholders and employees).

So why has no statutory corporate rescue procedure been introduced in Hong Kong? A cynic might infer that the political will to introduce corporate rescue, at least in order to save jobs, is lukewarm at best, given that the unemployment rate in Hong Kong is currently around 3%. But even if that is the case, times change and one should be prepared for the future.

International comparisons Singapore, England and the US

In Singapore corporate rescue can be facilitated through a process of judicial management. That is similar to the process of 'administration' in England & Wales, enshrined in the Insolvency Act 1986 (as amended, particularly, by the Enterprise Act 2002) which has the benefit of a moratorium on claims. There, an administrator can be appointed without necessarily involving the court, with the stated aim of 'rescuing the company as a going concern', or achieving a better result for creditors than they might get in a liquidation, or realising property to make a distribution to one or more secured or preferential creditors.

In the US, a company in financial difficulty can have recourse to the 'debtor in possession' protection of Chapter 11 of the Bankruptcy Code – with the benefit of an automatic stay on claims.

Europe

On 12 March 2014, a European Commission recommendation 'On a New Approach to Business Failure and Insolvency' sought to ensure that viable enterprises in financial difficulty, wherever they are located in the Union, have access

to national insolvency frameworks which enable them to restructure at an early stage with a view to preventing their insolvency, and therefore maximise the total value to creditors, employees, owners and the economy as a whole. The recommendation also aims at giving honest bankrupt entrepreneurs a second chance.

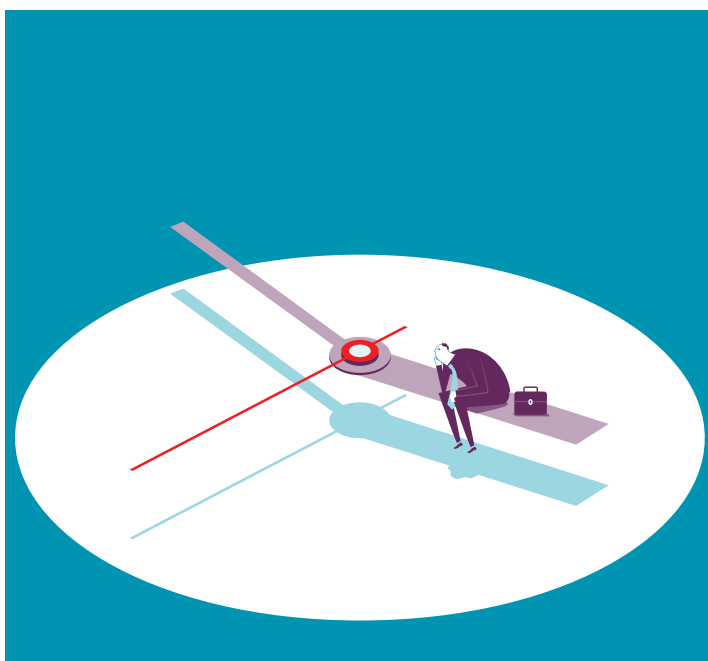
The European Commission said that 'national insolvency rules vary greatly in respect of the range of the procedures available to debtors facing financial difficulties in order to restructure their business'. It noted that 'Some member states have a limited range of procedures meaning that businesses are only able to restructure at a relatively late stage, in the context of formal insolvency proceedings. In other member states, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be'.

The Law Reform Commission also recommended back in 1996 that 'a solvent company which recognised that it was trading into difficulties should [also] be able to avail itself of supervision. It would stand a better chance of a successful reorganisation than a company that continued trading until it was insolvent'. That is to say, sooner rather than later.

Insolvency procedures in Hong Kong

Sadly, Hong Kong does not have a statutory regime for corporate rescue and the limited range of formal insolvency procedures means that businesses are only able to restructure at a relatively late stage.

Hong Kong's Financial Services and the Treasury Bureau pointed out in its consultation (*Improvement of Corporate Insolvency Law Legislative Proposals*) in



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April 2013, that the corporate insolvency and winding-up provisions in Hong Kong are broadly based on the UK Companies Acts of 1929 and 1948. That is to say, our corporate insolvency procedures are based on legislation dating back nearly 85 years from a jurisdiction which itself introduced new legislation to facilitate corporate rescue nearly 30 years ago, and then amended and improved it over a decade ago.

Attempts have nevertheless been made to develop the law in Hong Kong by appointing provisional liquidators under section 193 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance with power to explore the possibility of a corporate rescue. These attempts have been motivated by a desire to maximise creditor recoveries, by showing that there is a valuable asset, such as the listing status of a company, which might be realised in the event that the company is not wound up. These attempts can best be understood in the context of the relevant legal framework.

Absent a voluntary, non-statutory agreement between the company and all of its creditors, a company in Hong Kong can only have recourse to two alternatives.

1. **Schemes of Arrangement.** This requires the court to sanction the holding of initial meetings and thereafter to approve the proposed Scheme. The procedure is time consuming and has proved to be very expensive to operate. Perhaps most importantly, it does not provide for any moratorium on claims against the company during the process.
2. **Provisional Liquidation.** This can only be used if the company is insolvent, where its assets are in jeopardy and a winding-up petition has been presented at court – as the appointment of provisional liquidators must be for the purposes of the winding up:

- Providing that provisional liquidators can be appointed

in these circumstances, there is no objection to them having extra powers to enable them to consider a corporate rescue.

- The presentation of a winding-up petition secures the benefit of its own statutory moratorium, while the provisional liquidators explore (amongst other things) the possibility of a corporate rescue, which might then be implemented through a Scheme of Arrangement.
- There is, nevertheless, a significant difference between such an appointment and one which might otherwise be made solely for the purpose of enabling a corporate rescue to take place.

The difficulties are demonstrated in *Re Plus Holdings Ltd* (2 HKLRD 726/2007). The company was insolvent. A creditor's winding-up petition had been presented



and an application was made to appoint provisional liquidators. The most valuable asset of the company was its listing status. That was in serious jeopardy because the company had been put into the third stage of the delisting procedures and the management had not submitted a viable resumption proposal. To protect that asset, the petitioning creditor wanted to appoint provisional liquidators who could submit a viable resumption proposal to the stock exchange – accepting that, if there was no realistic prospect of rescuing the company in a specified period, the petitioner would apply to wind up the company.

The court appointed provisional liquidators with powers to enable them to consider a corporate rescue. In so doing, the court made it clear that 'the statutory power to appoint provisional liquidators ... must be for the purposes of the winding up ... there is a significant difference between appointing provisional liquidators on the basis that the company

is insolvent and assets are in jeopardy, which is permissible, and appointing provisional liquidators solely to facilitate a corporate rescue, which is not permissible.'

While recognising that 'the sale of listing status ... would now appear to be a thing of the past, with the SFC and the HKEx adopting a very stringent approach after 2004', the court was 'not prepared to say that it would be futile for independent professionals to explore viable methods of restructuring'.

Ultimately an investor was found, and a rescue was effected through a Scheme of Arrangement, and the winding-up petition was dismissed. This was, however, in relation to a petition presented in 2006 and was only dismissed nearly two years later in 2008.

Provisional liquidation is time consuming and expensive. While it works in some cases, the rescue of smaller, otherwise

viable but insolvent, companies in Hong Kong may be being frustrated by the time and expense involved in such a procedure.

Equally, there can be no serious argument that it must be better to be able to effect a sell-off, at a sensible price, within a couple of weeks of administration (as with Barings, and consistent with the 30-day period envisaged by the Law Reform Commission), rather than face the prospect of a potentially futile sale of assets, that are already in jeopardy, and which might ultimately only be effected two years after issuing a winding-up petition (as with Plus Holdings).

Time for change

The Law Reform Commission recognised the need for corporate rescue in Hong Kong back in 1996. While it saw a role for a reformed Scheme of Arrangement procedure (incorporating a moratorium), the Commission said that the current statutory framework for Schemes of

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Provisional liquidation is time consuming and expensive. While it works in some cases, the rescue of smaller, otherwise viable but insolvent, companies in Hong Kong may be being frustrated by the time and expense involved in such a procedure.

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Arrangement 'is so clearly deficient in the elements required for a proposal to creditors to be made that it did not assist in any way in the formulation of our proposals'.

It was in no doubt that there is a place for a corporate rescue procedure that could be used in cases where a company or part of a company could be saved. In trenchant terms, it said that 'it is beyond dispute that it is better for a viable business to survive as a going concern, in whole or in part, than for it to be simply wound up and such assets as remain distributed'. This 'distribution' in a liquidation is effectively a fire sale.

The Commission clearly stated that 'Hong Kong [needs] a comprehensive system to enable and encourage the reorganisation of companies in situations where liquidation was not the appropriate solution'. It therefore recommended introducing provisional

supervision. It was 'convinced' that this 'would be better than the existing procedures', not least because it would provide a flexible framework and limit the costs of court appearances.

Despite the Commission's recommendations, and despite numerous rounds of consultations and formal provisional supervision proposals – such as the Companies (Corporate Rescue) Bill in 2001; further public consultation in 2009; the publication of the conclusions from that consultation in 2010; and another consultation in 2013 – there is still no statutory corporate rescue procedure in Hong Kong.

In its Consultation Conclusions of May 2014, the Financial Services and the Treasury Bureau stated that the government is now actively developing a proposal to introduce a new statutory corporate rescue procedure for Hong Kong. 'Since the last public consultation

on the introduction of a corporate rescue procedure, the government has been studying the various other key issues of the proposals. We are further consulting stakeholders on the detailed proposals in 2014.'

Those Consultation Conclusions, together with the government's detailed proposals on a new statutory corporate rescue procedure, were placed before a meeting of the Panel on Financial Affairs on 7 July 2014. In an *Updated Background Brief* that was prepared for the meeting, dated 4 July 2014, the LegCo secretariat referred to the 1996 Law Reform Commission recommendation for 'provisional supervision' to provide a moratorium on legal action to a company in financial difficulty, and to the need to encourage directors to act on insolvency earlier.

At the time of writing, no minutes are available for that meeting. It is, however, understood from a webcast of the meeting that it is proposed to have a draft bill in the next two years – so, presumably, around 2016. This begs the question: how much further consultation is needed? What is meant by 'actively developing' proposals to introduce a new statutory corporate rescue procedure? After all, detailed proposals for corporate rescue have been available for nearly 20 years. It is time to enact legislation in Hong Kong to facilitate a corporate rescue culture. Now is the time for change!

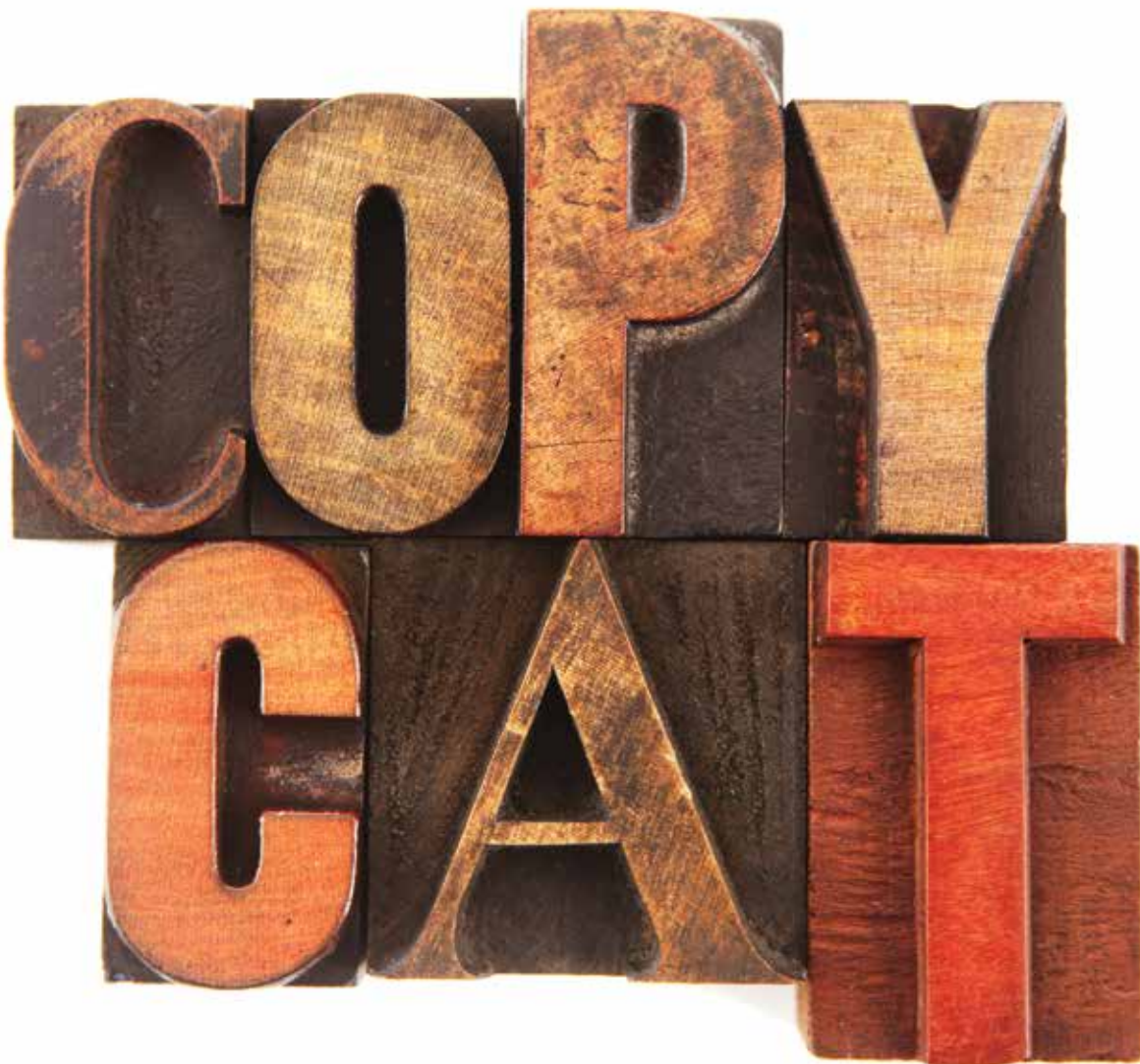
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Shadow companies: new CFI judgments

In two recent cases, Hong Kong's Court of First Instance (CFI) calls for proactive measures against shadow companies.



In two recent Hong Kong cases, *Power Dekor (Hong Kong) Ltd v Power Dekor Group Co Ltd* (1 HKLRD 845/2014), and *Exxon Mobil Corporation v USA Exxon Mobil Oil Ltd & Others* (HCA 2188/2013), Zervos J of the Hong Kong Court of First Instance reopened the debate about shadow companies in Hong Kong. Despite changes to the Companies Ordinance in 2010, aimed specifically at dealing with the shadow companies problem, Zervos J's judgments in effect expressed the view that the amendments do not adequately deal with the problem and called for proactive measures to be taken by the Companies Registry of Hong Kong to deal with the root of the problem.

The legal issues

The two cases involved similar factual and legal issues. In each case, the claimant had an established reputation in Hong Kong, whereas the defendant was an unrelated company incorporated in Hong Kong with a name very similar to the claimant's household brand. The defendants were typical 'shadow companies' in Hong Kong, which exhibit the following characteristics:

- they are largely inactive companies and do not have substantial business activities in Hong Kong
- their directors and shareholders typically reside overseas, very often in the People's Republic of China
- they engage secretarial companies based in Hong Kong to serve as their company secretary
- they use the address of their company secretary as their registered office address, and
- many of them use, or are suspected of using, their Hong Kong company name as a front to give legitimacy to infringing activities taking place in the People's Republic of China or overseas.

Under the current company registration regime in Hong Kong, the Companies Registry is not required to examine a proposed company name at the time of incorporation of the company to see if it may conflict with another person's rights to the name (or part of it). Unless the proposed company name is identical to an existing Hong Kong company name, or contains restricted words such as 'bank' or 'trust', the Companies Registry will not raise any objection and will approve the proposed name.

If a trademark owner objects to a new company name that has been approved by the Companies Registry, it is essentially left with two options:

- (i) to complain to the Companies Registry (within 12 months of the incorporation of the company) on the ground that the company name adopted by the newly incorporated company is too like the

name of an existing company in Hong Kong, or

(ii) to commence civil proceedings in Hong Kong on the grounds of passing off (and possibly trademark infringement if the defendant company uses an identical or confusingly similar mark in the course of trade in Hong Kong).

Prior to the amendment to the Companies Ordinance in 2010, pursuing option (ii) involved quite an expensive and complex process. While a large number of these lawsuits ended up with a default judgment in favour of the claimant, the judgment would not automatically lead to a change of name of the shadow company, given that the Companies Registry did not have the power to act upon a court order to enforce a name change in the event that the defendant failed to comply.

The only effective solution that led to an eventual change of the company name, involved joining the shareholders of the shadow companies as parties to the proceedings and seeking an order from the court that the claimants' solicitors be authorised to sign a special resolution

Highlights

- the Court of First Instance (CFI) judgments in effect express the view that the changes to the Companies Ordinance in 2010 do not adequately deal with the shadow companies problem
- the Companies Registry is not required to examine a proposed company name at the time of incorporation of the company to see if it may conflict with another person's rights to the name (or part of it)
- the CFI judgments call for proactive measures to be taken by the Companies Registry to deal with the root of the problem

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Zervos J’s judgments highlight the fact that there is more work to be done in Hong Kong to finally solve the company name hijacking problem
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on behalf of the shareholders to effect a name change, in the event they failed to comply. These extra steps took time and incurred costs for the claimants, especially as, typically, the shareholders of shadow companies reside overseas and provide fake addresses making service of process difficult and expensive.

The CFI recommendations

As a result of joint lobbying by the IP community and the Companies Registry, changes to the Companies Ordinance were made in 2010 in advance of the major overhaul of the Companies Ordinance in 2014. The 2010 amendments deal with the enforcement of judgments against shadow companies when only the company and not the shareholders also are sued. They give the Companies Registry the power it did not have prior to 2010 to act upon a Hong Kong court order to direct a shadow company to change its company name to one not including the objectionable name or mark. If the shadow company fails to comply, the Companies Registry will then proceed to replace the objectionable part of the company name with its registration number. The amendment, however, does not deal with the root of the problem which is the incorporation of companies which adopt company names that incorporate a third party's trademark.

Zervos J seized upon this in the two recent cases. He expressed concern over the fact that the defendants were able to register the companies successfully with the Companies Registry despite having names so similar to some well-known brand names or trademarks. The learned judge commented that the unscrupulous individuals behind these shadow companies might be able to use the fact of incorporation to pass themselves off as the claimants in their business pursuits in the People's Republic of China to deceive potential customers.

The learned judge acknowledged the changes brought about by the Companies Ordinance amendment of 2010, but felt that the legislative provisions do not go far enough to deal with the problem. Zervos J called for greater scrutiny in the approval process, as well as legislative changes enabling the Companies Registry to take more effective measures, including the power to refuse the adoption of a company name that incorporates a third party's trademark, or to deregister a company name that is the same as, or too like another. In *Power Dekor*, Zervos J directed that a copy of his judgment be referred to the Companies Registry.

The implications

Zervos J's concerns are shared by many in the IP community and may reopen the

discussion on company name hijacking. Despite the 2010 amendment to the Companies Ordinance, the problem remains. Shadow companies continue to be incorporated in Hong Kong and brand owners have to expend time and money to deal with the problem by commencing court proceedings in Hong Kong. While realistically it would be difficult to see further amendments to the Companies Ordinance being made in the near future, especially given the recent overhaul of this ordinance, Zervos J's remarks are to be welcomed as they highlight the need to deal with the problem at source.

How this can be done is another matter – should the Companies Registry employ IP experts to vet company names, or should an objection period be set up whereby proposed company names could be published and interested third parties could object? Any such process or proposal would take time to agree and vet, but Zervos J's judgments highlight the fact that there is more work to be done in Hong Kong to finally solve the company name hijacking problem.

Gabriela Kennedy and Eugene Low
Mayer Brown JSM

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A bird's-eye view

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

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本文是就本年7月9日至11日在大连举行的「中国A+H股上市公司董事会秘书高级研修班暨香港特许秘书公会第三十三期联席成员强化持续专业发展讲座」所作的报导, 主要论及中国的并购重组增长迅速, 监管部门正在修改和制定相关规则以配合形势的发展; 并同时论及公司治理新趋势, 以及董秘在并购重组中所扮演的角色。

由香港特许秘书公会(以下简称“公会”)与上海证券交易所(以下简称“上交所”)联合主办的中国A+H股上市公司董事会秘书高级研修班暨香港特许秘书公会第三十三期联席成员强化持续专业发展讲座(以下简称“讲座”)于7月9日至11日在大连举行, 来自中国证券监督管理委员会(以下简称“证监会”)、上交所、国际律师事务所及公会的相关专家等就并购重组议题与参会人士进行了充分交流。

简政放权 并购游戏规则大调整

证监会代表介绍, 中国占全球并购市场

摘要

未来公司治理将出现以下趋势:

- 国际间公司治理模式趋同;
- 履行社会责任和可持续发展, 除了对股东负责、以利润为目标外, 更关注小股东利益和责任感; 及
- 强化董事会建设, 能有效监督及管治公司运作。

交易规模比例逐年攀升, 2012年占比高达8.9%, 成为第二大并购市场。2013年上市公司并购市场风起云涌, 重大资产重组交易数量呈现爆发式增长, 首次披露的重大资产重组交易数量共计180起, 相比2012年大幅增长82%, 达到历史最高水平。

在这个过程中, 上市公司的并购市场结构发生明显改变: 按交易数量统计, 产业并购爆发, 借壳上市、整体上市占比下降。2013年产业整合高达101单, 同比增长146%, 成为今年上市公司重大资产重组数量大幅提升的主要推手, 借壳上市与整体上市数量分别为31单和38单。而2006年以前, A股并购市场处于初级阶段, 绝大部分的并购重组为借壳上市, 2006年股权分置改革完成后, 产业整合比例不断提升。不过证监会代表同时指出, 虽然金额增加, 但按交易规模统计, 产业并购规模较小, 目前仍处于发展初期。

尽管并购重组增长迅速, 但监管部门仍在酝酿修改完善相关规则, 证监会代表介绍, 今年3月国务院下发《关于进一步优化企业兼并重组市场环境的意见》, 提出要加快推进审批制度改革。

系统梳理相关审批事项, 缩小审批范围, 取消下放部分审批事项, 优化企业兼并重组审批流程, 简化相关证照变更手续, 对此证监会做了大量筹备工作, 此外, 该代表也对正在制订的并购与重组新规进行了系统解读。

值得关注的是, 就在7月11日, 证监会正式发布修订的《上市公司重大资产重组管理办法》、《上市公司收购管理办法》, 并向社会公开征求意见。办法规定, 将对不构成借壳上市的上市公司重大购买、出售、置换资产行为取消审批, 取消要约收购事前审批及两项要约收购豁免情形的审批, 同时完善发行股份购买资产的市场化定价机制, 定价区间从董事会决议公告日前20个交易日均价大幅拓宽。

上交所代表则对重大资产重组基本流程做了详细介绍, 在筹划并停牌后, 交易所将对停牌前股票交易情况进行核查, 并要求上市公司在停牌五个工作日提交内幕信息知情人名单。随后, 上市公司需召开首次董事会、披露重组预案并复牌; 召开二次董事会、披露重组报告书草案; 并在获得国资部门批复后召开股东大会并网络投票。

最后, 证监会将对相关重组进行审核, 上市公司进行实施并做好配套融资工作, 最后持续督导, 关注公司重组后盈利实现情况, 承诺兑现。在这个过程中, 上交所需要履行的职责包括停牌、异常交易核查、停牌期间沟通、指导和重组预案的形式审核、重组过程中的持续监督以及并购重组分道制评价。

对于海外市场的并购重组趋势, 英国欧华律师事务所合伙人兼中国业务负责人刘巍博士认为目前中国企业海外并购热情依然很高, 从最初的能源、矿产为主到目前的多样化(技术、品牌、地产), 而海外并购需要考虑不同法律文化、体系之间的碰撞, 需要关注的内容包括所投国家的法律体系, 是否有对外



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今年3月国务院下
发《关于进一步优
化企业兼并重组市
场环境的意见》，
提出要加快推进审
批制度改革。
”

资投资的限制或是股利政策、发生争议能否保证外国投资权益。同时还需关注中国国内的监管体系，包括目前对外投资的限制，是否需要监管批复或备案等。关键之一就是要做好并购的尽职调查和风险规避。

中信证券中信并购基金管理有限公司董事总经理徐波先生介绍了跨境并购现状与趋势、并购战略及规划、估值与定价方法以及交易管控等，分享了中国化工通过并购做大做强成功案例。

公司治理新趋势

香港特许秘书公会前会长、现任行政总裁孙佩仪女士则就“董事会/公司秘书之核心治理职责及国际最新发展”做了主题介绍。

她介绍了中信泰富事件及美国安然事件等个案情况来说明公司高管可能存在隐瞒财务数据等情况，最终损害股东利益。这意味着上市公司可能存在内部监管被董事会视为橡皮印章，令管理层为所欲为；审计委员会也只是空壳，未能发挥监察公司财务报告的角色等等问题。

也正是这些问题的存在，近年来国际市场相关规则一直在修改，她认为，未来公司治理将出现以下趋势：首先国际间

公司治理模式趋同，其次履行社会责任和可持续发展，除了对股东负责、以利润为目标外，更关注小股东利益和责任感，最后强化董事会建设，能有效监督及管治公司运作。

她观察到公司治理的一些最新发展趋势，包括香港证监会、联交所通过最新修订的规则强化了内幕信息管控与信息披露责任与违规的处罚，同时提升公司秘书的专业治理职责与作用，倡导董事会成员多元化、强化内控及风险管理等。

董秘在并购重组中的角色

作为并购重组的组织与参与者，广州白云山医药集团股份有限公司董秘陈静先生介绍了广药集团重组广州药业和白云山A的案例，分享了中港两地三处上市之信息披露与停复牌协调之经验。

在最后的小组讨论环节，参会董秘们按行业分六组就董秘在并购重组中发挥的作用及董秘的履职等议题进行了讨论，最后各小组派出代表就大家的讨论进行了总结发言。小组发言人中海集运董秘俞震表示，并购重组和生产经营可以起到对企业发展双轮驱动的作用，一方面需要生产经营，另一方面也要通过并购重组来发挥、体现、提升企业的价值，而董秘在并购重组中起到非常关键的

沟通协调作用，董秘要了解各方的利益出发点，在项目的立项，运作、收尾及最后的整合阶段起到积极的推动作用，就像润滑油渗透到项目这台发动机的各个方面。海通证券证券事务代表孙涛女士代表小组发言表示，董秘作为公司资本运作的策划和参与者，必须做好信息保密和内幕信息提示人的工作；确保决策程序合规合法；确保信息披露合规有效，比如，精准把握收购的比率；根据相关规定做好停复牌的工作，尽量减少停复牌的时间；做好投资者关系管理，包括媒体和广大投资者等。

讨论环节主席海通证券董秘金晓斌就董秘的履职进行了总结，他认为，董秘职能是五位一体，第一，是公司的官方发言人，第二，是监管部门指定的联系人，第三是股东和经营层的协调人，第四是公司资本运作的策划与参与者，第五是公司合规运作的执行人。董秘要发挥三个作用：公司正能量的传递者，公司良好品牌的维护者，公司创新的推动者。

蔡宗琦
撰文

This seminar is reviewed in English in the Institute News section of this month's journal (see page 39).

Seminars: June to July 2014

12 June

ESG reporting – a 360 workshop for corporate secretaries



Chair: Susie Cheung FCIS FCS(PE), General Counsel and Company Secretary, The Hong Kong Mortgage Corporation Ltd

Speakers: Dr Glenn Frommer, Managing Partner, ESG Matters Ltd; and Theodora Thunder, Streeter Strategic Ltd

17 June

Setting up a company in the Shanghai pilot free trade zone



Chair: Louisa Lau FCIS FCS(PE), General Manager and Company Secretary, HKICS

Speakers: Dr Wu Yan Lei, Managing Partner (JD US Attorney) of Shu Jin Law Firm; and Sam Wong, Director of Business Development of WKI Ltd

19 June

Responding to a fraud allegation: how to conduct an effective internal investigation



Chair: Edmond Chiu ACIS ACS, Director of Corporate Services, VISTRA Hong Kong

Speaker: Miang Lee, Executive Director, Fraud Investigation & Dispute Services, Ernst & Young Advisory Services Ltd

24 June

Data privacy at work



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

Speaker: Jennifer Tam, Senior Associate, Mayer Brown JSM

Competition Commission engages HKICS as stakeholder

In June, Rose Webb, Senior Executive Director, Philip Monaghan, Executive Director (General Counsel); and Wendy Thian, Senior Manager (Competition Affairs); of the Competition Commission; engaged Edith Shih FCIS FCS(PE), President; Samantha Suen FCIS FCS, Chief Executive; Mohan Datwani FCIS FCS, Director, Technical and Research, Solicitor; of the HKICS; and Professor Anne Carver, of the Institute's Technical Consultation Panel; as stakeholders following its

publication of *Getting Prepared for the Full Implementation of the Competition Ordinance*.

A wide range of topics were discussed at the meeting including the Competition Commission's proposed guidelines to be issued later this year and compliance issues. The Institute suggested that, from a resources perspective, the Competition Commission should especially seek to assist SMEs to understand the new

competition regime which is to be implemented next year and should develop some self-assessment checklists. There was also a consensus to widen the knowledge of company secretaries as gatekeepers. Anna Wu, Chairperson of the Competition Commission, will speak at the Institute's corporate governance conference on Friday 19 September 2014, and the Commission will speak to the Institute's members following the publication of its guidelines.

26 June

The new Companies Ordinance – Lecture 2: priorities for the next six months (a practical sharing session with company secretaries)



Chair: Samantha Suen FCIS FCS, Chief Executive, HKICS
Speaker: Wendy Yung FCIS FCS, Executive Director and Company Secretary, Hysan Development Company

28 June

How to run an annual general meeting and manage difficult meetings properly



Chair: Dr Maurice Ngai, FCIS FCS(PE), CEO, SW Corporate Services Group Ltd
Speakers: Dr Albert Lung, FCIS FCS, Lecturer; and Seaman Kwok, Head, Corporate Secretarial of Boardroom Corporate Services (HK) Ltd and Director of Boardroom Share Registrars (HK)

3 July

Conflict of interest/ fair dealing by directors under new CO and beyond (re-run)



Chair: Susie Cheung FCIS FCS(PE), General Counsel and Company Secretary, The Hong Kong Mortgage Corporation Ltd
Speaker: Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS

HKICS attends reception for Hong Kong SAR establishment anniversary

HKICS Chief Executive Samantha Suen FCIS FCS attended a reception in Guangzhou, hosted by the Hong Kong Economic and Trade Office (GDETO) in Guangdong of the Hong Kong government, in celebration of the 17th anniversary of the establishment of the Hong Kong Special Administrative Region on 1 July 2014. About 500 guests from the provincial and municipal governments, Hong Kong non-government organisations and trade associations attended the event.



The Director of the GDETO Albert Tang delivering his speech at the reception

Membership activities

Community service engagement

Taking the opportunity of the 65th anniversary of the Institute's presence in Hong Kong, a new Community Service Group has been established to organise community service activities for members.

The inaugural event, PHAB Fun day, was held on 5 July 2014. A group of 20 members – including family members and secretariat staff from the membership team – joined with 14 persons with physical disabilities to experience and promote PHAB (Physically Handicapped and Able-Bodied) integration (傷健融合).

At the activity, Daniel Tsang, Regional Manager (Hong Kong Island Region II) of the PHAB Association, explained the various kinds of physical disabilities and daily challenges faced by the disabled and common misunderstandings towards them. The PHAB Association members brought to this event a positive attitude and impressive performances: including diabolo

tricks, country music with clay-made ocarina and African-inspired drum rhythms.

Many of the participants from the Institute were first-time musicians, but they joined the PHAB Association members to make a harmonious musical experience. This was followed by a game competition and a very moving sharing session.

Below are some of the participants' comments on the event:

'During this event, I was able to understand more about disabilities and the PHAB Association, and how simple things in our daily lives are not easy for them – for example, they need help usually from bus drivers to lower the boarding platform at the bus entrance.'

'It was a very good experience. I had the chance to interact with them closely during the sharing session. The games and activities helped close the gap between us. We are no different from one

another. We played, ate, laughed together and successfully achieved the PHAB integration.'

'I am grateful to have met them. Through this event I gained a better understanding of their unique lives and their wish to be treated as one of us.'

Participants also voiced their support for future community activities organised by the Institute to help different beneficiaries and to promote social harmony. With this goal in mind, the Institute has decided to engage the services of the SAHK Chiwan workshop again for the letter shopping of the Membership Renewal Notice for 2014/2015. SAHK is a non-profit rehabilitation organisation serving persons with physical or mental disabilities.

We need your support – join the community service team and make a positive difference to the society we live in. For enquiries please contact Cherry Chan at: 2830 6005 or email: member@hkics.org.hk.



Membership activities

Happy Friday for Chartered Secretaries – The fantasy of diamond

This event was held on Friday 11 July 2014. A central branch of Chow Tai Fook was reserved solely for our members and light refreshments and chilled wine were served. Hamilton Cheng, Finance Director and Company Secretary of Chow Tai Fook, and a member of the Institute's Company Secretaries Panel, shared the success story of Chow Tai Fook, including its business strategies and future plans. Alan Chan, Head of the Branding Department of Chow Tai Fook, displayed Chow Tai Fook's marketing strategies and their latest campaigns. Last but not least, Sheryl Cashmore, Training Director of Chow Tai Fook, gave a lively and informative briefing to members about white diamonds and other coloured diamonds. Members were given the opportunity to shop with special discounts. Everyone enjoyed this Friday evening, particularly the chance to interact with other members and appreciate jewellery in such a deluxe environment. A special thanks to Chow Tai Fook for co-organising and sponsoring this unique event for our members.



HKICS Prize 2014 – call for nominations

The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretarial profession over a substantial period. Awardees are bestowed with the highest honour – recognition by their professional peers. You are invited to submit your nominations. The nomination deadline is Tuesday 30 September 2014. Please visit: www.hkics.org.hk; or contact Cherry Chan at: 2830 6005; or email: member@hkics.org.hk for details.

New Graduates

Congratulations to the new Graduates listed below.

Chan Yuk Man, Calvin
Chang Wai Man
Kwong Yik Ying
Lai Wai Ki
Ngan Hoi Yin

Newly appointed company secretaries

The Institute invites Associates and Fellows to provide notification as to their latest appointments as company secretaries of listed companies in Hong Kong for inclusion in CSj. 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 Jonathan Chow at: 2830 6088, or email: member@hkics.org.hk.

Appointment

Wendy Yung Wen Yee FCIS FCS, Executive Director and Company Secretary, Hysan Development Company Ltd, was appointed to the stock exchange Listing Committee on 11 July 2014.

More information is available on the HKEx website: www.hkex.com.hk/eng/newsconsul/hkexnews/2014/140711news.htm.

The Institute's fee structure 2014/ 2015

The Council has approved the following fee structure for the financial year 2014/ 2015, which will apply from 1 August 2014.

Members and Graduates	
Items	Amount (HK\$)
Annual subscription	
Fellows	2,510
Associates	2,150
Graduates (holding the status for less than 10 years, that is after 1 August 2004)	1,850
Graduates (holding the status for more than 10 years, that is from on or before 1 August 2004)	2,510
Retired rate (Note 1)	500
Election fees	
Fellows (Note 2)	1,000
Associates	1,950
Graduate advancement fee	1,900
Re-election fees	
Fellows	3,150
Associates	2,610
Graduates	2,080
Other fees	
Membership card replacement	60
Certificate replacement	150
Membership confirmation	200

Students	
Items	Amount (HK\$)
Registration fee	1,250
Re-registration fee	1,250
Renewal fee	780
Late studentship registration administration charge (Note 3)	550
Examination fee	1,100 per subject
Examination postponement fee	750 per subject
Examination appeal fee	2,000 per subject
Exemption fee	1,100 per subject
Exemption re-application administration charge (Note 4)	600 per application
Transcript application	80 per copy
Examination technique workshop	470 per subject
HKICS study outline	350 per copy
ICSA study text	800 per copy
HKCL study pack	470 per copy
CCA late registration charge	350 per month

Mainland's Affiliated Persons Programme	
Item	Amount (HK\$)
Annual subscription	2,200

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

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

All retired rate applications are subject to the approval of the Membership Committee.

Note 2: The special rate for the Fellow election fee at HK\$1,000 will continue to be applicable during 2014/ 2015.

Note 3: An administration charge will be applied to late studentship registrations for taking the corresponding examinations in June and December.

Late studentship registration period	Examination diet
1-15 August 2014	December 2014
1-15 February 2015	June 2015

Note 4: An administration charge for each exemption re-application will be applied to students who do not settle the exemption fee within the designated period of time following the approved exemption.

Affiliated Persons (AP) ECPD seminars in Dalian

The Institute held the 'Advanced Seminars for A+H Share Board Secretaries/ The 33rd Affiliated Persons (AP) ECPD Seminars' from 9 to 11 July in Dalian under the theme of mergers and acquisitions (M&As). The seminars are the fourth set of joint seminars co-organised by the Institute and the Shanghai Stock Exchange (SSE) since the signing of a memorandum of understanding between the two organisations.

The seminars attracted over 120 participants, including 54 from H-share companies; 39 from A+H share companies; 15 from A-share companies; and 11 from red-chip companies. Ten speakers delivered presentations covering a wide spectrum of topics, followed by a group discussion. Speakers from the China Securities Regulatory Commission (CSRC) and SSE, spoke on M&A regulations and the procedures for material asset reorganisations respectively. HKICS Chief Executive Samantha Suen FCIS FCS also attended the seminars and shared her views on the key corporate governance

responsibilities of the corporate secretary and on international developments in the corporate secretarial profession. Attendees discussed and shared views on the corporate secretary's role in M&As and other related topics in the group discussion session.

During the seminars, HKICS Vice-President, Dr Gao Wei FCIS FCS, and Samantha Suen, also took the opportunity to introduce the Chartered Secretarial profession to participants, and shared their views on the prospects of the corporate secretarial profession on the Mainland.

A networking dinner reception was arranged on 9 July. The Institute would like to express its sincere thanks to all the speakers, as well as the event co-organiser, SSE, associate organiser, Shinewing CPA, and sponsors Equity Financial Press Ltd, Computershare Hong Kong Investor Services Ltd and DLA Piper UK LLP.

This seminar series is reviewed in Chinese on pages 32-33 of this month's journal.



At the seminars



ECPD and MCPD

What you should know about the MCPD requirements

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

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 (at least 3 ECPD points)	31 July 2015	15 August 2015
2015/ 2016	1 January 1995 - 31 July 2015	15 (at least 3 ECPD points)	31 July 2016	15 August 2016

Revised mandatory CPD policy (effective 1 August 2014)

	Current MCPD Policy	Revised MCPD Policy (for 2014/ 2015)
Minimum CPD requirements	At least 3 ECPD points out of 15 CPD points for members working in corporate secretarial (CS) sector/ trust and company service providers (TCSPs)	At least 3 ECPD points out of 15 CPD points for members subject to mandatory CPD requirements in <i>all</i> disciplines
Practitioner's Endorsement	Accumulate at least 15 ECPD points in last CPD Year; and Fulfillment of at least 30 ECPD points in last two consecutive CPD Years	Accumulate at least 15 ECPD points in last CPD Year

Abolition of Practitioner's Endorsement fee

The application fee and the annual renewal fee for new applicants for the Practitioner's Endorsement (PE) and existing PE holders respectively have been waived for the financial year 2014/ 2015. Please refer to the new forms at the ECPD section on the Institute's website: www.hkics.org.hk for the 2014/ 2015 application/ renewal.

New policy on seminar enrolment (effective 1 August 2014)

Effective from 1 August 2014, no cancellation is allowed once a seminar enrolment has been confirmed. Substitution of enrollee is eligible with a HK\$100 administration fee together with the 'Transfer of Enrolment Form' received by the Institute at least two clear working days prior to the event date.

Please note that a confirmed spot by a member can only be replaced by a member; if a confirmed spot by a non-member is replaced with a member, the remaining enrolment fee shall not be refunded.

Substitution of enrollee is not applicable to an ECPD Programme Package (Individual) holder.

New ECPD programme package for individuals (effective 1 August 2014)

	Practitioner's Endorsement holder	Individual without Practitioner's Endorsement
Discounted price	HK\$2,800	HK\$3,300
Package benefits	Participants are entitled to attend 10 HKICS ECPD seminars (1.5 or 2 hours each) held within a CPD year. The final decision is subject to the discretion of the Institute.	
Discount to be enjoyed	Up to 30%	Up to 17.5%
Remarks	This package is offered to Institute members and students only.	

Change in ECPD programme package for corporates (effective 1 August 2014)

The validity period for ECPD programme corporate packages has been changed. The corporate package must be used to pay for HKICS ECPD seminars that are held within a CPD year.

ECPD and MCPD

Forthcoming seminars

Date	Time	Topic	ECPD points
12 Aug 2014	6.45 p.m. – 8.15 p.m.	How to plan for ESG reporting	1.5
26 Aug 2014	6.45 p.m. – 8.15 p.m.	Legal aspects of personal injuries at the work place	1.5
28 Aug 2014	6.30 p.m. – 9.15 p.m.	AML & CFT workshop series (3): AML compliance policies within a company	2.5
3 Sep 2014	4 p.m. – 5.30 p.m.	Directors and officers: legal liabilities, insurance and recent trends	1.5
11 Sep 2014	6.45 p.m. – 8.15 p.m.	Social media – essential legal issues you should know	1.5

For details of the forthcoming seminars, please visit the ECPD section on the Institute's website: www.hkics.org.hk.

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.

Membership application deadlines

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

Submission deadlines	Scheduled approval dates
Saturday 20 September 2014	Tuesday 21 October 2014
Saturday 12 November 2014	Thursday 11 December 2014

For enquiries, please contact Ken Lai at: 2830 6016, or Jonathan Chow at: 2830 6088, or email: member@hkics.org.hk.

Secretariat supports computer recycling

In support of the environmentally sound management of electronic waste, the secretariat disposed of a number of obsolete desktops and laptops as well as non-functioning printers and accessories via the Hong Kong government's Computer Recycle Programme. Under the programme, the collected computers still in working condition will be refurbished by not-for-profit Caritas (Hong Kong) before being donated to the needy. The remainders will be taken up by a commercial recycler.

International Qualifying Scheme examination

June 2014 examination diet results

Candidates will receive an email and an SMS notification by mid-August 2014 when the June 2014 examination diet results are ready to be released. Examination result slips will be posted to candidates and these results will not be disclosed by phone or email.

December 2014 examination diet timetable

	Tuesday 2 December 2014	Wednesday 3 December 2014	Thursday 4 December 2014	Friday 5 December 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

Please enrol between 1 and 30 September 2014. The enrolment form will be available at the Studentship section of the Institute's website: www.hkics.org.hk from the fourth week of August 2014.

Corporate Governance Paper Competition and Presentation Award 2014

This competition aims to raise awareness about the importance of good governance among undergraduates of local universities. The six finalist teams will present their papers and compete for the Best Presentation Award. Members and students are welcome to attend.

Date:	Saturday 13 September 2014
Time:	10 a.m. – 1 p.m.
Venue:	United Conference Centre Limited, 10/F, United Centre, 95 Queensway, Admiralty
Fee:	Free of charge

For enquiries and enrolment, please contact Carmen Wong, Assistant Manager, Education and Examinations, at: 2830 6019, or email to: student@hkics.org.hk.

Summer internship programme 2014 for Tin Shui Wai students

The Institute, a member of the Hong Kong Coalition of Professional Services (HKCPS), once again supported HKCPS and arranged three Form 5 students from Tin Shui Wai, New Territories to work at the secretariat as summer interns for two weeks this July. First-time employed, they found the work experience practical and valuable. 'I learned a number of document management and clerical skills and was grateful to the Institute for this working opportunity,' said Karen Ho of SPHRC Kung Yik She Secondary School.



Student Ambassadors Programme (SAP) – Summer Internship Programme 2014

A total of 17 student ambassadors received summer internship offers from seven companies (listed below in alphabetical order). The Institute would like to thank these companies for their kind support for the Student Ambassadors Programme.

Employer	Summer intern	University and programme
Angela Wang & Co, Solicitors	Wu Yan Hei	Bachelor of Business Administration, Caritas Institute of Higher Education
EFA Secretarial Ltd	Ma Hoi Ki, Katelyn	Bachelor of Business Administration (Corporate Governance concentration), Hong Kong Shue Yan University
	Wu Yan Hei	Bachelor of Business Administration, Caritas Institute of Higher Education
Hutchison Whampoa Ltd	Ma Hoi Ki, Katelyn	Bachelor of Business Administration (Corporate Governance concentration), Hong Kong Shue Yan University
	Wong Pui Man	Bachelor of Business Administration in Accounting, Hang Seng Management College
	Yip Si Ching, Cheryl	Bachelor of Business Administration (Law), The University of Hong Kong
Intertrust Resources Management Ltd	Wong Man Hei, Iris	Bachelor of Business Administration (Corporate Governance concentration), Hong Kong Shue Yan University
Reachtop Consulting Ltd	Chan Hok Yi	Bachelor of Business Administration in Professional Accounting, Open University of Hong Kong
	Siu Wing Lam	Bachelor of Business Administration, Hang Seng Management College
TMF Hong Kong Ltd	Chan Wai Ling, Cathy	Bachelor of Arts in Business, the School of Professional Education and Executive Development (SPEED), The Hong Kong Polytechnic University
	Chang Chi Fung	Bachelor of Business Administration in Professional Accounting, Open University of Hong Kong
	Fong Man Sai, Mandy	Bachelor of Business Administration in Corporate Management, Caritas Institute of Higher Education
	Hui Wing Lam, Cherry	Bachelor of Business Administration, Hong Kong Shue Yan University
	Kwong Wai Yi, Rosy	Bachelor of Commerce in Law & Business, Hong Kong Shue Yan University

	Law Tsz Wa, Zoie	Bachelor of Business Administration, Hang Seng Management College
	Tam Yik Sing, Simon	Bachelor of Business Administration in Corporate Management, Caritas Institute of Higher Education
	Wong Yin Ling, Karen	Bachelor of Business Administration, Hang Seng Management College
Tricor Services Ltd	Leung Hoi Yeung, Ocean	Bachelor of Commerce in Law & Business, Hong Kong Shue Yan Univeristy
	Wong Mung King, Amy	Bachelor of Business Administration in Finance, Lingnan University



Angela Wang & Co, Solicitors



EFA Secretarial Ltd



Hutchison Whampoa Ltd



Intertrust Resources Management Ltd



Reachtop Consulting Ltd



TMF Hong Kong Ltd



Tricor Services Ltd

IQS information session

The Institute held an International Qualifying Scheme (IQS) information session on 21 July 2014 for the general public interested in pursuing a career as a Chartered Secretary. Anita Tsang ACIS ACS, Senior Manager – Corporate Services, Tricor Services Ltd, shared her working experience and valuable career advice with the attendees.



At the seminar

IQS examination – recruitment of reviewer (Corporate Secretaryship)

The Institute is recruiting an IQS examination reviewer for the subject Corporate Secretaryship. The appointment is for four examination diets (that is, two years) with remuneration. Appointment will be approved by the Education Committee. Interested members please email your resume to: recruit@hkics.org.hk by Friday 29 August 2014. For recruitment details, please visit the News section of the Institute's website: www.hkics.org.hk.

Payment reminders

Studentship renewal

Students whose studentship expired in June 2014 are reminded to settle the renewal payment by Friday 22 August 2014.

Exemption fees

Students whose exemption was approved via confirmation letter in May 2014 are reminded to settle the exemption fee by Tuesday 12 August 2014.

New Students Orientation

Students who have registered since March 2014 are invited to attend the 'New Students Orientation' to be held on Monday 22 September 2014. This event aims to provide new students with up-to-date information on the Institute and serves as a platform for them to meet with other students. The IQS examination subject prize winners will also share their examination preparation tips at the event.

Date	Monday 22 September 2014
Time	7 p.m. – 8.30 p.m.
Venue	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central, Hong Kong

The enrolment form can be downloaded from the Studentship section on the Institute website: www.hkics.org.hk.

For enquiries, please contact Carmen Wong, Assistant Manager, Education and Examinations, at: 2830 6019.

Student Ambassadors Programme (SAP) – recruitment of mentors

The SAP has been an effective platform to promote the Chartered Secretarial profession to local undergraduates. Participation of members as mentors is important to introduce the qualification and profession to mentees. Mentors can share their working experience, professional knowledge and provide career guidance.

Mentors will be invited to join a tea reception, which will be the kick-off event of the SAP 2014/ 2015. This will be held on Saturday 27 September 2014 from 2.30 p.m. to 4.30 p.m. at Happy Veggie (1/F, Bayfield Building, 99 Hennessy Road, Wanchai).

For enquiries and enrolment, please contact Carmen Wong, Assistant Manager, Education & Examinations at: 2830 6019, or email: student@hkics.org.hk.

New SFC newsletter

The Securities and Futures Commission (SFC) has launched a new publication – the *Corporate Regulation Newsletter* – designed to help market participants understand the listing process and disclosure requirements for listed companies and listing applicants. It discusses specific areas where listed companies and listing applicants can improve disclosure to the market. It also highlights areas of concern observed during the review of prospectuses and related documents and the SFC's ongoing monitoring of listed companies.

The newsletter can be found on the SFC website – see Published Resources/ Industry-Related Publications at: www.sfc.hk.

SFC disciplinary action for internal control failures

The Securities and Futures Commission (SFC) has reprimanded Ping An of China Securities (Hong Kong) Company Ltd (Ping An) and fined it \$6 million over serious internal control deficiencies and other matters. An SFC investigation found that, between 1 August 2010 and 30 April 2011, Ping An failed to:

- establish anti-money laundering internal control procedures
- actively identify and report to the SFC and the Joint Financial Intelligence Unit suspicious transactions in a timely manner
- provide anti-money laundering training to its staff
- establish and follow appropriate and effective procedures to protect client assets in effecting payments
- effectively communicate and enforce its internal policies on employee dealings
- enforce its account opening procedures in relation to address proofs, and
- have in place an effective compliance function.

More information is available on the SFC website at: www.sfc.hk.

HKEx proposes to update internal controls requirements

Hong Kong Exchanges and Clearing (the Exchange) has launched a consultation on proposed changes to the section of its Corporate Governance Code relating to internal controls. The Exchange is of the view that the internal controls section of the Code should place greater emphasis on risk management.

Further, the Exchange considers that the Code should better delineate the roles and responsibilities of an issuer's board, management and internal audit function in relation to its risk management and internal control systems, and set out the minimum specific disclosures that an issuer should make in its Corporate Governance Report so as to enhance the transparency of its systems.

To achieve these aims, the consultation paper seeks views on proposals to update the internal controls section of the Code. In summary, the proposals set out in the consultation paper are intended to:

- emphasise that internal controls are an integral part of risk management
- enhance accountability of the board, board committees and management by clearly defining their roles and responsibilities in relation to risk management and internal controls
- improve transparency of the issuer's risk management and internal controls by upgrading the recommendation for issuers to disclose their policies and processes along with details of their annual review of the effectiveness of their risk management and internal control systems, and
- strengthen oversight of issuers' risk management and internal control systems by upgrading the recommendation for issuers to have an internal audit function.

The consultation paper can be downloaded from the HKEx website (www.hkex.com.hk). The deadline for submissions is 31 August 2014.

LegCo debates paperless securities

A Bill proposing a legal framework for the introduction of uncertificated securities in Hong Kong – The Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014 – has been introduced to LegCo. Currently, the law in Hong Kong requires the issue of paper certificates and the use of paper instruments of transfer for securities. The relevant investors hold only beneficial interest in the securities; they are not registered holders and do not hold legal title. Under the proposed uncertificated securities regime, investors will be able to choose to hold and transfer securities without paper documents and register the securities in their own names, thus enjoying the full benefits of legal ownership.

The broad framework for the regulation of the uncertificated securities market will be stipulated in the Securities and Futures Ordinance (SFO) and the Companies Ordinance, while the details relating to operational matters and regulation will be set out in new subsidiary legislation to be made under the SFO.

The initial stage of the proposed regime will cover shares that are listed or to be listed on the stock exchange. Other securities such as debentures and unit trusts that are listed or to be listed on the stock exchange will be covered at a later stage. It is envisaged that there will be a transitional period during which the current paper-based system will operate in parallel with the proposed uncertificated securities system.

The Bill currently being debated by LegCo provides for the making of related subsidiary legislation by the Securities and Futures Commission, which will oversee regulatory and operational matters relating to the new uncertificated securities market environment.

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

The HKICS is preparing a written submission on the proposed amendments to the Securities and Futures Ordinance and Companies Ordinance relating to uncertificated securities in Hong Kong. Members' comments can be provided to Mohan Datwani, HKICS Director of Technical and Research, at: mohan.datwani@hkics.org.hk, on or before 10 September 2014.

Consultation on the regulatory regime for listed entity auditors

The government has launched a public consultation on proposals to improve the regulatory regime for listed entity auditors. The reform proposals aim to enhance the independence of Hong Kong's regulatory regime for listed entity auditors from the audit profession, with a view to ensuring that it is benchmarked against international standards and continues to be appropriate in the local context.

Under the reform proposals, the regulatory remit of the Financial Reporting Council (FRC) will be expanded to oversee the regulatory regime for listed entity auditors, and the Hong Kong Institute of Certified Public Accountants (HKICPA) will be designated by law to perform the statutory functions of registration, setting of continuing professional development requirements and setting of standards on professional ethics, auditing and assurance with respect to listed entity auditors under the independent oversight by the FRC.

In addition to its existing investigatory functions and powers under the Financial Reporting Council Ordinance (Cap 588), the FRC will be vested with inspection and disciplinary functions and powers with regard to listed entity auditors for their audit engagements with listed entities.

The annex to the consultation sets out the key functions to be performed by the HKICPA and the FRC under the proposals. Based on the 'user pays' principle, and the principle that the auditor oversight body should be operationally and financially independent of the administration, the government proposes that the future FRC will be funded by levies coming, on an equal basis, from three sources, namely levies on listed entities, securities transactions and listed entity auditors.

The consultation paper is available on the Financial Services and the Treasury Bureau website (www.fstb.gov.hk). The deadline for submission is 19 September 2014. The government hopes to introduce the enabling legislation into LegCo in 2015.

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Please visit www.hkics.org.hk or contact Cherry Chan at 2830 6005 or email to member@hkics.org.hk for details.

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