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December 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



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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

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

Students: 3,167
Graduates: 468
Associates: 4,951
Fellows: 519

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December 2014

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Hong Kong companies, even where they have little connection with the US, may need to consider the long arm of US law in their compliance programmes, argue Kyle Wombolt, Global Head of Corporate Crime and Investigations, and Siyu Zhang, Associate, Herbert Smith Freehills.

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Merry Christmas!

The Council would like to thank members and students for their support over the year and wish you all a merry Christmas and a healthy and prosperous 2015!



The future of our profession

January 2012, the date of my first President's Message in this journal, seems like a very long way back. It has certainly been an eventful three years since I took up the presidency of the Institute and I would like to take the opportunity of this, my last President's Message, to review the status of the strategic goals we set out for ourselves almost three years ago.

In my first President's Message, I identified three strategic goals I hoped to take forward over my presidency. The first was to promote the value a Chartered Secretary brings to an organisation and we have seen good progress in this area. In the context of the complex regulatory environment today, our message – that companies with qualified Chartered Secretaries are better able to manage compliance risks and achieve the higher expectations of regulators and other stakeholders regarding corporate governance – has found an increasingly receptive audience.

The second strategic goal I identified was to assist in the professionalisation of the board secretary role in Mainland China. I considered this to be a long-term goal but this year we have seen very positive developments in this area. The creation of the China Association for Public Companies (CAPCO) Professional

Committee of the Board Secretary earlier this year was a significant step towards the eventual professionalisation of our profession in the PRC. From our contact with regulators and other stakeholders during our visits to Shanghai in April and October this year, it was apparent that there is keen interest in developing more uniform nationwide standards in board secretarial practices.

Our third goal was to promote the international ties and recognition of our profession. In this area, as I am sure readers of this journal will be aware, there has been dramatic progress. We succeeded in reorienting the Institute of Chartered Secretaries and Administrators (ICSA) as an international body. Since the general meeting of 11 December 2013, the ICSA has reformed its governance structure and set itself on a new course to be the leading global professional body in governance. The new ICSA Council held its first meeting in London in May 2013, during which I was elected as a Vice-President and an Executive Committee member. At the same time, we continue to work with the Corporate Secretaries International Association (CSIA) to promote good governance for corporate secretaries.

As the Institute embarks on the 21st year of its establishment in Hong Kong, it is well positioned to carry forward the torch of governance to the next milestone. With our unprecedented sustainable financial strength we are now able to further enhance membership services, provide additional funding for scholarships and

promoting governance, and widen our reach in the Mainland and internationally.

I am proud and honoured to have played my part in taking forward the evolution of our profession over the last three years, and I would like to take this opportunity to thank members of the HKICS Council, committees/panels and task force as well as the secretariat for all their hard work and support for our Institute and our profession.

At the AGM on 19 December I will be stepping down as your president, but I will continue to work with Council in my capacity as past president, and as Vice-President of the ICSA. I look forward to supporting the next president and Council to take our strategic goals forward.

I hope you have a wonderful Christmas and a happy, healthy and prosperous 2015.

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

Edith Shih FCIS FCS(PE)

我们专业的未来

我的首篇《会长的话》于2012年1月在本刊刊登，回想起来，仿佛一桩久远的往事。在担任公会会长的这三年间，公会经历了不少大事与演进，我希望通过最后这篇《会长的话》，回顾三年前我们所订下的策略性目标。

在我的首篇《会长的话》中，曾列出三项任期内会推展的策略性目标。首项目标是提升特许秘书为其所服务的机构贡献的价值，而这方面已取得了丰硕成果。在今天复杂的监管环境下，我们认为企业若拥有具专业资格的特许秘书，其合规风险管理工作将可做得更出色，并在企业管治方面符合监管机构及其他持份者的更高期望，这个讯息现已获得越来越多人的认同。

我所列出的第二项策略性目标，是协助推动内地董事会秘书角色的专业化。虽然当时我视此为长远目标，但今年已看到非常正面的发展。「中国上市公司协会(CAPCO) 董事会秘书专业委员会」于本年较早前成立，使我们的专业在内地的专业化进程中向前踏出了一大步。我们于今年4月和10月造访上海，与当地监管机构及其他持份者会面，得悉他们正积极寻求发展董事会秘书行业做法更一致的全国性水准。

第三个目标是加强我们专业的国际联系和所获得的国际认可，而我们在这方面取得了重大成就。本刊读者想必也注意到，我们成功地将英国特许秘书及行政人员公会(ICSA)重新定位为一个国际机构。自从ICSA于2013年12月11日举行了会员大会后，该会开始重组其管治架构，并订下新方向，就是要担当企业管治的全球性专业领导机构。ICSA的新理事会于2013年5月在伦敦举行了首次会议，而我在会上当选成为该会副会长及其执行委员会委员。与此同时，我们将继续与公司秘书国际联合会(CSIA)共同推广公司秘书的良好管治。

公会在香港踏入第21个年头，现已拥有适当平台，将管治的火炬推往另一个新里程。我们目前的财政状况达至前所未有的充裕水平，令我们可以进一步强化会员服务，为学术和促进管治提供额外资金，并开拓我们在内地和国际上的发展空间。

对于能在过去三年参与推动我们专业的发展，我感到万分自豪和荣幸。我谨此向香港特许秘书公会理事会、各委员会、小组委员会、专责小组及秘书处的所有成员致意，感谢他们对公会及我们专业所作出的贡献和支持。

我的会长任期将于12月19日会员周年大会当天届满，在此衷心感谢各位会员过去三年的支持。我仍会继续以公会前会长及ICSA副会长的身份，与理事会的成员一同共事，并会支援下任会长和理事会继续迈向我们的策略性目标。

谨此祝大家圣诞快乐，并迎接一个愉快、健康和富足的2015年。



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Ask the Expert

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

The identity and contact details of questioners will be kept confidential

Q: *Can we use our board portal to assist us with our board evaluation process?*

A: Most organisations have reviews in which board members are asked to rate their individual performance as well as the perceived effectiveness of the entire board. Many companies also undertake periodic governance reviews, which are basically objective assessments of how their board complies with its legal, regulatory and fiduciary responsibilities. These reviews help organisations develop best board practices.

Whether it's a formal or an informal process, gathering input is key to establishing the viewpoints of stakeholders. Company leadership teams and boards often need structured input to make better decisions. Some board portals come with interactive survey functionality. Being directly integrated into the board portal makes polling and building consensus easy, effective and secure, and is perfectly suited for online board evaluations.

Due to the busy schedules that board members endure, your board portal should have a simple and intuitive interface that makes surveys simple to create, engaging to fill out and informative to analyse.

Some of the benefits of the survey function may include:

- Respondents can easily access and complete surveys, as well as save in-progress surveys on their laptop or iPad.

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- Questions include a variety of response formats, including yes/no, multiple choice, open answers and Likert Scale (a psychometric scale commonly used in questionnaire tests).
- Responses can be set to be private or anonymous.
- Directors can be given the option to add comments.

For board members who travel often, being able to complete a questionnaire while offline and over multiple sessions is a major draw. Many board portals have seamless online-offline functionality and this feature helps directors work their way through lengthy surveys, even with an unreliable internet connection. The questionnaire and responses automatically sync for any updates, so users don't lose work, even if they lose their Wi-Fi connection.

*Erin Ruck, Regional Director
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Your chance to ask the expert...

The challenges company secretaries face in their work tend to be much broader in scope than those faced by other professionals. Their remit goes from technical areas of corporate administration to providing high-level corporate governance advice to the board. This means that practitioners need to be competent in a wide range of fields.

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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.

Know your Institute: the road ahead





This 'Know your Institute' series of articles has tracked the evolution of the Chartered Secretarial profession in Hong Kong over the last 65 years and has sought to familiarise readers with the work of the Hong Kong Institute of Chartered Secretaries in this anniversary year for the Institute. This concluding article in the series looks ahead to what the future might hold, both for the Institute and the profession.

Attempting to predict the future is a notoriously risky business, particularly over long-term horizons. Unexpected events have a habit of catching everyone by surprise. With that caveat, however, respondents to this article identify three trends which, at least in the near-term, look set to characterise the years ahead for both the Institute and the profession.

1. The governance trend

Corporate governance advice has become a 'headline' part of the services provided by corporate secretaries. This is part of the historical trend which has seen corporate secretaries become increasingly responsible for trusted advisory services to the board – in addition to the administrative tasks, such as organising

meetings and keeping company records, which first characterised the role. Respondents to this article believe that corporate governance will continue to rise in the corporate and regulatory agenda, and that corporate secretaries are ideally placed to benefit from this trend.

'I believe corporate governance, as an area, will continue to become prominent,' says Paul Moyes FCIS FCS, Chair of the Professional Services Panel, 'and I see a very bright future for anybody who is involved in that area, whether for listed companies or for other regulated businesses.'

Susie Cheung FCIS FCS(PE), Chair of the Membership Committee, agrees. 'The

Highlights

Respondents to this article believe:

- corporate governance will continue to rise in the corporate and regulatory agenda, and corporate secretaries are ideally placed to benefit from this trend
- members of the Institute with the necessary language and professional skills are well placed to enter the Mainland China market, and
- we will be seeing a broader perspective of the profession, both in terms of the geographical and professional backgrounds of its members.



“ I would encourage members to become more active participants in the Institute’s work. Getting involved is not just about making our Institute stronger, it is also about giving members the opportunity to be a part of our work and feel an affinity with the Institute. ”

Edith Shih, HKICS President

future is bright. There is a greater and more active role for company secretaries to play and how effective we are going to be, and how relevant to society, will depend on how much we want to play that role. I think we are establishing ourselves as the guardians of corporate governance.'

Polly Wong FCIS FCS(PE), Chair of the Education Committee, adds that the related issue of sustainability will be one of the key criterion for the future success of companies in Hong Kong. 'The role of the corporate secretarial profession will be increasingly critical in the coming decades for the sustainable development and success of corporations,' she says.

Respondents acknowledge, however, that there will be challenges ahead. Research carried out by the Institute into the roles and responsibilities of company secretaries in Hong Kong's listed companies (see '*The Significance of the Company Secretary in Hong Kong Listed Companies*' on the HKICS website: www.hkics.org.hk), found that the importance attached to the corporate governance advisory role still depends on the standing of the company secretary

and the attitude of directors, particularly the chairman, towards him or her.

HKICS President Edith Shih FCIS FCS(PE) believes that the Institute and individual Chartered Secretaries should work hard to ensure that this great opportunity for the Institute and the profession is not lost. 'New horizons have opened up bringing new opportunities for the profession. We must work towards establishing the company secretary position as *de facto* chief governance officer. In this way we can continue to grow,' she says.

2. The growth trend

The increasingly complex regulatory environment companies operate in today has both increased the demands on, and the demand for, corporate governance professionals. This trend, along with the demographics in Hong Kong and Mainland China, has seen the Institute become the fastest growing division of The Institute of Chartered Secretaries and Administrators (ICSA).

'I first joined the Institute in February 1995 and since then our membership has grown from about 3,000 to over 5,800, and our student numbers have been maintained at

Panel in focus: Company Secretaries Panel

History: The Company Secretaries Panel (CSP) was set up in November 1994.

Remit: The CSP consists of 18 company secretaries from major listed companies in Hong Kong. They combine to represent a third of Hong Kong's market capitalisation. The CSP promotes the Institute's relationship with listed issuers, regulators and the government. CSP members also contribute to consultation topics with regulators and the government.

Meetings: Quarterly.

Membership: Edith Shih (Chair); April Chan; Hamilton Cheng; David Fu; Eric Ip; Nereid Lai; Timon Liu; Joseph Mau; Neil McNamara; Gillian Meller; Patrick Ng; Paul Stafford; May Tsue; Terry Wan; Bill Wang; Grace Wong; Eirene Yeung; Louisa Yuen.

“
I see a very bright future
for anybody who is involved
in [corporate governance],
whether for listed companies or
for other regulated businesses
”

Paul Moyes, Chair of the Professional Services Panel



over 3,000 annually,' says Louisa Lau FCIS FCS(PE), HKICS General Manager and Company Secretary. 'I have seen growth in almost every aspect of the Institute's work. In 2003 we had eight staff members in Hong Kong – today we have 30 staff in Hong Kong and four in Beijing.'

The Institute's relationship with Mainland China will play an important part in maintaining that growth trajectory. 'This aspect of our work is very important,' says Edith Shih, 'and we will continue to work closely with our contacts on the Mainland with a view to mutual recognition. They will need to set up their own professional examination and qualification system but we will be extending whatever help we can with that.'

'Mainland China offers a lot of opportunity for our Hong Kong members,' HKICS Chief Executive Samantha Suen FCIS FCS(PE) points out. 'There is a huge demand in the Mainland for governance professionals. Regulators in China are keen to encourage more self-regulation by companies, while at the same time raising the bar in terms of governance standards. The HKICS, as ICSA's China Division, will speed up its efforts to promote the profession in Mainland China.'

Kenneth Jiang FCIS FCS(PE), the Institute's Beijing Representative Office Chief Representative, agrees. He points out that Hong Kong members with the necessary language and professional skills are well placed to enter the Mainland China market. 'As the fast-growing Mainland capital market continues to converge with its international counterparts, the need for corporate governance professionals

with international perspectives keeps growing,' he says.

The Institute's stakeholder network on the Mainland has provided a good platform to improve the awareness and knowledge among Hong Kong members about the regulatory and business environment in the Mainland. Last year the Institute launched its

Panel in focus: Professional Services Panel

History: The Professional Services Panel (PSP) was set up in November 2004.

Remit: The PSP consists of 12 senior practitioners from the trust and company service providers sector. It provides support and guidance to members of the profession who provide professional services to clients, as opposed to working as in-house company secretaries. The PSP is currently working on anti-money laundering and counter-terrorist financing issues. It is also looking at the implications of the changes brought in by the new Companies Ordinance. The PSP also handles the Institute's relationship with the Companies Registry through the Companies Registry's Customer Liaison Group.

Meetings: Quarterly.

Membership: Paul Moyes (Chair); Paul Campbell; Frances Chan; Loretta Chan; Edmond Chiu; Katherine Chiu; Teresa Lau; Liza Murray; Mabel Ng; Dr Maurice Ngai; Natalia Seng; Alberta Sie.

'PRC Corporation Practices' executive diploma programme in collaboration with HKU SPACE.

The Institute's Mainland China work takes time and financial resources, but Edith Shih believes that this is a wise investment. 'China is a very big market and it is our future. Our China work is not just a matter of developing that market, it is also for our own survival. We have to use our resources very carefully, but it is an expense that will provide a good return, perhaps not a monetary one

but certainly a return for the profession in due course which will benefit our members, the corporate arena as well as the community.'

3. Expanding horizons

Another trend, which has been particularly evident in the last decade, has been the closer ties between corporate secretarial professional bodies around the world. The Institute played a key part in the formation of the Corporate Secretaries International Association (CSIA) in March 2010. The Institute was a founding

member of the CSIA and April Chan FCIS FCS(PE), HKICS Past President, was its founding president.

Of course, as part of the ICSA, the Institute has always been linked to the global profession, but the ICSA itself has become a lot more globally minded in recent years. Recent structural reforms have given proportional representation to the ICSA divisions on ICSA Council. As the ICSA China Division, the Institute now has two representatives on ICSA Council – President Edith Shih (who was also

The HKICS at 65+20: what do members think?

Respondents to this series of articles (in alphabetical order) reflect on the past and look forward to the future in this double anniversary year.



'Since I joined the HKICS, I have seen the Institute grow much stronger. This has a lot to do with what's happening in society around us, in particular the demand for higher standards on the compliance side and the corporate governance side, but the Institute has also been good at picking up on this opportunity.'

Susie Cheung, Chair of the Membership Committee



'This year has been a time for celebration in relation to the achievements of the last 20 years. With the inevitable tide pushing all walks of society towards, and converging upon, good governance, this is also a time to plan and look

forward to continuing to push good governance to the forefront of decision makers and to assist with regulatory developments which I hope to contribute a part to.'

Mohan Datwani, Director, Technical and Research



'In my view, the Institute does seem to be going from strength to strength. The number of new members we are receiving each year is growing. I think our prominence is growing because corporate governance is such an important business area and our roles and responsibilities have very much been brought to the front of decision making. I think we are very well placed as the future governance professionals in China.'

Paul Moyes, Chair of the Professional Services Panel



'I would like members to think about what they can do for the Institute and about what the Institute can do for them. There are many ways members can get involved. That might take the form of attending a seminar or one of the Institute's functions or activities. It might be signing up to

become a mentor for our students or providing funding for our Chartered Secretarial Foundation, but I would encourage members to become more active participants in the Institute's work. Getting involved is not just about making our Institute stronger, it is also about giving members the opportunity to be a part of our work and feel an affinity with the Institute – that is surely better than sitting around waiting for things to happen.'


Edith Shih, HKICS President

elected ICSA Vice-President and Executive Committee member earlier this year) and Past President Natalia Seng FCIS FCS(PE).

Respondents to this article believe that this trend, together with the trend for practitioners to take on a corporate governance advisory role, is leading to a closer identification of the corporate secretarial role with corporate governance. Where this trend will lead the profession is hard to say – will we be seeing more ICSA divisions deciding to use the term 'governance' in their names?

Earlier this year the Australian division of ICSA changed its name to the 'Governance Institute of Australia'.

Whatever decisions are made regarding the name change issue, the profession is taking a broader perspective of the work of its members – whatever their specific designation. This trend is already apparent in the decision by the ICSA to broaden the curriculum of the Chartered Secretarial qualification to make it more relevant to those members of the profession who are not corporate secretaries.

'We have found that there are a lot of lawyers who want to become members, a lot of risk managers, compliance managers, internal auditors, tax people and even directors find our qualifications have value,' said ICSA President Frank Bush FCIS in interview with CSj recently. 'We have to recognise those different roles and we do so by introducing additional subjects to our curriculum that are more oriented towards some of those specific job descriptions.' 



'The world is changing. Globalisation, technology, information flow, demographics, new regulations and cross-border activities will bring challenges for businesses and professionals, but they will also bring opportunities. We should address these new challenges and capture

this window of opportunity to make the HKICS the leading professional institute in governance in Greater China – that is, Hong Kong, Mainland China, Macau and Taiwan.'

Samantha Suen, HKICS Chief Executive



'The board secretary is becoming more and more important as the demand in the capital markets for good corporate governance increases. At the same time, with the internationalisation of the economy and the opening up of the capital markets in the Mainland, the

Institute will have a rare opportunity for development. In the future, the Institute will be of unique significance in promoting the development of corporate governance and professionalising the board secretary in Mainland China.'

Dr Gao Wei, HKICS Vice-President



'This year marks a milestone anniversary for the Institute that symbolises the well-established and deep-rooted standing of the Institute as a professional body in Hong Kong. Also, this is a time for the Institute to launch new initiatives for sustainable development and success in the years ahead.'

Polly Wong, Chair of the Education Committee



'It has been great to witness the growth of the Institute and the Chartered Secretarial profession over the years. With the increased complexity in regulations there has been an increasing demand for governance professionals, but our

growth has also been largely due to the contribution of members and their efforts in promoting the profession.'

Candy Wong, Director of the Education and Examinations Department

Talking strategy

CSj interviews HKICS Chief Executive Samantha Suen FCIS FCS(PE) on her strategic goals for the HKICS.

What are your aspirations as Chief Executive of the HKICS?

'As Chief Executive of the HKICS, I help Council formulate strategies to develop the Institute and profession, and I lead the secretariat team in implementing such strategies. I also act as a representative or ambassador for the Institute in building better working relationships with our stakeholders locally, regionally and globally.

Another key part of my role is to build up a talented team at the secretariat to provide quality and proactive services to our stakeholders, especially to members, and to build the profile of our profession. I believe the secretariat can take a leading role in promoting high standards – especially good corporate governance and ethical standards.

In addition to the above, I'd also like to improve the loyalty and passion of our students and members for the Institute.'

What are the benefits for members of getting involved with the Institute's work?

'I was involved in the Institute's work when I was a student at the Hong Kong Polytechnic many years ago. I also joined an Institute working group and later on became a Council member and President after my graduation. Getting involved in the Institute's work provided me with great opportunities to learn from members of Council and its committees. It is immensely rewarding to contribute to the growth and development of the Institute. Members' involvement certainly brings benefits to current members but, perhaps more importantly, it also benefits future members. I feel proud of my involvement.'

What is your strategy relating to professional development?

'Professional development is an important area for us. We need to keep our members up to date with new regulations so as to help them fulfil their job duties and to mitigate the risk for the companies they serve.

The primary way we do that, of course, is via our CPD programme. I am working to achieve a more structured training programme for different levels of company secretaries and governance, compliance and risk management professionals. I think we should also offer training to directors and other senior management personnel in listed and private corporations as well as charitable organisations. We are also looking into providing more practical workshops, technical seminars and high-level roundtable discussions, as well as online learning programmes for busy company secretaries and executives who have tight deadlines and travel schedules.

Professional development is not only about CPD, however. As a leading professional Institute, we provide valuable research projects to highlight issues and set new standards and trends in company secretarial and governance topics. Our research reports also help our advocacy work and this is another area I am keen to develop. I am planning to strengthen our Marketing & Communication team. We need to get our message regarding the value that the Institute and Chartered Secretaries bring to the corporate world and the community to a broader audience.'

What is your strategy relating to member services?

'This is another important area. As an Institute established by members and for members, we should provide quality services to our members. I'd like to approach this area with a more personal touch – in particular I think we need to listen to members' views and needs. I am therefore planning a series of focus group discussions for fellows, associates, graduates and students to find out their needs and views. One thing to bear in mind is that many of our members are also members of other professional bodies. I hope that we can offer a platform for them to consider the HKICS as their home.

As mentioned earlier, I also aim to encourage members to get closer to the Institute by getting more involved in our work. This will maximise the good results from our members' services and will help nurture future leaders of the Institute. For example, I have invited four members to join our 2015 Annual Dinner Organising Committee. With their help, I'm sure

we'll be able to present a very special Annual Dinner on 14 January 2015.

I believe that, as professionals, we should also contribute more to the community. I am planning to set up a community service team and we will be organising more activities to help the less fortunate in our society.'

What is your strategy relating to education?

'The world has become very competitive, especially for the young generation. Our message for undergraduates, as well as senior high school students, is that our profession has a bright future. The business world is increasingly aware of the importance of good governance and ethics and these qualities are becoming essential elements for every individual.

A lot of effort has been put into promoting our profession to universities and undergraduates. The Institute has set up an Academic Advisory Panel with representatives from local universities to enhance our relationship with academia and the universities. I intend to continue this work and to maintain the high standard of our examinations and collaborative master's degree programmes. I would also like to improve the support services we offer to our students to help them obtain their qualifications as soon as possible. Moreover, the ICSA is going to review the current IQS examination syllabus with a view to bringing us more in line with the future needs of our community.'

The global ties of the Institute have been strengthening; could we discuss the new ICSA structure and the Institute's role as the ICSA China Division?

'The structural reforms to the ICSA are a very exciting development. I have attended two ICSA Council meetings this year and found all Council members to be enthusiastic about making the ICSA the leading global professional institute in governance. Council is also keen to reach out to the divisions.

“ we need to get our message regarding the value that the Institute and Chartered Secretaries bring to the corporate world and the community to a broader audience

Accordingly, the second Council meeting in 2014 was held in Hong Kong. The ICSA Executive Committee and its President and Vice-President met with Hong Kong and Shanghai regulators respectively when they were in this part of the world in October. They took the opportunity to update local regulators on our developments and to listen to their advice on the development of the Chartered Secretarial profession.

The 2015 Council meetings will be held in London in March and Kuala Lumpur in September.

Regarding the HKICS role as the ICSA China Division, I am working to speed up our efforts in promoting the profession in Mainland China. The Chartered Secretarial qualification is an international qualification and there is currently a lot of interest in Mainland China in international standards of corporate governance and corporate secretaryship – not only among multinational corporations and foreign investors. China offers a lot of

opportunity for our Hong Kong members and I think the HKICS, as the ICSA China Division, is well placed to expand its involvement in the development of the profession in Mainland China.'

Do you have any comments on the future career path for students joining the Chartered Secretarial profession in Hong Kong?

'This career path is very promising. Students should try to join a well-known professional firm or listed company to learn the basics and work their way up through the career gradually. At the same time, students should acquire technical knowledge by attending the Institute's CPD seminars and workshops and should get involved in the Institute's activities and working groups. Corporate secretaries need to be hard working, and they also need interpersonal skills and a good general business knowledge as they climb the corporate ladder. Bear in mind that practitioners need to communicate with very senior people – the chairman of the board, directors, senior managers and external stakeholders.'



Competition compliance: in search of legal certainty

A new compliance challenge for company secretaries in Hong Kong is just around the corner with the Competition Ordinance due to be implemented next year. Our In Profile candidate this month, Clara Ingen-Housz, Partner, Linklaters, helps to clarify some of the uncertainties surrounding the new law.

Thanks for giving us this interview. Do you think Hong Kong's new competition law will be a major issue for Hong Kong companies?

'I think most companies will have been following the public debate about this law over the last 10 to 15 years. Over the last two years, of course, discussions in LegCo have been particularly lively, with a lot of stakeholders making their views known. As you may recall, SMEs have expressed a lot of concern about the cost of compliance and the regulatory burden they may be exposed to. This is surprising since SMEs are often the main beneficiaries of competition legislation – it shelters them from bad conduct by bigger groups.

So the ordinance is nothing new and those who feel that they need to do something are probably already working on it. People are not going to wake up one morning and say – "oh my God I need to change my entire business model".

Meanwhile, at the consumer level, there are huge expectations in terms of what this ordinance is going to bring about. The hope is that prices at the supermarket and rents are going to go down but these are deliverables which are not going to be so easy for the Competition Commission to bring about because there is not necessarily a direct link between these prices and the competition law.

So there are a whole set of different expectations and the Commission has a lot of work ahead of it. Firstly, that is going to be about education. This law is not going to change the world the day it comes into force – change is going to be very gradual. Secondly, the Commission is going to have a big job trying to address the legal uncertainties that surround this law. That work will begin with the guidelines it will be releasing soon, but, in addition to that, the Commission may need to issue policy statements where there are areas of the law that are not completely crystal clear.'

What do you think will be the Competition Commission's enforcement priorities?

'Like any new authority, at first the Commission will have to go after well circumscribed cases that they can win beyond doubt. Typically it is easier to go after small cases because it is easier to gather evidence. In Singapore, for example, they initially went after what people thought were completely meaningless cases, but at the same time it is very important for an authority to build a track record of successful implementation or enforcement.

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for any new regime, my two cents on this would be that it is better to have a narrow scope of implementation and to put a premium on legal certainty
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However, in Hong Kong the SMEs have been assured that they won't be hit too hard by this ordinance and the public expects the Commission to go after the big guys which are much more difficult to catch. So it is a very difficult environment for the Commission to navigate in Hong Kong.'

You mentioned that SMEs are concerned about the cost of compliance, do you think these concerns are justified? For example, 'vertical agreements' are relatively common in Hong Kong so any prohibition of these could have a big impact.

'Vertical agreements are notoriously difficult to analyse and understand. You have to assess whether they are better or worse for competition before imposing restrictions on them, so there is a big push to try to exempt them from the regime. On the other hand, horizontal agreements will clearly always be illegal and it

Highlights

- countries implementing a new competition regime are better off having a simple, clear regime focused on serious anti-competitive practices such as price fixing, market sharing, bid rigging and output restrictions
- industry bodies and trade associations have a role to play in educating their members about the new competition law
- company secretaries should take the time to read the Competition Ordinance, understand it, and question to what extent the company they work for may have issues

is my impression that SMEs will be more directly concerned by horizontal issues.'

Could you give us a layman's guide to the meaning of 'horizontal' and 'vertical' agreements?

'Horizontal agreements refer to agreements between companies at the same level of the supply chain. So, for example, if all the print shops in a Wan Chai street quote you exactly the same price for what you want to buy that is obviously a cartel – a horizontal agreement to fix prices. The law is very clear on this: it is not acceptable and has to stop.

Vertical agreements are agreements between companies at different levels of the supply chain. An example of this would be a supplier telling a distributor not to sell in a particular area because another distributor is going to be selling in that area and the supplier doesn't want them to compete with each other. That might be how a supplier manages its distribution network.

Vertical agreements can have pro-competitive effects. Many competition regimes therefore require an analysis as to whether they are good or bad for competition and if they are seen as having a positive effect they may be permitted. There is no such debate when it comes to horizontal agreements.'

You mentioned that the Competition Commission needs to address the legal uncertainties that surround the Competition Ordinance – do you think the requirements are not sufficiently clear cut?

'Competition cases are very much based on the actual circumstances. I am often asked abstract questions about whether something is anti-competitive and the answer is always the same – it depends on the market and the sector and the product you are talking about. So many elements come into play. How do you define the market, for example? If the market is defined as the whole of Hong Kong a company may be seen as a small player, but if the market is defined as Central district, the company may suddenly have a huge market share.

For abuse of dominance cases, there is an expectation that the economy is going to be quite important. That is why the Competition Commission has hired an economist. An economist can help explain the net effect on the market. Vertical agreements are also going to be very difficult to assess and therefore it is important to learn from the Commission's guidelines whether they are going to be exempted. If they are going to be exempted

this will reduce the regulatory burden because companies can just focus on horizontal agreements.'

Which are more clear cut?

'They are more clear cut but they are not always that simple either to be honest. If you have grass roots companies running a small cartel this might be, for a competition lawyer, very easy to recognise, but there may be a cultural issue to consider because the companies may not perceive this as a problem. Talking to your competitors may be regarded as the way to do business – that's an issue we face in Asia. There is a whole cultural revolution that needs to take place.

So I would say that the compliance hurdle will not be so much about the legal analysis companies will need, but more about a change in attitudes. It is going to be about getting across the message that this is simply not something you are allowed to do, and this message needs to be repeated until it starts to get under the skin.

This is why the Competition Commission's educational work will be so important, but it will not only be up to the Commission to get this message out. Christopher To, Executive Director at the Construction Industry Council, is very alive to this issue and recognises that industry bodies need to help SMEs understand what they can and cannot do. You can't ask an SME association to hire lawyers and to get a full audit of their members' practices, this is impossible from a cost point of view, but I think that, following the example of the construction sector, it is incumbent on industry bodies to provide the necessary educational tools such as seminars and presentations.

Another dimension to this is that, when it comes to enforcement, it is important to demonstrate that you have done what you could to mitigate the risk of the law being breached. I am not saying that all SMEs should have a Rolls-Royce type of compliance programme but where a company can prove that it took the time to look at its own practices and, if there were issues, that they took steps to correct those issues, this would be an important element that the Competition Commission would look at.'

Do you think the Competition Ordinance is too lenient? In particular, there are no merger control provisions.

'Anna Wu was in Singapore recently and she said that she doesn't find it normal that we don't have a merger control regime in Hong Kong because that is an important dimension



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I think the Competition Commission
understands that it needs to go one step
at a time, which is to be welcomed
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to any competition regime. This was part of the political fight that was going on as the competition law went through the legislative process. This will mean that former competitors can merge and, for example, coordinate prices without breaching the first conduct rule. Once they have merged, however, if they start abusing their market power, they will be caught by the second conduct rule.

But I think it is important to bear in mind that, firstly, this is not irreversible. Merger controls were omitted with an understanding that the government will reconsider this in a few years. Secondly, there is a merger control regime in the telecom sector in Hong Kong, and thirdly, a gradual approach to the enforcement of a new competition regime is not necessarily a bad thing.

The Ordinance is quite lenient in terms of giving the benefit of the doubt to companies involved in less serious anti-competitive practices – which basically means anything other than the four main types of horizontal agreement: price fixing, market sharing, bid rigging and output restrictions. Where companies are involved in less serious anti-competitive conduct, the Commission will impose a 'warning notice' and the company will be given six months to change its business practices.

Some people say that the ordinance has been gutted by this because, frankly, companies have no incentive to change anything until they get a warning from the Commission. But is it such a bad thing that the Commission has to focus on the most serious conduct first? The reality is that they are probably not yet equipped to go after complex conducts, such as vertical agreements, and they will be much better off having a simple, clear regime focused on the four types of horizontal agreement.


Many competition regimes around the world are way too complicated. Why do countries think that they have to have a 60-page law when what they actually need is a very simple

set of rules against price fixing, etc. Because they adhere to all the international networks, there is huge pressure on smaller countries to have an elaborate competition regime when in fact they should be taking one step at a time.

For any new regime, having looked at these issues in different countries at different levels of maturities, my two cents on this would be that it is better to have a narrow scope of implementation and to put a premium on legal certainty. In the US they use a lot of economists to test the impact of any given behaviour on the market. Do you think SMEs are going to be able to do that here? So that's why we need to put the emphasis on legal certainty.

Of course, as a practitioner, I should want it to be complicated, but that will not help the effectiveness of the law. The Competition Commission has a big reputational stake here, it needs to be seen to be working with the business community and helping it to understand the law. I think the Commission understands that it needs to go one step at a time, which is to be welcomed.'

One final question – do you have any advice for company secretaries involved in competition compliance in Hong Kong?

'I think all companies, small or large, need to do something about this. Company secretaries should take the time to read the Competition Ordinance, understand it, and question to what extent the company they work for may have issues. After the implementation of the ordinance, the Competition Commission will have little tolerance for companies who suddenly wake up and say "what is this all about?"' 

Subsequent to this interview, the Competition Commission has released its guidelines on Hong Kong's new competition regime. Look out for coverage of these guidelines in subsequent editions of CSj.

The long arm of US law: implications for Hong Kong companies



Hong Kong companies, even where they have little connection with the US, may need to consider the long arm of US law in their compliance programmes, argue Kyle Wombolt, Global Head of Corporate Crime and Investigations, and Siyu Zhang, Associate, Herbert Smith Freehills.

Stories of record-breaking fines paid by non-US organisations accused of breaking US laws have been a regular occurrence in recent times.

Over the course of the last decade, the US authorities have opened multiple investigations of non-US companies for violations of its Foreign Corrupt Practices Act (FCPA), which have resulted in billions of dollars in fines and disgorgement. Most recently, in November 2013, Weatherford International, a Swiss organisation, agreed to pay over US\$150 million to settle FCPA-related charges by US authorities. To date, eight of the 10 largest FCPA-related settlements were entered into with non-US corporates.

But the FCPA has not been the only statute under which US authorities have sought to charge non-US organisations. Over the last five years, US authorities have brought

multiple actions against non-US financial institutions for violations of various US economic sanctions programmes. The most recent, and most significant, example is the action taken against BNP Paribas, a French bank, which agreed to pay nearly US\$9 billion to resolve various alleged sanctions violations.

These cases have increased awareness among Hong Kong organisations of the importance of recognising the risk of being implicated in investigations by US authorities and having to pay multi-million dollar fines in consequence. The starting point for addressing that risk is to understand the scope of US laws that have the potential to apply to Hong Kong organisations.

The Foreign Corrupt Practices Act

The FCPA is one of the most actively enforced anti-corruption statutes in the

world. The US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) are responsible for its enforcement and between them have initiated over 400 investigations against corporations and individuals for alleged violations of the statute since its inception. Many of those matters have lasted for years and cost the target companies tens of millions of dollars in penalties and disgorgement, not to mention legal fees and additional compliance costs.

The FCPA includes two key components. The first component is the anti-bribery provision, which, broadly speaking prohibits persons or organisations from providing anything of value to non-US public officials, political parties or candidates for public office, in order to assist in obtaining or retaining business. The second component is the accounting



provisions, which require those organisations that are issuers of securities on a US exchange to maintain:

1. books and records that accurately and fairly reflect the transactions and dispositions of the assets of the issuer, and
2. internal accounting controls that are sufficient to provide reasonable assurance that, among other things, the issuers transactions are executed as authorised and appropriately recorded.

The 'anti-bribery' provision may apply to a Hong Kong organisation where:

- it is a US 'issuer', that is, it issues securities, including American Depository Receipts, that are listed and traded on a US exchange, or its

securities are traded on an over-the-counter market in the US and it is accordingly required to file reports with the SEC

- it is a US 'domestic concern', that is, it is incorporated in the US (for example a Delaware corporation) or has its principal place of business in the US
- it is an 'agent' of a US issuer or a US domestic concern – this is particularly relevant to a Hong Kong organisation that is a subsidiary of a US issuer or a US domestic concern, or
- it conducts a part of its business in the US, in which case the FCPA will apply to its conduct within US territory.

The accounting provisions apply only to US issuers and have frequently been relied upon by the US authorities in their investigations of corrupt conduct.

The Marubeni cases

The extent of the FCPA's jurisdictional reach is illustrated by two recent FCPA-

enforcement actions against Japan's Marubeni Corporation.

Marubeni is a Japanese trading company headquartered in Tokyo. It does not have any securities traded in the US and, accordingly, is not a US issuer. Yet, in recent years, the company has paid more than US\$140 million to resolve allegations that it had violated the FCPA.

The first such occasion was in 2012, when Marubeni entered into a deferred prosecution agreement with the DOJ and paid a US\$54.6 million penalty to resolve allegations that it had violated the FCPA.

The resolution followed an investigation by the US authorities into the conduct of an organisation called TSKJ, a joint venture which was formed to bid for a US\$6 billion project to construct a liquefied natural gas, or LNG, facility on Bonny Island in Nigeria. The members of the joint venture included, among others, Kellogg, Brown & Root, a US company, and Technip, a French company which had ADRs listed in the US and was, accordingly, a US issuer. The US authorities investigated an alleged decade-long scheme by the joint venture

Highlights

- the Foreign Corrupt Practices Act may be applied to a Hong Kong organisation where it does business in partnership with a US company, or even where a business meeting or a payment occurs in the US
- Hong Kong companies may also need to consider the implications of the US sanctions programmes aimed at various foreign countries and organisations
- the Hong Kong Stock Exchange requires listing candidates to take measures to minimise their potential exposure under foreign sanctions regimes before they are admitted to listing

and its partners to bribe Nigerian officials in relation to the LNG project, and ultimately secured a payment of more than US\$1.5 billion by the TSKJ partners to settle FCPA-related charges.

As part of the investigation, it was alleged that TSKJ had hired Marubeni to assist it in winning business related to the LNG project, and had paid Marubeni US\$51 million, in part for use as a slush fund for payments to Nigerian officials. Marubeni did not carry out any activities inside the US. However, the US authorities asserted jurisdiction over Marubeni on the basis that it had acted as an agent of TSKJ and each of the joint venture partners. As such, it was considered to have acted as an 'agent' of a US 'domestic concern' (Kellogg, Brown & Root) and a US 'issuer' (Technip), thus bringing it within the scope of the FCPA.

The second case involving Marubeni arose out of an investigation of alleged corruption in Indonesia. Between 2002 and 2009, Marubeni partnered with a multinational organisation with shares that were at one time listed on the NYSE and which had a number of subsidiaries based in the US. Together the two organisations were tendering for a US\$118 million contract to provide equipment and services for the Tarahan power project in South Sumatra.

Marubeni and its partner were awarded the Tarahan project in 2005. However, it was alleged that they had engaged consultants to pay bribes to government officials in exchange for assistance in securing the contract, and that the payments were made from, among other locations, a Marubeni bank account in New York to a bank account held by one of the consultants at a Maryland bank. It

was also alleged that Marubeni employees had discussed the payment of the bribes on a number of occasions, including at a face-to-face meeting in the US and via various electronic communications. Therefore, while Marubeni was neither a US 'issuer', nor a 'domestic concern', the US authorities asserted jurisdiction on the basis that Marubeni engaged in acts in furtherance of a corrupt payment in the territory of the US. In March 2014, Marubeni paid a penalty of US\$88 million to settle the case.

For Hong Kong organisations the Marubeni cases illustrate the need to consider the potential impact of the FCPA, even where the Hong Kong organisation is not itself a US issuer, organised under US laws, or a subsidiary of the same. The FCPA may reach a Hong Kong organisation where it does business in partnership with a US company, or where some act incidental to its business – for example, a business meeting or a payment – occurs in the US.

US Sanctions

The US sanctions regime consists of a number of separate sanctions programmes aimed at various foreign countries and regimes, non-governmental entities (such as terrorist organisations), narcotics traffickers and entities involved in weapons proliferation activities.

The scope of activities restricted by the sanctions regime varies with each sanctions programme and depends on the US foreign policy and national security objectives concerning the subject of the sanctions programme. For example, the US maintains very broad restrictions on trade and investment with Iran and Cuba, but applies more limited restrictions on dealing with Libya, where

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the Foreign Corrupt Practices Act is one of the most actively enforced anti-corruption statutes in the world
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its restrictions are principally targeted at persons connected with the former Qadhafi regime. Moreover, the sanctions programmes are liable to change. This has been particularly evident in the contrasting developments of the sanctions programmes against Iran and Myanmar, which have, respectively, tightened and loosened over the last three years.

Where a Hong Kong-based organisation is incorporated under US law, it will be treated as a 'US person' for the purposes of the various sanctions regimes and thus generally will have to abide by the restrictions imposed by those regimes. For certain sanctions programmes, for example those involving Iran and Cuba, a Hong Kong organisation that is a subsidiary of a US company or is owned by US persons will be treated as a 'US person' and be subject to the same restrictions as are imposed on US companies, even though its nexus with the US is limited.

Of potentially more significance given Hong Kong's importance as a trading centre and import/export hub, a Hong Kong organisation that exports US-origin goods or services to a country subject to



US sanctions may violate that programme even if it has no other US connection. This risk is illustrated by a recent case involving Dutch aviation company Fokker Services which, in June 2014, agreed to pay over US\$20 million to US authorities in order to resolve alleged violations of various US sanctions programmes stemming from Fokker's export and re-export of US-origin aircraft parts, technology and services to customers in Iran, Myanmar and Sudan.

A Hong Kong organisation may also run afoul of a US sanctions programme where it seeks to make a US dollar payment to a country or person that is subject to US sanctions. US dollar payments are generally cleared through US-based banks, so US authorities may take the view that by instructing a payment of US dollars to a sanctioned country or person, a Hong Kong organisation is in effect seeking to procure the export of a US-origin service (that is, a banking service) to that

country or person in breach of applicable sanctions. This theory is essentially what underpinned the various actions taken against BNP Paribas and a number of other non-US financial institutions for violations of US sanctions programmes.

Hong Kong organisations may become enmeshed in US sanctions even where they are not directly subject to a US sanctions programme if they do business with a country or organisation that is a target of the programme. Indeed, the US authorities have specially designated over 30 Hong Kong organisations because of such dealings, which means that their assets in the US are blocked and US persons are effectively prohibited from dealing with them.

Moreover, certain aspects of the US sanctions against Iran may apply to non-US persons who have little or no contact with the US. For example, non-US organisations may have certain

restrictive measures imposed on them that may exclude them from dealing with the US economy if they invest in Iran's energy sector or provide products or services to Iran.

Finally, the prominence of the US sanctions programmes in and around the Hong Kong marketplace has recently increased even more following a decision by the Hong Kong Stock Exchange which requires listing candidates to take measures to minimise their potential exposure under foreign (including US) sanctions regimes before they are admitted to listing. The mitigation measures required by the exchange may include terminating or transferring business in sanctioned countries, even in circumstances where the listing candidate might not otherwise be subject to US laws. As a result of this, it is now not uncommon to see listing prospectuses include extensive disclosures of business done in sanctioned countries and the measures taken to terminate that business.

Conclusion

The FCPA and the US sanctions programmes are two examples where the long arm of US law has the potential to reach Hong Kong organisations with potentially significant monetary and compliance consequences. Accordingly, those organisations will be well served to take note of the potential risk and plan their operations accordingly.

Kyle Wombolt, Global Head of Corporate Crime and Investigations, and Siyu Zhang, Associate, Herbert Smith Freehills.

Special thanks also to James Dalton, Senior Associate, for his help in the preparation of this article.

A photograph of four metal plates, likely aluminum, arranged in a square pattern. Each plate has a wooden stick inserted into its center. The plates are slightly tilted, and the sticks are positioned vertically. The background is a dark, solid color. The text "Changing rules, changing roles – managing it all" is overlaid on the top-left portion of the image.

Changing rules,
changing roles –
managing it all

The winning paper in this year's Corporate Governance Paper Competition examines the recent changes brought in by Hong Kong Exchanges and Clearing (HKEx) to corporate governance requirements to raise the overall standard of issuers' corporate governance, and coordinate HKEx's Corporate Governance Code and listing rules with international best practice.

Corporate governance is the key to determining the effectiveness and sustainability of a company since it is the framework that guides and directs companies to achieve their goals and objectives in a way that adds value to the company and maximises the interests of stakeholders. It is known to have direct correlation with a company's share price.

The major aim of the recent changes to the corporate governance requirements introduced by Hong Kong Exchanges and Clearing (HKEx) was to raise the overall standard of issuers' corporate governance and coordinate HKEx's Corporate Governance Code (the Code) and listing rules with international best practice.

Issuers and the market as a whole can benefit from more effective and efficient corporate governance. The revised Code and listing rules give rise to better accountability of issuers and directors. The amendments not only improve transparency, but also raise the quality and effectiveness of directors and company secretaries as well as bringing into sharper focus the vital functions of different board committees.

However, the ever-changing and more stringent rules may challenge issuers. It will take time to implement concrete measures to comply with the rules while directors, committees and company secretaries need time to adjust to the new roles.

Board diversity

Although Hong Kong has long been one of the most sustainable and balanced economic environments in the world, board diversity is still an area requiring improvement. In December 2012, investment management fund BlackRock fund analysed 35 blue chip companies and found that 40% of them had no women on their boards. To tackle this issue, HKEx introduced a new Code provision on board diversity in September 2013; this affects more than 1,500 listed companies in Hong Kong.

According to the Board Diversity Policy Statement announced in February 2013, board diversity covers many areas, such as gender, age, educational and cultural background, ethnicity, skills, professional experience, length of service and knowledge.

To evaluate the performance of companies when complying with this policy, the nomination committee monitors, reviews and reports on the board composition annually in the company's Corporate Governance Report. It also discusses and recommends any revisions to the policy so as to ensure its effectiveness.

The Code says that a balance of skills, experience and diversity of perspectives, which are appropriate to the requirements of the businesses of the issuer, should be found on its board. For example, a balanced composition of both executive and non-executive directors should be included to create a strong independent element on the board and hence exercise independent judgement effectively.

This new provision has brought about tremendous changes to most of the

Highlights

- board diversity can ease companies' entry into new markets and generate high customer loyalty, a boost to employee morale, improved decision-making and corporate performance and better risk management
- the new requirement for monthly management updates is intended to provide directors with a balanced and understandable assessment of the issuer's performance, position and prospects
- new rules regarding the qualifications and experience of company secretaries state that they need to engage in 15 hours of professional training each financial year in order to ensure that they have sufficient skills and knowledge to perform their duties

issuers in Hong Kong. The most significant change is the potential for better decision-making. By considering a broader range of perspectives, board effectiveness as well as decision-making can both be improved.

A board consisting of like-minded people from similar backgrounds may lead to groupthink, in which the decisions made by them may not be in the best interests of the company as they may not have received enough scrutiny. On the other hand, having a board composed of people from different backgrounds and with differing professional and personal experiences enables the board to approach issues from different angles, allowing the board to come up with more diverse viewpoints and suggestions. This can lead to improved corporate performance.

“
having a wide pool of talent from different genders, ethnicities, ages, races and cultures, produces a competitive advantage while at the same time creating a good and successful impression for the public

”

Extended benefits of board diversity

Board diversity can also enable companies to better manage risks. The board acts as the governing body, which oversees and directs a company's affairs. Having a diverse board of people with different areas of professional expertise can facilitate greater insights and discussion, even over complicated business and technical matters. This allows the board to anticipate and manage risks, devise wise strategies and make good choices, even if risks are involved.

Board diversity can also create a better public image for companies. Having a wide pool of talent from different genders, ethnicities, ages, races and cultures, produces a competitive advantage while creating a positive and

successful impression for the public.

Having a diverse workforce enables other stakeholders to foresee many potential benefits of investing in or working with that company. It is therefore easier and more convenient for the company to enter new markets and maintain high customer loyalty as well as boost employee morale.

These positive effects of board diversity can ensure fairness. This is because a broader range of perspectives enables companies to approach and consider more possible ideas and business strategies, so that all the shareholders, including minorities, can be treated equally and fairly. This in turn protects the rights of both shareholders and companies. From this, we can see that the new provision regarding board diversity has driven the corporate governance system to become more comprehensive and complete.

Duties of directors

One of the significant changes to corporate governance has been those relating to directors' duties. Directors no longer only have a brief idea of the companies whose boards they sit on; they are now expected to be closely involved with the issuer's



Rule 3.08 of the Main Board Rule and GEM Rule 5.01 state that directors are required to take an 'active interest in the issuers' affairs' as well as to 'obtain a general understanding of its business'. They are obliged to follow up and investigate anything they notice that is untoward. Merely clocking up attendance at formal meetings does not mean that the directors' duties are satisfied.

The above change reflects greater accountability. Having directors more involved in the issuer's business gives the board a better understanding of the business, and the company can clarify who is accountable for their decisions and performance, ensuring that power and resources are used appropriately and are aligned with the firm's best interests. By doing this, organisations can be run more efficiently and effectively.

In fact, recently there have been growing expectations of competence and accountability across the globe. Several examples come from Australia (these include Centro, James Hardie and Fortescue). Seven former non-executive directors, three former executive directors and the company secretary/general counsel of James Hardie Industries Ltd were found to have breached their duties of care and diligence as they failed to read and understand financial reports. According to King & Wood Mallesons, client alerts on Centro on 1 September 2011 and 30 June 2011, as well as those on Fortescue on 8 March 2011 and James Hardie on 13 May 2011, all discussed the recent landmark disclaimers on the duties and liabilities of directors. It is expected that Hong Kong regulators and stakeholders, when considering the standards by which directors in Hong Kong listed companies should be judged, will mention these cases.

Another change to the Code, the new provision C.1.2, requires issuers to provide monthly management updates to directors. These must be 'sufficient to give directors a balanced and understandable assessment of the issuer's performance, position and prospects'.

This change will help directors carry out their duties effectively while creating greater transparency. Providing monthly management updates that are balanced and understandable can provide directors with useful information to review and forecast the issuer's performance. In this way, accurate and timely disclosure of crucial information, including the issuer's performance and sustainability, can be ensured.

Other amendments to the Code reveal that the board of directors is now expected to evaluate the acceptability of the time directors spend on the company's affairs, while the board must be notified of all significant changes to time commitments.

Previously, there was a provision obliging directors to attain at least eight hours of training in a financial year. After recent changes, the Code places more emphasis on the disclosure of how directors comply with their training obligations instead of merely requiring them to undertake a certain number of training hours.

This change can help better define and clarify the responsibilities of directors. By attaching more importance to how directors comply with their training obligations, the role of directors has been transformed to ensure a closer connection with the issuer's affairs. Cooperation between the company and board of directors is encouraged so as to

create and enhance value as well as to maintain sustainability.

Directors' voting rights

One of the noticeable changes in rules is associated with the voting rights of directors, with the removal of the 5% threshold for voting by a director in a situation in which they have personal interests.

In the past, directors with 5% or less interest in issued shares or voting rights of companies were allowed to vote on a board resolution, on the basis that a 5% interest was deemed negligible. However, this exemption has now been removed, while directors are also required to consider whether transactions are material.

This adjustment prevents a conflict of interests when voting, hence ensuring fairness. Stakeholders' interests are protected, while all shareholders are treated equally. The whole voting process can then become more objective.

Independent non-executive directors

Rule 3.10A, requiring that at least one-third of the board must be independent non-executive directors (INEDs), was amended with effect from 31 December 2012. HKEx now puts more emphasis on facilitating strong INED representation on the board. According to HKEx, the new rule does not impose a heavy burden on issuers since 80% of them need appoint only one additional INED to fulfil the requirement. Another option is to reduce the number of directors.

The growing importance of INEDs in maintaining good corporate governance is demonstrated in further new amendments – as stated in the new Code provision,

“
Directors are obliged to follow up and investigate anything they notice that is untoward. Merely clocking up attendance at formal meetings does not mean that the directors’ duties are satisfied.
 ”

an INED who has been in his post for more than nine years will continue to serve only with shareholders' approval, and the issuer will need to clarify the reasons for the INED's re-election and his/her independence. New Rule 3.25 states that issuers must establish a remuneration committee chaired by an INED and one that has a majority of INEDs as committee members. Meanwhile RBP A.4.4 recommends an issuer establish a nomination committee with a majority the membership being INEDs.

Auditor and company secretary

Shareholders' approval at a general meeting is required for the appointment or removal of an auditor. To foster transparency, and to ensure shareholders fully understand why an auditor is being removed, an issuer proposing to remove an auditor needs to send a circular to shareholders and the auditor is allowed

to make representations to shareholders. An issuer also has to ensure that auditors attend the annual general meeting in order to have full understanding of the company.

To comply with a new Code provision, a company secretary's selection, appointment or dismissal must be discussed at a physical board meeting, to ensure these events receive proper board attention. New rules regarding qualifications and experience for company secretaries are set out, along with a new section in the Code defining their roles and responsibilities. In particular, a company secretary needs to engage in 15 hours of professional training each financial year in order to comply with a new rule. These measures are to ensure company secretaries have sufficient skills and knowledge to perform their duties.

A new Code provision for the audit committee states that the audit committee should be responsible for arrangements enabling employees to bring up concerns over financial reporting improprieties. Another Code provision states that an audit committee should arrange meetings with the external auditor at least twice a year. This is to ensure the effectiveness of the company's accounting and financial policies and controls. Recommended best practice is that the audit committee should establish a whistleblowing policy and system.

Board committees

HKEx has made attempts to enhance the effectiveness of board committees through a set of new measures. For instance, an issuer must form a remuneration committee in which the majority of members are INEDs, with an INED chairman, and clear written terms of reference for the committee must be published. Similar sets of recommended measures also apply to the nomination committee (although the chairman is allowed to be either the board chairman or an INED). HKEx gives flexibility to issuers on either setting up a corporate governance committee or allowing the board to elect to perform this role itself.

Joyce Tang Dik Ying, Department of Accountancy, Lingnan University; and Stacy Wong Hei Yu, School of Accounting and Finance, The Hong Kong Polytechnic University

About the Corporate Governance Paper Competition

The Institute's Corporate Governance Paper Competition is designed to promote awareness of corporate governance among local undergraduates. The competition is run in tandem with the Institute's biennial Corporate Governance Conference. Authors of the competing papers also enter a presentation competition and the awardees of both competitions receive their certificates at the Corporate Governance Conference.

In the second and final part of this article, to be published in next month's journal, the authors make recommendations on how to further the goals of HKEx to build better corporate governance in line with international common practice.

2015

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in FIRST QUARTER **2015**

- ▶ **Connected Transaction – Practical sharing and Latest update on Listing Rules**
Speaker(s): **Ms. Beatrice Lung, Managing Director, Optima Capital Limited**
Date : 14 Jan 2015
- ▶ **Risk Management – Challenges and Opportunities in fulfilling C.2 requirement of Corporate Governance Code**
Speaker(s): **Professional(s) from PwC**
Date : 28 Jan 2015

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ListcoPRO is a services provider of professional services to listed companies in Hong Kong. We are a leader in the area of professional Listco CPD training with specialized focus in listed companies' practices, particularly in Listing Rules Compliance, Financial Reporting Standards, Taxation and Company Secretarial practices, Investor Relations, Legal and Transaction Support. Our cooperating partners are mostly international accounting firms, leading legal firms and professional bodies.

December 2014 29

Cybersecurity and the evolving role of boards



At a time when the theft of customer information often leads to executive level shake-ups, boards are taking a greater role in evaluating the adequacy of their organisations' cybersecurity. Many boards, however, have yet to apply the same level of critical observation to their own security.

Leadership's engagement with cybersecurity is not only internally driven. Regulators have also begun to raise expectations. In the US, for example, the Securities and Exchange Commission has affirmed the importance of including cybersecurity processes and events in a public company's disclosure of risk factors and material events. And while certain regulations may not apply to privately held companies and not-for-profits, their owners, business partners and donors hold them to strict standards.

Yet despite the board's responsibility for overseeing cybersecurity, they often overlook one critical link in the cybersecurity chain: the board's own role as custodian of company information. After all, a board routinely handles, stores and internally shares sensitive financial and sales data along with confidential strategic plans, senior executive compensation policies and other privileged information. Unauthorised access to any of this information could have severe consequences.

Information hazards

The problem is that a board's position 'above' the organisation means it is often excluded from the organisation's own processes. As a result, when the Chief Information Officer reviews the enterprise's cybersecurity needs, he or she may understandably believe that board security is a matter for the company secretary or general counsel. The assumption may be that board-level cybersecurity is outside the CIO's domain.

There is also the undeniable fact that all cybersecurity options entail a compromise between convenience and effectiveness. Because of the senior status of board members and leadership, there is a natural tendency to minimise any inconvenience on their part. As a result, board members often opt to access, store and share information in ways that may be convenient, but are considerably less secure than what is done by the organisation as a whole. These include the sending of hard-copy packs of board materials or the emailing of PDFs.

Password practice

Another compromise is where passwords are required. Instead of mandating secure passwords that contain no recognisable words and that consist of a combination of different character types, simple passwords such as a child's name may be permitted. While these practices often arise from ad-hoc decisions rather than

deliberate policy, they are nevertheless resistant to change due to inertia.

Given the heightened level of threats in these times, boards and senior management must do more than provide oversight of an organisation's cybersecurity. They must set an example of security best practices from the top.

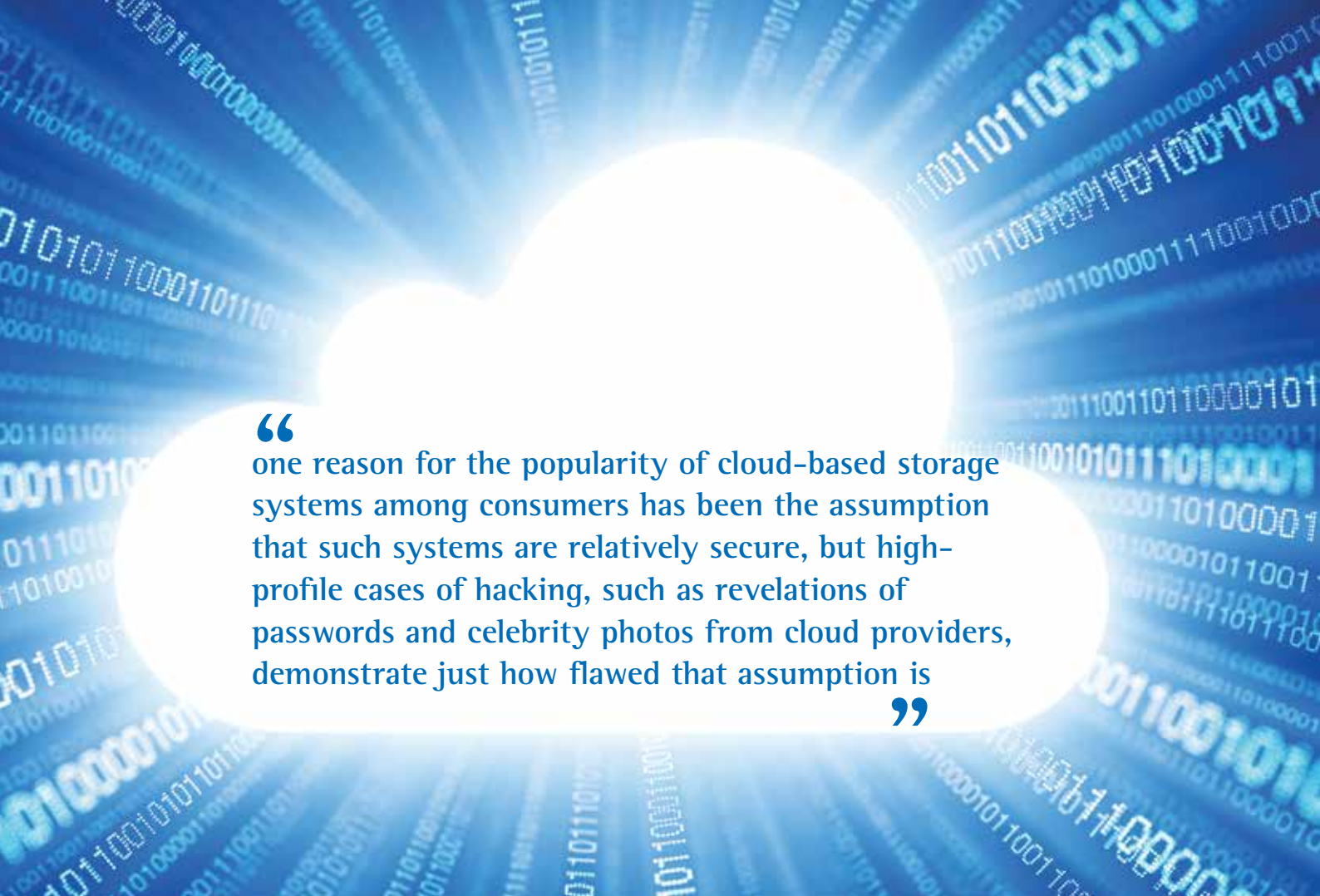
A framework for evaluating board security

Leaders who want a firm, intuitive grasp of how to judge their board's cybersecurity practices can easily end up in a tangle of jargon. Fortunately, however, it can be easily straightened out by asking three basic questions:

1. How is the board data stored?
2. How strong are the locks?
3. Who controls the keys?

Highlights

- in the race to provide top-end corporate security against cyber espionage, boards commonly overlook their own role as custodians of company information; as a result of being 'above' common company practices, board members are commonly and dangerously excluded from standard operating procedures
- data stored in unsecured public 'clouds' are susceptible to hacking, whereas hosted board storage keeps data secured and segregated
- a hosted board portal, 256-bit encryption and an administrator combine to make a formidable security system and the ability to conduct a virtual purge removes the threat of a known leak



“one reason for the popularity of cloud-based storage systems among consumers has been the assumption that such systems are relatively secure, but high-profile cases of hacking, such as revelations of passwords and celebrity photos from cloud providers, demonstrate just how flawed that assumption is”

Posing these questions can help with the evaluation of the board's current solutions for information sharing, communication and collaboration – as well as any it may be considering.

1. How is the board data stored?

Any security evaluation should begin with the examination of who controls the data. Not knowing where information is, and having an inability to control where it goes, means the solution is highly unsecure.

This is why emailing board documents as PDF files is not a secure solution. Files can be accidentally forwarded by directors to others outside the board, or housed in personal email accounts with minimal consumer-level security.

The same holds true for public file-sharing systems where files are stored 'in the cloud'. What this really means is that

your files could be on any server in the file-sharing network; you, as a customer, have no way of knowing exactly where they are. This ambiguity is why it's called a 'cloud' in the first place.

One reason for the popularity of cloud-based storage systems among consumers has been the assumption that such systems are relatively secure, but high-profile cases of hacking, such as revelations of passwords and celebrity photos from cloud providers, demonstrate just how flawed that assumption is.

Although hosted board portals do seem cloud-like and are often mistakenly referred to as 'cloud-based storage' – there are important differences. For one thing, they carefully control where your data is stored on the hosted system. What's more, they keep the information of each hosted organisation segregated from each other. Knowing where data is

located as well as its protective security measures provides greater control and assurance over who has access to the information.

2. How strong are the locks?

Keeping close tabs on data's whereabouts is certainly crucial, but so is ensuring that only authorised users can access it. This is accomplished through encryption, that is: the enciphering of data into a string of meaningless zeros and ones. Only those with the correct digital key can decipher it.

Of course, paper board packs have no digital key at all; the information can easily be read by anyone who gets their hands on it. And while it may be true that PDFs that are emailed or stored on file-sharing systems can be encrypted and protected by passwords, it puts the onus on whoever is distributing and receiving the material to manage password protocols. Furthermore,

documents 'protected' in this way still remain vulnerable to 'brute force' attacks via readily available software.

Higher-quality hosted board portals typically use 256-bit encryption – a key of 256 zeros and ones. Since there are more possible combinations than stars in the universe, it's safe to say that it would take an infinite amount of time for even the most determined hackers using the most advanced technology to crack the code.

3. Who controls the keys?

No matter how strong an encryption system may be, anyone with the right key can still access the information. For example, anyone who has the password to a password-protected PDF virtually owns the document. Stolen passwords mean stolen documents.

However, with a hosted board portal, a password only goes so far. Yes, it allows access to the portal. But because control of the encryption keys protecting the board documents resides within the system, the person logging in will only see what he or she is allowed to see. A strong portal never loses control of the documents.

A secure position

Given the heightened level of threats in these times, boards and leaders must do more than provide oversight of an organisation's cybersecurity. They must set an example of security best practices from the top.

The security implications are significant. If a password is stolen, the administrator can simply deny access for that password. And after sensitive documents are no longer needed, the administrator can conduct a



“
Anyone who has the password to a password-protected PDF virtually owns the document. Stolen passwords mean stolen documents.
”

'virtual purge', closing off the documents to anyone trying to access that user account with the stolen password.

Beyond the protection of needing the right password to gain access, a board's administrator can limit access to specific board documents according to criteria such as a committee membership, allowing them to be visible only to members of the audit committee or compensation committee, for instance. The administrator can also control from which specific device a director may access the system.

The right message starts at the top

While cybersecurity may have a

permanent place on the agendas of boards and senior management in more and more organisations, that's not enough. Security must also be a permanent part of boards' behaviour.

Having the right platform to handle board information, communication and collaboration will ensure essential security practices are followed in the boardroom. It also sends the right message, namely: cybersecurity is everyone's business.

Al Percival, Managing Director, Asia Pacific, Diligent APAC Board Services

The author can be contacted by email: apercival@boardbooks.com.

Professional Development

H-Share Training Programme 2014

The Institute's H-Share Training Programme was held on 11–15 November 2014. The speakers included representatives of Hong Kong Exchanges and Clearing Ltd (HKEx); the Securities and Futures Commission; the Independent Commission Against Corruption; Deloitte Touche Tohmatsu Ltd; Francis & Co in association with Addleshaw Goddard (Hong Kong) LLP; Hong Kong BDO Ltd; Mayer Brown JSM; ONC Lawyers; Shinewing(HK) CPA Ltd; Standard Chartered Bank Ltd; and SW Corporate Services Group Ltd.

This training programme was attended by over 40 delegates including directors of listed companies, board secretaries and senior executives. Through the five-day training programme, they gained a deeper understanding of the Hong Kong listing rules and other recent regulatory updates. The programme also included updated information on corporate governance practices and recommendations on day-to-day company secretarial work.

The Institute would like to give special thanks to Toppan Vite Ltd, the event sponsor. Please visit the 'Gallery' section of the Institute's website at www.hkics.org.hk for more photographs.



Benjamin Cheuk, Director, Corporate Finance, the Securities and Futures Commission; Edith Shih FCIS FCS(PE), HKICS President; Dr Maurice Ngai FCIS FCS(PE), HKICS Professional Development Committee member; Louisa Lau FCIS FCS(PE), HKICS General Manager & Company Secretary; Kenneth Jiang FCIS FCS(PE), BRO Chief Representative; and Lydia Kan ACIS ACS, Professional Development Director



At the seminar



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CHARTERED
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Invitation to The Hong Kong Institute of Chartered Secretaries Annual Dinner 2015

Date	Wednesday, 14 January 2015
Time	6.30 pm Cocktail Reception 7.30 pm Dinner
Guest of Honour	Professor K C Chan, GBS, JP Secretary for Financial Services and the Treasury, HKSAR
Venue	Grand Ballroom, Conrad Hong Kong
Dress code	Lounge suits
Reservation fees	HK\$600 per Student HK\$850 per Member/Graduate HK\$950 per Non-Member HK\$10,200 per table (12 seats)

For registration, please visit the Institute's website: www.hkics.org.hk.

For enquiries, please contact Ms Michelle Phong
on 2830 6003 or marketing@hkics.org.hk.



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Professional Development (continued)

ECPD and MCPD

What you should know about the MCPD requirements

All members who qualified between 1 January 2000 and 31 July 2014 are required to fulfil at least three enhanced continuing professional development (ECPD) points out of the 15 CPD points for members subject to mandatory CPD requirements. Members are reminded to maintain their training records for at least five years for random audit checking of compliance. The respective submission deadlines are set out below.

CPD year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Submission deadline
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 three ECPD points out of 15 CPD points for members working in corporate secretarial (CS) sector/trust and company service providers (TCSPs)	At least three 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 Fulfilment 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 seat of a member can only be substituted by a member; if a confirmed seat of a non-member is substituted by a member, the remaining enrolment fee would 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.

Forthcoming seminars

Date	Time	Topic	ECPD points
11 Dec 2014	6.45pm – 8.45pm	Directors' and officers' series session two: D&O insurance – pitfalls and bonuses	2
15 Dec 2014	6.45pm – 8.15pm	The new Companies Ordinance – application issues about financial reporting that company secretaries need to know (re-run)	1.5
16 Dec 2014	6.45pm – 8.15pm	No-par regime and transactions under the new Companies Ordinance	1.5
8 Jan 2015	2.30pm – 4.30pm	Market misconduct: its coverage and must-know recent developments	2
13 Jan 2015	6.45pm – 8.15pm	Tax investigation in Hong Kong	1.5
16 Jan 2015	3.00pm – 5.40pm	Reverse takeover	2.5
20 Jan 2015	4.30pm – 6.30pm	Risk Management Reform for Hong Kong Listing Companies – Trendsetting for Asia?	2
26 Jan 2015	6.45pm – 8.45pm	Directors' and officers' series session three: the life cycle of D&O claims and regulatory investigations	2
28 Jan 2015	6.45pm – 8.15pm	Hong Kong-incorporated NGOs – public governance standards/business review as limited or guarantee companies under NCO	1.5
6 Feb 2015	3.00pm – 5.40pm	New connected transactions rules (re-run)	2.5
9 Feb 2015	6.45pm – 8.45pm	新公司法例下如何更有效率地开设中国公司(re-run)	2

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

Professional Development (continued)

研修班回顾: 香港上市法规更新

第三十四期联席成员强化持续专业发展讲座在北京举行

香港特许秘书公会于9月26日在北京举办“中国内地在香港上市公司高级管理人员研修班”（研修班）暨“第三十四期联席成员强化持续专业发展（ECPD）讲座”。来自香港交易所、香港特许秘书公会的专家与参会嘉宾就“香港上市法规更新及其合规”的议题进行了探讨，并交流了有关法规的实施及合规事宜。

上市规则概况

港交所上市部政策与秘书组副总裁彭京玲就“董事的责任、内部监控及风险管理与环境、社会及管治报告”的内容发表了演讲。“一套制度不能完全适合所有机构！”她首先介绍了港交所上市规则的概况，该规则旨在反映市场常规并维持投资者信心，其中第3.08条、第3.09条对董事的责任进行了详细规定，譬如要求董事须履行诚信责任，以应有的技能谨慎和勤勉方式行事，不可只靠出席正式会议了解发行人，并须积极关心发行人的事务，发现任何欠妥事宜时必须跟进等。要判定一位董事是否尽职，则需采用客观及主观性综合准则，即：可合理预期任何人在执行有关董事就有公司所执行的职能时所需具备的一般知识、技巧及经验（客观准则）；及该董事本身所具备的一般知识、技巧及经验（主观准则）。

在内部监控及风险管理方面，她指出目前的企业管治守则的原则，是董事会应确保发行人的内部监控系统文件妥善且有效，以保障股东的投资及发行人的资产。具体规定包括：至少每年应检讨一次发行人的内部监控系统、资源、员工资历及经验，以及培训课程及有关预算是否足够。对于这一议题，彭京玲特别指出从国际发展趋势来看，企业正日益重视风险的识别、理解及管理。倘若妥善



讲座现场

实施，风险管理功能可有效降低一个组织的风险水平，而内部审核功能将对发行人的风险管理及内部监控系统是否足够和有效，做出分析及独立评估。基于此，她对现行企业管治守则提出五项修订建议，包括将风险管理加入守则内部监控一节；界定董事会及管理层各自的职责；将内部审核等相关建议最佳常规提升至守则条文的地位；建议在审核委员会的相关条文内适当加入风险管理，但不拟规定董事会另设风险委员会。

最后她还介绍了《环境、社会及管治报告指引》情况。这一指引旨在提高对上市公司的认识，鼓励其进行报告，并给初学者提供路标，其中包括工作环境质素、环境保护、营运惯例和社区参与等四个主要范畴。

界定公司秘书角色

“公司秘书是公司的良心”。香港特许秘书公会副会长高伟博士就“公司秘书/董事会秘书之核心治理职责及特许秘书资格”的主题与参会人士进行了交流。他首先介绍了香港上市规则对公司秘书的职责规定，并着重介绍了公司秘书及董事会秘书的未来职业发展。从国际市场来看，各个国际组

织都在修订守则以强化公司秘书的公司治理角色。过去10年，公司秘书角色发生了巨大变化，行政职责减少，而战略性的角色有所加强。2010年，在银行业近期屡遭败绩和形形色色的公司丑闻后，公司秘书的作用凭借对董事会效能的密集关注而实现巨大跨越。公司秘书如今应：担任董事长的关键顾问，准备在适当时间向其提出意见；给非执行董事、甄选培训和发展需求提供支持；在促进董事会的评价时，应采取独立的立场；确保遵守法规、公司治理准则和指南。香港联交所上市规则最近的修订，也进一步界定了公司秘书在公司治理的作用及角色，对于任职资格及持续培训要求作出了进一步的明确和严格规定。公司秘书的职业正日益专业化、职业化、市场化和国际化；与此同时，公司治理专业资格的全球化、职业化也有新的发展动向。香港特许秘书公会作为国际特许秘书及行政人员公会的中国公会，制定了一份国际标准，以确保每位被接纳的学员及会员，都具备一定的专业水平和操守。

香港《公司条例》的最新修订
来自卓佳专业商务有限公司的沈施佳



副会长高伟博士(最左)及吴德龙(最右)向讲者孙玉蒂、沈施佳美和彭京玲致送纪念品

美及孙玉蒂介绍了香港《公司条例》的最新修订对香港上市发行人的影响，并指出新公司条例的四个主要目的是：加强企业管治、确保规管更为妥善、使公司条例现代化、及方便营商。在企业管治方面，则重点加强了董事问责性、提高了股东在决策过程中的参与程度，及改善了公司的资料披露。新《公司条例》将影响由今年3月3日后开始的财政年度的财务报告，规定在香港注册成立的发行人，必须在截至2015年3月31日止年度的财务报告内，根据新条例首先做出披露。

同时，新公司条例已废除财务报表须包含附属公司及非附属公司详情的规定。如果发行人有大量分布在不同区域的附属公司，则编制董事名单将需耗用发行人大量资源。

最后，英国史密夫斐尔律师事务所合伙人兼北京代表处首席代表邹兆麟律师也就关联交易法规的最新修订、判定标准、股东批准、通函/公告及管控内容，和大家进行了交流，并重点介绍了内幕信息与内幕管控中董监高的职责与义务以及违规处罚。

“
公司秘书的职业正日益专业化、职业化、市场化和国际化；与此同时，公司治理专业资格的全球化、职业化也有新的发展动向。
”

第三十四期联席成员强化持续专业发展讲座于9月26日在北京成功举办。公会谨此向各位讲者、协办商信永中和，以及赞助商卓佳专业商务有限公司表示谢意。

The 34th Affiliated Persons ECPD seminar was held on 26 September in Beijing. The Institute would like to express its thanks to the speakers, the event associate organiser, Shinewing CPA, and the sponsor Tricor Services Ltd.

Seminar review: Hong Kong listing regulations update

This article reviews the 34th Affiliated Persons ECPD seminars held on 26 September 2014 in Beijing on the theme of 'Hong Kong listing regulations update'. The seminar attracted over 120 participants from H-share companies, A+H share companies, red-chips, A-share companies and other Mainland corporations. Ellie Pang, Vice-President, Policy and Secretariat Services Unit, Listing Department of Hong Kong Stock Exchange, discussed directors' duties, internal control, risk management and ESG reports. Dr Gao Wei FCIS FCS(PE), HKICS Vice-President,

introduced the Chartered Secretarial profession and core duties of company secretaries/board secretaries. Natalia Seng FCIS FCS(PE), Past President of HKICS, CEO – China and Hong Kong, Tricor; and TY Soon FCIS FCS(PE), Director of Corporate Services of Tricor Services Ltd; shared their views on the impact of the new Companies Ordinance on Hong Kong-listed issuers. Tom Chau, Partner of Herbert Smith Freehills discussed connected transactions, inside information and the management and control of inside transactions.

Professional Development (continued)

Seminars: October to November 2014

21 October

What registered agents of
BVI companies should do



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

Speakers: Ian Mann, Head of Litigation & Insolvency Practice, and Irena Wu, Senior Associate, Corporate & Commercial, Harney Westwood & Riegels (Hong Kong)

24 October

Preventing, detecting and
reacting to fraud



Chair: Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Past President of HKICS

Speakers: Anita Hou, Partner of Forensic and Investigation Service, Shinewing Specialist Advisory Services Ltd; and Jill Wong, Partner, and Ben Yates, Associate, Howse Williams Bowers

27 October

Legal overview on search
warrants and raids



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

Speakers: Jamie Stranger, Partner, Litigation, and Ian Childs, Senior Associate, Litigation, Stephenson Harwood

29 October

New connected
transactions rules



Chair: Mohan Datwani FCIS FCS(PE), LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS

Speaker: Daniel Wan, Partner, Francis & Co, in association with Addleshaw Goddard (Hong Kong) LLP

30 October

Talk on competition law –
Competition Commission



Chair: Mohan Datwani FCIS FCS(PE), LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS

Speakers: Rose Webb, Senior Executive Director, Wendy Thian, Senior Manager (Competition Affairs), and Jing Jing Zhao, Senior Manager (Competition Affairs), Competition Commission

4 November

Social media – essential
legal issues you should
know



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

Speakers: Michelle Chan, Partner, and Catherine Mun, Partner, Bird & Bird

7 November
新公司法例下如何更有效率地开设中国公司



Chair: Alberta Sie FCIS FCS(PE), Company Secretary, EFA Secretarial Ltd

Speaker: Joe Zou, Managing Partner, Shenzhen Guangshen CPAs

Membership

New Graduates

Congratulations to our new Graduates listed below.

Au Man Yi	Lee Shuk Woon
Chan Kit Yu	Lee Suk Ping
Chan Cheuk Man, Charmaine	Leung Ka Yee
Chan Chui Wan	Leung Kam Wa
Chan Shuk Kam	Leung Siu Hung, Joel
Chan Wing Yin, Jenny	Leung Tsz Huen
Chang Li Kwan, Frances	Li Kam Shuen
Cheng Lai Ning	Li Ping Yui
Cheung Chi Ming	Lo, Maggie Waiki
Cheung Sze Kan	Mok Cee Kee, Alexandra
Chin Chun Yue	Mo Shun Chi
Chow Yee Tung	Or Ching Han
Chu Ching Man, Anna	Poon Ching Yan
Chu Oi Wa	Poon Tsz Yan
Fan Chun Kit	Poon Yuk Ching, Ada
Heung Ka Lok	So Lai Yung
Jiao Yingchen	Tong Kam Chun
Kam Choi Yin, Celia	Tse Lan Sang, Spencer
Keung Kwan Yi	Wong Kwok Keung
Kwan Yuk Yin	Wong Kwong Ling
Lam Cheuk Man	Wong Ngar Lai
Lam Shi Ping	Wong Wah Man
Lee Pui Shan, Jenny	Yee Wai Leung

New Associates

Congratulations to our new Associates listed below.

Chan Chi Wah	Leung Yuen Kam
Chan Ching Ching	Leung Yuet Kwan
Chan Siu Kwan	Li Yuk Chun
Chan Yuk Ting	Liu Ka Man
Cheng Tak Tai	Ng Tsz Yeung
Cheuk Wing Shan	Sare Wai Yin
Cheung Wah Lung, Warren	So Lai Shan
Chow Chun Yue	Song Dan
Ho Choi Ting	Sze Pik Wah, Emma
Ho Ka Sze	Sze Suet Ling
Ho Ka Yee	Tam Wai Keung
Ho Kwok Yan, Lydia	Tsang Shuk Wai
Ho Sze Chun	Tsang Wai Yee
Hui Sze Wai, Sylvie	Wan Ka Man
Kwok Ho Kwan	Wong Man Ki
Lam Lau Mei	Wong Tung Mui
Lam Sin Man	Wong Yiu Hung
Lam Siu Wa	Woo Sow Lai
Lee Pui Yan	Yu Yin Yan
Lee Wai Yin	Yuen Seen Wah, Cynthia
Leung Ho Yan, Julian	
Leung Wai Hung	
Leung Yi Ngai	

Membership (continued)

Opportunities from China's opening up

The Institute hosted a luncheon for members on 22 October 2014 at which Anita Fung, the Hong Kong Chief Executive for The Hongkong and Shanghai Banking Corporation, was the keynote speaker. The topic of her presentation was the opportunities for Hong Kong's small and medium-size enterprises, corporations and financial institutions as China opens up its capital markets to the rest of the world and its economy to market forces.

Observing that China has grown to become the second-largest economy and largest trading nation in the world, Ms Fung also highlighted that while foreign direct investment (FDI) into China has gained great attention, over the last 10 years China's investments overseas have grown from almost zero in 2000 to now match inward FDI. Ms Fung projects that China's outward FDI will soon exceed inward-bound funds due to the country's amassed foreign exchange reserves, savings and capital resources. China's foreign exchange reserves are just under US\$4 trillion, which account for about one-third of the world's total foreign exchange reserves.

China's new free trade zones, including those in Shanghai and Qianhai, and the imminent introduction of the Shanghai-Hong Kong Stock Connect programme are attracting keen interest from financial market participants in Hong Kong, Ms Fung said. Both initiatives should allow freer flows of funds both into and out of China's capital markets. If implemented smoothly, the Stock

Connect programme may also be extended to China's stock market in Shenzhen and could lead to direct links between China and Hong Kong's bond and foreign exchange markets.

'If the Shanghai-Hong Kong Stock Connect is successful, imagine how Hong Kong will benefit from the massive interest in using Hong Kong to do IPO financing. Because you are not only relying on investors in Hong Kong or the region or Europe, you have investors in China that could invest into Hong Kong,' she said. 'It will also pave the road for China to feel more comfortable to allow greater access into the other parts of the financial system.'

When asked when she expects China's Renminbi currency will be made fully convertible, she said there is a possibility this could be achieved in the next three to five years. However, she also believes some restrictions on capital flows between China and the rest of the world may persist beyond that date.

Ms Fung concluded her talk with a forecast made by the *Economist* that China's GDP will overtake the US by 2021. She encouraged Hong Kong to be prepared to capture opportunities that may arise as China shifts from being a manufacturing powerhouse to a major consumer of goods and services. The Institute would like to thank Ascent Partners and Lippo Group for sponsoring this event and the Women's Foundation for being a supporting organisation.



At the luncheon



Susie Cheung FCIS FCS(PE), Chair of the Institute's Membership Committee presenting a souvenir to Anita Fung

New Fellows

The Institute would like to congratulate the following Fellows elected in November 2014.



Cheung Chin Wa, Angus FCIS FCS

Mr Cheung is Company Secretary of China Agri-Products Exchange Ltd and PNG Resources Holdings Ltd. He is an independent non-executive director of Echo International Holdings Group Ltd. He has been working in the company secretarial sector for more than

eight years with solid experience in corporate governance and company secretarial duties.



Lai Po Sing FCIS FCS

Mr Lai has been Finance Director of China Resources Enterprise Ltd since June 2014. Prior to joining the company, he worked for various international accounting firms in Hong Kong and served as financial controller and company secretary for several listed

companies in Hong Kong. Mr Lai has extensive experience in handling internal and external auditing, finance and accounting, regulatory and compliance as well as company secretarial matters.



Lam Yee Fan FCIS FCS

Ms Lam is the Company Secretary of Van Shung Chong Holdings Ltd, responsible for the corporate secretarial and corporate governance affairs of the Group. Ms Lam has substantial experience in company secretarial practices and corporate governance in

various sizeable companies listed on the Main Board of the Hong Kong Stock Exchange and/or NASDAQ in the US.

Additional New Fellow:

Chan Sau Yee FCIS FCS, Company Secretary, Kerry Mining (Hong Kong) Ltd

Annual Subscription 2014/2015

Members and Graduates are reminded to settle their annual subscription for the financial year 2014/2015. Members should note:

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). For details of card benefits and the application form, please refer to the Institute's website: www.hkics.org.hk.
2. Failure to pay by Saturday 31 January 2015 constitutes a ground for membership removal. Reinstatement by the Institute is discretionary, subject to payment of all outstanding membership and re-election fees and levies, if any, during the removed period.
3. Please complete and return the Personal Data Update Form to the Institute together with your payment by using the return envelope.

Members and Graduates who have not received the Membership Renewal Notice for the financial year 2014/2015 should contact Jonathan Chow at: 2830 6088, or email: member@hkics.org.hk.

Annual Dinner

The Institute's Annual Dinner 2015 will be held on Wednesday 14 January 2015 at the Conrad Hong Kong. Professor KC Chan, GBS, JP, Secretary for Financial Services and the Treasury, will be the guest of honour at the event. For details, please refer to the flyer on page 35, or visit the events section of the Institute's website: www.hkics.org.hk.

Advocacy

President speaks at HKICPA gathering

President Edith Shih FCIS FCS(PE) gave a presentation to the members of the Hong Kong Institute of Certified Public Accountants (HKICPA) at the Business Leaders and Senior Members Gathering on 17 November 2014 entitled 'Over the Rainbow'. This was hot on the heels of her receiving an Honorary Fellowship from the Open University of Hong Kong a day earlier for her outstanding contributions to society. In a heart-warming speech to HKICPA and her family and friends, Ms Shih recounted her university days in the Philippines, and how it culminated in her studies at Columbia University in New York in applied linguistics, and her eventual pursuit of law. Ms Shih also told of the developments in her legal career dating back to 1984 with

a leading law firm in Hong Kong. She recounted the inevitable tide that led her to her current position as Head Group General Counsel of Hutchinson Whampoa Ltd, with some 280 lawyers and 60 company secretarial staff under her charge. Despite the handling of transactions running into the tens of billions, Ms Shih retains the human touch and cares dearly for her staff. Also present at the presentation were Ms Shih's husband and sister. The occasion ended with Ms Shih's rendition of 'Over the Rainbow'.

We at HKICS are proud of the leadership of Ms Shih and wish her well as she takes on the Vice-Presidency of ICSA for the Institute amongst her other services for the community and public good.

Congratulations

President Edith Shih FCIS FCS(PE) was awarded an Honorary Fellowship by The Open University of Hong Kong (OUHK) on 16 November 2014. Ms Shih delivered an acceptance speech at the award ceremony and shared her learning and working experience.



Edith Shih receiving the Honorary Fellowship award by OUHK



HKICS attends OUHK luncheon

President Edith Shih FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE) attended a luncheon organised by The Open University of Hong Kong (OUHK) on 16 October 2014. Professor Liu Mingkang, the former Chairman of the China Banking Regulatory Commission and Honorary Doctorate of Business Administration of OUHK, delivered a speech at the event themed: 'What are the implications of QE tapering on the Chinese financial industry', which was part of the university's Distinguished Speaker Series.



At the luncheon

Chief Executive attends 2015 Policy Address and Budget Consultation

Chief Executive Samantha Suen FCIS FCS(PE) attended the Hong Kong SAR Government's 2015 policy address and 2015/2016 budget consultation sessions for the financial services and professional services sectors on 21 and 26 November 2014 respectively.



CHARTERED
SECRETARIES
特許秘書

More than meets the eye.
潛能. 超越所見.

Risk Management Reform for Hong Kong Listed Companies – Trendsetting for Asia?



Speakers:



Ms Edith Shih FCIS FCS(PE)
President, HKICS
Head Group General Counsel &
Company Secretary
Hutchison Whampoa Limited



Mr Andrew Weir
Regional Senior Partner,
Hong Kong & Global Head of
Building, Construction and
Real Estate Practice, KPMG

A major recent initiative of Hong Kong Exchanges and Clearing Limited (HKEx) is to promote an internal control and risk management culture among listed issuers. This seminar will seek to highlight HKEx's proposals and their impact upon the governance of listed issuers, and to bring out the emerging trends which Hong Kong is to adopt and to give thoughts to other Asian jurisdictions.

This seminar organised by The Hong Kong Institute of Chartered Secretaries (HKICS), in partnership with the Hong Kong Trade Development Council, is part of the International Financial Week following the Asian Financial Forum 2015 (AFF) to be held on 19-20 January 2015. Participants of AFF 2015 will enjoy HKICS member's rate in attending this seminar.

Date :	20 January 2015 (Tuesday)	Fee :	HK\$400 for HKICS members and AFF participants
Time :	4.30 pm to 6.30 pm (including Q&A session)		HK\$450 for others
Language :	English	Accreditations :	HKICS (2 ECPD points) The Law Society (TBC)
Venue :	KPMG, 23/F, Hysan Place, 500 Hennessy Road, Hong Kong		

For enquiries, please contact Ms Rachel Yue at 2830 6058 or Ms Janet Ng at 2830 6011 or email to ecpd@hkics.org.hk.

Organiser



CHARTERED
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特許秘書

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cutting through complexity

International Qualifying Scheme (IQS) examinations

Examination postponement application

Candidates who are prevented by illness from attending a scheduled International Qualifying Scheme (IQS) examination must submit a satisfactory medical certificate when applying for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the entire December examination diet, that is, on or before Friday 2 January 2015.

The application form is available at the examinations section on the Institute's website: www.hkics.org.hk. For details, please contact Ruby Ng at: 2830 6006, or Mandy So at: 2830 6068.

Amendment of 'Instructions to Candidates'

Candidates must complete the front page of the booklet and the headings on any additional pages during the examination. Candidates must write down the attempted question numbers of section B on the front page and inside the answer books. Failure to do so may result in mark deduction (up to two marks in total). No time will be allowed when the session for the examination lapses.

June 2015 diet reminders

Examination timetable

	Tuesday 2 June 2015	Wednesday 3 June 2015	Thursday 4 June 2015	Friday 5 June 2015
9.30am-12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2pm-5pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Please enrol between 1 and 31 March 2014.

Syllabus updates

Please note that the syllabus for the following subjects will be updated with the requirements under the new Companies Ordinance with effective from the June 2015 examination:

- Hong Kong Corporate Law
- Corporate Governance
- Corporate Secretaryship

Students may refer to the 'Studentship' section of the Institute's website: www.hkics.org.hk for details.

IQS information session

The Institute held an IQS information session on 17 November 2014 for members of the general public interested in pursuing the Chartered Secretarial profession. Arthur Lee ACIS ACS, Assistant President and Director of Investors Relations of CGN Meiya Power Holdings Co Ltd, shared his work experience in the profession and his experience about becoming a graduate via the Master of Corporate Governance programme with the attendees.



Arthur Lee sharing his experience

Student Update

Academic Advisory Panel Luncheon

The Institute held an Academic Advisory Panel Luncheon on 30 October 2014 at the American Club with representatives from local universities. Polly Wong FCIS FCS(PE), Education Committee Chairman, and Ivan Tam FCIS FCS, Education Committee Vice-Chairman, hosted the lunch, with General Manager and Company Secretary Louisa Lau FCIS FCS(PE) and Director, Education and Examinations Candy Wong accompanying. They shared with the following attending academic professionals (listed in alphabetical order) the recent developments and future activities of the Institute.

- Professor Alan Au, Acting Dean/Associate Dean, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong
- Dr Derek Chan, Associate Professor in Accounting (Area Co-ordinator), Faculty of Business and Economics, The University of Hong Kong
- Alfred Ma, Assistant Professor, Department of Accountancy, City University of Hong Kong
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, The Chinese University of Hong Kong
- Claire Wilson, Associate Head, Department of Law and Business, Hong Kong Shue Yan University
- Dr Brossa Wong, Associate Dean, School of Business, Hang Seng Management College
- Dr Pauline Wong, Assistant Professor, Department of Accountancy, Lingnan University



Group photo of the Academic Advisory Panel

Student Ambassadors Programme (SAP) – visits

With the aim to familiarise student ambassadors with the Chartered Secretarial profession, the Institute organised two visits in the past two months:

- Securities and Futures Commission (SFC) on 22 October 2014, and
- Hong Kong Ethics Development Centre, Independent Commission Against Corruption (ICAC) on 11 November 2014.



At SFC



At Hong Kong Ethics Development Centre, ICAC

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

Student Update (continued)

HKICS Professional Seminars

The Institute organised four Professional Seminars last month to promote the Chartered Secretarial profession to university students.

Date	Institution	Speaker	Topic
12 November 2014	The Hong Kong University of Science and Technology	Dr Davy Lee FCIS FCS(PE)	Company secretaries and corporate governance
13 November 2014	Hang Seng Management College	Edmond Chiu ACIS ACS	Importance of corporate governance and the company secretary
14 November 2014	The Open University of Hong Kong	Jerry Tong FCIS FCS	Role of the company secretary in corporate governance
19 November 2014	Hang Seng Management College	Candy Wong	Introduction to the Institute and the IQS examinations



Dr Davy Lee at the seminar



Jerry Tong at the seminar



Edmond Chiu at the seminar

Payment reminders

Studentship renewal

Students whose studentship expired in October 2014 are reminded to settle the renewal payment by Monday 22 December 2014.

Exemption fees

Students with exemptions approved via confirmation letter on 22 September 2014 are reminded to settle the exemption fee by Monday 22 December 2014.



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

*學生亦可報讀個別學科單元

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

單元一 中國公司行政 Corporate Administration in PRC
單元二 中國公司治理 Corporate Governance in PRC
單元三 中國稅務 Taxation in PRC
單元四 中國公司法律 Corporate Law in PRC

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

*學生亦可報讀個別學科單元

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

核心單元：(必須全部修讀)

單元一 中國董事會秘書實務 Corporate Secretaryship in PRC
單元二 中國公司治理 Corporate Governance in PRC
單元三 中國公司行政 Corporate Administration in PRC

非核心單元：(可選單元四或五)

單元四 中國稅務 Taxation in PRC
單元五 中國公司法律 Corporate Law in PRC

最新
單元

中國公司治理

講者簡介

李源博士

- 廣東省社會科學院企業研究所副所長、研究員
- 廣東省社會科學院研究生部教授
- 畢業於暨南大學管理學院 - 管理學博士
- 廣東省人事廳研究員

上課時間及地點

每單元課程為期一個月
授課時間：4堂，每堂6小時，共24小時
上課時間：逢週六上堂，下午(2:00-5:00)及晚上(6:00-9:00)
授課地點：港島區其中一所教學中心

授課日期

2015年(逢週六)1月17日、1月24日、1月31日、2月7日

每單元課程學費

港幣3,850元

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

課程查詢

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

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

電話：28816177 電郵：ecpd@hkics.org.hk

香港大學專業進修學院乃非牟利機構。



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