

CSj

February 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



Global compliance

New Companies Ordinance
Director induction
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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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2014年1月7日，香港特许秘书公会在港召开新一轮的董事会秘书专责小组会议，与会者均认同，现今商业环境变化莫测，公司秘书对引导董事作出合规的决定，发挥关键作用。

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The New Companies Ordinance: your guide

This month we launch a new column in the journal devoted to the new Companies Ordinance. The ordinance, Cap 622, will be implemented on 3 March 2014 and will have major implications for the work of company secretaries in Hong Kong. *CSj* will track its implementation and provide practical advice to readers on compliance issues throughout the year. Watch this space!

The HKICS has organised a series of seminars on the new Companies Ordinance; please refer to the 'ECPD' section of the Institute's website (www.hkics.org.hk) for details.



Before turning to the theme of this month's journal, I would like to draw your attention to a new HKICS guideline – *Practices of Inside Information Disclosure of A+H Companies* (available on the 'Publications' section of the Institute's website: www.hkics.org.hk) – which represents a major achievement by our Affiliated Persons on the Mainland. Over the last year a working group led by Dr Gao Wei FCIS FCS, Board Secretary and General Counsel, Sinotrans Ltd, and HKICS Council member, has been working on the guideline which, as the title suggests, gives guidance on ensuring compliance with disclosure requirements in Mainland China and Hong Kong.

Coordinating compliance with these two disclosure regimes has long been a major challenge for A+H share companies. Our Institute first highlighted the differences between these two regimes in our research report *A Comparative Study of Continuing Disclosure in Hong Kong and the PRC* (September 2008, also available on the HKICS website). That study highlighted not only the material differences in the requirements relating to information disclosure, but also the different approaches to enforcement taken by regulators in Mainland China and Hong Kong. Apparently, companies in Mainland China generally have greater opportunities for consultation with their relevant stock exchange, including about any 'major events' which need to be disclosed.

Two important developments in Hong Kong since the Institute's 2008 report have made this disparity even more pronounced. Firstly the Hong Kong stock exchange has moved away from the pre-vetting of company announcements, and secondly the

Cross-border compliance

revised Securities and Futures Ordinance (SFO), which came into force in January 2013, has transferred responsibility for the enforcement of inside information disclosure from the stock exchange to the Securities and Futures Commission (SFC). This has not only increased the potential penalties for breaches of the requirements (directors and chief executives, for example, could face a fine of up to HK\$8 million), but it has also reduced the opportunities for listed companies to consult over inside information disclosures. The SFC has provided guidance on the provisions of the SFO, but leaves it up to companies to decide what is or what is not inside information. It takes the position that only the companies themselves are in a position to make such a judgement.

Given these differences, coordinating compliance with the disclosure regimes in Mainland China and Hong Kong will continue to be a challenge for A+H share companies and the Institute's new guideline will be an important resource going forward. It provides A+H share board secretaries with a one-stop guide to the respective disclosure requirements, as well as tips on how best to structure their internal controls, how to make inside information disclosure announcements and how to deal with the media.

Having multiple international listings certainly increases a company's options for raising capital and helps capture investors' attention, but, as the foregoing discussion makes very clear, coordinating compliance with multiple sets of listing rules can be problematic. This brings me rather neatly to the theme of this month's journal – cross-border compliance. While it is true that there has been substantial convergence between jurisdictions in terms of listing rule requirements and corporate governance expectations, significant differences remain and companies can potentially find themselves struggling to ensure the equal treatment of shareholders and regulatory compliance in jurisdictions with very different regulatory approaches and legal systems.

The differences between the regulatory regimes of Mainland China and Hong Kong should come as no surprise – apart from anything else the legal system in Mainland China is based on civil law while that in Hong Kong is based on the common law. But significant disparities can also exist between jurisdictions belonging to the same legal tradition. The US, for example, follows a rules-based approach, while the UK follows a principles-based approach to corporate regulation.

Bill Wang, Company Secretary for Standard Chartered Bank (Hong Kong) Ltd, points out in this month's cover story (see pages 8–13), that cross-border compliance requires a very special skill set. Wang, who like me has a legal background, believes that this is one of the areas where the company secretarial role is even more challenging than that of a legal adviser. Firstly of course, one needs to be familiar with all the relevant listing requirements. Secondly, one needs to have the knowledge and cultural sensitivity to understand the spirit as well as the letter of the law in different listing jurisdictions. But thirdly, while these skills might help us work out a compliance strategy which satisfies the regulators, shareholders and other stakeholders in our different listing jurisdictions, there is still the question of how all of these factors impact the company's business strategy.

There can be little doubt, then, that cross-border compliance is a tough assignment for the company secretary, but, precisely because of the difficulties involved, this is one of the areas where we add significant value.

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

Edith Shih FCIS FCS(PE)

跨境合规

在谈及本刊今期的主题前，我先邀请大家注意香港特许秘书公会的一项新指引 — 《A+H股上市公司内幕信息披露实务》(Practices of Inside Information Disclosure of A+H Companies) (可于公会网站www.hkics.org.hk的「刊物」一栏内浏览) — 它标志着我们内地联席成员(Affiliated Persons) 所取得的一大成就。过去一年，由中国外运股份有限公司董事会秘书兼总法律顾问高伟博士及香港特许秘书公会理事会成员所领导的工作小组，一直努力不懈地制订该指引。顾名思义，该指引旨在提供确保遵守中港两地之披露规定的指导。

协调遵守两地的披露制度，一直是A+H股上市公司所面对的一大挑战。公会在其研究报告《内地与香港上市公司的持续披露比较研究》(A Comparative Study of Continuing Disclosure in Hong Kong and the PRC) (2008年9月，也可于香港特许秘书公会的网站上浏览) 中，率先强调两地制度之间的差异。该项研究不仅突显两地在信息披露规定方面之重大差异，也突显中港两地的监管机构在实施上的不同取向。明显地，内地公司一般有较多机会咨询相关证券交易所的意见，包括须予披露的任何「重大事项」。

自公会在2008年发表了该份报告后，香港出现了两项重要发展，令差距更加显著。首先，香港联合交易所不再预先审阅上市公司的公告；其次，于2013年1月生效的经修订《证券及期货条例》，将联交所执行内幕信息披露的责任，移交了证券及期货事务监察委员会（证监

会）。这不仅增加了违反有关规定可能受到的处罚（例如，董事及行政总裁可能会被罚款最高800万港元），也削减了上市公司就内幕消息的披露寻求咨询的机会。证监会虽然已就《证券及期货条例》之规定提供指引，但由公司自行界定那些属于内幕消息。证监会所抱持的看法是，只有公司自己才能作出这方面的判断。

基于此等差异，协调遵守中港两地的披露制度，将会继续成为A+H股上市公司所面临的挑战，而公会所出版的新指引，将会成为重要的参考资源。该指引为A+H股公司的董事会秘书提供了有关披露规定的一站式指导；同时在如何建构最有效的内部监控、如何作出内幕信息披露的公告，以及如何与媒体打交道等方面提供提示。

多重跨国上市，无疑可以为公司的资金筹集提供更多渠道，也有助于吸引投资者的关注，然而，正如上述讨论明确指出，协调遵守多套上市规则并非易事。这正好让我承接本刊今期的主题 — 跨境合规。虽然在上市规则之规定及对公司治理的期望方面，不同司法管辖区之间，在相当程度上渐趋一致，但当中仍有显著差异，而公司可能需要戮力地确保，即使不同司法管辖区的监管方式和法制各异，对待各地股东和监管合规都会一致。

中港两地监管制度之间存在差异，这不会令人感到意外 — 终究内地的法制是以民法为基础，而香港法制则建基于普通法。然而，即使是源于同一法律传统

的司法管辖区，它们之间依然会存在显著差异。譬如，美国的公司监管是以规则为本，而英国的就以原则为本。

渣打银行（香港）有限公司公司秘书王伟民在本期封面故事（参见8-13页）中提到，处理跨境合规工作，需要一套非常特殊的技能。王先生也像我一样拥有法律知识背景，而他认为，这是公司秘书工作较诸法律顾问工作更具挑战性的其中一个范畴。首先当然是，我们需要熟悉所有的相关上市规定；其次，我们需要在知识和文化上具有敏锐的触觉，从而理解上市所在的各个司法管辖区的法律精神和条文；第三是，该等技能可有助我们制定合规方面的策略，从而满足上市所在的司法管辖区之监管机构、股东及其他利益相关人士的要求，惟当中仍存在所有该等因素如何影响公司业务策略的问题。

故此，对公司秘书来说，处理跨境合规工作无疑是艰巨的任务，但正因为该等困难的存在，成为公司秘书贡献重大价值的领域。



施熙德

Meeting at *Kempinski*



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Ask the Expert

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

Q: *Why all of a sudden have board portals become a buzz word in Hong Kong? Our traditional board had not previously been interested in technology. What's changed?*

A: Introduction of the iPad fundamentally opened the boardroom to technology by making it accessible to even the most traditional board members. A year and a half after its introduction, the iPad has made the paperless boardroom a reality. Not that technology was a stranger in the boardroom – it has been there for years. It's just that in the 'pre-iPad' days, director use was light, mostly from home and for a quick check of material prior to the meeting. In-meeting use was virtually non-existent, primarily from a handful of tech-savvy directors, whereas more traditional directors stuck with paper. This created the undesirable side effect of splitting the boardroom between progressive and traditional directors, less than ideal for a forum of this type. This 'pre-iPad', browser-based, world was successful in delivering electronic copies of the boardbook for the convenience of a handful of techie directors, but the long-anticipated paperless boardroom never materialised.

Now suddenly, and without much fanfare, the iPad has changed the game. Almost immediately, boards made up of all kinds of directors are going paperless, and not without reason. First, the app opens up a wider range of access to content. It is no longer just about the current meeting; you also have a bird's eye view of all previous meetings, all in a way that presents complex information with unprecedented efficiency.

Second, by combining the immediacy of online access with the readability of print, the app delivers an experience that doesn't just have parity with paper, it delivers an experience that is better than paper. Finally, as a device, the iPad is so straightforward that it can serve as a common platform for the whole board. So, unlike its browser predecessor, it produces an

BoardVantage

inclusive experience for all directors – progressive and traditional alike. If you are contemplating making the switch to the iPad and going paperless, it is important to understand the new set of uses that come with it. That is because the new 'post-iPad' world is materially different from the old 'pre-iPad' world. For one thing, it is more mobile, and that mobility introduces a set of new uses with their attendant risks.

Laptops may have been the accepted standard of mobile computing inside the enterprise for 10 years or more, but not so in the boardroom. Although laptops were present they were not mobile.

With the advent of the iPad, things could not be more different. Directors now own their iPads. They may have purchased them with their own money or the company may have gifted them. In either case, unlike the old-school laptops, directors now carry their iPads wherever they go, and they rely on them for board materials, whether in-meetings or in-between. Not unreasonably, they expect ready access to those materials even if they're out of Wi-Fi range. This is a common scenario when board members are prepping for a meeting while in transit, perhaps reviewing material or making annotations in-flight on the way to a meeting.

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Your chance to ask the expert...

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

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

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

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





Global compliance

Ensuring compliance with one set of listing rules is difficult enough, so spare a thought for the practitioners who need to ensure compliance with multiple, and potentially conflicting, sets. Senior company secretaries working for companies with multiple international listings offer some tips on the art of multi-jurisdictional compliance.

Over the last two decades there has been a steady increase in the numbers of companies opting to raise capital through equity issues outside of their home market. This can take the form of direct listings on overseas stock exchanges or via a cross-listing vehicle such as a depository receipt.

The benefits of these strategies are not limited to the obvious capital raising opportunities involved. There is also the potential for raising liquidity, enlarging the investor base and raising the company's public image. A high profile listing on one of the world's major stock exchanges certainly helps with a

firm's 'visibility' – a number of overseas companies have listed in Hong Kong in recent years with a view to raise their profile among the expanding numbers of affluent consumers in Mainland China.

As you might expect, however, having multiple international listings can be costly. There are the upfront costs of the overseas IPO launch and the ongoing costs of managing compliance with two, or even multiple, sets of listing requirements. In theory, given the gradual harmonisation of securities regulation around the world, multi-jurisdictional compliance should be fairly straightforward. Many internationally listed companies opt to comply with the

Highlights

- companies with dual listings should ensure that they have people in both locations with a knowledge of the rules in the other jurisdiction – this prevents silos operating
- company secretaries cannot take a tick box approach to the rules they are subject to – they need to think through the rationale behind the rules
- in addition to a technical knowledge of the rules, company secretaries need to give strategic advice to the board on how all relevant factors will impact the company's business

“
most issues can
be overcome with
good planning and
preparation
”

Paul Stafford, Corporation Secretary
and Regional Company Secretary Asia-
Pacific, The Hongkong and Shanghai
Banking Corporation Ltd



most stringent regulations they are subject to in the assumption that this will mean that they will be in compliance with all relevant regulation.

The picture can sometimes be rather more complicated, however. There are cases, for example, where the requirements of two listing jurisdictions are incompatible. Back in September 2007, Standard Chartered Bank found itself in this dilemma. Disclosure obligations in the UK required it to release price-sensitive information (PSI) as soon as possible. Disclosure obligations in both Hong Kong and the UK required it to ensure the information was released simultaneously to all of its shareholders.

These two obligations came into a head-on collision due to Hong Kong's then listing rule 2.07C(4) which prevented it from publishing the information to its Hong Kong investors during Hong Kong's share trading

hours. The Hong Kong listing rules will soon allow inside information announcements to be released during the stock exchange's trading hours subject to a short trading halt. The trading halt proposals are expected to be implemented in mid-2014 – see the Hong Kong Exchanges and Clearing website (www.hkex.com.hk) for details. At the time, however, the only way out of the dilemma was for Standard Chartered to apply for a waiver from rule 2.07C(4).

The waiver was duly granted and such waivers, where a Hong Kong listing rule conflicts with the rules in a company's home jurisdiction, are now easier to obtain than in the past (see 'The waiver: the easy route to harmonisation?' on page 11). There is an extensive list of common waivers for overseas companies with primary, dual primary as well as secondary listings, for which the Stock Exchange of Hong Kong has set out its conditions.

In search of a waiver

One benefit of the increased competition between the world's stock exchanges for international listings has been a new willingness among bourses to relax requirements for dual and secondary listings. This helps companies 'synchronise' compliance with the rules in their various listing jurisdictions, but seeking a waiver often requires significant input from the company secretary. Bill Wang, Head of Group Listings, Asia at Standard Chartered Bank, and Company Secretary for Standard Chartered Bank (Hong Kong) Ltd, has a good knowledge of this aspect of the company secretarial role, having lobbied the Stock Exchange of Hong Kong on numerous occasions to simplify Hong Kong's connected transaction rules.

The connected transaction rules in Hong Kong are designed to prevent majority shareholders from abusing their power to the detriment of minority shareholders –

an important consideration in a jurisdiction where the majority of local issuers are predominantly family-controlled, or dominant shareholder-controlled. However, diversely-held companies may still be subject to these rules even where the risk of abuse is very low. Like many international companies, Standard Chartered has a diverse shareholding structure, but it does have a passive shareholder with a holding above the 10% threshold which triggers Hong Kong's connected transaction rules.

The company has sought a waiver from these rules for a number of corporate transactions on the basis that the substantial shareholder – the Singapore

sovereign fund Temasek – is a passive investor. 'Temasek does not affect our management positions, it does not even have a board seat,' says Wang. 'We deal with our big shareholders in the same way we deal with smaller shareholders in terms of having arm's length dealings. We are not in a situation where the substantial shareholder may have an incentive and the actual influence to do something to the detriment of the investing public.'

The stock exchange is sympathetic to this reasoning and has put out several market consultations proposing to relax the connected transaction rules. Currently

the exchange grants applications from listed issuers on a case by case basis. 'We have engaged them quite closely and have been quite successful in convincing them that, in most cases, we should get an exemption,' says Wang. 'To their credit, the exchange by and large takes a balanced and sensible regulatory approach without compromising investor protection or unduly burdening the listed issuers.'

A global marketplace for shares?

The possibility of a global marketplace for shares governed by a single set of rules is still a very distant, and perhaps highly unlikely, prospect. While there has been a convergence between jurisdictions

The waiver: the easy route to harmonisation?

There has been observable progress towards the harmonisation of securities regulation internationally, but the process is a very slow one. Transnational networks of regulators, such as IOSCO and the Basel Committee on Banking Supervision, have been gaining prominence but their standards are non-binding and they do not have monitoring or dispute resolution mechanisms.

The world's stock exchanges have nevertheless found ways to mitigate the compliance hurdles for internationally listed companies. As Dr Bryane Michael, Senior Fellow at the University of Hong Kong Law Faculty's Institute of International Financial Studies and the Centre for Comparative and Public Law, points out, 'regulators seem to be rather accommodating on many aspects of mutual recognition.'

Mutual recognition seems in fact to have become the favoured route to harmonisation through the back door. There have been formal bilateral 'mutual recognition' agreements between exchanges recognising the adequacy of both parties' regulation, or, lower down the scale, 'memorandums of understanding'. The easiest and the most

common route, however, is for stock exchanges to grant waivers for conflicting or inappropriate requirements on a case by case basis, and these have been increasingly evident in Hong Kong.

The Stock Exchange of Hong Kong now grants extensive waivers from the listing rules to companies with a secondary listing on the exchange where the Hong Kong rules are at odds with the rules of the company's home jurisdiction, or are simply burdensome in the context of two sets of listing rules. There are conditions attached, however. To qualify for 'secondary listing' status, companies must have, among other things, a good compliance track record and their primary listing must be on a 'recognised stock exchange' where the standards of shareholder protection are at least equivalent to those in Hong Kong.

A list of 'recognised stock exchanges' is set out in the 'Joint policy statement regarding the listing of overseas companies', issued by the Stock Exchange of Hong Kong and the Securities and Futures Commission (SFC) on the Hong Kong Exchanges and Clearing website: www.hkex.com.hk.



in areas such as accounting standards, there remains a significant disparity between corporate governance and listing requirements. This is nowhere more evident than here in Hong Kong where a large number of A+H share companies have the task of synchronising compliance with very different regulatory regimes.

'If you have dual listings in Hong Kong and London or New York, the compliance challenges are not as great as they are for companies with dual listings in Mainland China and Hong Kong,' says Gao Wei, Board Secretary and General Counsel, SinoTrans Ltd and HKICS Council member. 'To start with, Mainland China's legal system is based on civil law while that in Hong Kong is based on common law. The thinking, the logic of these two legal systems is therefore different.'

Over the last year a group of A+H share board secretaries, led by Dr Gao, has been working on a new HKICS guideline (*Practices of Inside Information Disclosure of A+H Companies*) on compliance with inside information disclosure

requirements in Mainland China and Hong Kong.

'There were many concerns among board secretaries about the new inside information disclosure requirements in Hong Kong since the implementation of the revised Securities and Futures Ordinance (SFO). This law is very complicated for Hong Kong companies, but for A+H share companies it is even more challenging,' says Dr Gao.

One reason for this is that Mainland board secretaries are used to being able to consult with their relevant stock exchange about what disclosures need to be made, but this is less possible in Hong Kong where companies are expected to make their own judgements about what is or what is not inside information. 'The SFC is the law enforcement agency – they will not explain your compliance obligations based on the facts, they just expect compliance with the law,' Dr Gao says.

Paul Stafford, Corporation Secretary and Regional Company Secretary Asia-Pacific,

The Hongkong and Shanghai Banking Corporation Ltd, points out that company secretaries also need to consider the differences between share registration and settlement systems in their listing jurisdictions. HSBC has listings in London and Hong Kong and needs therefore to synchronise corporate actions working via the CREST system in the UK and CCASS in Hong Kong.

'The company secretary needs to understand how each system works and to design how corporate actions are coordinated for implementation across the jurisdictions,' he says. He adds, however, that 'most issues can be overcome with good planning and preparation.'

He also recommends that companies with dual listings should ensure that they have people in both locations with a knowledge of the rules in the other jurisdiction. 'This prevents silos operating and also ensures any emerging issues or actions arising from developing regulations in one jurisdiction, but

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Sometimes you just have to step back and say, ‘Does that make sense? Why do we have those regulations in the first place?’
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Bill Wang, Head of Group Listings, Asia at Standard Chartered Bank, and Company Secretary for Standard Chartered Bank (Hong Kong) Ltd

which impact or conflict with the other jurisdiction, are identified early during a consultation process and well before implementation date,’ he says.

The most important thing, Stafford suggests, is to have a culture to comply with both the spirit and letter of the requirements, and to have systems for prompt escalation and resolution. The mention of the ‘spirit’ of the requirements here is significant. There has been a growing trend towards ‘principles-based’ securities regulation globally since the UK moved to a comprehensive ‘principles-based’ regime in 2003.

‘We certainly prefer a principles-based approach because there is no “one-size-fits-all” regulation that will do the job,’ says Bill Wang. ‘You need to provide space to the listed issuers to apply the principles and stick with the spirit of the rules and regulations, otherwise you would get a less meaningful box-ticking exercise – people can find ways to comply with the letter but the spirit of rules is what matters the most.’

What skills do I need?

Readers of this journal will be well aware of the complexities involved in listing rule compliance. Complying with multiple sets of rules further complicates the picture, but company secretaries have the skill sets needed for this work. Bill Wang believes that the most important thing is for practitioners to take the right approach to compliance. ‘Too many compliance officers just say, “these are the rules, you just have to implement them”,’ he says.

He points out that this approach simply does not work in the context of a company with multiple international listings faced with competing sets of regulations. ‘Sometimes you just have to step back and say, “Does that make sense? Why do we have those regulations in the first place? Do we have an alternative way of complying without the unintended consequences?”’ He adds that there should be no stigma attached to a company which has clearly thought through the rationale behind the rules and has come up with an alternative way of complying – this after all is the whole intention of the ‘comply or explain’ principle.

‘Ticking the box is relatively easy; thinking about multiple options that will achieve the same goal and selecting the one that fits the company and society as a whole, that requires more work and a more thorough analysis, but once you’ve been through that process you will have better credibility with regulators and society. You are showing that you have thought through the issues and come up with a sensible solution that serves everyone’s purposes,’ he says.

In addition, Wang argues that company secretaries need to have a passion for the

job. Wang used to be the Senior Group Legal Counsel for the Standard Chartered Group, but has appreciated the move into the company secretary role. ‘I can tell you it is definitely not a paper pusher role,’ he says. ‘It is not just about keeping the administrative matters in order, it is very much a trusted advisory role to senior management and the board on governance issues, on control issues, on what are the best policies and procedures to adopt in various areas such as risk governance.’

For Wang, the move into the company secretary role was a logical step up to the next level, where he needed to combine his technical knowledge of the rules with a much broader strategic perspective of how all the relevant factors would impact the company’s business. ‘When I was in the legal function, I also had a trusted advisory role but the audience was quite limited. Since switching to the governance role I find that the audience has widened. It can be a CEO, a chairman – these are your main stakeholders. They are busy people so you have to articulate the strategic and governance issues in very succinct manner and make sure they get facts and options and the best possible advice for their decision making. That is very big picture stuff. So you are elevated to the next level, you become a strategic adviser rather than a purely technical issue adviser,’ he says, ‘but having had solid legal training and experience is certainly a plus to the role.’

The new guideline on information disclosure in Mainland China and Hong Kong (‘Practices of Inside Information Disclosure of A+H Companies’) is available on the ‘Publications’ section of the Institute’s website: www.hkics.org.hk.



The new Companies Ordinance: are you ready?

In this second and final part of their article, Billy Lam, Loretta Chan and Wilson Fung of Mayer Brown JSM, highlight the key issues that directors and company secretaries need to watch out for in the new Companies Ordinance.

As we all know, the new Companies Ordinance (CO) comes into force on 3 March 2014. Among the many changes that the new CO introduces, there are some which may have a more direct or important impact on directors' and company secretaries' liabilities. This article discusses those changes and their implications.

Directors' reports – business review

The new requirement for an analytical and forward-looking business review which forms part of the directors' report may have an impact on directors' liabilities. This new requirement applies to public companies and the larger (that is, those which do not qualify for simplified reporting) private companies and guarantee companies. Private companies not qualified for simplified reporting are also allowed to opt out of this requirement by special resolution. Further, this new requirement does not apply to wholly-owned subsidiaries.

The business review has to contain a fair review of the company's business, a description of the principal risks and uncertainties facing the company, and an indication of likely future development of the company's business. To the extent necessary for an understanding of the

development, performance or position of the company's business, the business review should also include an analysis using financial key performance indicators and a discussion of the company's environmental policies and performance, its relationships with its key stakeholders etc. However, impending matters in the course of negotiation do not have to be disclosed if the directors consider that such disclosure would seriously prejudice the company's interest.

For private companies, this business review requirement may be something rather new. However, listed companies in Hong Kong might have already included some of the above information in their preliminary announcements of interim/ annual results as well as interim and annual reports pursuant to either mandatory requirements or recommended disclosures under the listing rules.

To ease directors' concerns about their potential liabilities and to encourage meaningful reporting, a 'safe harbour' has been introduced to limit directors' civil liability for statements in, or omissions from, the directors' report.

Directors are liable to compensate the company for any loss it suffers as a result

of any untrue or misleading statement or an omission if:

- they knew the statement to be untrue or misleading, or were reckless as to whether it was untrue or misleading, and

Highlights

- companies which do not qualify for simplified reporting will need to include an analytical and forward-looking business review in their directors' reports, but a 'safe harbour' provision has been introduced to limit directors' civil liability for statements in, or omissions from, these reports
- directors can be indemnified for liabilities towards third parties in connection with any negligence, default, breach of duty or breach of trust if certain requirements are met
- the new CO expands the requirements relating to directors' disclosure of interest

- in respect of omission, they knew the omission to be a dishonest concealment of a material fact.

As regards directors' civil liability (or that of the other parties such as professionals involved in the preparation of the directors' report) to any third party relying on the directors' report, for example investors, this is also excluded under the new CO. So, it seems that directors need not be too worried about their potential civil liabilities arising from the new requirement for a business review as long as there is no recklessness or dishonesty on their part.

Indemnification of directors' liabilities

Directors may incur contractual, tortious, or other personal liabilities towards their company and third parties, and even criminal liabilities. However, they may

be protected by indemnity provisions in some cases. Section 165 of the current CO governs such indemnity provisions but it does not expressly deal with indemnity provisions in respect of a director's liabilities towards third parties. Further, under the current CO, a director may apply for relief in respect of liability for negligence, default, breach of duty and breach of trust pursuant to section 358.

Part 10, Division 3 of the new CO expressly defines the scope of permitted indemnifications in respect of a director's liabilities towards third parties. The aim is to make void any provision for exemption or indemnity of a director's liability in connection with any negligence, default, breach of duty or breach of trust (section 468), but creates an exception in respect of a director's liability towards a third party (section 469(1)) if certain

requirements as laid down in section 469(2) are met.

Section 469(2) requires that the provision must not provide indemnities against:

- any liability of the director to pay a fine imposed in criminal proceedings or a sum payable by way of a penalty in respect of non-compliance with any regulatory requirement, or
- any liability incurred by the director in defending criminal proceedings in which he is convicted, and in defending civil proceedings brought by his company or an associated company or on behalf of such company in a derivative action or multiple derivative action in which judgment is given against the director, and in connection with an

Companies Registry guidance

<p>To prepare for the commencement of the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong, on 3 March 2014, the Companies Registry issued four external circulars and four guidelines last month.</p>	<p>iii. No 3/2014 – The New Companies Ordinance (Cap 622) – A Guide on Directors' Duties, and</p> <p>iv. No 4/2014 – The New Companies Ordinance (Cap 622) – Major Changes in Filing Requirements.</p>	<p>iv. Guideline on Registration of Corporate Names for Registered Non-Hong Kong Companies.</p> <p>Copies of the external circulars and guidelines are available and can be downloaded from the 'New Companies Ordinance' section of the Companies Registry's website (www.cr.gov.hk).</p>
<p>The four external circulars are:</p>	<p>The four guidelines are:</p>	<p>For enquiries relating to the new Companies Ordinance, a dedicated hotline 3142 2822 has been set up. The hotline operates from Monday to Saturday 9 a.m. to 8 p.m. (excluding public holidays). Email enquiries can be sent to cr.nco@cr.gov.hk.</p>
<p>i. No 1/2014 – Commencement of the new Companies Ordinance (Cap 622)</p> <p>ii. No 2/2014 – The New Companies Ordinance (Cap 622) – Guidelines issued by the Registrar of Companies</p>	<p>i. A Guide on Directors' Duties</p> <p>ii. Guide on Communications to and by Companies</p> <p>iii. Guideline on Registration of Company Names for Hong Kong Companies, and</p>	

Source: Companies Registry



“ it is important that directors fully understand and live up to the new standard that is expected of them under the new regime as well as ensure that their companies comply with the new requirements ”

unsuccessful application for relief under section 358 of the current CO (or sections 903 and 904 of the new CO).

Liability incurred by directors in defending proceedings will essentially be liability in respect of their legal costs. As subsection (b) does not mention regulatory action, it would appear directors can still be indemnified for their legal costs incurred in an unsuccessful defence of a regulatory action.

New provisions governing conflicts of interests

Part 11 of the new CO contains provisions governing conflicts of interests which deal with the following four subject matters.

1. Loans, quasi-loans and credit transactions

The current CO prohibits a company from making loans to its directors, or a director of its holding company, or a company in which its directors have controlling interest. In the case of a listed company or a relevant private company, the prohibition also extends to a director's connected entities. In respect of quasi-loans and credit transactions, these are

similarly prohibited if the company is a relevant company.

Changes are introduced by the new CO. Under section 491, the concept of 'relevant company' is changed to 'specified company' which is narrower in scope and only covers a public company or a private company or company limited by guarantee that is a subsidiary of a public company. Section 492 defines 'body corporate controlled by director' – there is controlling interest if a director has more than 50% voting power at general meetings of the body corporate, or the directors or majority of the directors of the body corporate are accustomed to act according to his directions. Additionally, the new CO expressly defines 'connected entity' under section 486 and has expanded its scope. A director's cohabitee, minor child and associated body corporate (a body corporate in which the director and related persons have 30% voting power at general meetings) are included as connected entities.

Other changes are relatively minor. For example for loans, the prohibition is extended to cover loans to a body corporate controlled by a director of a

holding company. The new CO further restricts loans, quasi-loans made to and credit transactions entered into for an entity connected with a director of a holding company.

Under the new CO, transactions which would otherwise be prohibited are allowed if the prescribed approval of members of the company and/ or holding company in question is obtained. Under section 496, members' prescribed approval means approval obtained by a resolution of the members prior to the transaction, and requires that there is a memorandum sent to members setting out specified matters in respect of the transaction. In the case of a specified company, there is an additional requirement that the resolution is passed after disregarding affirmative votes by interested members. A prior unanimous consent of all relevant members can also constitute members' prescribed approval.

There will only be civil consequences for contraventions (see section 513). The new CO does not provide for criminal liability for contraventions.

The existing exceptions under the current CO are retained with some variations.

Company secretaries and the Companies Ordinance rewrite

The expertise and experience of company secretaries is a valuable resource for the government and regulators when it comes to legislative and regulatory reforms, and this is particularly true when it comes to companies legislation which forms part of the core expertise of company secretaries in Hong Kong. Now that the Companies Ordinance rewrite exercise, one of the largest-scale and most complex legislative reforms ever undertaken in Hong Kong, is nearing completion, it is perhaps fitting to acknowledge the key role played by representatives of the Institute in guiding this monumental project to a successful conclusion.

The following members of the Institute have served on the Standing Committee on Company Law Reform (SCCLR):

- Peter Greenwood FCIS FCS
- Anthony Rogers FCIS FCS
- Mike Scales FCIS FCS
- Edith Shih FCIS FCS(PE), and
- Wendy Yung FCIS FCS.

The SCCLR was set up in 1984 to advise the government on amendments to the Companies Ordinance and the Securities and Futures Ordinance on matters relating to corporate governance and shareholders' protection. Members of the SCCLR include representatives from relevant government departments and regulators, as well as from the relevant business sectors and the professions.


The SCCLR has played a central role in reviewing the Companies Ordinance and several of its recommended amendments to the ordinance were implemented by means of amendment bills prior to the launch of the Companies Ordinance rewrite exercise in 2006. Most recently, the SCCLR considered the provisions of various draft subsidiary legislation necessary for the implementation of the new

Companies Ordinance, which was passed by the Legislative Council in July 2012.

Since the launch of the rewrite exercise, which has been led by a dedicated Companies Bill Team at the Companies Registry, many Advisory Groups have been formed to advise the rewrite exercise on specific topics under consideration. The following members of the Institute have served on these Advisory Groups:

- John Brewer FCIS
- Richard Leung FCIS FCS
- Paul Moyes FCIS FCS
- Natalia Seng FCIS FCS(PE)
- Bernard Wu FCIS FCS, and
- Eirene Yeung FCIS FCS.

In addition, the Institute has made numerous submissions to the public consultations launched as part of the rewrite exercise. The members of the Institute who have contributed to the work of the Institute's Technical Consultation Panel (TCP) over the eight years of the rewrite exercise are too numerous to mention by name, but this is certainly a good juncture to collectively recognise their contributions to this important and often highly technical work.

The Institute will continue to make its voice heard in the ongoing governance debate in Hong Kong. 

The SCCLR's 2012-2013 annual report is now available at the websites of the Financial Services and the Treasury Bureau (www.fstb.gov.hk/fstb) and the Companies Registry (www.cr.gov.hk).

In addition, three new exceptions are introduced:

- i. where the value of a transaction does not exceed five percent of the company's net assets or called up share capital (section 505)
- ii. where funds are provided to a director for defending civil or criminal proceedings regarding misconduct (section 507), and
- iii. where funds are provided to a director for defending regulatory actions by a regulatory authority (section 508).

For (ii) and (iii), the funds must be repayable to the company if the director's defence is unsuccessful.

2. Material interest in transactions, arrangements or contracts

Section 536 of the new CO has expanded the scope of section 165 of the current CO to also cover transactions and arrangements in which a director is interested, in addition to contracts. Of the three terms, 'arrangement' has the widest meaning and may cover a number of transactions with different parties.

Also, under the new CO, directors need to declare the extent of their interest in addition to the nature of their interest. Presumably, if a director's interest is his shareholding in a company, he should also disclose the percentage of his shareholding. However, if a director is not aware of his interest or the transaction in question, he is not liable to make a declaration unless he ought reasonably to be aware.

Section 537 provides when and how a director should declare his interest. If the

transaction has already been entered into, he must make a declaration as soon as is reasonably practicable. For a proposed transaction, he must declare his interest before the transaction is entered into. Under section 538, the declaration can be made at a directors' meeting, through a written notice to other directors or by a general notice; section 538 (4) to (8) set out the requirements for a general notice.

3. Payment for loss of office

There are provisions in the current CO which govern payments to directors or former directors for compensation of loss of office etc. Under the new CO, they are extended to also cover payments to directors or former directors of a holding company; entities connected with the directors or former directors; payments made at the direction or for the benefit of the directors or former directors or their connected entities; payments in connection with transfer of undertaking or property of a subsidiary; and transfer of shares of the company or a subsidiary resulting from a takeover offer. The prescribed approval of members (or affected members in case of takeover) is required. Sections 524 and 525 provide for exceptions.

4. Director's service contract

Section 534 of the new CO is new and it regulates long-term service contracts of directors with a company. Without the prescribed approval of members, a company shall not agree to any provision under which a director's guaranteed term of employment exceeds or may exceed three years.

Widening the scope of unfair prejudice

Section 168A of the current CO has been a key provision in the protection of the interest of minority shareholders. There

are only minor changes to the regime under the new CO.

First, 'objectionable conduct' is widened by section 724 so that a member may rely on a 'proposed act' or 'actual or proposed omission' as unfairly prejudicial conduct. Because proposed acts or omissions are included, more applications for interim reliefs in proceedings under the new CO can be expected.

In addition, section 725 gives the court wider powers and empowers the court to make any order it thinks fit for giving relief in respect of the matter in question. A new set of subsidiary legislation entitled *The Companies (Unfair Prejudice Petitions) Proceedings Rules* will be introduced which set out the procedures applicable to a petition under the new CO.

Conclusion

As discussed above, directors' liabilities may to a certain extent and in one way or other be impacted by the changes introduced by the new CO. It is important that directors fully understand and live up to the new standard that is expected of them under the new regime as well as ensure that their companies comply with the new requirements.

**Billy Lam, Loretta Chan and
Wilson Fung**

Mayer Brown JSM

Further information can be found on the Financial Services and Treasury Bureau and Companies Registry websites: www.fstb.gov.hk and www.cr.gov.hk.

The first part of this article was published in the January edition of CSj.

Why directors need company secretaries

The latest Regional Board Secretary Panel meeting, held on 7 January 2014 in Hong Kong, confirms the key role of the company secretary in guiding directors through today's complex and highly regulated business landscape.



The Institute's Regional Board Secretary Panel (RBSP) meetings are intended as a forum to initiate a lively conversation among HKICS members about the current corporate governance and regulatory challenges in Mainland China and Hong Kong. The latest RBSP meeting was held on 7 January 2014 in Hong Kong and was attended by 25 company secretaries, legal executives and senior managers representing a number of renowned Mainland enterprises listed in Hong Kong.

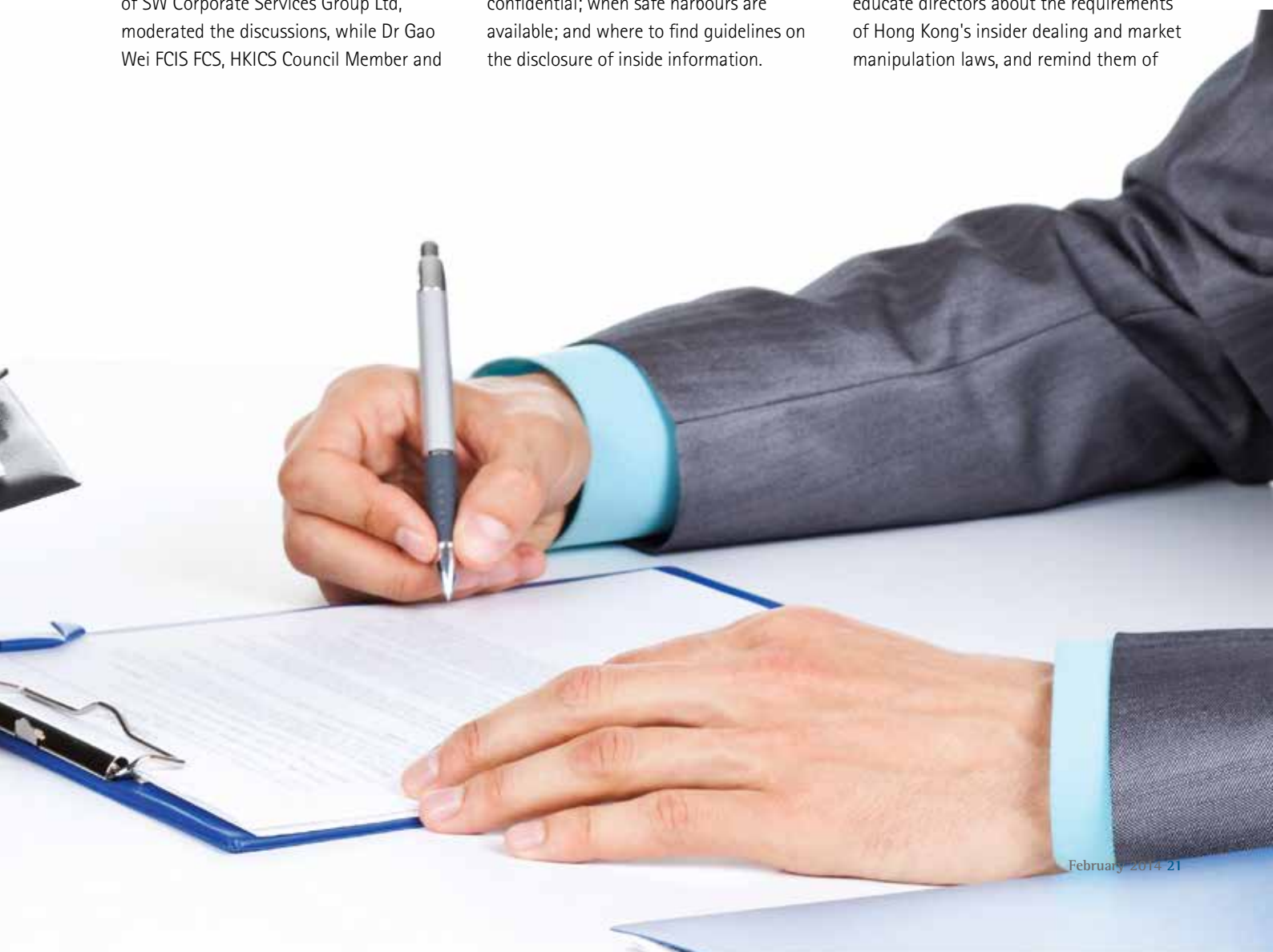
Dr Maurice Ngai FCIS FCS(PE), HKICS Vice-President and Director and CEO of SW Corporate Services Group Ltd, moderated the discussions, while Dr Gao Wei FCIS FCS, HKICS Council Member and

Board Secretary and General Counsel of Sinotrans Ltd; as well as Yao Jun, Chief Legal Officer, General Manager of the Legal Department and Company Secretary of Ping An Insurance (Group) of China Ltd; gave keynote speeches and shared their experience with the attendees.

The discussion kicked off with an animated presentation by Dr Gao on the induction of directors and the role played by the company secretary in ensuring good corporate governance. It was followed by Mr Yao's thorough introduction to what constitutes inside information; the importance of keeping inside information confidential; when safe harbours are available; and where to find guidelines on the disclosure of inside information.

In between the presentations, the forum's discussions focused on a few recent insider trading cases in Hong Kong and in the Mainland – in particular the heavy penalties imposed by the CSRC on Everbright Securities for insider trading. Most participants agreed that many of these insider trading mistakes could have been avoided if these companies had insider trading policies clearly stipulated for the benefit not only of the directors but also the employees who have access to inside information.

They also noted that such court cases are the best 'teaching materials available to educate directors about the requirements of Hong Kong's insider dealing and market manipulation laws, and remind them of



the legal consequences of not complying with them. Dr Ngai remarked that the directors of some Mainland companies are not familiar with the relevant insider trading laws in Hong Kong and that these court case studies are an effective way of reminding them about the potentially very serious consequences of violating Hong Kong's insider trading requirements.

The guiding role of the company secretary

Following the Walker Report on corporate governance in the UK banking industry in October 2009 and the release of the UK Corporate Governance Code, formerly known as the Combined Code, in May 2010, Hong Kong Exchanges and Clearing (HKEx) published a renewed version of the Director's Handbook. Dr Gao recommended this highly useful resource at the beginning of his presentation, pointing out that it gives an updated overview of the key governance issues for board/ company secretaries – including the key duties of the company secretary in facilitating the induction and the provision of ongoing guidance to directors.

He also referred the audience to Section F of Hong Kong's Corporate Governance Code as an excellent guide to the important role of the company secretary in supporting the board. Of particular relevance to this discussion is the principle set out in Section F that the company secretary is key to ensuring good information flow within the board and ensuring that board policies and procedures are followed. Accordingly, in addition to advising the board through the chairman and/ or the chief executive on governance matters, the key duties of the company secretary include facilitating the induction and professional development of directors.

'As with the board secretaries of Mainland China, Hong Kong's company secretaries should provide advice to the board to ensure good corporate governance and should arrange for the induction of new directors, encompassing both directors' duties and responsibilities in general and specific matters pertaining to the company itself and the industry in which it operates,' he said.

The company secretary should also identify any training needed for inexperienced directors and should ensure that there is an ongoing programme to keep all directors updated on developments in the company and of the latest regulatory framework. 'The HKICS arranges over 100 activities every year and they are suitable for directors to take part in as part of their training programme,' said Dr Gao.

He emphasised that any failures by directors to comply with corporate and regulatory requirements can be disastrous, not only for themselves, but also for the company and its shareholders. The 520 million yuan fine imposed by the CSRC on China Everbright for insider trading is a case in point.

Dr Gao also cited the Hong Kong Aircraft Engineering Company (HAECO) insider dealing case brought to court by Hong Kong's Securities and Futures Commission (SFC). The defendant, a HAECO non-executive director and a former government official, was fined about HK\$50,000 for making about HK\$80,000 from an insider deal on the company's stock. He also received a five-month jail sentence suspended for two years.

'These cases clearly demonstrate that some listed companies lack a stringent internal approval procedure for the prevention of insider trading,' said Dr Gao. He strongly recommends that all directors should familiarise themselves with the *Model Code for Securities Transactions by Directors of Listed Issuers* published by HKEx. 'The stock purchase procedure exemplified by the Model Code not only protects directors and employees from committing insider dealing and market misconduct by mistake, but also helps

Highlights

- the company secretary plays a key role in facilitating the induction and the provision of ongoing guidance to directors
- the company secretary should identify any training needed for inexperienced directors and should ensure that there is an ongoing programme to keep all directors updated on developments in the company and on the latest regulatory framework
- failures by directors to comply with corporate and regulatory requirements can be disastrous, not only for themselves, but also for the company and its shareholders – the 520 million yuan fine imposed by the CSRC on China Everbright for insider trading is a case in point



“
 court cases are the best ‘teaching materials’ available to educate directors about the requirements of Hong Kong’s insider dealing and market manipulation laws
 ”

safeguard the interest of the company as a whole,’ he said.

Regarding inside information disclosure, Dr Gao also mentioned Hong Kong’s revised Securities and Futures Ordinance (SFO) which was implemented on 1 January 2013. The SFO imposes a statutory obligation on Hong Kong listed companies to disclose inside information, and, in Dr Gao’s view, is geared towards investors. He pointed out that directors now have to ask themselves if an event or particular piece of information would be regarded as price-sensitive from the perspective of an investor. ‘This is difficult. How can directors know what the investors are thinking?’ he questioned.

The new Companies Ordinance

Dr Gao also highlighted the higher corporate governance requirements relating to directors in Hong Kong’s new Companies Ordinance, which will come into effect next month. He explained that the new ordinance adopts a mixed objective and subjective test in the determination of directors’ standards of care, skill and diligence. Accordingly,

a director must exercise the reasonable care, skill and diligence that would be exercised by a reasonably diligent person with:

- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same function as the relevant director (the objective standard), and
- the general knowledge, skill and experience that the director has (the subjective standard).

Directors should pay attention to the fact that their duties specified above are primarily governed by the common law, he reminded his listeners.

Dr Gao also pointed out that the Company Law of the People’s Republic of China and the new Companies Ordinance of Hong Kong share some similarities in terms of the duties of directors. Article 148 of China’s Company Law stipulates that directors, supervisors and senior managers should comply with laws, administrative regulations and the articles of association.

They should bear the obligations of fidelity and diligence to the company.

‘Under common law, directors should avoid conflicts of interest, which is equivalent to “the obligations of fidelity” in the Mainland,’ he said.

The new Companies Ordinance has also tightened restrictions of directors’ conflicts of interest, in particular raising the requirements for their disclosure of interests. ‘In fact, as a director, every time you buy your company’s stock, no matter how many shares, you have to disclose the transaction and get the approval from your company first. Once approved, this has to be filed with the HKEx within five days,’ Dr Gao said. ‘There are similar disclosure policies in China as stipulated in the Administrative Rules on Acquisition of Listed Company.’

Inside information – best practices for board secretaries

In his presentation, Yao Jun gave an accessible and non-legalistic explanation of what inside information is, as well as the dual roles played by directors and

managers as both insiders and the keepers of inside information.

'If you are not sure whether some information on hand is classified as inside information, ask your company lawyer as soon as possible. If the information qualifies for a safe harbour exemption, make sure it is perfectly safe. If it has to be disclosed, do it immediately, right after discussion with the board,' he said.

On this point, Mohan Datwani FCIS FCS, HKICS Director of Technical and Research, reminded the participants that the safe harbours regarding inside information have been narrowed under the new rules. 'Under the old regulations, there were a lot of things you could choose not to disclose... but under the new law, there are only a very few instances in which you can use a safe harbour [exemption], such as incomplete negotiation and trade secret,' he said.

Yao Jun went on to explain that the directors and senior management of a company are both insiders and the keepers of inside information. As insiders, they are prohibited from trading in the company's securities or their derivatives during any sensitive periods, nor can they leak the information or encourage others, explicitly or implicitly, to trade in the securities.

He emphasised that board secretaries should ensure that an effective monitoring system, a set of security measures and an inside information disclosure policy should be in place.

Swapping notes

The speakers' presentations were followed by a lively open forum session. Xie Bing, Company Secretary of China Southern Airlines Company Ltd, addressed the disclosure of inside information. He

suggested that seeking a trading suspension, if necessary, can be a useful means to ensure best practices are followed when an inside information announcement needs to be made. Such a suspension, however, must be consistently applied across all bourses, be it the H-shares of Hong Kong or A-shares on the Mainland.

This was echoed by Wei Fang, Chief Representative of the Representative Office of China National Petroleum Corporation in Hong Kong. 'We all learn from our mistakes. Our company has been listed for 12 years and we have learned many lessons. From my experience, a trading suspension can be a good thing for the company since it can give you time to prepare an announcement, or make a clarification of some burning issues that affects the company's reputation and stock prices,' said Mr Wei.

Lu Lu, Company Secretary of China Galaxy Securities Co Ltd, which is an A+H-share company, raised a question about the best ways for company secretaries to get the whole picture of an event or an incident in order to judge whether it should be disclosed as inside information.

'I think we as company secretaries can take the initiative to request to attend different meetings concerning the development of a particular event or incident in order to make the judgement,' answered Huang Haiyan, Vice-President and Joint Company Secretary of Boyaa Interactive International Ltd.

Gao Ke Ying, Director of Securities and Legal Affairs at A8 Digital Music Ltd, asked at which stage an M&A deal should be announced. In response, Dr Gao pointed out that if the deal is still under negotiation and can be considered 'an

incomplete proposal or negotiation', then the relevant safe harbour can be applied.

Citing her experience of handling information requests from both HKEx and the SFC regarding an acquisition, Zhong Yan, Board Secretary, Great Wall Technology Co Ltd, said she realised that the SFC has much stricter standards than the HKEx.

Mr Datwani echoed this comment. 'Very different from the HKEx, the SFC is much more forceful in defending against insider trading and market manipulation. They have actually hired more staff to keep a close eye on company activities. Unfortunately, once your company has been suspected, you can expect to have to answer a long list of questions raised by the SFC,' he said.

Li Qian, Joint Company Secretary of BYD Electronic (International) Co Ltd, noted that his company's stock ownership guidelines and insider trading policies have been very important in preventing directors and employees from conducting insider dealing unwittingly. 'Without prior approval from the company's chairman, no director or employee can buy the company's stock. If they have no idea of what insider trading is, we'll be the gatekeeper. In so doing, not only can we protect our directors and staff but also protect the interest of the company,' he said.

Dr Gao agreed. 'After all, we should do our best to ensure that directors and managers understand the regulatory framework. If directors know when to ask the right questions, it would give us a higher sense of job security,' he said.

Jimmy Chow
Journalist

董事为什么需要公司秘书？

2014年1月7日，香港特许秘书公会（公会）在港召开新一轮的董事会秘书专责小组会议，与会者均认同，现今商业环境变化莫测，公司秘书对引导董事作出合规的决定，发挥关键作用。

公会的董事会秘书专责小组会议，目的是通过小组讨论形式，鼓励公会会员就当前企业管治以及中国内地和香港的监管架构所带来的挑战，作深入讨论和交流。最近一次会议于今年1月7日在香港召开，共有二十五位代表多家在港上市内地知名企业的公司秘书、法律专家和高级管理人员出席。

香港特许秘书公会副会长及信永方圆企业服务集团行政总裁魏伟峰博士为圆桌会议的主持人，而中国外运股份有限公司董事会秘书兼香港特许秘书公会理事高伟博士及中国平安保险（集团）股份有限公司董事会秘书兼首席律师姚军则作出了主题演讲，并跟与会者分享了他们的实际经验。

高伟博士负责第一轮的演讲，内容围绕新董事启导工作，以及公司秘书在确保良好企业管治中所扮演的角色。其后，姚军在其演讲中则扼要说明了何谓内幕信息、内幕信息保密之重要性、什么情况下可引用安全港条文、以及在哪儿可以找到有关内部信息披露的指引。

在演说及讨论过程中，演讲嘉宾和与会者更讨论到了几宗在中港两地的内幕交易案例——特别是光大在816事件后被中国证监会判罚5.2亿元人民币一案。大多数与会者都表示，这些事件反映出有很多上市公司都欠缺一套严谨的内幕交易防控措施，以防止董事及能接触内幕消息的员工进行公司股票买卖而误堕法网，否则的话，这些内幕交易事件根本是可以避免的。

与会者一致同意这些实际案例是最佳的反面教材，能有效向董事说明内幕交易

摘要

- 公司秘书在新入职董事的启导工作和全体董事的持续培训计划扮演着重要角色，以确保他们了解公司的最新发展和法律法规
- 若董事因疏忽而违反了公司及法例要求，对其个人本身以至公司和股东利益的影响可以相当巨大。光大被判罚5.2亿元人民币正好说明这点。



和市场操纵行为的相关法例，以及违规的严重法律后果。魏伟峰博士还特别提到，对于一些不谙香港内幕交易和市场操纵行为相关法例的内地公司董事，这些案例殊值作为借镜，以免误蹈法网。

公司秘书的引导角色

据高伟博士在演讲开始时介绍，2008年金融危机后，英国当局成立了一个专门小组，检讨英国银行业的公司管治，探究金融机构的企业管治出现了什么问题。调查报告（名为「Walker Review」）于2009年10月发布，而在这份报告之后，英国也发布了新的《公司治理守则》（此前名为「Combined Code」）。

其后，港交所亦发布了更新版的《董事手册》，高伟博士认为这本《董事手册》对董事及公司秘书均有极高的参考价值，当中提及到对董事培训新的要求。（注：《董事手册》目前只提供英文版，而高伟博士在公会专业技术及研究总监高朗的协助下，正把《董事手册》内容翻译成中文。）

此外，他还特别引述了港交所《上市规则》附录14《企业管治守则》F部份的条文，重申了公司秘书的角色，包括确保董事会成员间的信息沟通及董事会政策及程序方面的遵循、向董事会提供关于良好企业管治的意见、安排董事入职培训（启导）等。

他说：「跟内地董事会秘书一样，香港公司秘书须向董事会提供关于公司治理方面的建议，同时，作为良好公司治理的一部分工作，公司秘书也须安排董事启导，向董事详细讲解董事的责任、公司的营运和行业状况等。」

公司秘书有责任向新入职董事提供培训，除新入职的启导外，还须向所有董事安排持续的培训计划，确保他

们了解公司的最新发展和法律法规。他说：「公会每年都会组织一百多次讲座，这些活动都十分适合董事参加。」

高伟博士特别提醒，若董事因疏忽而违反了公司及法例要求，对其本身个人以至公司和股东利益的影响可以相当巨大。光大被判罚巨款一案正好说明这点。他还引述了港机工程前独立非常董事被裁定内幕交易罪成一案，被告被判处监禁五个月，缓刑两年，并罚款五万港元。他相信，被告本身为前政府高官，理应不会犯险从事内幕交易以赚取八万港元，也反映公司缺乏有效监管内幕交易的政策。

他说：「这些案例反映了有些公司的内幕交易防控措施做得不足。」他建议董事熟读《主板规则》附录十「上市发行人董事进行证券交易的标准守则」，里面提及的股票购买程序规范，可防止内幕交易和市场失当行为，不仅能保障董事和雇员利益，也有利于维护公司的整体利益。

新《公司条例》

在演讲中，高伟博士提及，将于今年三月实施的新《公司条例》，对企业管治的规定有更高的要求。他解释说新《公司条例》对董事的谨慎、技能、勤勉的判断标准采用了主观与客观结合的方式。董事须具备一个恰当勤勉的人所具有的恰当的谨慎、技能与勤勉，这个人须：

- 具有一个相关董事履行相同职能所应具备的一般知识、技能与经验（主观标准）
- 具有董事所具有的一般知识、技能与经验（客观标准）

高伟博士提醒，董事应当注意以上要求属普通法的信义义务，是一项重要的约束。

他举了一些中华人民共和国的《公司法》及香港新的《公司条例》相似的地方，例如，前者第148条规定，「董事、监事、高级管理人员应当遵守法律、行政法规和公司章程，对公司负有忠实义务和勤勉义务」，这个跟香港的《公司条例》的规定相差无几。

他解释说：「按照这个去理解，香港跟大陆的公司法其实都没有区别的，都是主观和客观的对董事有所要求。普通法要求董事避免利益冲突，而这个要求在内地相当于忠实义务。」

另外，新《公司条例》还收紧了对董事利益冲突的限制，特别是权益披露。「公司董事购买公司的股票，无论购买多少，均要作出披露，及预先通知公司，获准后在成交后五天之内再知会港交所。在内地也有一套《上市公司收购管理办法》。」

董秘处理内幕信息时的最佳实践

在演讲中，姚军深入浅出的讲解了何谓内幕信息，以及董事和高级管理人员作为内幕信息的知情人和管理责任人的角色。

他开章明义地指出：「如果你不清楚什么是内幕信息，赶快去问你的律师，了解要不要尽快披露。该保密的便要保密，不可以对任何人说，要披露的，和董事局商讨后就要赶快披露。」

在内幕信息的议题上，高朗特别提醒，在修例前有很多事情还是可以选择不作披露，但在新例下，安全港容许的豁免寥寥可数，一般为未完成的商议或计划及商业机密。

姚军续说，董事及高级管理人员有双重身份，其一是内幕信息的知情人，其二是内幕信息管理责任人。作为知情人士，他们在敏感期不能买卖公司股份或其衍生工具，以及不得明示或暗示他人从事上述交易活动。他强调，董秘应尽

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实际案例是最佳的反面教材，能有效向董事说明内幕交易和市场操纵行为的相关法例
”



最大努力确保公司建立并贯彻执行一套有效的监控系统、安全措施及内部信息披露政策，以策万全。

意见交流

中国南方航空股份有限公司董事会秘书兼董秘办主任谢兵同意姚军的看法，认为保密不了的就该尽快披露，如果可行，还应同时在不同的交易所申请暂时停牌，如香港的H股及上海的A股等。

中国石油天然气股份有限公司香港代表处总代表魏方也同意谢兵对暂时停牌的观点。他说：「我在这里跟大家分享我们的经验，包括我们的错误，我们来港上市已有十二年了，中间有很多经验，教训也很多。在停牌的经验方面，我认为停牌是有意義和有利的，能给我们时间作一些澄清维护公司的形象，对一些负面报导进行反驳。」

同在A股和H股上市，中国银河证券股份有限公司会议秘书路璐向其他与

会者提问，到底该怎样做才能掌握大局，从而判断某些事情或事故是否需要作出披露。

博雅互动国际有限公司副总裁及联席公司秘书黄海燕答道：「我认为我们应尽可能参与公司各种会议，尽可能主动提出参与，特别是关于公司的一些重大事情，才能把重要的事情回馈到公司秘书的层面。」

A8电媒音乐有限公司证券及法律事务部总监高克颖则提问，并购投资到底在哪个阶段便要公布？高伟博士引用安全港中对未完成的商议或计划的豁免，指出如果收购仍在商议阶段，毋须公布。

长城科技股份有限公司董事会秘书钟彦从经验体会到，港交所和证监会对收购计划需要披露的资料细节程度有极大差异，而后者比前者严格得多。高朗坦言：「证监会比联交所『严格』得多，总之对公司有任何怀

疑，便会查找到底，而证监会亦聘请了很多人，监视每一家公司的活动。如果公司一旦出事，证监会有充足人手逐一跟进。」

比亚迪电子（国际）有限公司公司秘书李黔跟大家分享，指出其公司之员工股票买卖指引和内幕交易政策，对防止董事和员工进行内幕交易起极大作用。他说：「员工买卖股票必须先得到董事长审批。如果他们不知道什么是内幕消息，就让我们把关，要我们审批，此举不但可保障董事和员工，也保障了公司利益。」

高伟博士在会上打趣地说：「我们作为董秘，必须把这些要求灌输给董事。只要董事具备了以上的法律知识，反过来也是帮助了我们，职业安全感也会大大的提升！」

Jimmy Chow
记者



Trends in sustainability disclosure

Benchmarking
the world's stock
exchanges

Which of the world's stock exchanges are home to the world's most advanced sustainability reporters, and, perhaps more significantly, why? A new study by CK Capital, the investment research arm of Corporate Knights Inc, based in Toronto, Canada, suggests that stock exchange regulatory requirements that are mandatory, prescriptive and broad are most strongly correlated with sustainability disclosure excellence.

The reporting practices of publicly traded companies have evolved dramatically over the past 20 years. While the foundation of the balance sheet, income statement and cash flow statement remains intact, today's listed companies supplement these core documents with a diverse body of information and data covering areas including corporate policy, strategic plans, business targets and accounting policy, as well as forward-looking information.

The broadening scope of corporate disclosure is being driven to a large extent by tightening regulatory requirements. But it is also a result of the growing demand among investors for more comprehensive firm-level information.

It is against this backdrop that the recent explosion in corporate sustainability reporting should be viewed.

Sustainability reporting – loosely defined as the practice of providing information

about a company's environmental, social and governance risks, opportunities and management capabilities – is the latest innovation in this trend towards expanding corporate reporting and transparency.

Sustainability reporting may not always move the market, but it can provide a fascinating window into corporate strategy and firm behaviour. How companies perform on such indicators as annual greenhouse gas emissions over revenue, CEO compensation over average employee salary or lost time injury rate can provide rare glimpses into their strategy for managing costs, their approach to motivating employees and their operational effectiveness.

It is for these reasons and more that Corporate Knights sought to analyse the general state of corporate sustainability reporting with our recent report, *Trends in Sustainability Disclosure: Benchmarking the World's Stock Exchanges*. Released in October 2013,

Highlights

The CK Capital report suggests that:

- emerging market stock exchanges are on track to overtake those based in developed markets by 2015 in terms of the proportion of their large listings that disclose the seven first generation sustainability indicators
- one of the primary drivers of better sustainability disclosure is the tightening of regulatory requirements in this area
- sustainability disclosure requirements that are mandatory, prescriptive and broad are most strongly correlated with sustainability disclosure excellence

the report was the second in the series, following up on our inaugural study that was released in June 2012 at the United Nations Rio + 20 conference.

The first objective of the report was to figure out which stock exchanges were home to the world's most advanced sustainability reporters. The second aim was to determine which types of policies were correlated with sustainability disclosure excellence.

Stock exchanges were ranked based on the extent to which their large listings had disclosed what CK Capital refers to as the seven 'first generation' sustainability indicators: employee turnover, energy use, greenhouse gas (GHG) emissions, lost-time injury rate, payroll, waste produced and water consumption (see Figure 1 opposite).

Results

1. The global picture

European exchanges dominate the top rankings in our latest *Trends in Sustainability Disclosure* report, but emerging markets exchanges are rapidly closing the 'disclosure gap'.

The BME Spanish exchange, based in Spain, received top billing in this year's ranking, moving up from fourth position in last year's assessment. The top 10 were rounded out by the Helsinki Stock Exchange, the Tokyo Stock Exchange, the Oslo Stock Exchange, the Johannesburg Stock Exchange, the Euronext Paris, the Copenhagen Stock Exchange, the SIX Swiss Exchange, the Athens Stock Exchange and the Euronext Amsterdam.

It is no surprise to see the strong performance of European stock

exchanges. Corporate sustainability reporting has long been encouraged across Europe, with the recent Grenelle II legislation in France the latest in a long line of progressive European disclosure policy.

But the real story is the rapid progress of emerging markets-based stock exchanges. While only one emerging markets-based exchange cracked the top 10 in this year's ranking – the Johannesburg Stock Exchange – we find evidence that a great process of 'catch up' is taking place in quantitative sustainability reporting practices across the emerging markets. Our analysis indicates that, as a whole, emerging market stock exchanges are on track to overtake those based in developed markets by 2015 in terms of the proportion of their large listings that disclose the seven first generation sustainability indicators.

Sustainability disclosure excellence among emerging markets firms is typified by the Brazilian mining giant Vale SA, India's Tata Motors and Digi, a Malaysian telecommunications company. These firms are three of only 117 large companies globally that currently offer their investors complete 'first generation' sustainability reporting.

While this 'catch up' process is the result of many different factors, one of the primary drivers has been an influx of reporting mechanisms implemented by stock exchanges and other regulatory actors. Celebrated examples include the decision of the Securities and Exchange Board of India to mandate the inclusion of Business Responsibility Reports in the annual reports of India's 100 largest listed entities based on market capitalisation.

2. The implications for regulators

Implementing effective sustainability disclosure policies is not an easy task for policymakers. Sustainability data often falls into a 'grey zone' insofar as financial materiality is concerned. This means that many companies can legally circumvent well-intentioned disclosure policies – even, in some cases, mandatory disclosure policies put forward by securities regulators – by invoking the 'materiality' principle.

Stock exchanges face an additional burden. Unlike governments and securities regulators, they increasingly operate as for-profit companies, and are sometimes owned by listed entities. Many stock exchanges have expressed the legitimate concern that implementing sustainability reporting requirements into their listed standards could discourage future listings.

Perhaps most importantly, a complex, almost overwhelming, set of tools is at the policymaker's disposal. Permutations include voluntary, sector-specific disclosure policies, mandatory 'all inclusive' policies, the increasingly referenced 'comply or explain' model, and policies that use enforcement mechanisms versus those that do not. While good work is being done to help policymakers identify best practices, there is a dearth of quantitative evidence to help the global policymakers in this regard.

It is this 'gap' that we elected to fill with the policy analysis section of this year's study. While based on an admittedly parsimonious framework, our analysis suggests that there are three common characteristics to effective sustainability disclosure policies (see Figure 2 opposite).

Figure 1: The seven 'first generation' sustainability indicators

First generation sustainability indicator	Disclosure rate among large publicly-traded companies	Materiality driver
Payroll	59%	Pay equity is an increasingly visible sustainability theme, with tightening rules around workforce and CEO pay disclosure, and greater vigilance of excessive CEO compensation.
GHG emissions	30%	The prospect of carbon regulation is leading to a growing monetisation of GHG externalities, with the concept of carbon shadow pricing an increasingly utilised accounting tool.
Energy	27%	Energy use is an important proxy for firm-wide resource use efficiency, and an increasingly important cost centre for companies in many industries.
Water	25%	Water is an increasingly scarce global resource, and a firm's water use practices can reflect the foresight of its management team.
Waste	22%	Waste generated per unit of revenue is an important measure of operational efficiency.
Employee turnover	14%	Low employee turnover is correlated with effective human capital management.
Lost-time injury rate	13%	Workplace health and safety is an increasingly consistent proxy for managerial quality.

Source: CK Capital

Figure 2: CK Capital's policy analysis framework

Dimension	Options	Description
Policy type	Mandatory	Policies that impose a requirement to comply – that is, to disclose the information specified in the policy.
	Voluntary	Compliance with the disclosure requirement is optional.
Policy clarity	Prescriptive	The policy specifies the categories or specific items to be disclosed.
	Principles	Policies that only speak of sustainability/ CSR reporting as a general requirement.
Policy focus	Broad	The policy affects the disclosure of more than one first generation sustainability indicator across multiple sectors.
	Narrow	The policy only concerns a single first generation sustainability indicator, or a single industrial sector.

Source: CK Capital



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Our analysis suggests that disclosure policies should be mandatory (as opposed to voluntary), prescriptive (as opposed to principles-based) and broad (as opposed to narrow), in terms of the number of sustainability indicators targeted. We refer to policies that share these three characteristics as 'super policies'.

Of the 10 top ranked exchanges in our study, nine are based in countries with at least one super policy in force. Conversely, of the 10 bottom performing stock exchanges, nine are based in countries with no super policies. The single exception is the Shenzhen Stock Exchange, which published a set of Social Responsibility Guidelines in 2006.

Conclusion

Sustainability reporting can be viewed as the latest manifestation in the more general trend towards expanding corporate disclosure practices. Future milestones on this pathway include

integrated reporting, and the provision of more granular and standardised 'non-financial' information.

In addition to facilitating a more complete picture of a company's social and environmental impacts, sustainability reporting gives investors an additional source of data that can be exploited in the context of portfolio management.

While more research is needed to fully flesh out the relationship between disclosure policy and disclosure performance, our analysis suggests that mandatory policy instruments that are both prescriptive and broad are most strongly correlated with sustainability disclosure excellence. Stock exchanges – and indeed policymakers of all description – should consider incorporating these design characteristics into their sustainability disclosure policy programme.

The phenomenon of corporate sustainability reporting is here to stay, and demand among institutional investors, asset managers, community groups and other stakeholders for quantitative corporate sustainability data is only going to increase going forward. Stock exchanges should strategically review how they can best align themselves with this trend.

Doug Morrow

Managing Director, CK Capital

'Trends in Sustainability Disclosure: Benchmarking the World's Stock Exchanges' is available on the Corporate Knights website: corporateknights.com.

Comments on the report are invited and may be addressed to the authors at: research@corporateknights.com.

最新
課程

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

*學生亦可報讀個別學科單元

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

單元一 中國公司行政 Corporate Administration in PRC

單元三 中國稅務 Taxation in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元四 中國公司法律 Corporate Law in PRC

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

*學生亦可報讀個別學科單元

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

核心單元：(必須全部修讀)

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

非核心單元：(可選單元四或五)

單元四 中國稅務 Taxation in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元五 中國公司法律 Corporate Law in PRC

單元三 中國公司行政 Corporate Administration in PRC

中國稅務

講者簡介	龍朝暉教授 • 中山大學嶺南學院財稅系副教授 • 兼任中國非洲問題研究會理事及廣東省慈善事業立法專家組成員等職務
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：逢週六或日上課一堂，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	2014年(逢週六)4月12日、4月26日、5月3日及5月10日
每單元課程學費	港幣3,850元

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

課程查詢

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

每個單元課程出席率達75%或以上之香港特許秘書公會會員，可以獲得18個ECPD學分，但有關實際可帶往下年之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。

Seminars: December 2013

10 December 2013

2013 AGM season review



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

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

12 December 2013

Tips for managing IT security risks and case studies – what officers should know



Speakers: Ester Ip, MBus(IT), MSc(ESCom&ITComp), CPA, FCCA, CGA, CTA, CIA, CISA, Director, IT Audit & Consultancy, Crowe Horwath (HK) CPA Ltd; Den Wong, Chief Superintendent, Hong Kong Police (Retired), Senior Corporate Security Specialist; and Patrick Lam, Corporate Security Specialist, Crowe Horwath (HK) Transaction & IT Advisory Services Ltd

16 December 2013

Conflict of interest/ fair dealing by directors under the new Companies Ordinance and beyond



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

China Corporate and Regulatory Update 2014

The Institute's annual China Corporate and Regulatory Update (CCRU) conference was held on 7 January 2014, and was attended by over 50 board secretaries of H-share companies and company secretaries in Hong Kong. This event provides a valuable forum for the discussion of current corporate governance and regulatory issues in Mainland China.

Speakers at this event were: Wong Shun On, Council Member, The Taxation Institute of Hong Kong and Partner – China Tax & Business Advisory, Deloitte China; Dr He Jie, Head of Research, Institute Senior Economist, Shenzhen Stock Exchange; and Professor Liu Junhai, School of Law, Renmin University of China. The conference was chaired by Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd and Council Member of the Institute.

This event will be reviewed in a forthcoming edition of CSj.



Dr Gao Wei (far left); Polly Wong (second left); Edith Shih (middle), President; Louisa Lau (second right), General Manager; Kenneth Jiang (far right), BRO Chief Representative of the Institute; and the CCRU speakers

Regional Board Secretary Panel meeting

The Institute held a Regional Board Secretary Panel meeting in Hong Kong on 7 January 2014. More than 20 participants joined the event, including board secretaries from H-share, A+H share and red-chip companies. The theme of the meeting was 'Director's induction and experience sharing'. Speakers at this meeting were: Dr Gao Wei FCIS FCS, Board Secretary, Sinotrans Ltd and Council Member of HKICS; Mohan Datwani FCIS FCS, Director, Technical and Research, HKICS; and Yao Jun FCIS FCS, Chief Legal Officer/ Company Secretary, Ping An Insurance (Group) Co of China Ltd. The meeting was chaired by Dr Maurice Ngai FCIS FCS(PE), CEO, SW Corporate Services Group Ltd and Vice-President of the Institute.



This event is reviewed on pages 20-27 of this month's journal.

China COSCO courtesy visit

The Institute's representatives – Vice-President Dr Maurice Ngai, Chief Executive Samantha Suen FCIS FCS and General Manager & Company Secretary Louisa Lau FCIS FCS(PE) – received guests from China COSCO Holdings Company Ltd on 18 December 2013. The Institute's latest developments in Hong Kong and Mainland China were discussed at the meeting with President & Executive Director Jiang Lijun; Secretary of the Board Guo Huawei; Chief Financial Officer Tang Runjiang; and Authorised Representative Xiao Jinguang. Mr Jiang expressed support for the Institute's activities, especially the ECPD programme in the Mainland.



Appointments

HKICPA Council

The Secretary for Financial Services and the Treasury has appointed Natalia Seng FCIS FCS(PE) as a lay member of the Council of the Hong Kong Institute of Certified Public Accountants (HKICPA). Natalia is a Past President of the HKICS, and is currently the Chief Executive Officer, China and Hong Kong of Tricor

Group/ Tricor Services Ltd. She was appointed for a term of two years commencing 15 December 2013.

Natalia succeeds HKICS President Edith Shih FCIS FCS(PE) who has retired from the HKICPA Council after serving for three continuous two-year terms.

Board of Review (IRD)

Professor Paul Lo ACIS ACS, and Mohan Datwani FCIS FCS, Technical and Research Director of the Institute, were appointed as members of the Board of Review (Inland Revenue Ordinance) for a term of three years commencing 1 January 2014.

The Chartered Secretaries Foundation Ltd

The Chartered Secretaries Foundation Ltd, established in 2012 by the Institute, aims to support education and research in the field of company secretarial and business studies, particularly in the area of corporate governance for the benefit of the general public. The activities held during the past year are listed below.

- **Chartered Secretaries Scholarship**

The Foundation awarded 18 scholarships and 13 subject prize awards amounting to HK\$150,500 and HK\$53,000 respectively to selected university students in Hong Kong for the 2012/2013 academic year.

- **HKICS International Qualifying Examination (IQS) Subject Prize Awards**

Fifteen subject prize awards amounting to HK\$45,000 were presented to the subject prize winners for the December 2012 and May 2013 IQS examination diets.

- **Support to local university students promoting business ethics to high school students**

The Foundation sponsored the '2nd Business Leaders Convention for Secondary School Students – Business Ethics: Pathway to Future Leadership' organised by the teachers and students of The University of Hong Kong with a view to promoting business ethics to secondary school students.

- **HKICS Corporate Governance Paper Competition and Presentation Awards**

The Foundation, being a sponsor of the HKICS Corporate Governance Paper Competition and Presentation Awards, contributed HK\$3,000 to the publication of the winners' papers.

In 2014 the Foundation will step up its efforts in promoting business and general ethics and corporate governance among undergraduates and secondary school students through a new knowledge transfer programme. The Institute will partner with a local university and organise a number of workshops and seminars on the theme of business and general ethics.

To illustrate our progress towards the 2014 target of HK\$200,000, the HKICS secretariat has created a mosaic of Saggie, our secretary bird icon. Guests at this year's annual dinner watched as each new donation added a mosaic piece to the image. We hope that by the end of the year Saggie will be made whole by your generous donations – please act now!



The evening's entertainment was enhanced by the excellent soloist performance by Evelyn Lam who kindly volunteered to sing three songs to raise funds for the Foundation. Chief Executive Samantha Suen FCIS FCS and President Edith Shih FCIS FCS(PE), also sang for the Foundation. A total of HK\$169,700 was raised at the Dinner. The Institute sincerely thanks all donors for their generosity.

Please show your support by returning the enclosed pledge card to the Institute.

For enquiries, please email to info@csfoundation.org.hk, or contact the secretariat at 2881 6177.

Newly appointed company secretaries

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

Company secretary	Listed company	Date of appointment
Lai Siu Kuen FCIS FCS	Times Property Holdings Ltd (stock code: 1233)	11 December 2013
Ngai Wai Fung, Maurice FCIS FCS(PE)	China Cinda Asset Management Company Ltd - H Share (stock code: 1359)	12 December 2013
Yung Mei Yee FCIS FCS	Jintian Pharmaceutical Group Ltd (stock code: 2211)	12 December 2013
Kwong Yin Ping, Yvonne FCIS FCS	Qinhuangdao Port Company Ltd - H Share (stock code: 3369)	12 December 2013
Ng Sin Yee, Clare FCIS FCS(PE)	China Conch Venture Holdings Ltd (stock code: 586)	19 December 2013
Yau Chi Ming ACIS ACS	Consun Pharmaceutical Group Ltd (stock code: 1681)	19 December 2013
Lee Pui Nee ACIS ACS	Kerry Logistics Network Ltd (stock code: 636)	19 December 2013
Li Yan Wing, Rita FCIS FCS(PE)	Logan Property Holdings Company Ltd (stock code: 3380)	20 December 2013
Cheung Yuet Fan, Aries ACIS ACS	ArtGo Mining Holdings Ltd (stock code: 3313)	30 December 2013
Ho Wing Yan ACIS ACS(PE)	China Wood Optimization (Holding) Ltd (stock code: 8099)	6 January 2014
Lee Kwok Wan ACIS ACS	Major Holdings Ltd (stock code: 8209)	10 January 2014

New Graduates

Congratulations to the following new Graduates.

Cheng Sau Lan	Ho Kit Hung	Lo Suk Kuen	So Shuk Ling
Cheung Wai Fan, Jacqueline	Hui Wing Sze	Ng Ka Man	Sy Heung Sang, Connie
Chiu Ho Lam, Alva	Kong Ling Yan	Ng Yuk Ting	Wong Ka Man
Chiu Hoi Sze	Lam Man Wai	Pang Wah On, Nelson	Wong Wing Yin
Chong Hoi Ling	Lam Yuen Hing	Poon Po Han, Lisa	Wu Sze Lee
Chow Man Yee	Liu Wing Sze	Siu Ting Yuk	

New Associates

Congratulations to the following new Associates.

Au Hau Yi, Cleo	Ma Chun Fung, Horace
Chan Chung Yan	Ma Ka Ki
Chan Lai Yin	Ma Lap Kei
Chan Wing Ka	Ma Wai Chi
Chan Yan Shing	Mak Yuk Kiu
Chau Wing Si, Alice	Ng Fong Kuan
Cheok Si Wa	Ng Kong Yin
Cheung Kin Man	Ng Wai Yin, Agnes
Cheung Wai Shuen	Ng Yee Ping
Cochrane, Sherry Anne	Ng Yu Sei, Veronica
Ho Kam Hung	Poon Ka Cheuk
Ho Kin Yi	Siu Yun Ying
Kam Mei Yeung	Tang So Him
Ko Kay Bun, Kenny	Tong Yuen Ling, Rebecca
Kong Kin Man	Tse Ching Wah
Ku Sau Shan, Lawrence James	Tse Man Yee
Kwok Kam Tim	Tso Ping Cheong, Brian
Lai Yuen Ting	Tsoi Chi Cheong
Lam Yin Sheung, Maria	Tsoi Wing Kei, Michael
Lam Yuen Yan	Tsui Ka Yan
Lau Yuen Chi	Wong Man Kei, Maggie
Law Pui Yee, Amy	Wong Pui Ki
Lee Hoi Man	Wong Siu Ping
Li Pik Yin	Wong Yuen Ting
Li Sze Man	Yang Yuk Shun
Li Ying Hang, Anne	Yeung Kit Man
Liu Wai Kuen	Yeung Yim, Ava
Lo Hin Ying, Kathie	

Fellows-only benefits

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

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

- complimentary attendance at two Institute events – the annual convocation and annual dinner – following your Fellowship election
- eligibility to attend Fellows-only events
- priority enrolment for Institute events with seat guarantee (registration at least 10 working days prior to the event required), and
- speaker or Chairperson invitations at ECPD seminars (extra CPD points are awarded for these roles).

Application requirements:

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

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

Members' networking: Zhuangzi – social skills – company secretary

Following the overwhelming response to Dr Davy Lee's last talk on 'Chinese ethics in business' (「应用于商业之中式道德观念 - 儒家思想」) in June 2013, the Institute was delighted to invite Dr Lee to share his insight on 'Zhuangzi – social skills – company secretary' (「庄子 - 处世 - 公司秘书」). Dr Davy delivered his presentation in an informal members' after-work gathering on 23 January 2014.

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

New Fellows

The Institute would like to take this opportunity to congratulate the following Fellows elected in January 2014.



Chan Mee Sze FCIS FCS(PE)

Ms Chan is currently the Managing Director, Chief Executive Officer and Company Secretary of Dragonite International Ltd (stock code: 329). She is responsible for the corporate administration, corporate finance and legal affairs of the company. Ms Chan has 15 years of experience in corporate secretarial and corporate finance. She holds a bachelor's degree in Law from the University of London and a master's degree in Business Administration from the University of Dundee.



Cheung Hoi Yin, Brenda FCIS FCS

Ms Cheung is currently the Group Company Secretary of Roly Group and heads its Company Secretarial Department. She is also the Company Secretary of Linmark Group Ltd. Ms Cheung has over 20 years of extensive experience in company secretarial, compliance and corporate governance matters, and M&A activities. Ms Cheung holds a bachelor's degree in Accountancy from City University of Hong Kong and is a member of The Hong Kong Institute of Directors.



Pamela Chung FCIS FCS

Ms Chung is currently the Managing Director of Computershare Hong Kong Investor Services Ltd. She is responsible for Computershare Hong Kong's IPO business, and other capital market transactions such as listing by introduction and block trades. Ms Chung has over 19 years of extensive experience in the share registry business, especially the Hong Kong IPO market. She holds a master's degree in Business Administration from The Richard Ivey School of Business of The University of Western Ontario, Canada.



Pang Yuk Fong, Yvonne FCIS FCS

Ms Pang is currently the Managing Director of Focus Secretarial Services Ltd. She has over 25 years of experience in providing company secretarial, tax, accounting and auditing services. Ms Pang is a Fellow member of the Association of Chartered Certified Accountants and the Hong Kong Institute of Certified Public Accountants and an Associate of the Institute of Chartered Accountants in England and Wales. She holds a master's degree in Professional Accounting from the Hong Kong Polytechnic University.

Other new Fellows include:

- **Ho Lam Lai Ping, Theresa FCIS FCS**
Executive Deputy General Manager & Company Secretary, Guangdong Investment Ltd
- **Lim Chee Ying FCIS**
Company Secretary, Hong Kong, Noble Group Ltd, and
- **Yuen Wai Kuen FCIS FCS(PE)**
Company Secretary, Hong Kong Ferry (Holdings) Company Ltd.

The Institute would also like to congratulate our Director, Technical and Research, **Mohan Datwani FCIS FCS**, on becoming a new Fellow.



Mr Datwani is a Solicitor and Accredited Mediator (HKIAC), and a member of the Financial Reporting Review Panel and Board of Review (Inland Revenue Ordinance). Mr Datwani is involved in the promotion of good secretaryship and corporate governance for the Institute. He seeks to impart knowledge to members and has written guidance and provides CPD lectures on a variety of topics. Prior to joining the Institute, Mr Datwani was partner of a high ranking US international law firm in banking and finance, real estate, litigation and regulatory compliance. He holds a bachelor's degree in Law, a master's degree in Law and a master's degree in Business Administration.

Annual Dinner 2014

The Institute held its Annual Dinner on 7 January 2014 at the JW Marriott Hong Kong and achieved a record breaking attendance of over 450. It provided an excellent opportunity for members, practitioners, fellow professionals, government representatives and regulators to meet and communicate in a relaxed social environment.

We were honoured to have CK Chow, Chairman of Hong Kong Exchanges and Clearing Ltd (HKEx), as our guest of honour. In his Annual Dinner speech, he outlined the key HKEx corporate governance initiatives of recent years and the important role of the company secretary in upholding corporate governance standards in Hong Kong.

He emphasised that achieving good corporate governance is not just a question of bringing in new rules. It relies on the concerted efforts of a number of different actors, company secretaries included. 'I know this is a responsibility you do not take lightly,' he said. 'High standards of corporate governance are more important than ever as a competitive advantage for Hong Kong, so all of you are making valuable contributions to Hong Kong's standing as an international financial centre.'

The Institute would like to thank all the guests for participating in this year's Annual Dinner.

Guest list

Guest of Honour

CK Chow
Chairman, Hong Kong Exchanges and Clearing Ltd

Guests (in alphabetical order)

Ashley Alder
Chief Executive Officer, Securities and Futures Commission

Clement Chan
President, Hong Kong Institute of Certified Public Accountants

Kenny Chan
President, The Association of International Accountants, Hong Kong

Jeffrey Chan
Finance Director, Extended South East Asia, CPA Australia – Greater China

Professor Chan Ka Lok
Acting Dean of School of Business & Management, Synergis-Geoffrey Yeh Professor of Finance, The Hong Kong University of Science & Technology

Chan Yiu Kei
Membership Committee Chairman, Hong Kong Institute of Arbitrators

Chen Qiang
Secretary, Coordination Department, Liaison Office of The Central People's Government in the HKSAR

Professor Agnes Cheng
Head of School Of Accounting and Finance, The Hong Kong Polytechnic University

Rosalind Cheung
Principal Assistant Secretary, Narcotics Division, Security Bureau, HKSAR

Paul Chow FCIS FCS

Stella Choy
President, The Society of Chinese Accountants & Auditors

Ada Chung JP, FCIS FCS
Registrar of Companies, Companies Registry

David Graham
Chief Regulatory Officer and Head of Listing, Hong Kong Exchanges and Clearing Ltd

Mandy Ho
Programme Leader, Caritas Institute of Higher Education

Gordon Jones FCIS FCS

Simon Kwok
President, Hong Kong Institute of Surveyors

PC Lau
Chairman, Hong Kong Coalition of Professional Services

KS Lau
Chairman, Hong Kong Trustees' Association

Professor William Lee
Executive Director, Hong Kong Council for Accreditation of Academic & Vocational Qualifications

The Hon Kenneth Leung

Legislative Councillor
(Accountancy), Legislative Council
of the HKSAR

Elsie Leung FCIS FCS
Consultant, Iu, Lai & Li

Carrie Leung
Chief Executive Officer, Hong Kong
Institute of Bankers

Peter Lim FCIS
President, The Malaysian Institute
of Chartered Secretaries and
Administrators

Sue Lim
The Malaysian Institute of
Chartered Secretaries and
Administrators

Craig Lindsay
Chairman, Hong Kong Securities
and Investment Institute

Francis Mok
President, Hong Kong Institute of
Human Resource Management

Webster Ng
Vice-President, The Taxation
Institute of Hong Kong

Nick Sallnow-Smith
Chairman, The British Chamber of
Commerce, Hong Kong

Tony Tang
Vice-President, The Hong Kong
Institute of Architects

Roy Tsang

Chairman, Association of Chartered
Certified Accountants Hong Kong

Tse Yuk Yip JP
Assistant Commissioner, Inland
Revenue Department, HKSAR

Claire Wilson
Lecturer, Department of Law &
Business, Hong Kong Shue Yan
University

Dr Brossa Wong
Associate Dean of School of Business,
Hang Seng Management College

Dr Pauline Wong
Assistant Professor, Lingnan University

Tak Wong
President, Hong Kong Institute of
Landscape Architects

Salina Yan JP
Deputy Secretary for Financial Services
and the Treasury (Financial Services),
Financial Services and the Treasury
Bureau, HKSAR

Professor Raymond Yeung
President, CGA – Hong Kong

Albert Yip
Chairman – Corporate Governance
Committee, CMA Australia (Hong
Kong Branch)

Monica Yu
Executive Director, Hong Kong Ethics
Development Centre, ICAC

Dr Susana Yuen

Associate Professor, The Open
University of Hong Kong

Zhang Fang

Deputy Director-General,
Coordination Department, Liaison
Office of The Central People's
Government in the HKSAR

Newly elected Fellows

Chau Hing Ling FCIS FCS
Cheung Ka Li FCIS FCS(PE)
Chiu Soo Ching, Katherine FCIS FCS
Cho Che Kwong, Alex FCIS FCS
Chu Yin Yin, Georgiana FCIS FCS
Kenneth Jiang FCIS FCS
Lee Chun Ho, Ernest FCIS FCS
Leung Wing Han, Sharon FCIS FCS
Li Kar Lok, Bruce FCIS FCS(PE)
Dr Loke Hoi Lam FCIS FCS
Professor Low Chee Keong FCIS FCS
Ng Sau Kuen, Joyce FCIS FCS
Nip Kwok Wai FCIS FCS
Paul Stafford FCIS FCS
Tong Tsz Kwan FCIS FCS
Wong Lung Wo, James FCIS FCS
Helen Young FCIS FCS(PE)

*Photographs taken at the Dinner are
available overleaf and at the 'Gallery'
section on the Institute's website.*

Annual Dinner 2014 – photo gallery



CK Chow



Evelyn Lam



HKICS Annual General Meeting 2013

The Institute held its Annual General Meeting (AGM) on 31 December 2013 during which the Scrutineers' Report with the ballot votes received by the seven candidates for the election of Council members was read. Three candidates namely, Douglas C Oxley, Ivan KW Tam and Dr Gao Wei were re-elected as Council members, and three candidates David YH Fu, Paul A Stafford and Bernard TL Wu were elected as Council members.



At the AGM



HKICS Prize Winner 2013 – Edwin Ing FCIS FCS

The annual HKICS Prize celebrates the achievements of leaders of the Chartered Secretarial profession. The 2013 prize was awarded to HKICS Past President Edwin Ing FCIS FCS, who has played a pivotal role in building up the profession in Hong Kong and Mainland China.

Edwin served as a HKICS Council Member from 1994–2003 and was the President of the Institute for three years. He has chaired or served on numerous HKICS committees over the past years and was the Hong Kong Division's International Representative on the ICSA International Council from 1997–2001. Edwin's key contributions include establishing the

Institute's Beijing Representative Office, which has helped establish closer links with the Mainland regulators and associations. He also launched two of the Institute's key annual events – the Annual Corporate & Regulatory Update and the biennial Corporate Governance Conference. These events have since become the biggest scale and highest profile of the Institute's events respectively.

Edwin also served as the Interim Chief Executive of the Institute's secretariat for seven months between 1 December 2012 and 30 June 2013, and he continues to serve as a member of the Institute's Advisory Board.

An interview with Edwin Ing will appear in next month's edition of CSj.



ECPD

What you should know about the MCPD requirements

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

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

Members who do not work in the CS sector and/ or for TCSPs have the discretion to select the format and areas of MCPD learning activities that best suits them. These members are not required to obtain ECPD points from HKICS (but are encouraged to do so). Nevertheless they must obtain 15 MCPD points from suitable providers.

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

ECPD seminar enrolment

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

Institute reprimands Yim Wai Chung ACIS ACS for MCPD non-compliance

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

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

Mr Yim did not sign and return the undertaking. A DT hearing was held on 6 November 2013 and Mr Yim did not attend, nor provide any written explanation.

The DT resolved that Mr Yim be reprimanded with publicity to be given in the Institute's journal.

IQS examinations

Updates

1. December 2013 examination

Candidates will receive an email and an SMS notification by mid-February 2014 when the December 2013 examination results are ready to be released.

Examination result slips will be posted to candidates and these results will not be disclosed by phone or email.

2. June 2014 examination

The June 2014 examination diet will take place from 3 to 6 June 2014 (both dates inclusive). The enrollment period is between 1 and 31 March 2014. The examination entry form will be available at the 'Studentship' section of the Institute's website in late February 2014.

New Companies Ordinance

The new Companies Ordinance (CO), Cap 622, will be in operation from 3 March 2014. Students are required to pay attention to the following arrangements:

1. The June 2014 examination diet will be based on the current CO.
2. The December 2014 examination diet will include at least one question in Section B covering the new CO.
3. From the June 2015 examination diet onwards, the IQS examinations will be based on the new CO.

Students may refer to the HKICS homepage which is hyperlinked to the Companies Registry website for the latest CO updates.

Syllabus

Please note that the syllabus for the following subjects will be updated from the June 2014 examination diet:

- Hong Kong Financial Accounting
- Hong Kong Taxation
- Corporate Governance

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

IQS information session

On 22 January 2014, the Institute held an IQS information session for members of the general public interested in pursuing a career as a Chartered Secretary. Institute graduate, Karen Chan, shared her experience in becoming a graduate via the Master of Corporate Governance programme.



HKU SPACE Examination Preparatory Courses – Spring intake

HKU SPACE Examination Preparatory Courses will commence from 24 February 2014. Please refer to the timetable and enrolment form on the Institute's website. (www.hkics.org.hk). For enquiries, please contact HKU SPACE at 2867 8478 or hkics@hkuspace.hku.hk.

Student Ambassadors Programme (SAP)

Visit to Hong Kong Geopark

On 18 January 2014, a total of 25 student ambassadors and their mentors joined an outing to Sharp Island (桥咀州) and Yim Tin Tsai (盐田梓) organised by the Institute.



Summer Internship Programme 2014

Launched in 2005, the Institute's summer internship programme for undergraduates aims to promote the corporate secretarial profession to local university students. The internship period is usually from June to August 2014 for a maximum period of eight weeks.

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

Payment reminder

Studentship renewal

Students whose studentship expired in December 2013 are reminded to settle the renewal payment by **22 February 2014**.

Exemption fees

Students whose exemption approved via confirmation letter dated 28 November 2013 are reminded to settle the exemption fee by **28 February 2014**.

Inside information disclosure: compliance update

One year after the implementation of Hong Kong's statutory inside information disclosure regime, the Securities and Futures Commission (SFC) has released statistics reflecting enhanced disclosure standards among Hong Kong listed companies. In 2013, relative to 2012:

- corporate announcements about inside information increased by 52%
- profit alerts and warnings went up 16%, and
- there was an increase of 48% in announcements providing regular updates on companies' trading performance, such as monthly sales figures, production volumes and other key performance indicators.

The SFC reminds companies, as a matter of good practice, to publish trading

information on the HKExnews website and their own websites. 'This will help to ensure that all investors are aware of this important information,' said Ashley Alder, the SFC's Chief Executive Officer.

The SFC also reminds companies that they still have an obligation to consider whether any information is inside information that is likely to have a material impact on the share price. If it is, then companies must issue an announcement containing all information necessary for investors to make an informed decision, in addition to publishing regular trading information, as soon as reasonably practicable.

The SFC has also added to the Frequently Asked Questions (FAQs) section on its website, advising companies to disclose relevant directors' dealings when making an unusual price and

trading volume announcement under the listing rules. The new FAQs also address issues concerning disclosure obligations in relation to a statutory enquiry or investigation. Under Listing Rule 13.10, the Stock Exchange of Hong Kong may make an enquiry concerning unusual movements in the price or trading volume of a listed company's securities, the possible development of a false market in its securities or any other matters, and may, where appropriate, request the company to issue an announcement to clarify the matter.

More information is available on the SFC website (www.sfc.hk).

Corporate Secretaries International Association update

The Corporate Secretaries Toolkit

The Corporate Secretaries Toolkit will be launched in Hong Kong on 17 April 2014. This joint venture project of the Corporate Secretaries International Association (CSIA) and the International Finance Corporation (IFC) has been developed in response to strong demand in emerging markets and developing countries for corporate secretaries training. The toolkit will provide trainers with materials and instructions

for conducting training for corporate secretaries and covers the full spectrum of a corporate secretary's role, functions and responsibilities. It aims to clarify the duties of corporate secretaries, develop their skills and emphasise their role in developing good corporate governance practices in their organisations.

Further details will soon be available on the CSIA website (www.csiaorg.com).

New CSIA President

Carina Wessels took over as President of the CSIA last month. Wessels is Group Company Secretary of Exxaro Resources Ltd and Immediate Past President of Chartered Secretaries Southern Africa (CSSA).

Establishing a resolution regime for financial institutions

Last month the government and financial regulators, namely the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority, launched the first stage of a public consultation on establishing an effective resolution regime for financial institutions in Hong Kong.

The government hopes to develop measures to address the systemic and moral hazard risks posed by the failure of systemically important and 'too-big-to-fail' financial institutions. Following the recent global financial crisis, in which governments in a series of jurisdictions spent unprecedented amounts of public money rescuing failing financial institutions, a series of international regulatory reform initiatives have been pursued to enhance the resilience and stability of the financial system.

The Financial Stability Board (FSB) issued the *Key Attributes of Effective Resolution*

Regimes for Financial Institutions in November 2011. As a member jurisdiction of the FSB, and a major international financial centre, Hong Kong needs to meet the new FSB standards. Hong Kong's existing statutory framework does not provide for all of the powers that the FSB considers necessary for an effective resolution regime. Legislative amendments will thus be required to bring the existing arrangements in line with the new standards. By doing so, in the unlikely event that it becomes necessary, the financial regulators will be better placed to carry out orderly resolution of a failing financial institution without severe systemic disruption whilst protecting taxpayers in Hong Kong.

The consultation seeks views from the public and the financial services industry on initial thinking and some proposals for establishing a resolution regime in Hong Kong. More specific details and operation of the resolution regime will

be the subject of the second stage of this public consultation later this year. Subject to the outcome of public consultation, the government will seek to introduce legislative proposals into the Legislative Council in 2015.

The consultation paper can be downloaded from the websites of the Financial Services and Treasury Bureau (www.fstb.gov.hk/fstb); the Hong Kong Monetary Authority (www.hkma.gov.hk); the Securities and Futures Commission (www.sfc.hk); and the Insurance Authority (www.oci.gov.hk). The deadline for submissions is 6 April 2014.

Loans (Amendment) Bill 2014

The Loans (Amendment) Bill 2014 was gazetted last month. The Bill seeks to accommodate the issuance of Islamic bonds (sukuk) under the Government Bond Programme (GBP) for promoting the further and sustainable development of the local bond market. The Bill is part of the government's programme to promote the development of a sukuk market in Hong Kong in order to diversify the types of financial products and services available, and consolidate Hong Kong's status as an international financial centre and asset management centre. In parallel, the Hong Kong Monetary Authority, as the government's representative under the GBP, is examining practical issues in order to formulate a possible sukuk issuance plan for implementation upon enactment of the Bill, having regard to market circumstances.

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

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