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January 2014

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The Journal of The Hong Kong  
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香港特許秘書公會會刊



## The new Companies Ordinance Are you ready?

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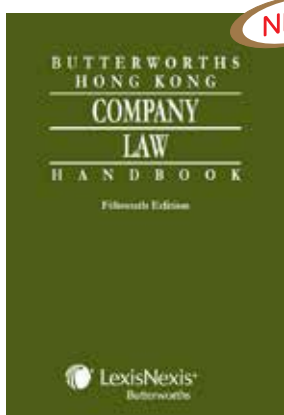
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## Butterworths Hong Kong Company Law Handbook - 15<sup>th</sup> Edition

An authoritative guide in Company Law and practice in Hong Kong



NEW

Author: ELG Tyler  
ISBN: 9789888231485  
Price: HK\$ 2,550.00  
Format: Paper back book  
Pages: 1,566 pp



Hong Kong's New Companies Ordinance (Cap 622) has been released.  
Contact us for details.

## About the book

**Butterworths Hong Kong Company Law Handbook (15th Edition)** provides another authoritative guide to Company Law and practice in Hong Kong. This handbook makes available in a convenient form the full text of the Companies Ordinance (Cap 32) together with section-by-section annotations, including the Companies (Winding-up) Rules and forms. The Butterworths Hong Kong Company Law Handbook is the most informed and handy guide available on the subject of Hong Kong company law and has been cited with authority in numerous court cases in the Hong Kong Court of First Instance, Court of Appeal, and Court of Final Appeal. This edition is annotated by Roman Tomasic, ELG Tyler and Vanessa Stott together with the contributions from John Brewer, Philip Lawton and DK Srivastava who are undoubtedly experts in the area of Company Law in Hong Kong.

Apart from these legislative updates, the annotations have also incorporated recent 2012-2013 case law. These amendments are incorporated in this edition so that it will serve as the most up-to-date reference guide for those who are engaged or interested in the dynamic practice of company law in Hong Kong.

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### About The Hong Kong Institute of Chartered Secretaries

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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### The Hong Kong Institute of Chartered Secretaries

(Incorporated with limited liability)

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

Tel: (852) 2881 6177

Fax: (852) 2881 5050

Email: [ask@hkics.org.hk](mailto:ask@hkics.org.hk) (general)

[member@hkics.org.hk](mailto:member@hkics.org.hk) (member)

[ecpd@hkics.org.hk](mailto:ecpd@hkics.org.hk) (Professional Development)

[student@hkics.org.hk](mailto:student@hkics.org.hk) (student)

Website: [www.hkics.org.hk](http://www.hkics.org.hk)

### Beijing Representative Office

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

Xicheng District, Beijing, 100031, China

Tel: (86) 10 6641 9368

Fax: (86) 10 6641 9078

Email: [bro@hkics.org.hk](mailto:bro@hkics.org.hk)

### Institute of Chartered Secretaries and Administrators

#### Governance Institute of Australia

Level 10, 5 Hunter Street

Sydney, NSW 2000

Australia

Tel: (61) 2 9223 5744

Fax: (61) 2 9232 7174

#### The Institute of Chartered Secretaries & Administrators in Canada

202-300 March Road

Ottawa, ON, Canada K2K 2E2

Tel: (1) 613 595 1151

Fax: (1) 613 595 1155

#### The Malaysian Institute of Chartered Secretaries and Administrators

No. 57 The Boulevard,

Mid Valley City, Lingkaran Syed Putra,

59200 Kuala Lumpur,

Malaysia

Tel: (60) 3 2282 9276

Fax: (60) 3 2282 9281

#### Chartered Secretaries New Zealand

PO Box 444

Shortland Street

Auckland 1015,

New Zealand

Tel: (64) 9 377 0130

Fax: (64) 9 366 3979

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email: [enquiries@ninehillsmedia.com](mailto:enquiries@ninehillsmedia.com)

### Editorial Committee

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### Credits

**Kieran Colvert**

Editor

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Illustrator (cover)

**Images**

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### Contributors to this edition

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

Mayer Brown JSM

**Karen Ho and Phyllis McKenna**

Companies Registry

**David Neville and Joseph Lee**

Cadwalader, Wickersham & Taft LLP, in association

with Joseph PC Lee & Associates

**Tommy Lau**

University of Hong Kong

**Kenneth Ko**

Journalist

### Advertising sales enquiries

**Paul Davis**

Commercial Director

Ninehills Media

Tel: (852) 2982 0559

Email: [paul@ninehillsmedia.com](mailto:paul@ninehillsmedia.com)

### Ninehills Media Ltd

PO Box 9963

General Post Office

Hong Kong

Tel: (852) 2982 0559

Fax: (852) 3020 7442

Internet: [www.ninehillsmedia.com](http://www.ninehillsmedia.com)

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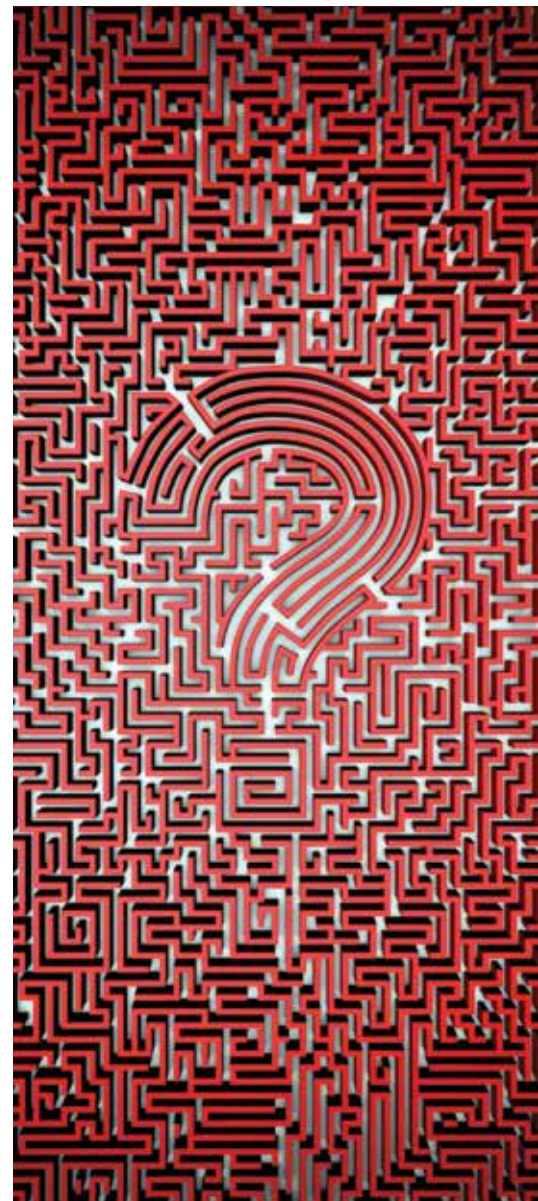
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# The year ahead

The year of the horse, 2014, is shaping up to be a busy year for company secretaries in Hong Kong. I am sure uppermost in our members' minds will be the impending implementation of the new Companies Ordinance, and there can be little doubt that our new company law will have a major impact on our work in the year, and years, ahead. The Institute, with its focus on delivering quality services to members and educating the public on good secretaryship and governance, aptly has the new ordinance as a major focus of this journal in 2014 and many of its activities to come.

In addition to being the theme of this month's edition, a dedicated new section in this journal will be devoted to the new ordinance. This will highlight the key issues for practitioners on an ongoing basis. We are glad to have Professor Edward (Ted) Tyler contributing his views to this new column. Professor Tyler, a former judge, was intimately involved in the enactment of the new Companies Ordinance. Through rationalising concerns of different stakeholders into drafting instructions, he shaped the new ordinance both in terms of content and approach.

The sheer scale of the law – it consists of more than 900 sections, 11 schedules and 12 items of subsidiary legislation – may seem rather daunting. However, we must bear in mind that not everything in the

new ordinance is new. Chapter 622 carries over many provisions from Chapter 32, so the key exercise for companies, and of course company secretaries, is to identify what has changed and what impact those changes will have.

The new ordinance represents an amalgamation of the company law provisions of many jurisdictions, to bring about an updated set of laws in Hong Kong consistent with the status of Hong Kong as a leading financial centre, which we should all be proud of. Not to be omitted is the work of the Companies Registry in educating the public through the briefing notes on their website, which we have hyperlinked from our website with their kind consent.

In terms of contents, the rewrite of the Companies Ordinance was designed, among other things, to simplify and deregulate our company law wherever possible. This should in theory mean that the job of ensuring compliance with the ordinance will be made easier and there are a number of areas where this is indeed the case. The new law allows eligible small private companies to prepare simplified financial and directors' reports and allows companies to dispense with an annual general meeting by unanimous shareholders' consent. It also dispenses with some relics of the past – abolishing the memorandum of association and the 'par value' of shares for all companies with a share capital.

The practical implications of these deregulatory changes are highlighted in the second cover story this month (see pages 14–19) by Karen Ho and Phyllis McKenna, Deputy Principal Solicitors at

the Companies Registry. Deregulation was not the only aim, however, of the rewrite exercise; it also set itself the task of enhancing the corporate governance provisions of the ordinance and ensuring better regulation. The first cover story this month by Billy Lam, Loretta Chan and Wilson Fung of Mayer Brown JSM (see pages 8–13), highlights new provisions which increase directors' and company secretaries' exposure to legal liabilities.

This is truly the 'Year of the new Companies Ordinance', which coincides with the 65th anniversary of the Institute of Chartered Secretaries and Administrators (ICSA), and the 20th anniversary of the incorporation of HKICS in Hong Kong. We will work closely with other divisions of the ICSA on the new structure established by the historical vote on 11 December 2013 for fair and equitable power distributions overwhelmingly supported by ICSA members worldwide. We are also planning on supporting the Corporate Secretaries International Association (CSIA) on the rollout of the *Company Secretary's Toolkit*, a project jointly established with the International Finance Corporation. We will continue our work here in Hong Kong, in the Mainland and in the international arena to make our anniversary another milestone in the advancement of our profession.

Edith Shih FCIS FCS(PE)

# 来年展望

马年将至，对香港的公司秘书来说，2014年将是忙碌的一年。公会会员最关注的，肯定是即将实施的新《公司条例》；毫无疑问，新的公司法对我们今年及往后多年的工作将有重大影响。公会向来注重为会员提供优质服务，并教育公众有关良好公司秘书工作和公司治理的知识；2014年本刊及多项活动均以新《公司条例》为重点，自是十分恰当。

除了以新《公司条例》作为今期的主题外，本刊还将设立新专栏，介绍新《公司条例》，持续为从业员讲述新条例的重点。我们很高兴邀得戴逸华教授为新专栏提供资料。戴教授曾任法官，一直密切参与制定新《公司条例》的工作，把不同利益相关人士的关注事项整理为草拟指示，确立了新《公司条例》的内容和草拟方向。

新法例长达900多条，有11个附表，12项附属法例，规模之大，可谓相当惊人。不过，我们得留意，新《公司条例》（香港法例第622章）的内容并非全新，当中有许多是第32章的原有条文。因此，新例实施后，公司和公司秘书的主要工作，是找出新法例有何改变，以及这些改变会带来什么影响。

新《公司条例》集合了多个司法管辖区的公司法条文，使香港的公司法能与时

并进，配合香港作为金融中心的地位，我们都应引以为荣。公司注册处在网站提供新法例的简介，教育公众，也功不可没。在获得该处同意后，公会的网站已提供超连结至该网站的相关页面。

在内容方面，重写《公司条例》的目的之一，是尽可能简化和放宽香港的公司法。因此理论上，确保合规的工作应更轻松；而在多个方面而言，这确是实情。新法例容许合格的小型私人公司制备简化的财务报告及董事会报告，并容许公司在股东一致同意下，无需召开股东周年大会。新法例也取消了一些历史遗留下来的过时做法，例如取消公司章程大纲，以及取消股份公司股份须有「面值」的规定。

在本期的第二封面故事中（见第14至19页），公司注册处副首席律师何刘家锦女士和麦锦罗女士重点介绍这些规定放宽后对实务方面的影响。不过，放宽规定并非重写《公司条例》的唯一目标，另一目标是加强条例的公司治理条文，改善规管。在本期第一封面故事中（见第8至13页），Mayer Brown JSM的林亦淙、陈慧媚和冯英伟则讲解了条例内有关增加董事和公司秘书法律责任的新条文。

今年确是「新《公司条例》的一年」，也正好是特许秘书及行政人员公会

(ICSA) 65周年纪念，以及香港特许秘书公会在香港成立20周年。2013年12月11日，ICSA会员大会的历史性投票，确立了权力公平分配的新架构，这架构获得全球大部分ICSA会员的支持。我们将与ICSA其他分部紧密合作，建立这新架构。我们也计划支援公司秘书国际联合会 (CSIA) 推出「公司秘书锦囊」，这是与国际金融公司联合推行的项目。我们将继续在香港、中国内地和国际层面从事各项工作，使公会的第20年成为公司秘书专业发展史上的另一里程碑。



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Date : 22 January 2014 (Wed)

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*(course ref: LPDP/1402/01)*

Speaker : Mr. Nelson Lam, Nelson Consulting Limited, Nelson and Company, CPA

Date : 12 February 2014 (Wed)

**Listing Rules Practical Update – Reverse Takeover (notifiable transaction)** (2 CPD Hours)

*(course ref: LPDP/1403/01)*

Speaker : Ms. Beatrice Lung, Managing Director, Optima Capital Limited

Date : 5 March 2014 (Wed)

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# Ask the Expert

If you would like to ask our experts a question, please contact CSj editor  
Kieran Colvert: [kieran@ninehillsmmedia.com](mailto:kieran@ninehillsmmedia.com)

**Q:** *What are the key changes in the new Hong Kong Companies Ordinance (CO) effective 1 March 2014 regarding listed companies' share registers?*

**A:** From a registry perspective, the following are the key changes brought about by the new CO:

## 1. Adoption of mandatory no par value on share capital

As par value does not show the real value of shares, section 135 of the new CO abolishes the concept of par value. The change also abolishes nominal value, share premium and the requirement for authorised capital. Those certificates already printed with par value to be issued after 3 March 2014 will need to be reprinted to remove the par value.

## 2. The common seal to become optional

To simplify the execution of documents, section 124 of the new CO states that a common seal is optional. There is no requirement for a share certificate to be sealed. Companies are invited to consider eliminating the need to seal certificates, or to use a printed seal on certificates instead of using a manually affixed seal.

## 3. New streamlined procedures for lost certificates

Taking into account technological developments, notices related to lost certificates will no longer have to be posted in newspapers – they may be posted on a company's website instead. Notices under sections 164 and 166 of the new CO should be published on a company's website (HK\$200,000 and below) and in the Gazette (above HK\$200,000 or other cases as specified).

## Computershare

### 4. Multiple proxies permitted

To align with international best practices, section 596(3) of the new CO allows multiple proxies (currently limited to two) in the case of a company having a share capital. Multiple proxies can only vote when a poll is called.

### 5. Replacement of the headcount test

To prevent vote manipulation such as share splitting, sections 674(2)(a)(ii) and (b)(ii) of the new CO state that the headcount test for approving a general offer or a takeover is replaced with the requirement that votes cast against the scheme do not exceed 10% of the voting rights attached to all disinterested shares.

### 6. Requirement for companies to explain a refusal to register a transfer of shares

To enhance transparency, sections 151(3) and (4) of the new CO state that companies should give reasons explaining their refusal to register a transfer of shares upon request and within 28 days of receiving such a request.

For details of all the changes discussed above, please refer to the 'New Companies Ordinance' and 'Frequently Asked Questions' sections of the Companies Registry website ([www.cr.gov.hk](http://www.cr.gov.hk)).

*Candy Wong, Vice-President of Client Services  
Computershare Hong Kong Investor Services Ltd  
[Candy.wong@computershare.com.hk](mailto:Candy.wong@computershare.com.hk)  
[www.computershare.com](http://www.computershare.com)*

## Your chance to ask the expert...

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

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

*If you would like to ask our experts a question, simply email CSj editor Kieran Colvert at: [kieran@ninehillsmmedia.com](mailto:kieran@ninehillsmmedia.com).*

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



# The new Companies Ordinance: are you ready?

The new Companies Ordinance, which comes into force in March this year, has been billed as an attempt to simplify, rationalise and deregulate our company law wherever possible. While the new ordinance certainly brings in a number of measures to this effect, there is a sting in the tail which directors and company secretaries need to watch out for. In this two-part article, Billy Lam, Loretta Chan and Wilson Fung of Mayer Brown JSM, highlight a number of key areas where the new Companies Ordinance increases directors' and company secretaries' exposure to legal liabilities.

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.

#### New formulation of 'responsible person'

Officers of companies need to be aware of the new formulation of 'responsible person', which replaces the concept of 'officer who is in default' and may widen the scope of criminal liability for officers of companies. Under section 3, the formulation of 'responsible person' applies where a provision of the new CO (or its subsidiary legislation) provides that a responsible person commits an offence if there is:

- a contravention of the new CO or of a requirement, direction, condition or order, or
- a failure to comply with a requirement, direction, condition or order.

For example, where a company fails to change its name pursuant to a direction of the Companies Registry, it will be necessary to identify the company's responsible persons, who

may be prosecuted together with the company. The term 'responsible person' encompasses two categories:

1. an officer or a shadow director of a company who authorises, permits or participates in the contravention or failure, and
2. an officer or a shadow director of a body corporate which is an officer or a shadow director of the subject company, if both the body corporate and the person authorise, permit or participate in the contravention or failure.

The word 'officer' is defined to include directors, company secretaries and managers of companies. For this purpose, managers are regarded as officers if they

are entrusted with the power to manage the whole of the affairs of the company.

Compared with the concept of 'officer who is in default' which can be found in the current CO, the new formulation of responsible person includes officers and shadow directors of corporate officers and corporate shadow directors (that is, the second category of persons referred to above). Another major difference is that, compared with the provision in section 351 of the current CO regarding an officer who is in default, the words 'knowingly and wilfully' have been removed in the new regime. The intention behind this change is to lower the prosecution threshold with a view to enhancing enforcement by extending the scope to cover reckless acts or omissions of officers. There is also a possibility that

#### Highlights

- the new Companies Ordinance increases directors' and company secretaries' exposure to legal liabilities
- where companies are in breach of the new Companies Ordinance, the identification of the company's responsible persons may become important as such persons may be prosecuted together with the company
- the intention behind the removal of the words 'knowingly and wilfully' in the definition of 'responsible person' is to lower the prosecution threshold with a view to cover reckless acts or omissions

“  
**Officers of companies need to be aware of the new formulation of ‘responsible person’, which replaces the concept of ‘officer who is in default’ and may widen the scope of [their] liability**  
 ”

the removal of the words 'knowingly and wilfully' will have the effect of shifting the burden of proof such that instead of the prosecution having to prove that the responsible person has the requisite knowledge of the contravention or failure, it will be up to the defendants to show that they do not have such knowledge.

**Codification of directors' duty of care, skill and diligence**

Currently, directors' duty of care, skill and diligence is governed by common law. Previous cases show that the standard of care has moved from a subjective test to an objective test (that is, what a reasonable director will do). Following the footsteps of the English jurisdiction, such duty is to be codified under the new CO and a mixed objective and subjective test will be introduced.

Section 465 of the new CO requires directors to exercise 'reasonable care, skill and diligence', which is defined as 'the care, skill and diligence that would be exercised by a reasonably diligent person', with the general knowledge, skill and experience:

1. that 'may reasonably be expected of a person carrying out the same functions carried out by the director in relation to the company', and
2. that 'the director has'.

These two limbs represent the objective and subjective tests respectively.

In other words, when deciding whether directors have exercised reasonable skill, care and diligence, their conduct is first compared with that of a person who is reasonably diligent and taken to be carrying out the same functions as the director in question; and if directors have additional knowledge or qualifications, then their conduct will be compared against that of a person with the same additional knowledge or qualifications as well. Considering both tests as a whole, directors need to achieve at least the objective standard, but this standard will be raised where a particular director possesses additional knowledge or qualifications.

**Ratification of directors' conduct**

At present, shareholders' approval is needed to ratify directors' conduct. Where directors are also the company's majority shareholders, their conduct can be ratified rather conveniently. The new CO plugs this loophole by introducing procedures regarding ratification which can be found in section 473. The new procedures only apply to a director's conduct involving negligence, default, breach of duty or trust in relation to the company. Passing an ordinary shareholders' resolution remains the method of ratification, but every vote in favour of the resolution

made by a member within any of the following three categories shall be disregarded:

1. a member who is the director in respect of whose conduct the ratification is sought
2. a member who is an entity connected with such directors (including their family members, bodies corporate associated with the director, etc), and
3. a member who holds shares in trust for such directors or entities.

These three categories of members may nevertheless still attend the meeting and be counted towards the quorum.

**Uniform solvency test**

Many countries have in recent years moved away from strict capital maintenance doctrine in favour of a solvency test. In keeping with this international trend, the new CO introduces a uniform solvency test which will apply to three kinds of transaction under Part 5 of the new CO: capital reduction, share buyback/redemption and the giving of financial assistance. In addition to this uniform solvency test, Part 13 of the new CO also provides for a solvency test which will be applicable to intra-group amalgamation. This article will focus on the uniform solvency test under Part 5 of the new CO.

This cash flow-based uniform solvency test is not something new to private companies. Under the current CO, there are already two major solvency tests which they can make use of. One is applicable to the giving of financial assistance by unlisted companies for the purpose of purchasing shares in the company or its holding company, the so-called 'whitewash procedure'; the other

applies to share redemption and buyback out of capital by private companies. These two tests are subject to minor differences. The main difference is that the first one provides for the situation where the company contemplates winding up within the next 12 months. The uniform solvency test under the new CO is the same as that which is currently applicable to financial assistance.

Pursuant to such tests, a solvency statement has to be made by the directors to confirm that the company would be able to pay its debts immediately after the transaction; and either:

- in the case where the company intends to commence winding up within the next 12 months, it will be able to pay its debts in full within 12 months after commencement of winding up, or
- in any other case, it will be able to pay its debts as they become due in the 12 months following the transaction.

Though the solvency test is not a new concept, its use has been substantially extended under the new CO in a few ways.

First, a court-free procedure for capital reduction based on the uniform solvency test will be introduced. This is an alternative to court approval and will be available to all companies. Second, all companies, not only private companies, will be allowed to make payment for share buyback and redemption out of capital subject to the uniform solvency test. On-market buyback by listed companies is an exception. Share buyback by listed companies through other means such as general offer or private contract may be funded by capital. Lastly, subject to the uniform solvency test, all companies (whether listed or unlisted) can give financial assistance for acquisition of their own shares or those of its holding company.

While the extended use of the solvency test results in relaxations of the capital maintenance doctrine, it is balanced by the right of members (as well as creditors

## Action required

- Company secretaries need to brief directors on the implications of the codification of directors' duty of care, skill and diligence in the new CO. All directors need to achieve at least the objective standard (the standard which 'may reasonably be expected of a person carrying out the same functions carried out by the director in relation to the company'). This standard will be raised where a particular director possesses additional knowledge or qualifications.
- Existing D&O contracts should be reviewed to ensure that they cover the increased legal liabilities for directors and company secretaries under the new CO.
- Company secretaries need to brief directors on their potential liabilities under the new CO when making solvency statements. Before signing a solvency statement, directors are under a statutory duty to inquire into the company's state of affairs and prospects, taking into account all liabilities of the company, including contingent and prospective liabilities.
- It is advisable to keep proper and detailed records of directors' reasons for their decisions when making solvency statements in case there is any subsequent challenge to the reasonableness of those decisions.
- The new CO introduces a court-free procedure for capital reductions, but court approval may be worth considering for non-standard cases, for example where objections are anticipated from shareholders/ creditors or where there are divided views on the solvency position of the company among directors.
- Interested/ connected directors and associates must be excluded from a vote to ratify directors' conduct; they may nevertheless still attend relevant meetings and be counted towards the quorum.

“  
**The extended use of the solvency test will accordingly increase the directors' exposure to potential liabilities**  
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except in the case of financial assistance) who do not vote for the transaction to make a court application to set it aside subject to certain procedures.

The extended use of the solvency test as mentioned above in effect means that there are more circumstances in which the making of a solvency statement by directors will come into play. Directors are expected to have reasonable grounds in giving their opinion as to the solvency status of the company. Directors who make a solvency statement without reasonable grounds will be subject to criminal liabilities under the new CO which can take the form of a fine or imprisonment. There are also potential civil liabilities for directors, which could, for example, amount to a breach of fiduciary duty to the company. The extended use of the solvency test will accordingly increase the directors' exposure to potential liabilities.

As the application of the solvency test with respect to share buyback/ redemption out of capital and the giving of financial assistance will no longer be confined to private companies under the new CO, directors of listed companies may find themselves facing a new and important task after the commencement

of the new CO while more flexibilities are given to their companies at the same time.

The court-free alternative procedure for capital reduction based on the uniform solvency test essentially transfers responsibility from the court to the directors, especially in terms of ensuring that the creditors' interests are not prejudiced by the capital reduction.

In the case of financial assistance, apart from making the solvency statement, directors also have responsibility for confirming that the giving of financial assistance is in the best interests of the company and the relevant terms and conditions are fair and reasonable to the company.

The new CO has dispensed with the need for an auditor's report which is currently required for share buyback/ redemption out of capital by private companies. It is considered that the auditors would not be in a better position than the directors when it comes to confirming the solvency position of the company. This in a way places the burden of making a forward-looking judgement on the company's solvency solely on the shoulders of the directors, although

they are always free to seek professional advice if in any doubt.

So, how can directors protect themselves in view of the potential liabilities that might arise from making the solvency statement under Part 5 of the new CO?

Before signing a solvency statement, directors are under a statutory duty to inquire into the company's state of affairs and prospects, taking into account all liabilities of the company, including contingent and prospective liabilities. In discharging such duty, directors are advised to make sure their opinions are based on the findings of a detailed financial review and the updated management accounts of the company. If they have any doubts, they should consult the company's auditor. It is also advisable to keep proper and detailed records of their reasons for making their decision in case there is any challenge to the reasonableness of the solvency statement in the future.

With regard to capital reduction, while the court-free procedure can save costs and time, a court approval may be worth considering in several situations, for example where there is a sizeable capital reduction or where an objection from the members or creditors to the proposed capital reduction is anticipated. Divided views on the solvency position among the directors may also indicate that it is a marginal case where directors should err on the side of caution. Instead of asking the dissenting directors to resign to facilitate the making of the solvency statement by all directors, which is required by the new CO (for court-free procedure for capital reduction as well as share buyback/ redemption out of capital), it is advisable to proceed with

the capital reduction in the alternative manner – that is, apply for a court order confirming the capital reduction. Though this is bound to be more expensive and time consuming, it is likely to provide more certainty as to the legality of the transaction and to reduce the risk exposure for the directors affirming the transaction.

It is worth noting that in the *Improvement of Corporate Insolvency Law Legislative Proposals* consultation document published by the Financial Services and Treasury Bureau in April 2013, it was proposed that if a company is wound up insolvent within 12 months of a share redemption/ buyback, directors who made the solvency statement

without reasonable grounds and the recipient of the payments of the redeemed or bought-back shares should be jointly and severally liable to return the money to the company. Directors should be aware of this proposal which may have a further impact on their liabilities.

Given the potential liabilities (both civil and criminal) arising from the making of the solvency statement, directors may wish to enquire whether the directors' and officers' liability insurance taken out by the company is wide enough to cover such liabilities, and to ensure that any potential liabilities to third parties are indemnified by the company, to the extent allowed under the new CO.

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

*Mayer Brown JSM*

*The second part of this article will be published in next month's CSj. 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](http://www.hkics.org.hk)) for details.*

*This journal will also feature a new column devoted to the Companies Ordinance to highlight the key issues for practitioners on an ongoing basis.*

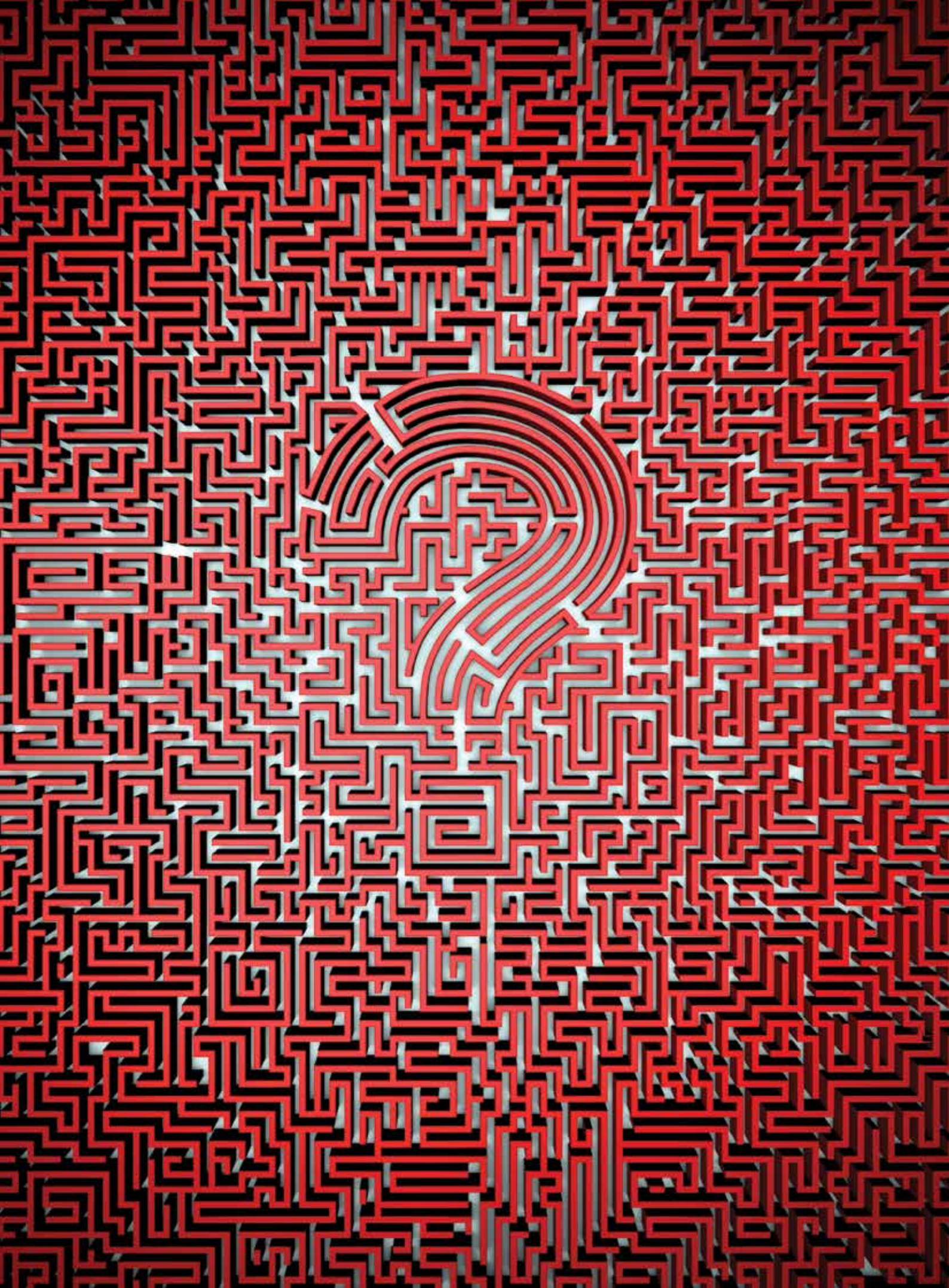
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# The new Companies Ordinance: your questions answered

What are the qualifying criteria for companies to prepare simplified financial statements and reports under the new Companies Ordinance? Under what circumstances may an AGM be dispensed with? These are some of the many questions posed by attendees at a recent HKICS ECPD seminar on the new Companies Ordinance. Karen Ho and Phyllis McKenna, Deputy Principal Solicitors at the Companies Registry, supply answers to these and other practical questions raised at the seminar.

**A**bolition of memorandum of association

*Following the abolition of the memorandum of association, mandatory articles are required to be included in the articles of association. Section 85 of the new Companies Ordinance (CO) requires that the articles of a company with a share capital must state certain information on capital and initial shareholding to be contained in the company's incorporation form. Is it necessary for companies incorporated under the existing CO (Cap 32) to amend their articles to include this information?*

'No, this requirement applies only to companies which are required to include such information in their incorporation form, which will be companies incorporating under the new CO only and not existing companies. There is no requirement for existing companies to set out in their articles of association the details and information required by section 85 of the new CO.'

*Are the 'model articles' set out in the Companies (Model Articles) Notice (Cap 622H) applicable to companies incorporated before the commencement of the new CO? What will be the position of Table A and Table C in the First Schedule to the existing CO after commencement of the new CO?*

'The model articles as set out in Schedule 1 to 3 of the Companies (Model Articles) Notice (Cap 622H) are only applicable to companies who incorporate under the new CO and who choose to adopt

all or any of the provisions of the model articles prescribed for the type of company to which they belong. This choice can be made expressly but the model articles prescribed for that type of company will apply by default if no other regulations for the company are filed on incorporation, and even where other regulations are so filed, the model articles prescribed for that type of company will apply insofar as they are not modified or excluded by the regulations so filed. A company is still free to create its own

## Highlights

- some provisions of the new Companies Ordinance are not applicable to companies incorporated under the existing Companies Ordinance
- for example, there is no obligation for existing companies to amend their articles to include the model articles prescribed in the new Companies Ordinance
- companies eligible to prepare simplified financial statements and reports are exempted the requirements under the new Companies Ordinance to prepare a 'business review'

bespoke regulations/ articles if it does not want the relevant model articles to apply.

For existing companies who have adopted Table A or Table C at the date of their incorporation, their articles will remain unchanged except for any article which has been overridden by a specific statutory provision of the new CO. Please see the Companies Registry website for details of specific provisions which may override provisions in the existing articles. The statutory provision will override any provision in the articles which is inconsistent.

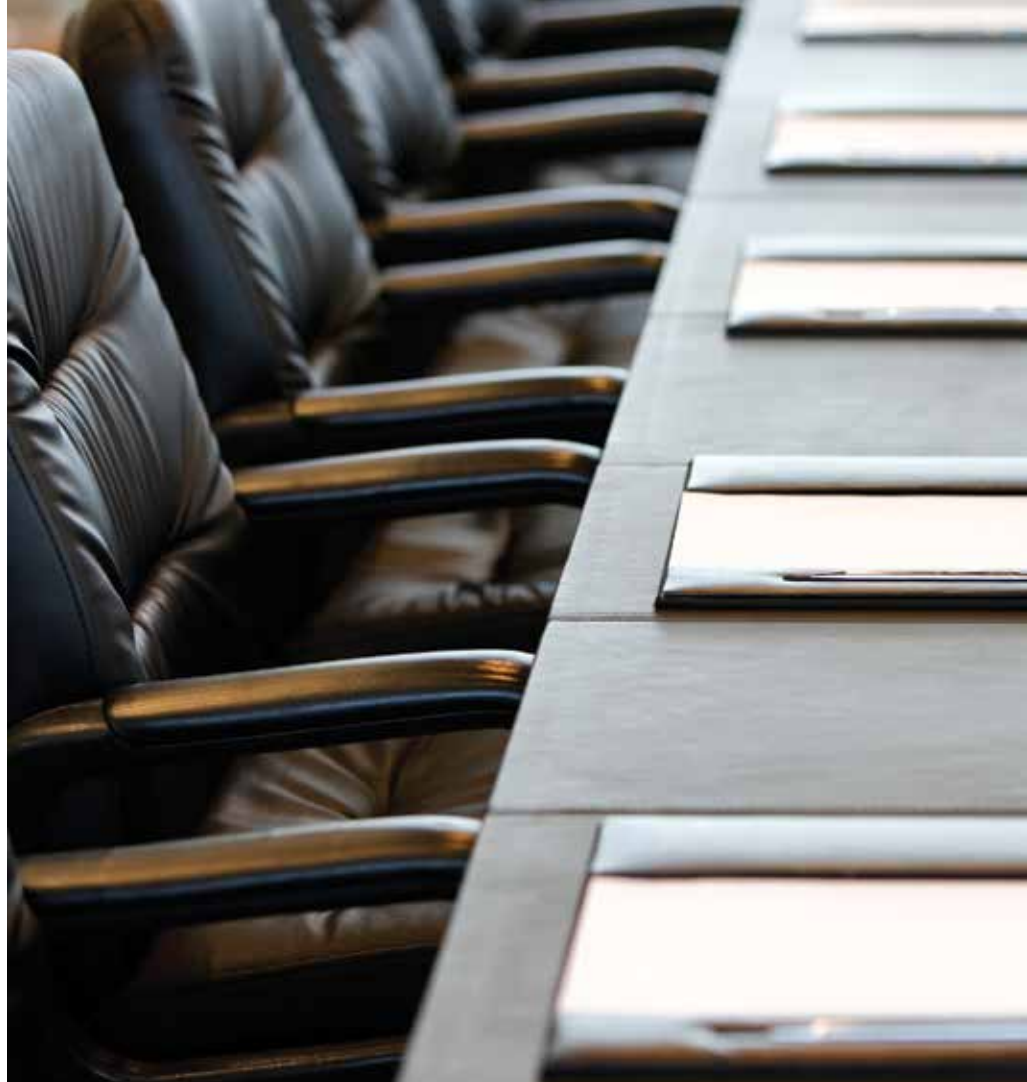
If an existing company wants to modify its articles for any reason, it will be required to follow the appropriate legal procedures, which for the most part involves the passing of a special resolution. Companies should obtain their own legal advice in this regard and if they so wish, in amending their articles they may take reference from the provisions of the model articles, but they need not do so.

There is no obligation for existing companies to amend their articles to include the model articles prescribed for the type of company to which they belong.

#### Abolition of par value

***The new CO adopts a mandatory system of no par for all local companies having a share capital and retires the concept of par value for all shares. Are there any documents that are required to be delivered to the Registrar of Companies for registration on commencement of the new CO to report the share capital position of the company immediately before the commencement?***

'No. The updated share capital position of the company will be reported in the next annual return to be filed by the company,



provided that there is no change in the share capital position before then.

When there are changes in the share capital, for example an allotment of shares or a permitted alteration of share capital, a return or notice in a specified form must be delivered to the Registrar of Companies for registration. A "statement of capital", which is a snapshot of a company's latest share capital, must be included in the notice or return. The relevant specified forms, for example, Return of Allotment (Form NSC1), include a statement of capital. The filing of the statement of capital ensures disclosure of up-to-date share capital information.

***Under the no par regime, can a company issue shares at different value? If yes, does it mean that different rights will be attached to shares with different value?***

'A company can issue new shares at

different issue prices. The abolition of par will remove the par value of the shares but does not affect the issue price of the shares. The issue price is a commercial bargain between the company (which issues the share) and an investor (who subscribes for the share and becomes a shareholder).

All shares issued, before, on and after the commencement of the new CO will have no par value. The law will deem all shares issued before the abolition to have no par value (section 135 of the new CO). The other rights attached to a share are not affected.

***What will be the position as regards the permitted use of share premium with the migration to a mandatory no par regime for all companies under the new CO? Can a company allocate the amount in its share premium account to existing shareholders or eliminate its***



“  
**AGMs may be dispensed with if the company passes a written resolution or a resolution at a general meeting by all members to that effect**  
 ”

***accumulated loss by reduction of share premium account?***

'The permitted uses of share premium are set out in section 48B of the existing CO, for example, to pay up shares which are issued as bonus shares. While the concept of "share premium" will be abolished under the new CO, these permitted uses of share premium existing on the date of commencement of the new CO will be preserved (section 38 of Schedule 11 to the New CO). Allocating the amount in the share premium account to existing shareholders or reducing the amount in the account for elimination of accumulated loss are not permitted uses of share premium.'

***With the abolition of share premium, what will happen to the rule on permissible capital payments?***

'The rules relating to "permissible capital payment", which are set out in section 49I of the existing CO, are premised on a

par value regime. As the new CO adopts a mandatory no par regime, the current rules relating to "permissible capital payment" cannot operate. Under the new CO, buy-backs out of the capital will be governed by the rules and requirements in sections 258 to 266.'

**Simplified reporting**

***What are the qualifying criteria for companies to prepare simplified financial statements and directors' reports?***

'Under the new CO, private companies (except certain companies specifically excluded) and guarantee companies may prepare simplified financial statements and directors' reports if the following qualifying criteria are met.

1. Small private companies/ holding companies of a group of small private companies qualify if any two of the following conditions are satisfied in a financial year:

- total revenue/ aggregate total revenue does not exceed \$100 million
- total assets/ aggregate total assets do not exceed \$100 million, and
- employees/ aggregate employees do not exceed 100.

No particular requirement relating to the ownership of the shares of a private company is imposed for the purpose of simplified reporting. A private company that is a subsidiary or a member of a group of companies of which a listed company is a member can adopt simplified reporting if it meets the qualifying criteria.

2. Larger eligible private companies/ holding companies of a group of larger eligible private companies qualify if they have 75% approval from members and no member objects six months before the end of the financial year, and any two of the following conditions are satisfied:

- total revenue/ aggregate total revenue does not exceed \$200 million
- total assets/ aggregate total assets do not exceed HK\$200 million, and
- employees/ aggregate employees do not exceed 100

3. Small guarantee companies/ holding companies of a group of small guarantee companies qualify if total

revenue/ aggregate total revenue does not exceed \$25 million in a financial year.

For a holding company of a group of small guarantee companies to qualify for simplified reporting, all companies within the group, including the holding company and each of its subsidiaries must qualify as a small guarantee company. The same principle applies to other groups. Accordingly, a holding company that is a small guarantee company having a small private company as its subsidiary does not qualify for simplified reporting as the holding company of a group of small guarantee companies.

The exemption under section 141D of Cap 32 is retained so that a private company (not having any subsidiary and not being a subsidiary of another company) with unanimous members' written agreement may opt for simplified reporting with respect to a financial year.<sup>1</sup>

***Are companies falling within the reporting exemption required to have their financial statements audited?***

'Yes. All companies are required to have their financial statements audited except for dormant companies. The reporting exemptions are in respect of specified requirements relating to the preparation of financial statements and directors' reports which include:

- subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards
- no requirement to disclose auditor's remuneration in financial statements

- no requirement for financial statements to give a "true and fair view"
- no requirement to disclose in the notes to financial statements the material interests of directors in transactions, arrangements or contracts of significance
- no need to include the following information in the directors' report:
  - business review
  - arrangements to enable directors to acquire benefits by the acquisition of shares or debentures
  - donations
  - directors' reasons for resignation or refusal to stand for re-election
  - material interests of directors in transactions, arrangements or contracts of significance entered into by a specified undertaking of a company

- no requirement for auditor to express a "true and fair view" opinion on financial statements'

**Annual general meeting**  
***When must a company hold its annual general meeting (AGM) under the new CO?***

'Under the new CO, a company must, in respect of each financial year, hold its AGM within the following period:

- in the case of a company limited by guarantee or a private company

that is not a subsidiary of a public company, nine months after the end of its accounting reference period, and

- in the case of any other company, six months after the end of its accounting reference period.

The accounting reference period is the period by reference to which the financial year is to be determined. If the accounting reference period is the first accounting reference period of the company and is longer than 12 months, the company must hold its AGM within the following period:

- in the case of a company limited by guarantee or a private company that is not a subsidiary of a public company:
  - nine months after the anniversary of the company's incorporation, or
  - three months after the end of that accounting reference period,
 whichever is the later; and

- in the case of any other company:
  - six months after the anniversary of the company's incorporation, or
  - three months after the end of that accounting reference period,
 whichever is the later.

As explained above, the requirement is to hold an AGM within six or nine

months after the end of the financial year. As the accounting reference period may be more than 12 months in the first financial year or in any subsequent financial years due to extension of the accounting reference period by alteration of the accounting reference date, it is possible that an AGM will not be held in a particular calendar year in such case.'

***Under what circumstances may an AGM be dispensed with?***

'AGMs may be dispensed with if the company passes a written resolution or a resolution at a general meeting by all members to that effect. The financial statements and reports that would otherwise be required to be laid before an AGM will need to be sent to the members.

A company is also not required to hold an AGM in respect of a financial year if:

- everything that is required to be done at the meeting is done by a written resolution and copies of the documents required to be laid or produced at the meeting have been provided to the members on or before the circulation date of the written resolution,
- the number of members falls to one at the time required for holding an AGM, or
- it is a dormant company.

**Karen Ho and Phyllis McKenna**  
*Deputy Principal Solicitors*  
*Companies Registry*

***More information on the new Companies Ordinance is available on the Companies Registry website: [www.cr.gov.hk](http://www.cr.gov.hk).***



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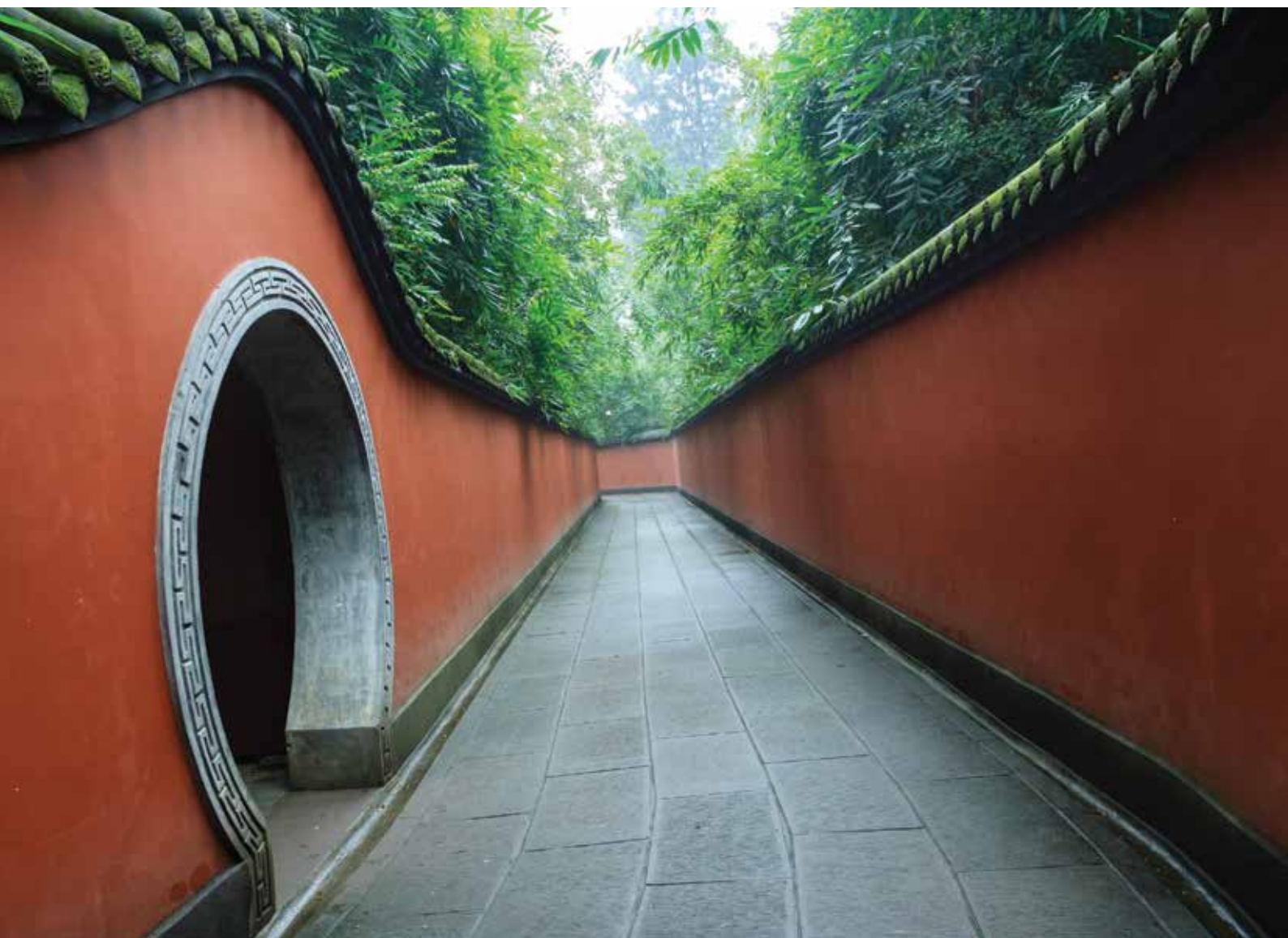
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## The road north

As a result of rapid economic development in Mainland China, there is a huge demand for professional service providers. This is good news for professionals, company secretaries among them, particularly those based in Hong Kong. Lau Ping Cheung, Chairman of the Hong Kong Coalition of Professional Services, talks to *CSj* about the work of the Coalition to achieve mutual recognition of professional qualifications in Mainland China and Hong Kong and to open up the road to the north for Hong Kong professionals.

Lau Ping Cheung, one of the founding members and current Chairman of the Hong Kong Coalition of Professional Services, still has a vivid memory of his illegal entry from Shantou to Hong Kong at the age of eight. On a pitch dark night he passed from boat to boat and reached Lamma Island. He changed into new clothes and his mother permed her hair with red hot iron clamps. Finally they landed at West Point and became Hong Kong residents under the Touch Base Policy at that time.

When he was young, he lived in a squatter area on a hillside and it was difficult to make ends meet. But he worked hard and studied well. He says that the efforts he put into his studies paid off. In 1971 he was admitted into the Surveying Department of the Hong Kong Polytechnic. Soon after graduation, he attained a professional qualification in surveying, and this was a key turning point in his life. After joining the surveying profession, he actively participated in the activities of professional bodies. In 1996 and 1997, he was Chairman of the Royal Institution of Chartered Surveyors (Hong Kong Branch) and President of the Hong Kong Institute of Surveyors, and witnessed the changes in Hong Kong during the handover of Hong Kong to Mainland China and the transitional period.

In 2000, Mr Lau succeeded in his run for a seat in the Legislative Council through the functional constituency route. This was another turning point in his life. In the past, he had focused on matters concerning his profession. After becoming a legislator, he was involved in a wider range of issues, including political, economic, livelihood, medical and educational issues. He considers that he has both gained and lost during his four-year term, during which there were two major incidents.

Firstly, in 2002, a proposal was put forward to cut civil service pay. The government was then in a budget deficit and there was great public pressure for civil service pay cuts. Mr Lau supported the government's proposal. He considered that everyone was in the same boat, and there was no reason why civil servants should be protected from times of economic downturn. But many in his constituency were from the civil service, and his decision took away a lot of his support. The second major incident was his support for legislation under Article 23 of the Basic Law in 2003. He considered that no country could dispense with national security law. Hence he supported the government's move to legislate. This was fatal to his run for re-election in 2004. Thereafter, he was accused of bribery during the election, but was finally acquitted.

The trials and tribulations over the years provided enlightenment for Mr Lau, and he has come to realise that one does not necessarily have to stand at the forefront in the legislative body in order to contribute to the community; one can also work diligently behind the scenes. Mr Lau has been deeply involved in economic, social and livelihood issues in Hong Kong. Currently he is a member of the Long-Term Housing Strategy Steering Committee and Convenor of the Working Group on Professional Services under the Economic Development Commission, giving advice to the government on the review of housing and real estate policies in Hong Kong.

Mr Lau stresses that he is rooted in Hong Kong and is ready to give his best for the community. On the shortage of land supply and the narrow-based economic structure in Hong Kong, he is quick to point out the crux of the problem. With property prices and rents at high levels, over 170,000 people are living in subdivided units, and 230,000 families are queuing for public housing. He believes that the structure of our economy is biased towards finance, real estate and tourism. It is therefore necessary to encourage diversified development in our economy and provide more suitable land to attract certain businesses or processes back to Hong Kong to meet future economic development and social needs.

#### The work of the HKCPS

Ten professional bodies in Hong Kong formed the Hong Kong Coalition of Professional Services (HKCPS) in 2001. As one of the founders, Mr Lau firmly believes that the body can promote

### Highlights

- many Mainland enterprises investing overseas could benefit from professional support from Hong Kong to help them develop overseas business more effectively
- the HKICS contributes expertise for the economic development of the Mainland, particularly in the areas of listing requirements and corporate governance
- a pilot scheme has now been launched in Guangdong Province to simplify practising requirements to attract professionals in Hong Kong to start their businesses in the province

professional services in Hong Kong, facilitate exchange and cooperation between Mainland China and Hong Kong and act as a bridge. He points out that, according to the government's statistics, professional services and other business services account for 11% of the GDP of Hong Kong. This is a big force which has an impact on the economy and the livelihood of the people of Hong Kong.

The 10 professional bodies initiating the formation of the Coalition of Professional Services were the Hong Kong Institute of Certified Public Accountants, Hong Kong Institute of Architects, Hong Kong Bar Association, Hong Kong Dental Association Ltd, Hong Kong Institute of Engineers, Hong Kong Institute of Landscape Architects, the Law Society of Hong Kong, Hong Kong Medical Association, Hong Kong Institute of Planners and Hong Kong Institute of Surveyors. In 2010, The Hong Kong Institute of Chartered Secretaries joined as the eleventh member body. At present, the 11 bodies have over 86,000 members who have obtained professional qualifications, and over 41,000 trainees and students. They are from four major areas, namely, medical and health, finance, law, and building and construction.

The members of the HKCPS work in different sectors, contributing greatly to the community. They include District Council members, Legislative Council members, Executive Council members and principle officials under the accountability system. The Chief Executive, CY Leung, is also a distinguished professional.

He adds that the HKCPS plays an important role in Hong Kong and the government recognises its influence. When preparing the policy address and budget every year, the government invites the HKCPS to give its views on various issues. Moreover, the HKCPS was deeply involved in the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) which was signed in 2003. The HKCPS also makes proposals every year to policy bureaus on new developments of CEPA in order to promote mutual recognition of professional qualifications in Hong Kong and the Mainland and to ease restrictions on professionals practising on the Mainland.

In December 2013, a HKCPS delegation went to Beijing and met key officials of the National Development and Reform Commission and the Ministry of Commerce. Meanwhile, individual professional bodies paid visits to the National Health and Family Planning Commission, the Ministry of Housing and Urban-Rural Development, the Ministry of Justice and the Ministry of Finance to exchange views on livelihood, social and economic issues.



“  
I believe that  
professionals in Hong  
Kong can ... share the  
international experience  
gained in Hong Kong  
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'Currently one of the key focuses of the HKCPS is to explore how to grasp the opportunities and meet the challenges presented to Hong Kong by the Shanghai Free Trade Zone,' says Mr Lau. In addition, Guangdong Province, Nansha, Qianhai and Hengqin have formed an economic golden triangle. Recent talks under the 'Framework Agreement on Hong Kong-Guangdong Cooperation' have explored whether Hong Kong and Macau could be added to this golden triangle to form another free trade zone.

'This is something we professionals need to follow closely. Furthermore, it was announced after the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China that the market will be further opened up, trade in services will be liberalised and systems will be reformed. I believe that professionals in Hong Kong can give a lot of advice in various aspects and share the international experience gained in Hong Kong,' Mr Lau says.

He further points out that the rapid economic growth in Mainland China over the past 30 years has been mainly powered by exports and foreign investment. But he notes that exports are affected by fluctuations in the world economy. At the moment, the lacklustre economic performance in Europe and the US has affected China's export trade and reduced foreign investments in China. There should therefore be two emphases in the economic transition of China. The first is to boost domestic demand, encourage spending and speed up urbanisation, increasing the power of consumption on various fronts. The second is to encourage Mainland enterprises and funds to explore opportunities outside China. Funds should not just be



applied to buying US bonds but should be used for investments, economic development, and participation in oil production and infrastructural projects. Developments on these two areas will bring a lot of opportunities to professionals in Hong Kong.

'A lot of surveyors and architecture and accountancy firms now have over half of their income coming from Mainland business,' says Mr Lau. 'Many Mainland enterprises investing overseas are greatly in need of professional support from Hong Kong to help them develop overseas business more effectively. In addition, the government of Hong Kong actively promotes the development of Hong Kong as an arbitration centre and encourages the provision of international arbitration services in Hong Kong. This also opens up abundant opportunities for professionals.'

In view of the huge market on the Mainland and the needs of economic transition in future, Hong Kong professionals have a lot of opportunities in the north. Mr Lau says that the Hong Kong Institute of Chartered Secretaries contributes greatly in the areas of listing requirements and corporate governance and has conducted a lot of training on the Mainland. This is an important area of expertise that the Mainland will need for its future economic development.

Regarding mutual recognition, he says that considerable results have been achieved. A more imminent issue at the moment is qualification vetting for professionals practising and setting up new practices on the Mainland, including work experience on the Mainland and manpower needs, etc. Even though the 10th CEPA agreement has been signed, it is still very difficult for professionals to start new practices on the Mainland. A pilot scheme has now been launched in Guangdong Province to simplify practising requirements to attract professionals in Hong Kong to start their businesses in the province. The objectives are to make better use of the professional expertise and international experience of Hong Kong to help Mainland enterprises expand overseas; support the international development of local industries and businesses; increase employment opportunities; create a professional community; and speed up economic development.

In late November 2013, CY Leung, HKSAR Chief Executive, led a large delegation from Hong Kong to visit Guangxi Province to understand the trading activities between Guangxi and ASEAN countries and the opportunities they bring to Hong Kong businessmen and professionals. Mr Lau says there is heavy

trading between Guangxi and ASEAN countries, but the dearth of professional service providers is serious and Hong Kong professionals should look into the opportunities this provides. Urbanisation, housing and railway construction, as well as infrastructural projects require a lot of professionals to ensure the quality of the projects and the standard of their design. This is a good opportunity for Hong Kong professionals to contribute their expertise.

Apart from promoting professional development, the HKCPS is also actively involved in community work. Mr Lau says that during the SARS epidemic in 2003, the HKCPS set up a SARS Fund to help the affected owners of Amoy Gardens replace their pipes, and monitored the whole process of design, tendering and implementation. In 2008, the HKCPS again extended its helping hand to snow storm victims on the Mainland and raised funds for them. In 2013, a fund raising concert was held in support of victims of the earthquake in Sichuan. This year, the HKCPS facilitated the establishment of an organisation for young professionals in Hong Kong to encourage them to contribute to the work of the HKCPS, raise professional standards and participate in community affairs, thereby pulling together the strengths of a range of professions.

### Life lessons

Mr Lau does not dwell on the significant achievements of his life so far, but he has learned some important life lessons that he is eager to impart to the next generation. He stresses that one must be proactive and positive and must not back away from one's responsibilities. He believes his own career has shown that you can change your fate through knowledge and a good deal of perseverance. Mr Lau's key principles are to be ready to commit and to be responsible.

In the context of the current challenges of the world economy as a global village, competition can come from anybody and anywhere in the world. Mr Lau encourages young people to work hard and seek improvement. Not only do they have to build a strong foundation in their studies, enriching their knowledge and polishing their language skills, they also have to build up good inter-personal relationships. Only by doing so will they avoid falling behind others and build a better future for themselves and for the community.

**Kenneth Ko**  
*Journalist*



## 专业服务北上之路

中国经济快速发展，对专业服务需求十分殷切，而包括公司秘书在内的香港专业人士正好把握这非常机遇，在这庞大市场分一杯羹。香港专业联盟主席刘炳章与本刊畅谈这发展趋势，以及该组织致力促进中港两地专业人士的资格互认及异地执业，为香港专业界打开北上之路。

**现**职瑞安房地产发展总监的刘炳章，曾任香港测量师学会会长，2000年至2004年任香港立法会(建筑、测量及都市规划界)议员，对香港经济、社会及民生等问题可谓事事关心。目前，更身兼长远房屋策略督导委员会成员及经济发展委员会旗下的专业服务业工作小组召集人，为政府出谋献策，检讨本港房屋及产业政策。

刘炳章出生于广东潮安，现年62年岁，对社会事务充满热忱。谈及本港土地短缺及经济结构过于狭窄，他迅即点出问题症结，在楼价租金高企之下，超过17万人居住在劏房，23万户轮候公屋，而经济结构主要依赖金融、房地产及旅游几大行业，有必要鼓励多元化的行业发展，设法提供更多适合的土地，吸引企业把一些业务或工序回流香港，配合未来的经济发展及社会需要。

刘炳章强调，个人植根于香港，愿意尽力贡献社会。他忆述当年8岁从汕头偷渡来港的情形，还历历在目，在黑夜中驳船到南丫岛，更换新衣服，母亲用烧红了的铁钳烫发，最后成功登陆西环，在当时抵垒政策下成为香港居民。小时家住山边寮屋，生活很不容易，但他在困难中努力以赴，终于学有所成。他说，努力读书改变了命运，并在1971年考进理工学院测量学系，毕业后很快便考获专业测量师资格，成为人生一大转折点。入行后不久，他便积极参与专业团体的活动，于1996及1997年间更出任英国皇家特许测量师学会香港分会会长，及香港测量师学会会长，见证香港回归及过渡期间的变化。

在2000年，刘炳章参选立法会功能组别胜出，成为立法会议员，是人生另一个转折点。从以往集中关注专业界事务，转入立法会的工作，牵涉的议题更为广泛，包括政治、经济、民生、医疗及教育等问题。四年任期间，他形容个人有得有失，而当中发生了两件大事，包括2002年公务员减薪建议，当时政府面对财政赤字，社会有很大声音要求公务员减薪，刘炳章支持政府的建议，认为大家要同舟共济，经济有起有落，公务员没有理由独善其身。不过，他的选民里包括了很多公务员，他的决定令他失去了不少支持。第二件大事是2003年政府推动基本法23条立法，他认为任何国家不可能没有国安法，于是支持政府立法，也成为他2004年竞选连任的致命伤，最终落选。之后，他惹上官非，被控涉嫌贿选，但最终胜诉。

### 香港专业联盟任重道远

多年来的历练，给刘炳章另一种启发，认为不一定要站在议会前线，在背后默默耕耘也可以为社会作出贡献。香港的十大专业团体于2001年共同成立香港专业联盟，身为创办人之一的刘炳章深信，该组织可以推广香港的专业服务，及促进

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我相信香港专业界可以...  
提供很多香港的国际经验  
”

中港两地的交流和合作，发挥沟通和桥梁作用。他指出，根据政府经济资料，专业服务及其他工商服务占本港整体GDP百分之十一，是一个颇大的力量，对经济、民生和社会都有一定影响。

发起组成专业联盟的十个专业团体包括香港会计师公会、香港建筑师学会、香港大律师公会、香港牙医学会、香港工程师学会、香港园境师学会、香港律师会、香港医学学会、香港规划师学会及香港测量师学会。在2010年香港特许秘书公会加入成为第十一个会员团体。目前，11个专业团体辖下已获专业资格的人数超过86,000人，实习生及学生逾41,000人，主要涵盖四大范畴，包括医疗健康、财务、法律及建设等界别。

刘炳章说，香港专业联盟这道旋转门出了很多社会精英，在不同领域工作，为社会作出心出力，其中，包括区议会议员、立法会议员、行政会议成员及政府问责官员，甚至特首梁振英也是专业界的表表者。

他又说，香港专业联盟是对香港社会起着相当作用的一个平台，香港政府也很重视其影响力，每年制定施政报告及财政预算案时都邀请该组织就不同议题提出意见。2003年，内地与香港签署了「内地与香港关于建立更紧密经贸关系的安排」(CEPA)，香港专业联盟便已参与其中，自此每年会向各

### 摘要

- 很多内地企业要走出去投资，亟需香港的专业服务支援，更有效地拓展海外业务
- 香港特许秘书公会是内地经济发展所需的重要范畴之一，尤其在上市要求及公司管治方面有很大贡献
- 广东省推行的先行先试计划，目的在简化执业条款，引入香港专业界到当地去开业。

政策局就CEPA最新发展提建议，以促进中港两地专业资格互认及降低往内地执业的门槛。

在2013年12月，香港专业联盟组团上访北京，与国家发展和改革委员会及商务部主要官员会面，同时，个别专业团体造访了国家卫生及计划生育委员会、住房和城乡建设部、司法部及财政部等不同官员，就社会、民生及经济多方面问题加强沟通和接触。

刘炳章说：「目前，香港专业联盟的重点工作之一是如何抓住上海自由贸易区给香港的机遇和挑战，我们专业界可以做到些什么及找到什么商机。此外，广东省与南沙、前海及横琴等地构成了一个经济金三角，粤港合作框架协议最近谈及会否把这金三角加上香港及澳门，形成另一个自由贸易区，这都是我们专业界关注的。另外，三中全会公布了进一步市场开放、服务贸易自由化及体制改革，我相信香港专业界可以在各方面给予很多意见，及提供很多香港的国际经验。」

他又指出，中国经济过去30多年的高增长模式，主要靠出口及外来投资带动，但出口受世界经济起跌影响，正如目前欧美经济表现强差人意，内地出口受到牵连，外来投资也相应减少。中国经济转型有两个重点，第一是加大内需，鼓励消费，及加快城镇化步伐，提高各方面的消费力。第二是内地企业及资金走出去，不再只是以购买美国债券为主，而是鼓励向外投资，做经济开发，参与开采石油及基建等项目，这两方面的发展会带给香港专业界很多机遇。

「其实，现在很多香港测量师行、建筑师楼及会计师行超过一半收入，来自内地业务。很多内地企业要走出去投资，亟需香港的专业服务支援，更有效地拓展海外业务。此外，香港政府大力推动香港仲裁中心的发展，鼓励国际仲裁服务在香港落地生根，也给专业界很大发展机会。」

针对内地庞大的市场，未来经济转型的需要，香港专业界北上发展大有可为。刘炳章认为，香港特许秘书公会是一个跨法律及财务的专业团体，尤其在上市公司要求及公司管治方面有很大贡献，在内地也做了很多培训工作，是将来内地经济发展所需的重要范畴之一。

对于两地专业互认方面，他指出大家已取得相当程度的成果，目前更重要的问题在于内地执业及开业的资格审查，包括在内地的的工作经验及聘任人手等要求，即使CEPA第十份协议已签定，香港专业界要在内地开业仍是困难重重。现在，广东省推行的先行先试计画，目的在简化执业规条，引入香港专业界到当地去开业，更有效地利用香港的专业人才及国际经验，以帮助内地企业走出去，支援当地

## “ 目前，香港专业联盟的重点工作之一是如何抓住上海自由贸易区给香港的机遇和挑战 ”

工商业的国际化发展，同时增加就业机会，凝聚一个专业社区，加快经济发展。

2013年11月底，特首梁振英率领庞大的香港代表团访问广西，探索广西与东盟国家的贸易活动及其带给港商及香港专业界的商机。刘炳章说，广西及东盟国家的贸易活动频繁，同样是面对专业服务不足的情况，值得香港专业界探索和发展业务。即如当地城镇化发展计画，房屋、铁路及基建等建设，都需要大量的专业人手，确保工程品质和设计水准达标，这将会是香港专业界一展所长的好机会。

除了促进专业发展，香港专业联盟也积极参与社会工作。刘炳章说，2003年「沙士」期间，该组织成立了「沙士」基金，协助受影响的淘大花园业主免费更换渠管，并监察整个设计、招标及施工过程。2008年，香港专业联盟又雪中送暖，为内地雪灾灾民筹款，2013年举办筹款音乐会，给四川地震灾民送上支持。今年，亦促成香港的青年专业组织成立，藉以鼓励青年专业人士参与业务拓展，一起提升专业水准，及投入社会事务，凝聚专业人士的能量。

### 活出丰盛人生

刘炳章逆境自强的成长故事，是「知识改变命运」的写照，凭着坚持不懈的努力和实践，活出丰盛有意义的人生。做事要有所承担，敢于负起责任，是刘炳章处世的大原则。他自谦地说，并不觉得自己有什么成就，但强调待人处事必须以主动正面的态度，决不可怯于承担，逃避责任。

面对着现今地球村经济的挑战，竞争来自任何人及世界任何一个角落，刘炳章鼓励青年人要努力向上，不但要打好学习基础，拥有丰富知识和卓越语文能力，还要在人际关系方面下功夫，才能不落他人之后，为自己和社会打造更美好明天。

高锦坚  
〈记者〉

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# The Alibaba decision: the implications for Hong Kong



David Neville and Joseph Lee, Cadwalader, Wickersham & Taft LLP in association with Joseph PC Lee & Associates, assess the implications of the Stock Exchange of Hong Kong decision to reject the proposal by the Alibaba Group to list in Hong Kong with a 'partnership structure' designed to entrench control of the company with the founder/ senior management group.

Last year Alibaba Group, the holding company for a group of PRC-based Internet e-commerce companies with sales that exceed those of eBay and Amazon combined, announced plans to make an initial public offering of its shares and to list those shares in, most likely, Hong Kong or the US. The company's plans and resulting pressure on the Stock Exchange of Hong Kong to capture this highly-prized listing have forced the Exchange to look at certain of its corporate governance standards for listed companies and assess whether they permit the Exchange to compete effectively with stock exchanges in other major global financial centres – and to engage in some soul-searching as to whether the ability to compete in this regard is even a high priority at this point in time. Alibaba's ultimate choice, and the results of the Exchange's

self-contemplation, will likely have a significant effect not just on Alibaba, but on other Asian companies seeking Hong Kong listings and, increasingly, on non-Asian businesses seeking primary or secondary listings on Hong Kong's stock exchange.

## Hong Kong or the US?

At present, when private companies are rarely shy about speaking publicly of IPO plans, even in the earliest stages of planning, Alibaba's potential IPO has been the source of international media publicity for a long time. The biggest question about the IPO, other than perhaps its timing, has been whether the company would choose to list in the US, historically the biggest market for technology-related public companies, or in Hong Kong, the premier 'overseas' market for PRC businesses.

Since 1992, when Brilliance China Automotive became the first PRC business to list in the US, and 1993, when Tsingtao Brewery issued the first H-shares, companies from Mainland China have confronted the question of which overseas listing venue would be best for them. In the early years, Hong Kong achieved a clear edge, mainly for the two types of reason outlined below.

1. **Valuations.** PRC issuers found that Hong Kong listings tended to generate a greater level of 'buzz' – media coverage, attention from financial analysts and investor interest – than US listings, resulting in higher valuations and enhanced liquidity in both primary and secondary markets, a strong enticement towards Hong Kong. In addition, as a number of PRC



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the result is generally viewed as a statement by the Exchange that not only is a dual voting class structure taboo, but also any structure that has the effect of concentrating power in a manner that diverges from one-share-one-vote shareholder democracy  
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companies have begun to adopt dual listings in Shanghai and Hong Kong, the typically higher domestic valuations may push Hong Kong valuations upward, despite a lack of fungibility between domestic and foreign-owned shares.

2. **Compliance and potential exposure.** Compliance costs, and resources required, may generally be somewhat higher for a PRC business listing in the US than for one listing in Hong Kong. Probably more importantly, most companies (and most market observers) believe that the potential exposure to shareholder claims and securities fraud actions is significantly greater for US-listed than for Hong Kong-listed companies. These views have only been further strengthened over the years as a result of the Sarbanes-Oxley and other reforms in the US.

Other factors, such as the issuer's industry segment, sometimes countered the Hong

Kong edge. Technology companies have long been wary of Hong Kong, believing it to be a 'bricks and mortar' market where investors would not fully understand their businesses or, as a result, properly value them. Only in the past several years has this perception begun to temper.

Alibaba has, through very visible discussions with the Exchange and Hong Kong's Securities and Futures Commission (SFC), brought another factor to the forefront of the listing venue discussion: corporate governance.

#### The dilemma for Hong Kong

While it has long been possible for a company listing in the US to maintain dual classes of common equity – typically, one class having the traditional one vote per share on matters brought to a shareholder vote, with the other class having supervoting rights, thereby entrenching control in a founder or management shareholder group holding collectively a minority of shares – this structure has not been accepted by the Exchange for new listings for many years.

### Highlights

- the Exchange's decision reaffirms its determination to uphold basic corporate governance principles
- some have questioned whether the decision will reduce Hong Kong's ability to compete with stock exchanges in other financial centres
- regulators in Hong Kong play a much greater role in shareholder protection than in the US where shareholder disputes are often settled by the courts

Knowing this, but still remaining interested in a Hong Kong listing, Alibaba's controlling shareholders sought to explore alternatives which might concentrate power in a way that would satisfy the pre-IPO shareholders (led by a senior management group loyal to Alibaba founder Jack Ma, who collectively own approximately 10% of the equity, and by affiliates of Yahoo and Softbank, which own in aggregate approximately 60% of the company) while also passing muster with the Exchange. The proposal by Alibaba has come to be known as a 'partnership structure' under which the founder/ senior management group would be granted, presumably in the company's articles of association, the absolute right to nominate a majority of the members of the company's board of directors, regardless of the group's equity ownership or, therefore, degree of voting control.

By virtue of the partnership structure, the controlling group would at the same time have both a lesser degree of control over Alibaba than with a dual voting class structure (with the concentration of power going only to board elections, not all matters brought before the shareholders) and a greater degree (with power to put into position, through the nomination right, a majority of the board being absolute, rather than merely exaggerated, as with dual voting classes). The partnership structure proposal opened up the proverbial hornet's nest in Hong Kong.

Following months of speculation by the media and a wide variety of financial pundits, the Exchange told Alibaba that it would not accept the listing of the company with the partnership structure in place. Though nominally a limited decision, the result is generally viewed as a statement by the Exchange that not only is a dual voting class structure taboo,

but also any structure that has the effect of concentrating power in a manner that diverges from one-share-one-vote shareholder democracy.

In a memorable blog post on the website of the Exchange's parent company, Charles Li, the CEO of the Exchange, spoke of the 'voices arguing endlessly' in his head, then proceeded to lay out the cross-section of views on what path the Exchange should take, ranging from maintaining its longtime status quo, to taking an innovative stance to empower visionary company founders, to adopting a US-style model in which, as long as the company's public disclosure is accurate and sufficient, investors are left to make their own decisions, to advancing the Exchange's commercial opportunities and the ability of Hong Kong retail investors to invest in Asian companies. Ultimately, Li concluded that the decision made was one specific to the Hong Kong market: 'In the end, we should take responsibility for doing what is right and best for Hong Kong, not just what is safe and easy.'

#### The implications of the Exchange's decision

To the surprise of none, Alibaba announced immediately after the decision that it was ending discussions with the Exchange, and Joe Tsai, the Executive Vice-Chairman of Alibaba, put out a statement openly critical of the Exchange's decision. To the surprise of many, Alibaba also said that while it would focus its efforts on a US listing, it would seek approval there of its partnership structure, rather than moving towards the previously-accepted dual voting class structure.

In the aftermath of the Exchange's decision, commentators were split on whether the seeming inflexibility of the

Exchange would lead it to be unable to compete with more innovative stock exchanges in other financial centres, whether the Exchange was to be applauded for staying true to its previously-expressed principles and acting to protect the interests of company shareholders, or even whether the whole argument was irrelevant because potential investors would never have accepted the novel partnership structure in the Hong Kong market anyway.

It remains unclear just how much, if any, flexibility on corporate governance issues the Exchange will be willing to exhibit in the future, or what effect the Exchange's position will have on its own operations or on Hong Kong's status as a major global financial centre. A number of conclusions, however, may be drawn from the debate to this point.

#### Credit where credit is due

Even if one considers the Exchange's position to be shortsighted, there is a degree of nobility in its decision to follow its longstanding principles of protecting shareholder interests and enforcing its views about proper corporate governance for listed companies. Clearly, the Exchange was focused not just on Alibaba and on bringing that company to Hong Kong, but also on the potential effects of 'opening the floodgates' to other infringements by other issuers of basic principles.

#### The Exchange is not exactly analogous to the US exchanges

The Exchange has historically taken a much more paternalistic approach to vetting and regulating listed companies than have regulators in the US market. This is partially due to conceptual differences – as noted above, US law and regulation focuses principally on adequacy of disclosure,



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**the outcome of Alibaba’s battle with the Exchange and SFC has consequences that will stretch far beyond the borders of Asia as financial globalisation continues**  
 ”

leaving ultimate investment decisions to investors – but also reflects market development, to the extent that there is a long history of shareholder derivative and minority shareholder litigation in the US in which US courts have acted to protect public company shareholders, a litigation history largely absent in Hong Kong. Without these protections for shareholders, Hong Kong regulators clearly have felt, and continue to feel, strong pressure to protect those parties.

#### Issues among the controlling shareholders?

As with any private company, the dynamic and issues among the controlling shareholder groups (the management ‘partners’, plus Yahoo and Softbank) are not fully open to public view. If the three groups, together controlling approximately 70% of Alibaba’s pre-IPO equity, were completely in sync, Alibaba should be relatively free of control issues, as the shareholders would be able to enter into a voting trust or voting agreement, or (assuming a US listing is pursued) amend the memorandum and/ or articles of association to put into place a dual voting class structure, or even exert virtually complete control by acting in concert, without any written agreement.

Relations among the major shareholders were recently, if fleetingly, brought into

the public light as a result of Alibaba’s termination of a variable interest entity, or VIE, structure which had been used to give Alibaba the economic benefits of a business it was prevented from owning directly by PRC regulations. One or more of the Alibaba controlling shareholders was thought to have been both surprised and disturbed by the action. This, and the founder/ senior management push for the partnership structure, even in the context of a US listing, may perhaps indicate that there are issues among the three controlling shareholder groups, effectively freezing the current arrangement in place.

#### It ain’t over ‘til it’s over

The Alibaba situation brings to mind the words, long ago, of that eminent observer of emerging markets, Yogi Berra. While Alibaba announced that it ceased discussions with the Exchange relating to a Hong Kong IPO, the most recent word on the subject is that the company is now planning to avoid a decision on listing venue for some period of time. Would anyone really be shocked if the door was reopened and the Hong Kong option is once again considered? Until a US listing is actually completed, Hong Kong should not be ruled out. Further, even if a US listing does come to pass, it seems likely that Alibaba might wish to position itself (including through its choice of corporate structure) such that a later secondary

listing or subsidiary spin-off in Hong Kong would be a possibility.

#### Global effect

Finally, it is worth noting that, over the last few years, the Exchange has put a substantial amount of time and resources into wooing non-Asian companies to list in Hong Kong, either for their primary listing (Prada), or on a secondary basis (Vale, Glencore, Coach), in order to exploit Asian connections in their businesses or to open up a new pool of capital and investors. All of these companies, including future listers, will be subject to the Exchange’s ultimate policy position on corporate governance. Therefore, the outcome of Alibaba’s battle with the Exchange and SFC has consequences that will stretch far beyond the borders of Asia as financial globalisation continues.

**David Neuville, Partner, Cadwalader, Wickersham & Taft LLP, and Joseph Lee, Principal, Joseph PC Lee & Associates.**

*In Hong Kong the firms operate together as Cadwalader, Wickersham & Taft LLP, in association with Joseph PC Lee & Associates. Copyright: Cadwalader, Wickersham & Taft LLP*

#### What’s your view?

Do you support the Exchange’s decision to reject Alibaba’s ‘partnership structure’ proposal? Join the debate by emailing the CSj editor at: [kieran@ninehillsmedia.com](mailto:kieran@ninehillsmedia.com); or by posting your views on the HKICS Facebook Fan Page at [www.facebook.com/HKICS](http://www.facebook.com/HKICS), or at the HKICS Twitter feed: [www.twitter.com/HKICS](http://www.twitter.com/HKICS).



# Does more disclosure mean better governance?

The Institute's Corporate Governance Paper Competition is held annually to raise awareness of corporate governance issues among local undergraduates. This year's competition was held on the theme 'Corporate governance means more reports and disclosure?' The second part of the winning paper, published here, finds that more disclosure does not necessarily mean better corporate governance.

The first part of this article, published in last month's journal, explored the relationship between corporate governance and disclosure. In this second part, we move on to the main argument of the study – that disclosure and reports are necessary for, but not by themselves enough for, good corporate governance.

While good reporting and disclosure practices are certainly a part of good corporate governance, more disclosure should not be regarded as a panacea for all problems. For one thing, the presence of more information in a market does not always result in a more accurate perception of market value. This might be because of the complexity of transactions involved or because of an over-reliance on third-party credit ratings.

### Imperfect information

#### 1. Complexity of transactions

In an article in the *University of Illinois Law Review* ("Rethinking the disclosure paradigm in a world of complexity", vol 2004), Steven Schwarcz highlighted the dilemma that some structured transactions are so complex that disclosure to investors of the company originating the transaction is necessarily imperfect – it either oversimplifies the transaction, or provides detail and sophistication beyond the level of comprehension of retail or even most institutional investors and financial analysts.

One recent example is the subprime mortgage crisis where disclosure regarding mortgage-backed securities (MBS), collateralised debt obligations (CDO) and other asset-backed securities (ABS) generally complied with the respective laws and regulations, but the complexity of the transactions seems to

have made the disclosure inadequate. Many investors still made the wrong decisions. These facts apparently go against the predominant view that full and fair disclosure of all relevant aspects of the securities enables investors to be protected as they can evaluate the merits of an investment and fend for themselves.

As many transactions have become too complex to be understood by ordinary investors, there has been an increased reliance on expert analysts. Although the costs incurred in hiring experts are usually kept below the benefits generated, a cost-benefit balance may be out of equilibrium when a company enters into more complicated transactions.

#### 2. Over-reliance on rating agencies

Over-reliance on rating agencies such as Standard & Poor's and Moody's might also offset the effect of disclosure. Instead of flipping through pages of a prospectus, investors sometimes take a short-cut and rely on the rating given by the rating agencies. Investment fund managers are also inclined to follow the crowd because a fund manager who suspects a stock is overvalued but does not act on his analysis and simply follows the crowd will rarely be blamed for a poor investment

decision when the stock ultimately crashes since his peers made the same mistake. This kind of collective thinking together with over-reliance on credit ratings diminishes the effectiveness of disclosure.

#### Too much disclosure?

Disclosure can be a double-edged sword. It is true that, generally, when more information is disclosed stakeholders are better able to monitor the management thereby improving the company's value. Too much disclosure, however, can reduce the company's value and lead to other side effects.

#### Increased accounting costs

In the wake of the subprime mortgage crisis and subsequent financial scandals, more disclosure requirements have been imposed on corporations. Catering for additional accounting and audit requirements, firms have to incur extra costs in preparing their financial statements and audit reports.

The Sarbanes-Oxley Act of 2002 was enacted in the US in response to corporate and accounting scandals such as Enron. According to section 302 of the Act, the signing officer is responsible

### Highlights

- better transparency is clearly a good thing but corporate governance is about much more than disclosure
- a transparent company is not necessarily practising good corporate governance – you also need to look at its record on the equitable treatment of its shareholders, responsiveness to stakeholder concerns, the competency of its board and directors' behaviour
- there are downsides to excessive disclosure

for certifying that the report does not include any untrue statements or material omission or be considered misleading, and external auditors need to issue an opinion on whether the management maintained effective control over financial reporting (see [www.soxlaw.com/s302.htm](http://www.soxlaw.com/s302.htm)).

Hong Kong has its own accounting standards called Hong Kong Financial Reporting Standards (HKFRS) issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) and based on IFRS. It should also be noted that HKICPA issued 'HKFRS for Private Entities' as a financial reporting option for private entities on 30 April 2010 in order to ease the reporting burden of private entities by relieving them of the requirement to apply full HKFRS.

#### Leaking information to competitors

A company's management can be reluctant to disclose certain information for fear of providing rivals with too much knowledge and statistics and threatening its competitive edge. Some information, where it is not 'inside information' as defined by the Securities and Futures Ordinance, may need to be kept for internal use instead of being made public.

#### Increased managerial compensation

Benjamin Hermalin and Michael Weisbach have shown (see *'Information disclosure and corporate governance'*, The Journal of Finance, Vol. LXVII, No.1, February 2012) that increased disclosure tends to bring about greater equilibrium in managerial compensation. CEO compensation is expected to increase due to an 'exogenously imposed increase in the quantity or quality of information that needs to be disclosed about a firm and its managers'. It is also argued that even in the absence of any bargaining power,

managerial compensation will rise as a compensating differential because better monitoring tends to adversely affect managers.

#### Value-reducing activities

When more disclosure and explanations are required to be made to shareholders, managers might lose the incentive to set ambitious goals to create more value to the company. Increased monitoring measures may induce managers to engage in value-reducing activities, so as to make them appear more competent.

#### Transparency means good corporate governance?

This study has argued the benefits of increased transparency, but good corporate governance is about much more than disclosure. A transparent company, for example, is not necessarily practising good corporate governance – to determine that you would need to look at its record in a number of key areas.

#### Rights and equitable treatment of shareholders

Emphasis is put on equitable treatment of all shareholders, including minority and foreign shareholders, in the corporate governance framework so that they can seek redress in case of a violation of their rights. The OECD corporate governance principles provide some guidance in protecting shareholders:

- within any series of a class, all shareholders should be treated equally in voting rights
- insider dealing and abusive trading is not permitted, and
- members of the board should

disclose to the board any conflict of interest they may have in a transaction.

#### Interests of other stakeholders

If we follow the traditional shareholder approach, only shareholders' interests should be emphasised because the shareholders' claim is consistent with the objectives of the company to generate wealth, and they are at greatest risk. A broader stakeholder approach, however, considers that the rights of stakeholders who are not shareholders, such as customers, employees, creditors, suppliers, local communities, etc, should be respected and taken into consideration in making business decisions.

#### Integrity starts at the top

The importance of integrity and ethical behaviour in business should never be underestimated. Mervyn King believes that 'Good corporate governance is about intellectual honesty and not just sticking to rules and regulations' (see *King Report on Governance for South Africa*, 2009). As many commentators have pointed out, the most important criterion is that senior executives need to set the tone at the top. Firstly, an ethical leader is capable of shaping the organisational norms in a positive direction and his/ her behaviour is the benchmark of what standard of business ethics the members of the company should attain. Secondly, people tend to equate the image of the executives with that of the company. Therefore, ethical messages conveyed by the managerial team affect the company's brand directly.

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For the long-term success of the company, it seems that the interests of other stakeholders and shareholders ought to be compatible with each other. The idea is that maximising customers' satisfaction and improving employees' welfare should have a positive influence on achieving the corporation's governing objectives and reinforcing shareholders' interests. Good corporate governance is indeed, as Dr Sumanjeet points out in his book *Balancing the Interests of Shareholders and Stakeholders through Corporate Governance*, the 'reconciliation of otherwise diverging interests'.

#### Responsibilities of the board of directors

There is a division of power between directors and shareholders, dictated by the companies' memorandum and articles of association as well as the Companies Ordinance. Hong Kong's Corporate Governance Code (the Code) published by the Stock Exchange of Hong Kong also requires a clear division of the responsibilities of the management of the board and the daily management of the business. In Hong Kong, boards of

directors comprise executive and non-executive directors, including independent non-executive directors (NEDs). It is required that there are at least three independent NEDs present in the board; they bear the same fiduciary duties as executive directors.

The Code stipulates that the company should be led by a board which assumes responsibility for leadership and control of the company. It is important for the board to make decisions objectively in the interest of the company. The board should also review the contributions of the directors and ensure that they perform their duties to the company to attain effective corporate governance.

Directors' responsibilities include:

- acting in good faith and honesty and exercising independent judgement with due care and caution with regard to the interests of stakeholders
- exercising power in accordance with laws, agreed terms, and articles of association, and

- avoiding conflicts of interests.

#### Conclusion

Good disclosure practices are integral constituents of good corporate governance. The recent global financial crisis and various scandals have strengthened the need to enhance corporate transparency. Yet, owing to the inherent limitations and insufficiencies of disclosure, more disclosure does not necessarily mean better corporate governance. Excessive disclosure might even create an adverse impact on a company's competitive advantage and add to its costs. In order to achieve better corporate governance, other factors in addition to appropriate disclosure mechanisms are vital – including protecting shareholder rights; balancing the interests of all stakeholders; ensuring the company has a competent board; and ensuring directors behave ethically.

#### Tommy Lau

*Undergraduate, Bachelor of Business Administration and Law, University of Hong Kong*

## Seminars: November – December 2013

### 7 November 2013

Still room for improvement in the proposed Hong Kong corporate insolvency law reform?



Roger LC Leung FCIS FCS, LLM, MBA, FCMA, FCPA, FHKIoD, MHKIHRM, INED of Casablanca Group Ltd (seminar chair), presenting souvenirs to the speakers: Stephen Liu, Head of Ernst & Young's Restructuring & Insolvency practice and Sammy Koo, Managing Director of Ernst & Young's Restructuring & Insolvency practice.

### 8 November 2013

Communications to board and stakeholders: an effective approach for company secretaries



Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd (seminar chair), presenting a souvenir to the speaker, Jeffrey Markley, Partner, Simitri Group International.

### 12 November 2013

Companies Ordinance updates (amendments effective 2014). Will the changes increase companies' operational risk exposure? What are the solutions?



Susan Lo FCIS FCS(PE), Director – Corporate Services, Tricor Services Ltd (seminar chair), presenting souvenirs to the speakers (from left to right): Matt Emsley, Partner, Herbert Smith Freehills; Mark Spadaccini, Managing Director, DUAL Asia; and Ivan Kuan, Executive Director, Willis Hong Kong Ltd.

### 18 November 2013

Directors' duties under Cayman law



Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Past President of HKICS (seminar chair), presenting a souvenir to the speaker, Richard Spooner, Of Counsel, Maples and Calder.

### 21 November 2013

Potential compliance risk and ways to manage it – what company secretaries should know



Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd (seminar chair), presenting a souvenir to the speaker, Angus Young, Assistant Professor, Hang Seng Management College and Adjunct Professor, Southwest University of Political Science & Law; Hong Kong Representative, GRC Institute.

### 3 December 2013

Financial modeling for beginners



Ernest Lee FCIS FCS, Partner, Professional Practice Department, Ernst & Young (seminar chair), presenting a souvenir to the speaker, Raymond Yuen, CFA, FCPA, MHKSI.

14 November 2013

### Corporate governance developments and issues



Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd (seminar chair), presenting a souvenir to the speaker, Matt Emsley, Partner, Herbert Smith Freehills.

4 December 2013

### Common employment disputes



Lily Chiong FCIS FCS, Associate Director, Corporate Secretarial Division, KCS Hong Kong Ltd (seminar chair), presenting a souvenir to the speaker, Samuel Li, Solicitor & Notary Public, Samuel Li & Co.

## The Essential Company Secretary Forum

The Institute organised a forum on *The Essential Company Secretary* on 25 November 2013. The HKICS published a revised edition of this one-stop guide to the essential responsibilities and duties of company secretaries in October 2013. This latest revision brings the guide up to date, in particular giving greater emphasis to the higher standards of professionalism and ethics expected of company secretaries in today's business environment.

As one participant at the forum pointed out, the guide has become effectively a professional code of conduct for company secretaries. Compliance with *The Essential Company Secretary* is required of all members of the HKICS for both private and listed companies. The Institute deems the guide to be a description of the minimum standards of professional and ethical conduct for its members that are applicable across the board.

Participants found the forum a very useful and informative event, highlighting the key themes of the revised edition of *The*

*Essential Company Secretary*, such as the higher standards of professionalism and ethics mentioned above and the higher legal liabilities company secretaries are exposed to in the current business environment. The panel of experts (see below) shared their perspectives on these themes and shared their experience of how the company secretarial role has been evolving over their working lives. Speakers at this event were:

- April Chan FCIS FCS(PE), Past President, HKICS; Company Secretary, CLP Holdings Ltd
- Edith Shih FCIS FCS(PE), President, HKICS; Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd
- Mike Scales FCIS FCS, Corporate Governance Consultant, Noble Group Ltd (Singapore), and
- (Moderator) Mohan Datwani FCIS FCS, LLB LLM, MBA (Iowa), Director, Technical and Research, HKICS.



## 香港特许秘书公会H股高管研修班在京举行 交易管控与信息披露成关注焦点

时至岁末，又到一年中上市公司准备年度财务审计和业绩报告的时候。围绕这一主题，同时针对A、H股强化内幕信息披露与公司董事及高管责任的新监管要求，为满足两地上市公司董事及高管勤勉尽职、谨慎决策的需要，香港特许秘书公会于2013年11月20-22日在北京举行了2013年H股公司高级管理人员研修班暨第三十一期联席成员强化持续专业发展(ECPD)讲座。

据悉，近200名来自H股、A+H股、红筹股公司高管和相关专业人士参加了本次研修班，担任本次研修班讲师的包括来自财政部、中国证监会的领导，以及知名律师事务所、会计师事务所和投行的专业人士。

香港特许秘书公会理事兼专业发展委员会副主席高伟博士首先回顾了公会近期的主要工作，并在致辞中说：“无论是在国际还是在国内，监管者和公司董事会均日益重视良好公司治理的作用，赋予董秘越来越重要的公司治理职责。一方面要呼吁监管者和董事会给予董秘更大的支持，另一方面，董秘群体需不断提升自身专业素质，实现专业化发展，成为真正的专业人才。”

而在上述背景与目标之下，本次研修班探讨的议题也设置的相当广泛与务实，包括内幕交易防控及上市公司监管重点工作，年度财务审计与业绩报告准备，须予公布交易、关联交易及信息披露，员工股份激励计划在中国的实施与管理技巧等。其中，作为监管机构的监管重点，有关上市公司各种交易的管控和信息披露的话题成为此次研修班成员关注的焦点之一。

中国证监会代表在演讲中详解了监管部门对上市公司内幕交易的防控。该讲者指出，当前上市公司内幕交易具有交易方式多样，操作手段隐蔽，信息多层传



递和向金融衍生品发展等多重特征。而为防控内幕交易，监管部门也频出“组合拳”。该讲者向研修班成员们详细解说了当前针对内幕交易而出台的各项法律法规以及相关的防控机制建设，如内幕信息知情人登记制度、股价异动核查与并购审核等。

对于信息披露，该讲者也指出了当前上市公司操作中存在的问题。譬如信息披露有效性不足，一方面披露内容公式化，机构投资者感觉“不解渴”；另一方面，部分用语专业艰涩，中小投资者难以理解。此外，上市公司主动披露意识也不强。

中国财政部代表在演讲中简要介绍了2012年度中国上市公司实施企业内部控制基本规范情况，该讲者指出，内控规范体系总体运行平稳，执行有效，全面提升了企业管理水平和风险防范能力，对提高财务信息披露质量发挥了重要作用，但是总体企业内控水平仍然偏低，仍需持续提升。下一步财政部将进一步扩大实施范围，推动中国所有上市公司和国有大中型企业实施内控规范体系，现正在探讨中小板、创业板企业的实施；进一步完善内控规范体系，制定各行业操作指南，特别是风险较高的金融行业，将加快其内控体系建设；加强对企业的政策指导和监督检查，针对实施

过程中的问题，发布问题解释；针对内控人才匮乏，专业机构水平参差不齐的情况，重点扶持和培育一批本土内控专业机构和专业人才；加强企业内控的监督检查，鼓励有条件的地区成立地区企业内控协会，发挥行业自律作用。

该讲者指出，公会和财政部一直保持良好沟通和合作，希望继续加强双方合作，同时，也希望公会在做专业培训时加强对内控规范体系方面的宣传和培训，共同推动中国上市公司的公司治理和内控水平。

南方航空股份有限公司董秘谢兵分享了南航的年报准备经验。南航是一家三地上市公司，其三地年报的准备遵循时间从紧、范围从严，兼顾重点与求同存异的原则。在实施过程中实现四化：工作制度化的原则。在实施过程中实现四化：工作制度化，制度流程化，流程表单化，表单集成化。对于关联交易，谢兵认为，日常管理是基础，南航设有关联交易联席会制度；不要怕麻烦，就怕隐瞒，有效沟通很重要；充分披露是保障，要从严从多，从细披露。

在随后围绕“各种交易管控和信息披露技巧与经验分享”话题进行的小组讨论中，有小组代表认为，首先是公允性，第二是真实性，第三是保密性，第四是事先建立起违规的非常严格的惩罚制



## Seminar review: ECPD seminars in Beijing

度。另外，充分的透明化的信息披露，也有利于市场消化利空信息。

研修班成员亦坦承，关联交易的管控问题是一个难点，特别是下属公司的关联交易很难控制。另外就是关于合规与效率的关系问题，首先是要合规，其次才讲效率，当然合规以后尽可能提高效率。另有高管补充说，要充分享用上市规则带来的一些便利，比如说：能放到持续性关联交易取得上限的尽量使其取得上限，使得公司有更好的便利。

而面对即将到来的年度财务审计和业绩报告工作，在多位讲师提供专业意见的同时，研修班成员也就“如何有效地统筹和协调公司年度审计与年报工作，实务中遇到的具体问题及其解决办法”的话题进行了分组讨论。

研修班部分成员讨论认为，一是一定要制定一个时间表，建立一个详细的流程，在什么时间完成什么事情；二是要争取到领导对此项工作的重视，一定要事先沟通，持续对领导进行培训，并向领导说明利害；三是董秘办掌握“绩效扣分”的权力；四是与中介机构审计师、会计师及公司财务部的协调工作，董秘办在进行相关协调时可强势一些，实行问责制。另外，也建议上市公司团结起来，就工作中遇到的许多实际操作问题，如果能够简化且不影响股东利益的，共同与香港联交所和证监会进行沟通，争取能根据上市公司的需要改变一些规则。

研修班成员普遍对此次讲座及公会所提供的相关服务给予了高度评价，并对公会在持续提升董秘及相关高管群体的专业素养、有效履职及搭建两地董秘及监管机构的交流平台方面提出了更高期望。

证券日报 王杨

The Institute held the 31st Affiliated Persons (AP) ECPD seminars in Beijing from 20 to 22 November 2013 on the theme 'Annual Financial Audit and Performance Report'. The attendance of the seminars reached a record high of over 200 participants, including 42 from A+H-share companies; 41 from H-share companies; 24 from red-chip companies; 25 from non-listed companies; and seven from A-share companies.

Two officials from the Ministry of Finance of the People's Republic of China (MoF) and China Securities Regulatory Commission (CSRC) spoke on the topics 'Overview of the Implementation of Enterprise Internal Control Norms in 2012' and 'Prevention and Control of Insider Dealing and the Focus of Listed Companies Supervision and Administration'. They and the other eight speakers also shared their views and experience on related topics with the attendees.

During the group discussion, members from six teams exchanged their views and shared experience on the issues regarding the annual report and information disclosures with much discussion. The participants greatly appreciated the Institute's work in arranging high-quality seminars and in addition providing a valuable platform for interaction and communication. They assured the Institute their support in its professional development work in Mainland China. One valuable suggestion was that the Institute should increase the number of seminars relating to directors and supervisors, and to include more practical case studies.

A dinner reception was held after the seminars on 20 November. The Institute

would like to express its sincere thanks to the 10 speakers for their informative and inspiring presentations, and the event co-organiser and sponsors for supporting and sponsoring the seminars and the dinner.

*More information on the Institute's ECPD seminars is available on the HKICS website: [www.hkics.org.hk](http://www.hkics.org.hk).*

### Speakers' organisations

Ministry of Finance of the People's Republic of China

China Securities Regulatory Commission (CSRC)

Latham & Watkins LLP

SHINEWING CPA Ltd

Credit Suisse Founder Securities Ltd

Equity Financial Press Ltd

Herbert Smith Freehills LLP

PricewaterhouseCoopers Consultants (Shenzhen) Ltd

Computershare Hong Kong Investor Services Ltd

China Southern Airlines Co, Ltd

### Co-organiser

SHINEWING CPA Ltd

### Sponsors

Equity Financial Press Ltd

Computershare Hong Kong Investor Services Ltd

## New Graduates

Congratulations to the following new Graduates:

Chan Wing Chung  
 Cheok Si Wa  
 Cheung Kin Man  
 Ku, Lawrence James  
 Kwok Kam Tim  
 Lai Yuen Ting  
 Lam Yuen Yan  
 Law, Athene  
 Ma Lap Kei  
 Ng Sum Long, Sharon  
 Ng Wai Yin, Agnes  
 Ng Yee Ping

## 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
Tsang Tsz Ying, Fion ACIS ACS	New Times Energy Corporation Ltd (stock code: 166)	3 November 2013
Yip Wang, Zodia ACIS ACS	Chinese Food and Beverage Group Ltd (stock code: 8272)	8 November 2013
Mui Ngar, May ACIS ACS	Qin Jia Yuan Media Services Company Ltd (stock code: 2366)	11 November 2013
Tang Lo Nar ACIS ACS	Water Oasis Group Ltd (stock code: 1161)	12 November 2013
Kwok Siu Man FCIS FCS	VXL Capital Ltd (stock code: 727)	13 November 2013
Mok Ming Wai FCIS FCS	Midas Holdings Ltd (stock code: 1021)	14 November 2013
	Greatview Aseptic Packaging Company Ltd (stock code: 468)	27 November 2013

## 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 Chan or Cherry Chan at the Membership section at 2881 6177 or member@hkics.org.hk.*

## ECPD

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### 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.

## Annual subscription 2013/ 2014 – final reminder

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Members and Graduates are reminded to settle their annual subscription for the financial year 2013/ 2014. Members should note:

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). For details of the card benefits and application form, please refer to the Institute's website.
2. Failure to pay the subscription on or before **31 January 2014** may result in removal from the membership register. Once membership has been removed, ex-members are required to apply for re-election and settle the outstanding subscription fees plus the re-election fee if they would like to reinstate their membership.
3. Please update your latest employment information by completing the 'Personal Data Update Form' and returning it to the Institute together with the membership renewal notice and cheque for payment of subscription (if paying by cheque) by using the return envelope.

Members and Graduates who have not received the Membership Renewal Notice for the financial year 2013/ 2014, please contact the Membership section at 2881 6177 or member@hkics.org.hk.

## Membership activities

### Members' networking – visit to Hong Kong Global Geopark, Sai Kung Volcanic Rock Region

A visit to the Hong Kong Geopark situated in Sai Kung Volcanic Rock Region was held on 23 November 2013 with 30 attendees. Led by qualified Geopark guides, participants enjoyed the extraordinary landscape and views in the area.

Participants found this visit inspiring. Throughout the visit, they not only enhanced their geological knowledge but also realised the importance of environmental conservation and sustainability. In addition to the informative visit, participants enjoyed a delicious seafood lunch.

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



*Group photo at Yim Tin Chai*



*Group photo at Pak Lap Wan*



*Professional guide explaining the different rock structures*



*Extraordinary landscape and view of the region*



### Zhuhai one-day study tour

The Institute organised a one-day study tour to Zhuhai on 29 November 2013 with 20 participants. The group met with senior government officials at the Zhuhai Municipal Administration for Industry and Commerce (ZMAIC) who explained the latest regulatory developments to the group.

The group also visited the new landmark of Zhuhai – the wind farm project developed by China Shenhua. Vice-General Manager of China Shenhua, Li Dongming, provided a briefing on the project's investment and infrastructure. Members treasured this opportunity to learn about the project details and how it contributes to Zhuhai's sustainable development. Apart from the corporate visit, the group also enjoyed the tasty local cuisine and cultural sightseeing during the tour.

*More photos taken on the study tour are available at the gallery section of the Institute's website.*



*Group photo at the famous Zhuhai Fishing Girl Statue*



*Visiting the Zhuhai Municipal Administration for Industry and Commerce*



*At the wind farm*



## HKICS President visits Beijing

HKICS President Edith Shih FCIS FCS; Membership Committee Member Stella Lo; and Chief Representative of the Beijing Representative Office (BRO) Kenneth Jiang, joined the Hong Kong Coalition of Professional Services (HKCPS) visit to Beijing on 16 and 17 December 2013, and met with officials from the National People's Congress; the Ministry of Commerce; the Hong Kong and Macau Affairs Office of the State Council; the All-China Youth Federation; and the Hong Kong Special Administrative Region Beijing Office.

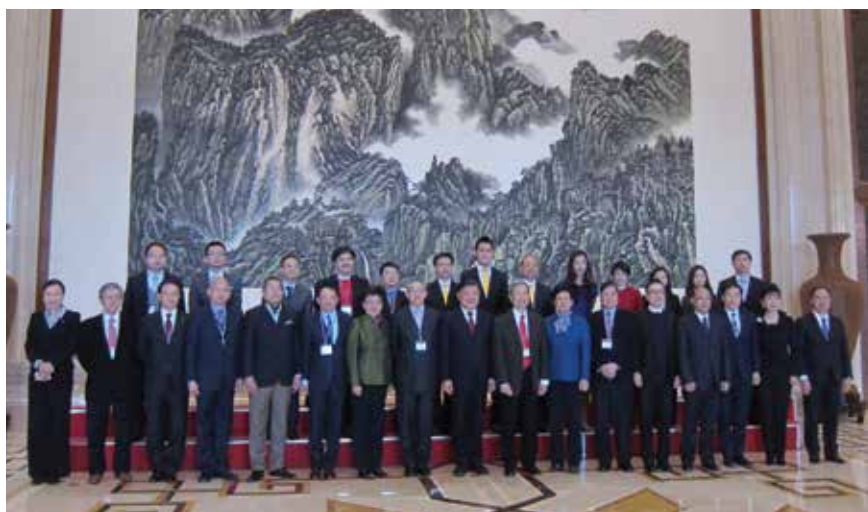
During the visit, Ms Shih made four appeals on behalf of the Institute, calling on the Mainland authorities to:

1. implement a professional qualifying scheme for board secretaries to meet the increasingly demanding corporate governance requirements
2. accept the Institute's qualification as an eligible qualification for board secretaries of Mainland listed companies
3. support the lobbying of the WTO regarding the proposal for the recognition of Corporate Governance, Compliance and Secretarial Advisory Services (CGCSAS) in the WTO's Services Sectoral Classification List, and
4. introduce a 'company secretary' system similar to that implemented recently in Zhuhai, and to explore and

strengthen the role and function of the company secretary position in corporations.

Mr Chen Zhu, Vice-Chairman of the Standing Committee of the National People's Congress, showed great support to the proposal regarding the professionalisation of board secretaries. He indicated that non-profit organisations and professional organisations such as the Institute will play a key role in the establishment and improvement of the self-regulation system in Mainland's capital market, and in the process of deepening the reform and deregulation of the country.

Ms Shih also took the opportunity to visit the China Association for Public Companies (CAPCO) on 17 December and met with CAPCO officials including Yang Lin, Deputy Chief Supervisor of the CAPCO Supervisory Board. Dr Gao Wei, Council Member and Vice-Chairman of the Professional Development Committee; Kenneth Jiang; and BRO Senior Manager Carrie Wang, joined the meeting. The two parties exchanged the latest development updates, reviewed the previous communications, discussed possible further cooperation in 2014 and agreed to strengthen cooperation in terms of communication between listed companies in Hong Kong and the Mainland. They also exchanged views on jointly promoting the amendment of the *Prerequisite Clauses for the Articles of Association of Companies Seeking a Listing Outside the PRC* so as to contribute to the amendment of the new Securities Law of Mainland China.



HKCPS Delegation group photo with Chen Zhu, Vice-Chairman, National People's Congress



Edith Shih presenting a souvenir to Yang Lin, Deputy Chief Supervisor of CAPCO Supervisory Committee



*From left to right: Stella Lo; Chen Zhu, Vice-Chairman, National People's Congress; Edith Shih*



*Meeting with Chen Zhu, Vice-Chairman, National People's Congress*



*Edith Shih with representatives of CAPCO*



*At the meeting*

## Congratulations!

The Institute would like to congratulate Dr Anthony Francis Neoh FCIS FCS, who has been awarded an honorary doctorate degree of Social Sciences by The Open University of Hong Kong (OUHK) in recognition of his tremendous support for the OUHK's legal translation programmes and seminars.

Dr Neoh is a Senior Counsel and former Chief Adviser to the China Securities Regulatory Commission. He is active in public service and has contributed immensely to the construction and regulation of the capital markets in both Hong Kong and Mainland China.

Dr Neoh's involvement in the education field is also impressive. He holds many adjunct, honorary and visiting professorial appointments in many prestigious universities around the world, including Peking University, Tsinghua University and the School of Law at Harvard University, USA.

## Branding Workshop for the secretariat

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The secretariat held a 'Branding Workshop' on 25 November 2013. This workshop was conducted by Carolyn Butt, Founder of EGNITE.

During the workshop, Carolyn introduced key branding principles and objectives, as well as the concept of brand value. Secretariat staff enjoyed this interactive and interesting workshop. We hope our colleagues will be able to apply the knowledge on branding to improve the service delivery and help build the brand of the Institute.

Our sincere thanks and appreciation go to Carolyn.



*At the Branding Workshop*



## Christmas party

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The secretariat held a Christmas party on 5 December 2013. Secretariat and Council members enjoyed a great evening with interactive games, great food and wine. Thanks to all Council members for their prize sponsorship and participation.



## Annual Dinner 2014

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The Institute's Annual Dinner 2014 was held on 7 January 2014 at the JW Marriot Hong Kong. Sir CK Chow, Chairman, Hong Kong Exchanges and Clearing Ltd, was the guest of honour at the event. Details with photos will be reported in the next issue of CSj.



## IQS examination timetable (June 2014)

The June 2014 examination timetable is set out below.

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

Enrolment period for the June 2014 examination is from 1 to 31 March 2014.

### IQS examinations: new Companies Ordinance

The new Companies Ordinance (CO) will be effective 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 can refer to the HKICS homepage which is hyperlinked to the Companies Registry website for the latest CO updates.

### Payment reminder

#### Studentship renewal

Students whose studentship expired in November 2013 are reminded to settle the renewal payment by 22 January 2014.

#### Exemption fees

Students whose exemption is approved with a confirmation letter dated 1 November 2013 are reminded to settle the exemption fee by 31 January 2014.

### Upcoming activities

#### International Qualifying Scheme (IQS) information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute will be invited to share valuable experience on the career prospects of qualified Chartered Secretaries.

Members and students are encouraged to recommend this information session to friends and colleagues who might be interested in learning more about the IQS.

For details, please contact the Education and Examinations section at 2881 6177.

<b>Date</b>	Wednesday, 22 January 2014
<b>Time</b>	7 p.m. – 8.30 p.m.
<b>Venue</b>	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
<b>Enrolment deadline</b>	Wednesday, 8 January 2014 [on a first-come-first-served basis. Participants will receive an email confirmation.]

## The new Companies Ordinance: new briefing materials

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The Companies Registry has added new briefing materials to the section of its website devoted to the new Companies Ordinance (CO). The Companies Registry set up a dedicated thematic section on the new CO on its website last month. The briefing materials include:

- briefing notes on each part of the new CO and its 12 pieces of subsidiary legislation
- a table of origin and a table of destination cross-referencing provisions of the new CO and the existing CO
- highlights of the key changes, and
- frequently asked questions.

*The new Companies Ordinance (Cap 622) will come into operation on 3 March 2014. The new briefing materials are available on the Companies Registry website ([www.cr.gov.hk](http://www.cr.gov.hk)), or via a direct link from the HKICS website ([www.hkics.org.hk](http://www.hkics.org.hk)).*

## SFC to step up oversight of corporate conduct

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The Securities and Futures Commission (SFC) will take a broader and more proactive approach in overseeing corporate conduct of listed companies, the SFC's Chairman Carlson Tong announced at a function held by the Chamber of Hong Kong Listed Companies. 'This will mean more surveillance, analysis and enforcement work,' Mr Tong told his audience. He added that this approach stems from market concerns over cases of serious corporate misconduct in listed companies and how it can be detected at an early stage to reduce damage to the market and the investing public. To this end, the SFC has set up a dedicated corporate regulation team to review company announcements, circulars and reports; conduct periodic in-depth reviews of each company; and adopt risk-based criteria to focus on particular companies, including those with a history of losses or frequent restructuring.

*Mr Tong's speech is available on the SFC website: [www.sfc.hk](http://www.sfc.hk).*

## Exchange issues guides to acceptable jurisdictions

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The Stock Exchange of Hong Kong has published 20 country guides for the jurisdictions deemed to be 'acceptable overseas jurisdictions'. In addition to Hong Kong, the PRC, the Cayman Islands and Bermuda, the Exchange has accepted 21 jurisdictions as a company's place of incorporation. These 'acceptable jurisdictions' are: Australia, Brazil, British Virgin Islands, Canada (Alberta), Canada (Ontario), Canada (British Columbia), Cyprus, France, Germany, Guernsey, Isle of Man, Italy, Japan, Jersey, Korea, Labuan, Luxembourg, Singapore, England and Wales, USA (California), and USA (Delaware). The current publication of country guides excludes Canada (Ontario) – this will be published at a later date, as appropriate, when another applicant incorporated in Ontario applies for a listing on the Exchange.

The country guides set out, among other things, comprehensive and user-friendly guidance on how companies incorporated in the relevant jurisdiction can meet the requirement for equivalent shareholder protection standards in Hong Kong's listing rules. The Exchange will in the future update a country guide when it is informed of a material change in the laws, rules or regulations referred to the country guide by a new applicant or a listed company incorporated in the relevant acceptable jurisdiction. New applicants and listed companies incorporated in an acceptable jurisdiction are obliged at the earliest opportunity to inform the Exchange of such material changes.

*The 20 country guides are available on the Exchange's website: [www.hkex.com.hk](http://www.hkex.com.hk).*

## Tiger Asia admits insider dealing

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The Court of First Instance today ordered Tiger Asia Management LLC and two of its senior officers to pay over HK\$45 million to investors affected by their insider dealing. The court orders followed admissions by the Tiger Asia senior officers that they contravened Hong Kong's laws prohibiting insider dealing.

*More information is available on the SFC website: [www.sfc.hk](http://www.sfc.hk).*



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## Members' Networking Event

莊子 - 處世 - 公司秘書 (Zhuangzi - Social Skills - Company Secretary)

所謂中式道德觀念是指中國數千年以來的道德倫理觀念。中國道德倫理之基礎博大精深。繼早前的儒家思想大獲好評，現正介紹莊子處世哲學。

莊子的學說如何應用於公司秘書的工作上？是次 Members' Networking 邀得李國輝博士 (Dr Davy Lee) 在一個配有美酒及美點的輕鬆環境下，為大家分享「莊子 - 處世 - 公司秘書」，誠邀大家踴躍參與！

### 詳情

日期 : 2014年1月23日(星期四)  
時間 : 晚上6時30分至8時  
地點 : 中環雪廠街16號西洋會所 (Club Lusitano) 24樓  
費用 : 港幣100元  
(配有美酒及小食)  
語言 : 粵語

強制持續專業發展學時: TBC  
MCPD Point: TBC

### 資深會士專享優惠

- 可於 2013 年 12 月 30 日前優先報名留位

### 嘉賓講者

李國輝博士

Dr Davy Lee FCIS FCS(PE)

- 公會前任會長
- 力寶集團公司秘書
- 中國人文學科文學士(一級榮譽)
- 投資管理碩士
- 工商管理博士

### 程序

6:30 - 6:45 會員登記及交流

6:45 - 6:50 歡迎辭

6:50 - 7:10 李博士就「莊子 - 處世 - 公司秘書」的分享:

(一) 了解莊子的處世哲學

(二) 如何將莊子的學說應用於公司秘書的工作上

(三) 擴闊大家對中國人文通識之視野

(四) 增加和豐富與人交談的話題



7:10 - 7:20 問答時間

7:20 - 7:50 歡樂時光及會員交流

7:50 - 8:00 結語



若需更多資訊，請登入公會網址：[www.hkics.org.hk](http://www.hkics.org.hk) 或致電2881 6177聯絡秘書處。



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