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July 2014

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



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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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Membership statistics update

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

Students: 3,198
Graduates: 460
Associates: 4,861
Fellows: 510

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July 2014

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本文是香港特许秘书公会在南宁召开的「第32期联席成员讲座」的内容,当中包括关联交易规则的简化、内幕信息管理的性质、修改H股相关的《特别规定》、董事会秘书的专业化发展等。

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A global profession

I promised in last month's President's Message that I would update you on the meeting of the Institute of Chartered Secretaries and Administrators (ICSA) International Council held at the end of May in London. The result of the meeting you probably already know – previous President Frank Bush, representative of the Australian Division, was elected President unopposed. David Venus and myself, representatives of the UK, Republic of Ireland and Associated Territories (UKRIAT) Division and the China Division respectively, were elected Vice-Presidents.

But the real significance of the meeting is not the election of new honorary officers, it is what the meeting represents for the future of the ICSA and the global profession. Members who have been following the major changes to the governance structure of the ICSA will know that this meeting was anything but a routine meeting of the ICSA governing body – it was the first meeting of the reconstituted ICSA International Council.

Recent amendments to its Royal Charter and new byelaws have repositioned the ICSA as an international body, founded in the UK, but with a global membership which has a proportional voice in the Institute's affairs. UKRIAT no longer has an inbuilt majority on Council – it has become an ICSA division along much the same lines as the other divisions around

the world. The composition of the ICSA International Council is now based on the proportion of the membership each division represents. This means that, where before we had one representative on Council, we now have two – former HKICS President Natalia Seng and myself.

This repositioning of the ICSA comes at a significant time. While the Chartered Secretarial profession was born in the late 19th century in the UK, it has grown to become a global profession of corporate secretaries and governance professionals. Put simply, we are much stronger as a globally united profession than as disparate national bodies concerned only with looking after the interests of members in our own jurisdictions. And that strength is going to be much needed. There is a lot of hard work to be done to promote the work and values of our profession on an international level.

The ICSA International Council will hold its next meeting in Hong Kong on 17 and 18 October 2014. We look forward to welcoming our overseas colleagues and introducing them to our members then.

Another topic I would like to draw your attention to this month is our upcoming corporate governance conference (CGC), which will be held on 19 September. As you no doubt know, our biennial CGC is the headline event in the Institute's calendar, and for very good reason. It offers a valuable opportunity for members

of the profession locally to join with practitioners and other stakeholders from all over the world to discuss the latest developments affecting the profession.

The forum this year will be on the theme 'Changing rules, changing roles – managing it all'. At a time of major regulatory change, corporate secretaries and all governance professionals need to remain particularly vigilant about the environment in which we work. The CGC will provide an excellent opportunity for us to engage in this debate with high-level speakers and panellists from Hong Kong and overseas – if you haven't already done so, I urge you to sign up for this event since seats are filling up fast.

Finally, I would also like to mention the most popular event of our CPD calendar – the Annual Corporate and Regulatory Update – which was held last month. This event is reviewed in the two cover stories this month, and I would like to take this opportunity to thank the speakers, regulators, sponsors, supporting organisations, the secretariat and of course the attendees, for making this year's ACRU such a resounding success.

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

Edith Shih FCIS FCS(PE)

一个全球性的专业

在上期《会长的话》中，我曾承诺向大家汇报五月底在伦敦举行的特许秘书及行政人员公会（ICSA）国际理事会会议的最新消息。大家可能已经知悉是次会议的结果——代表澳大利亚分会的前会长Frank Bush于一致赞成情况下当选为会长，而David Venus与本人（分别代表英国、爱尔兰及相关领土（UKRIAT）分会和中国分会）就当选为副会长。

然而，是次会议的重大意义并非在于选出新任名誉会长和副会长，而是会议对ICSA以及这个全球性专业的未来代表些什么。如果大家关注ICSA在管治结构上的重大变革，定会明瞭是次会议绝非ICSA管治机构的一次例行会议，而是ICSA国际理事会重组后的首次会议。

根据近期修订的《皇家特许状》及新制订的附例，ICSA重新定位为一个于英国创立的国际机构，其会员来自全球各地，而对该会事务的发言权，应按各分会的会员人数比例而定。UKRIAT在ICSA国际理事会中不再享有固定的多数议席，而与其他分会同样是ICSA的分会。该理事会的组成，目前是按各分会的会员人数占全体会员人数的百分比来计算。换言之，以往我们在该理事会中仅有一席，现今则有两席，分别由香港特许秘书公会前会长沈施加美和本人出任。

ICSA的重新定位，正值一个别具意义的时期。特许秘书这门专业始于19世纪末的英国，目前已发展成为一个由公司秘书及企业管治人员组成的全球性专业。简单而言，我们作为一个全球性联合组织，力量远大于一个只在自身司法管辖区照顾会员利益的本土组织，而此强大力量日后将会越益重要。在国际上倡导我们专业的工作和价值观，未来还有大量工作要做。

ICSA国际理事会定于今年10月17至18日在香港举行下次会议，届时我们将会隆重欢迎海外同业到临，并介绍他们给会员认识。

另一件我想请大家注意的事情，是我们将于今年9月19日举行「企业管治研讨会」。众所周知，这每两年一度的研讨会是公会的旗舰活动，而且确实是实至名归。此会议为会员提供难得机会，与来自世界各地的同业和各界人士讨论影响我们专业的最新发展。

是年度的研讨会主题为「法规及角色变化 - 应对自如」。在目前重大监管变革之际，公司秘书和企业管治人员须对其所处的工作环境保持高度警觉。企业管治研讨会正好为我们提供上佳机会，与来自本港和海外的杰出演讲嘉宾及专题讲者聚首一堂，讨论各方面议题。假如阁下报名参加此研

讨会，我诚邀你尽快行动，因为座位很快便会预订一空。

最后，我也希望一提本会持续专业发展计划中最受欢迎的活动「公司规管最新发展研讨会」，该会已于上月举行，今期两篇封面故事已作出详细报道。今年公司规管最新发展研讨会取得空前成功，我谨此向演讲嘉宾、监管机构、赞助商、支持机构、秘书处，当然还有众出席者，表示诚挚谢意。



施熙德

Building a compliance culture

Compliance failures often stem from poor management and governance within companies rather than deliberate fraud. Regulators attending this year's Annual Corporate and Regulatory Update therefore emphasised the importance of their supervisory role in fostering a compliance culture in Hong Kong companies.

Capital market regulators have twin roles – as law enforcers and as market supervisors. While the former role is very well recognised in the market, the latter role is much less familiar. Regulators attending this year's Annual Corporate and Regulatory Update (ACRU) emphasised, however, that the supervisory role is just as important in maintaining market standards. Enforcement actions give a regulatory system its credibility, but supervisory actions help to identify and prevent problems before they escalate into major compliance failures.

'The role of the Exchange, as the frontline regulator of companies, is not only to enforce the listing rules but also to educate the market and influence compliance culture and attitudes,' said Stephen Jamieson, Head of Enforcement, Listing Department, Hong

Kong Exchanges and Clearing Ltd (the Exchange) in session 1 of the seminar.

'We are not a law enforcement agency,' he reminded his audience. The Exchange reports conduct which may amount to possible breaches of the law to the Securities and Futures Commission (SFC) and other law enforcement agencies such as the Independent Commission Against Corruption and the Commercial Crime Bureau, and will suspend its own investigations if they overlap with investigations by these bodies to avoid duplication of regulatory resources and possible prejudice to their enforcement action.

These law enforcement agencies ensure that companies abide by their legal

obligations, but the Exchange's supervisory role, Mr Jamieson pointed out, focuses on upgrading companies' internal controls and corporate governance standards to deter future breaches of the rules.

Seeking dialogue

In the second session of the day, ACRU participants learned that the SFC, despite its primary role as an enforcement agency, is just as keen to engage its regulatees. Michael Duignan, Senior Director – Corporate Finance Division, SFC, focused his presentation on the role and work of the Commission's new Corporate Regulation Team. Since it was created in December last year, the Corporate Regulation Team, which Mr Duignan heads, has been seeking a constructive dialogue with companies in Hong Kong.





'We are seeking to increase the level of compliance culture within companies and improve general corporate behaviour,' he said. 'The SFC does not supervise listed companies so the levers we use are less direct, but big sticks can only take you so far', he added.

Since the SFC is much better known for its enforcement role, a call from the Commission might well be cause for alarm. In the Q&A concluding the SFC's ACRU session, Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS, and the MC for this year's ACRU forum, asked Mr Duignan how a company should respond if it gets a call from the Corporate Regulation Team.

'That depends on what we're asking for,'

he replied. 'We might just be asking for information, or we might be asking for help in trying to assess market views. I want to have a constructive dialogue with companies, I don't want to be in an ivory tower in the Cheung Kong building.

We consider it a success if a company calls us to say: "you should really look into this".'

Some tensions inevitably exist, however, between the twin roles of regulators in

Highlights

- enforcement actions give a regulatory system its credibility, but supervisory actions help to identify and prevent problems before they escalate into major compliance failures
- the new Corporate Regulation Team at the SFC is seeking a constructive dialogue with companies in Hong Kong
- if a breach of the listing rules reveals failings in a listed company's internal controls, further breaches are likely and the Exchange needs to step in



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”

Michael Duignan, Senior Director –
Corporate Finance Division, SFC

Hong Kong. For example, Mr Duignan stressed that there are limits to how much guidance the SFC can provide to companies seeking to comply with Hong Kong's new statutory inside information regime.

The SFC has issued guidance on this challenging area for compliance, including its *Guidelines on Disclosure of Inside Information*, the many FAQs on its website devoted to this area, and the consultation service it launched before the revised Securities and Futures Ordinance (SFO) was implemented in January 2012. Perhaps not surprisingly, the consultation service has been heavily subscribed, but Mr Duignan pointed out that the service cannot answer specific questions regarding whether a piece of information is 'inside information', or whether it is covered by one of the 'safe harbours' in the SFO. Ultimately these judgements have to be made by the companies themselves since everything depends on the specific circumstances involved, he said.

If a caller to the consultation service asks, for example, whether a company needs to disclose the identity of new shareholders,

the answer might seem to be obviously no. But if that new shareholder happens to be Warren Buffet, clearly this information would have an effect on the share price. 'So, as a regulator, you can't make the judgement for companies,' Mr Duignan said.

He added that getting legal advice is not a 'get out of jail free' card. He quoted a recent comment by a judge in a case in Ireland – 'if a lawyer says murder is legal it doesn't prevent you from being prosecuted! The company secretary does have an important role to play, however. 'I wouldn't go as far as saying that the company secretary is "our man in the room", but certainly he is the person who needs to alert directors to the risks involved', Mr Duignan said.

Understanding regulators' expectations

Another related theme to emerge from this year's ACRU was the need to understand regulators' expectations of market behaviour.

Mr Jamieson emphasised that the Exchange is keen to enhance the transparency of the processes involved

in its enforcement of the listing rules. To this end, in September 2013, the Exchange published two statements designed to give market participants a much better understanding of the Exchange's continuing expectations (see 'Statement of Enforcement Policy Strategy' and the 'Statement' annexed to 'New Procedures', available at: http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/documents/enfs_0913.pdf).

Mr Jamieson urged market participants to read these statements since they explain the factors the Exchange considers when determining the appropriate level of its enforcement action. While the sanctions available to the Exchange are lighter than those available to law enforcement agencies, they can involve trading suspensions and even cancellation of listing.

As you might expect, the Exchange will consider the seriousness of the breach and the risk of prejudice to investors, but there are a number of other factors set out in the statements which are rather less obvious and will help companies minimise their regulatory risks. For example, the

Exchange will consider the level of cooperation received from the issuer and its directors during the investigation.

Mr Jamieson reminded his audience that listing rule 2.12A imposes an obligation on issuers to provide as soon as possible, or in accordance with time limits imposed by the Exchange:

- information the Exchange reasonably considers appropriate to protect investors or ensure smooth operation of the market, and
- any other information or explanation that the Exchange may reasonably require for investigating a suspected rule breach or verifying rule compliance.

The Exchange will also look at whether the directors and senior management have implemented and maintained adequate and effective internal controls. The Exchange is interested to see whether the company has a corporate culture conducive to rule compliance. If a breach of the listing rules reveals failings in a listed company's internal controls, further breaches are likely and the Exchange needs to step in. Moreover, where serious or systemic weaknesses are identified in the company's internal controls, the enforcement action is likely to include the appointment of compliance advisers and a mandatory internal control review.

In the same spirit of transparency, ACRU participants also learned about the work processes of the SFC's Corporate Regulation Team. The team, as you might expect, reviews all corporate announcements to ensure that the Commission can identify potential problems as they emerge.

The results can sometimes be surprising. For example, Mr Duignan cited the fact that 86% of the inside information announcements made in 2013 did not actually lead to any market movement. The surge in inside information announcements over the past year (4,883 were made in 2013, as compared to 3,205 in the previous year) would appear to show that Hong Kong's statutory inside information regime has been very successful. But the fact that so few of these announcements actually led to a movement in the share price, casts doubt on whether the information disclosed was actually inside information.

Mr Duignan conceded, however, that the SFC has the benefit of hindsight. Predicting market movements is not easy.

If the analysts, he quipped, who tell us so knowledgeably why the market moved the way it did in their summary of the day's trading could predict what it was going to do tomorrow, they wouldn't be in TV, they'd be in hedge funds and very rich.

Nevertheless, companies do need to consider carefully how to label their announcements, he added. Labels such as 'voluntary announcement', 'overseas regulatory announcement', or 'regular update' are clearly inappropriate if the disclosure contains inside information.

Mr Duignan also cautioned against the use of vague, generic terms like 'a significant increase', or 'a material increase', or even 'record a profit as compared to a

ACRU 2014: the speaker line-up

Session 1: Hong Kong Exchanges and Clearing Ltd

- Katherine Ng, Head of the Policy Team, Listing Department
- Stephen Jamieson, Senior Vice-President, Listing Department, and Head of the Enforcement Team
- Sammy Chau, Vice-President, Compliance and Monitoring Team, Listing Department

Session 2: Securities and Futures Commission

- Michael Duignan, Senior Director, Corporate Finance Division

Session 3: Companies Registry

- Karen Ho, Deputy Principal Solicitor (Company Law Reform)
- Nancy Yau, Acting Deputy Registry Manager, Company Formation and Enforcement Division
- Marianna Yu, Deputy Registry Manager (Registration), Registration Division

Session 4: Official Receiver's Office

- Alan Fong, Assistant Official Receiver (Legal Services)
- Ophelia Lok, Assistant Principal Solicitor (Legal Services)



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”

Stephen Jamieson, Head of Enforcement, Listing
Department, Hong Kong Exchanges and Clearing Ltd

loss' in profit alerts. Mr Duignan pointed out that profit alerts need to contain supporting numbers – at least a profit range – otherwise they are meaningless. He advised companies to ensure that their intended disclosures are accurate, clear and comprehensive and adequate for investors to make an informed decision.

Thematic enforcement

Another theme to emerge from this year's ACRU was the trend towards 'thematic enforcement' by regulators. Mr Jamieson said that the Exchange groups cases linked by a common theme as this makes for a more efficient use of resources and means that any lessons learned in that particular area of practice can be communicated to the market.


A question from the floor in the Q&A concluding the Exchange's session asked what the Exchange has been doing since PSI disclosure enforcement went to the SFC. Mr Jamieson identified a number of different themes the Exchange has been focusing on, including:

- inaccurate, incomplete and/ or misleading disclosure

- failure to comply with shareholder approval requirements for connected or notifiable transactions
- directors' securities dealings in breach of the Model Code
- compliance with directors' undertaking to cooperate with the Exchange's investigations
- late financial reporting, and
- Rule 3.08 compliance.

Rule 3.08 refers to the revised directors' duties obligations brought in by the Exchange in 2012. In particular, Mr Jamieson emphasised the importance of directors staying informed about their company's affairs. Rule 3.08 was expanded to include an obligation for directors to take an active interest in their company's affairs, obtain general understanding of the business and follow up on anything untoward that comes to their attention.

'I have seen on many occasions examples of directors simply not aware of what is going on in a company,' Mr Jamieson said.

The SFC also seeks to identify problematic areas of market practice before they escalate. Mr Duignan warned, however, that identifying 'red flags' is not always predictive of market misconduct. For example, 'qualified accounts' may seem to be an obvious red flag – why was the auditor unable to give true and fair view of the financial statements? Subsequent investigations, however, may not confirm suspicions of an underlying problem. 'We have a long list of red flags,' said Mr Duignan, 'but we are still trying to work out whether any of them are actually predictive.' 

The Institute's 15th Annual Corporate and Regulatory Update seminar took place on 5 June 2014. More photos of the event are available in this month's Institute News section and on the HKICS website: www.hkics.org.hk.

The second cover story this month (see the following pages) covers other major compliance issues covered by this year's ACRU.



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UPCOMING EVENTS in 2014

Inside Information – Challenges and Opportunitites

Speaker(s) : **Professionals from PwC Hong Kong**
Date : 03 Sep 2014

Duties and Responsibilities of Directors of Listed Companies

Speaker(s) : **Professionals from Baker & McKenzie**
Date : 17 Sep 2014

Common Application Issues on HKFRS

Speaker(s) : **Mr. Joel Chan, ZHONGHUI ANDA CPA Limited**
Date : 24 Sep 2014

How to have effective Investor Relation

Speaker(s) : **Ms. Eva Chan,
Chairman of Hong Kong Investor Relations Association**
Date : 07 Oct 2014

Highlight of the Directors Risk in Commercial Contract

Speaker(s) : **Mr. Dominic Wai, Baker & McKenzie**
Date : 22 Oct 2014

Recap on Corporate Governance and Risk Control / Internal Control

Speaker(s) : **Ms. Kelly Fu, Deloitte Touche Tohmatsu**
Date : 29 Oct 2014

Illustrative Examples on Financial Instruments

Speaker(s) : **Mr. Joel Chan, ZHONGHUI ANDA CPA Limited**
Date : 12 Nov 2014

IPO Planning & Consideration – Tax & Stamp Duty, etc

Speaker(s) : **Professionals from PwC Hong Kong**
Date : 19 Nov 2014

Valuation Technique

Speaker(s) : **Professionals from KPMG**
Date : 26 Nov 2014

Financial Reporting Standard updates 2014/15

Speaker(s) : **Mr. Nelson Lam, Nelson and Company**
Date : 10 Dec 2014

Connected Transaction – Practical sharing and Latest update on Listing Rules

Speaker(s) : **Ms. Beatrice Lung, Optima Capital Limited**
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Listco Professional Development Programme

ListcoPRO is a services provider of professional services to listed companies' in Hong Kong. We are a leader in the area of professional CPD Training and development. Our group companies also provide a number of corporate services including Executive Recruitment, Corporate Governance and Compliance, Business and Transaction Advisory Services.



A changing landscape

Keeping pace with regulatory change is one of the top challenges facing compliance professionals and the Institute's Annual Corporate and Regulatory Update seminar aims to help attendees do just that – providing them with an opportunity to get first-hand information from regulators about the changing regulatory landscape in Hong Kong. *CSj* highlights the major compliance issues raised at this year's event.

The business environment, both globally and locally, is becoming a lot more challenging for compliance professionals. They need to keep up with an ever-changing regulatory landscape as well as the expectations of increasingly sophisticated and demanding investors.

'Investors have significantly higher expectations than they did 10 years ago,' said Katherine Ng, Head of Policy Team, Listing Department, Hong Kong Exchanges and Clearing Ltd (the Exchange), and the first speaker of the day at the Institute's latest Annual Corporate and Regulatory Update (ACRU) seminar. 'The market is more complex and challenging so the role you play as company secretaries has never been more important. What is needed is a commitment from the heart – don't ask "is this legal?", but rather "is this the right thing to do?" We are here to help you make the transition to higher governance standards and we look forward to working with you on building a workable and effective regulatory regime in Hong Kong.'

The Institute's ACRU seminar has gained a reputation as a premier opportunity for practitioners to get first-hand information from regulators about the issues at

the top of the compliance agenda. This year's event was no exception; regulators discussed a wide range of compliance challenges including: the new Companies Ordinance; the statutory inside information regime; the revised connected transaction rules; board diversity; ESG disclosure; internal controls; and corporate insolvency law reform.

Ms Ng focused her presentation on Corporate Governance Code compliance. She started by pointing out that the last decade has in fact been Hong Kong's 'golden decade' in terms of how the local market has developed. Between 2003 and 2013, we have seen a 50% growth in the number of issuers, a 400% growth in total market cap and a transition to a much more cosmopolitan mix of issuers.

She cited the Xinhua-Dow Jones International Financial Centres Development Index which now ranks Hong Kong third behind London (second) and New York (first) as a top global financial centre. This rise in Hong Kong's reputation could not have been achieved, Ms Ng pointed out, without the high degree of professional talent in Hong Kong – 'this couldn't have been achieved without you,' she said.

Maintaining high corporate governance standards has also been crucial to maintaining Hong Kong's reputation as a top international financial centre. Ms Ng said that, in general, listed companies have responded well to the requirements of Hong Kong's Corporate Governance Code. The Exchange's latest

Highlights

- the business environment, both globally and locally, is becoming a lot more challenging for compliance professionals
- there has been a relatively low compliance rate for the new code provision in Hong Kong's Corporate Governance Code requiring issuers to have and report on a policy on board diversity
- the Stock Exchange will soon publish a consultation paper on revisions to the Corporate Governance Code regarding internal controls



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Katherine Ng, Head of the Policy Team, Listing Department,
 Hong Kong Exchanges and Clearing Ltd

review of listed issuers' compliance with the code (published in November 2013 and available under the 'Issuer-related Information' section of the HKExnews website) found that:

- 36% of issuers complied with all the code provisions, and
- 97% of issuers complied with 70 or more code provisions.

Nevertheless, the review highlighted a number of areas where compliance has been patchy. Ms Ng highlighted three such areas – board diversity, ESG disclosure and internal controls.

Board diversity

Since September 2013, a new code provision in Hong Kong's Corporate Governance Code has required issuers to have and report on a policy on board diversity. Listed companies have to either comply or explain any non-compliance with this new code provision. 'Some

companies have neither disclosed a policy nor explained why they have not done so,' said Ms Ng. 'This is a breach of the code and we have sent letters to them,' she added.

A question from the floor during the Q&A concluding the Exchange's ACRU session asked what the Exchange is looking for in terms of a diversity policy. In response Ms Ng pointed out that the new code provision on diversity is not prescriptive and there are no specific targets or quotas in place.

'Some countries have imposed quantitative thresholds on the number of women on the board, but I would like to emphasise that diversity is about more than gender – it's also about age, experience and culture. Boards need a mosaic of experience that will enhance decision making and risk management performance. So there's no quantitative answer but we are looking for evidence that some thought has gone into diversity.'

Edith Shih, HKICS President and chair of the Exchange's ACRU session, added that the HKICS does not support quotas. 'No self-respecting female director would want to be on the board just because the listing rules say so,' she said.

ESG disclosure

In August 2012, the Exchange introduced its *Environmental, Social and Governance Reporting Guide* (available on the Exchange's website: www.hkex.com.hk), setting out the basic elements of environmental, social and governance (ESG) disclosure. The guide is a recommended best practice so there is no obligation for listed companies to comply. Ms Ng pointed out, however, that investors increasingly incorporate ESG criteria into their valuations and investment strategies so companies in Hong Kong need to address ESG issues whether or not they are caught by a mandatory requirement.

She also outlined the Exchange's plan to review how the market has embraced

ESG reporting (it has already sent out a questionnaire), and to raise the obligation level of its ESG guide to a code provision (subject to comply or explain). A question from the floor during the Q&A session asked what the projected date is for companies to comply with the ESG guide if it does become a code provision. Ms Ng responded that the Exchange plans to raise the obligation level of the ESG guide in 2015, but she added that it will not be effective immediately. 'There will be a transition period of at least a couple of months', she said, 'so it may be implemented late 2015 or early 2016'

Internal controls

Many compliance failures can be traced back to a failure of internal controls so the Exchange is seeking to upgrade the Corporate Governance Code requirements in this area. Internal controls were specifically omitted from the proposed reforms to the code in 2012, which means that the provisions regarding internal controls have not been updated since 2005. Ms Ng said that the Exchange plans to publish a consultation paper on internal controls this quarter.

Once again, Ms Ng emphasised that companies need to ensure they are up to speed in this area irrespective of the regulatory requirements – robust internal controls are simply good risk management practice. 'The majority of investors decline to invest in companies with insufficient risk management', she pointed out.

Hong Kong's new connected transaction rules

In a jurisdiction like Hong Kong with a large proportion of closely held companies, connected transactions are clearly a major area of concern for

regulators. Sammy Chau, Vice-President, Compliance and Monitoring, Listing Department, the Exchange, focused his ACRU presentation on the recently concluded exercise to simplify and improve the clarity of Hong Kong's connected transaction rules (Chapter 14A of the listing rules).

He said that the changes to the connected transaction rules, which became effective on 1 July 2014, aim to ease issuers' compliance burden while maintaining the same level of investor protection. To this end, the rules have been rewritten in plain language and, where possible, the compliance burden has been reduced. For example, there is a new exemption for transactions with persons connected at the subsidiary level. 'A connection at the subsidiary level is much more remote, so the risk of abuse is much lower,' Mr Chau said.

Mr Chau urged ACRU participants to consult the new frequently asked questions (FAQ) series on the Exchange's website (see Series 28 'Requirements on connected transaction rules'); and the guidance letter on continuing connected transactions issued by the Exchange. These can be found at:

- http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_28.pdf, and
- <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/ipoqj/Documents/gl73-14.pdf>.

The new Companies Ordinance

Hong Kong's new Companies Ordinance (Cap 622) was implemented on 3 March 2014. Three speakers from the Companies Registry highlighted the key changes

brought in by the new law. First up was Karen Ho, Deputy Principal Solicitor (Company Law Reform), Companies Registry, who gave a general introduction to the new law and highlighted some of the compliance challenges it poses.

The statutory statement on directors' duty of care, skill and diligence

There were no provisions on directors' duty of care, skill and diligence in the old Companies Ordinance (Cap 32). Ms Ho explained that the new Companies Ordinance introduces a statutory statement on these duties to provide clear guidance to directors. She added that both objective and subjective elements will be taken into account when assessing whether directors have exercised reasonable care, skill and diligence. This means that what is required of directors will vary between different types of directors and between different types and sizes of companies.

Strengthening the accountability of directors is one of the major aims of the new Companies Ordinance and Ms Ho highlighted another new requirement of the law intended to achieve this aim – the requirement for all companies (private and public) to have at least one director who is a natural person.

There has been some concern in the market regarding the practice of appointing corporate bodies rather than natural persons as directors since this can disguise the identity of those controlling companies. There were provisions in the old Companies Ordinance prohibiting all public companies, as well as private companies which are members of a group of companies of which a listed company is a member, from appointing corporate

directors, but there was no restriction for other private companies.

The new Companies Ordinance requires, on top of these restrictions, that private companies must have at least one director who is a natural person. Ms Ho pointed out that companies incorporated before the implementation of the new Companies Ordinance have until September this year to comply with this requirement since a grace period of six months after the commencement of the ordinance applies to such companies.

The 'business review' requirement

Under the new Companies Ordinance, Hong Kong-incorporated companies, unless they qualify for simplified reporting, will need to include a 'business review' in their corporate reports for financial years beginning on, or after, 3 March 2014. Schedule 5 of the new law sets out the required contents for the business review and these include a number of ESG areas, such as the company's environmental policies and performance, and the company's key relationships with its employees, customers and suppliers and others.

Companies which are eligible for simplified reporting are exempted from the business review requirement and Ms Ho explained the qualifying criteria for simplified reporting as set out in Division 2 of Part 9 and Schedule 3 of the new Companies Ordinance.

The new law sets out specific size criteria for companies to be eligible for simplified reporting, but there has been some doubt as to which financial year these criteria apply. Ms Ho explained that, for companies incorporated before the implementation of the new

Companies Ordinance, it is the size of the company in the first financial year after commencement of the new Companies Ordinance, or the financial year immediately preceding that first financial year, that counts.

For companies formed and registered under the new Companies Ordinance, it is the size of the company in its first financial year that counts. Qualification continues for subsequent financial years until the company is disqualified. In the future, the basic principle will be that companies need to fall within the size criteria for two consecutive financial years before they qualify for the reporting exemption for the immediately following financial year.

The definition of 'responsible person'

The new definition of 'responsible person' brought in by the new Companies Ordinance has generated a lot of interest among company secretaries in Hong Kong since it potentially increases their personal liability for breaches of the law. Ms Ho confirmed that the new definition lowers the threshold for contravention by company officers.

The old Companies Ordinance attributed criminal liability to officers in default if they 'knowingly and willfully authorised or permitted the default'. 'This puts the evidential burden very high as "willfulness" requires a deliberate act,' Ms Ho said. 'It was almost impossible to prosecute an officer in default under the old Companies Ordinance, but under the new formulation a "responsible person" may be prosecuted if he or she intentionally or recklessly allows a breach.'

She added that the new definition is not designed to catch negligence. 'The effect

of the new formulation is to lower the prosecution threshold to extend liability to reckless acts or omissions by officers, but not negligence,' she said.

Filing requirements

Two other speakers from the Companies Registry – Ms Nancy Yau, Acting Deputy Registry Manager, Company Formation and Enforcement Division, and Ms Marianna Yu, Deputy Registry Manager (Registration), Registration Division, highlighted the practical implications of the new Companies Ordinance for users of the Companies Registry's services – in particular, the key changes in filing requirements and the use of the new specified forms.

Since June 2014, the old forms are no longer accepted at the Companies Registry and Marianna Yu described as 'most encouraging' the rate at which users of the Registry have migrated to new forms. The latest figure indicates that 82% of forms submitted to the Registry are new forms.

As in previous years, one of the most useful sections of the Companies Registry session dealt with common errors in forms submitted to the Registry. In her ACRU presentation, Ms Yu concentrated on forms with the highest rejection rate to highlight common problems encountered.

Another issue which came up in the Q&A at the end of the Companies Registry session, was whether organisations have to display both the English and Chinese forms of their company name. Karen Ho responded to this question by confirming that the subsidiary legislation to the new Companies Ordinance does require companies to display their registered names, but added that the question of whether this means both the English and



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Karen Ho, Deputy Principal Solicitor (Company Law Reform), Companies Registry

Chinese forms of the name is in doubt. ‘We will seek legal advice and address this question on our website,’ she said.

Corporate insolvency law reform

The Exchange, the SFC and the Companies Registry are regular attendees at the Institute’s ACRU seminar. The fourth session of the seminar, however, has been taken by a variety of different regulators over the years, such as the Hong Kong Monetary Authority and the Inland Revenue Department.

This year, the Official Receiver’s Office (ORO) took the opportunity to brief ACRU participants on the ORO’s new legislative proposals to improve Hong Kong’s corporate insolvency law. Alan Fong, Legal Services Division 2, the Official Receiver’s Office, pointed out that the last major reform of corporate insolvency law in Hong Kong was in 1984, so bringing the legislation up to date is a matter of some urgency.

Hong Kong’s corporate insolvency law provisions used to be a part of the

Companies Ordinance. Since March this year, however, they have been excluded from the new Companies Ordinance (Cap 622), and the old Companies Ordinance has been renamed the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

Mr Fong said that the proposed reforms to Hong Kong’s corporate insolvency and winding-up provisions are designed to:

- facilitate more efficient administration of the winding-up process
- increase the protection of creditors through streamlining and rationalising the winding-up procedure having regard to international experience, and
- enhance the regulation of the winding-up process.

A three-month public consultation was launched in mid-April 2013. This contained 46 legislative proposals which

covered five aspects of the winding-up process:

1. commencement of winding-up
2. appointment, powers, vacation of office and release of provisional liquidators and liquidators
3. conduct of winding-up
4. voidable transactions, and
5. investigation during winding-up, offences antecedent to or in the course of winding-up, and powers of the court.

The much-needed corporate rescue procedure and insolvent trading provisions, however, were not part of the consultation – the government is working on new detailed proposals in this area and will further consult stakeholders on them. Meanwhile, the government plans to introduce an amendment bill containing its new legislative proposals on insolvency to the Legislative Council in 2014 or 2015. [CSj](#)



Forging a global profession

The Corporate Secretaries International Association (CSIA) teamed up with the Global Corporate Governance Forum (GCGF) to publish the 'Corporate Secretaries Toolkit' earlier this year. This second part of our interview with Carina Wessels, CSIA President, and Philip Armstrong, Head of the GCGF, discusses another recent CSIA project relevant to the profession globally – the publication of the 'CSIA Governance Principles for Corporate Secretaries'.

The 'CSIA Governance Principles for Corporate Secretaries' were launched late last year – how do they differ from the OECD corporate governance principles which have become a global benchmark for governance?'

Carina Wessels: 'The idea of the CSIA principles was to make them very practical for corporate secretaries. They address the day-to-day practical perspective of what the corporate secretary needs to do to ensure general governance principles in an organisation. The OECD principles are under review at present so, for the corporate secretary principles, we took some of the more recent thinking on sustainability and integrated reporting into consideration as well. Although it is not necessarily a trend everywhere in the world, an integrated approach was at least suggested as a best practice.'

You mention the practical focus of the CSIA principles – would you say that the real value of the exercise is the advice on practical implementation which accompanies each principle? For example, the transparency principle is followed by a reminder that real transparency is about disclosing bad as well as good news?'

Philip Armstrong: 'Yes. People always want the credit when things have gone well but they don't want the blame when things go badly. This is the difficulty with companies and transparency, I think the issue of transparency is a very difficult one, because transparency is dependent on a lot of factors. It depends on a professional and informed media free to report and scrutinise companies, and on active investors and a strong enforcement regime and some markets may have one or two, but not all three, of these necessary components.'

Carina Wessels: 'I think it may be an aspiration more than perhaps a reality, but that is probably the case with a lot of governance issues – they start off as aspirations.'

One of the CSIA principles aims to distinguish the role of directors from the role of executives, but in a family-owned company those distinctions don't always exist.

Philip Armstrong: 'When the IFC makes an investment in a company in emerging markets we do try to encourage some measure of independence on the board, but at the same time we also recognise that a family-owned business is, after all, a family business. What we focus on mostly is to try to ascertain that the board is reasonably professional even where it is made up of a number of family members or close relatives. But we have to be pragmatic and in some markets, frankly speaking, the more effective businesses are family businesses, notwithstanding that they don't entirely comply with, or adhere to, what we may call classic good governance.'

Highlights

- the CSIA Governance Principles for Corporate Secretaries are not just a list of principles – they attempt to give practical guidance on how corporate secretaries can ensure good governance in organisations
- the global financial crisis occurred due to governance issues in the markets that actually defined governance standards, resulting in a credibility gap for those governance standards
- increasing corporate governance regulation may not be the answer – corporate governance is essentially an attempt to offer practical guidance on how companies' legal obligations should be discharged

A recent study found that investors showed a bias towards family-owned and closely held businesses because they felt there was a longer-term perspective. Where the trouble usually tends to start in family-held businesses is when you move to the second and third generation, and people are being appointed to the board more out of patronage and family affiliation. That's when the successful family companies bring in more professional board members.'

Are the CSIA principles relevant to the corporate governance challenges of both developed and emerging markets?

Philip Armstrong: 'In developed markets we worry about executive compensation and board independence – we tend to worry about very structural

issues, but in emerging markets the challenges are conflicts of interest, related-party transactions and how independent directors operate on a board that is dominated by a controlling shareholder. Those are much more nuanced and difficult issues to deal with than the structural obsessions that we have in the advanced markets.

The other problem we have is that the global financial crisis occurred due to governance issues in the markets that actually defined governance standards. So that brought something of a credibility gap to corporate governance in a lot of markets. I fear that we're likely to have a few more crises before too long.'

On the same scale as the 2008 crisis?

Philip Armstrong: 'Yes. When you look at the US you actually wonder if anyone learned anything from the crisis. There has been massive pushback on all the legislation that was brought into place, particularly from the banking lobbyists and various other interest groups in the business sector. I wouldn't say that that leaves you with a lot of confidence. It is just back to business as usual. But we have to be concerned that we've had three crises now that have come from the world's largest economy – the dot com bubble, Enron, Worldcom and so on, and then the global financial crisis. You have to ask yourself,

in a market where legal enforcement is rigorously asserted, the media is free to report and investors have some challenges but are by and large active, why do we keep having these recurring crises?

Meanwhile, the problem you are having in Europe, and it is affecting the UK, is that there is an increasing tendency to regulate corporate governance. Unfortunately I think that will be detrimental to corporate governance; it pushes it towards the rules-based regime that operates in the US and, as we have seen, that is not very successful, but then of course the principles-based system in the UK was shown to be deficient

in the financial crisis. This is a difficult issue for regulators and policy makers.'

Carina Wessels: 'You end up with a lot of box ticking and the specific issues that need to be addressed are not really part of the DNA or the culture of the organisation. They are not focusing on being well governed but on seeming to be compliant from a regulatory perspective.'

Philip Armstrong: 'In the US it's all about box ticking because litigation is so pervasive. The idea that you follow a set of principles where you can

exercise a measure of judgement is seen as almost suicidal because if you make the slightest mistake somebody is going to sue you.'

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 ‘[In South Africa] we have implemented a code for responsible investing. This places obligations on investors, as well as companies, to think about what they need to do to improve the whole governance framework.
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Carina Wessels, President, Corporate Secretaries International Association

Do you recommend, then, that jurisdictions adopt principles-based corporate governance regulations?

Philip Armstrong: 'What we've lost in the governance discussion is that governance was originally designed to articulate the practices behind the legal requirements. You can add a requirement in a code or regulation that directors need to be inducted, but then the question is how that is done – what would we, in this market, consider to be good practice?

So governance was designed to offer some practical guidance in the relevant market as to how the various legal obligations should

be discharged. But, as a result of all these crises that we have had over the last 10-20 years, governance has become very politicised and we certainly saw that in the global financial crisis. So the tendency has been to seek a quick fix and that quick fix tends to be regulation.

So we are moving towards a more rules-based response. The problem is that pharmaceutical companies will be structured differently to financial or retail companies. The principles-based approach offers you the opportunity to provide a principle around a common issue or practice and then companies can modify their practices relevant to their particular sector and business structure and leave it to the market to evaluate and interrogate. I think we are losing some of that.'

Is the weakness of the principles-based approach the fact that there is not really much of a price to pay for companies who just do the minimum?

Philip Armstrong: 'The principles-based approach was designed in a market where all the essential elements to make it work existed. The media, investors and an effective regulatory enforcement regime are all present in the UK market. The problem is that there has been an imitation of the approach in markets without that necessary infrastructure.

The problem with the principles-based approach always reminds me of Winston Churchill's comment about democracy being not a great idea but the best one we've got right now. I think principles-based corporate governance falls somewhere in that category.


The other shortcoming in my view is that there are a lot of systemic issues that aren't being addressed. We talk about institutional investors as if they are all active, engaged and participating in the market, but they aren't. I can probably give you a handful of investors and institutes that are genuinely interested in the market and genuinely consider how they vote their shares.'

Carina Wessels: 'What we have seen recently in the South African context, and I think it has been fairly successful, is that we have implemented a code for responsible investing. This places obligations on investors, as well as companies, to think about what they need to do to improve the whole governance framework. We've seen a lot more interaction, not at the level

that it should be, but we have seen a lot more interaction between nominee shareholders and institutional investors with companies in terms of the way they intend to vote and why they intend to vote that way. There has also been an increased understanding from companies about what investors' needs are.'

Thank you both very much for giving CSj this interview. My last question is just to ask about your future plans – are there any other joint CSIA/ GCGF projects in the pipeline?

Philip Armstrong: 'At this stage we haven't sat down and looked at a plan for the way ahead. I think for us the discussion would be around market segmentation. Obviously, we won't be using the *Corporate Secretaries Toolkit* in those countries where national organisations exist and are active, but what for us is important is that we have a partnership with the people that are professionals in the field. If we are faced with training requirements, or changes to laws and regulations which affect the role of the corporate secretary, we have a body to whom we can turn, either for trainers to help us support the training that will take place in these countries, or to comment on the laws and legislation that we often are presented with in these markets. So that's how we would see the working relationship.'

Carina Wessels: 'We see the role of our local member bodies and the CSIA as being a voice for governance globally and the GCGF is very well established in this field. So, although there are no specific initiatives being planned, in terms of a general collaboration, we would like to have a lot of interaction and a lot of collaboration with the GCGF' 

Carina Wessels and Philip Armstrong were interviewed by Kieran Colvert, Editor, CSj. The 'Corporate Secretaries' Toolkit was launched in Hong Kong on 16 April 2014 at the Foreign Correspondents' Club. The first part of this interview was published in the June edition of CSj.

Since the interview, Philip Armstrong has become Senior Advisor: Corporate Governance at the International Finance Corporation (IFC), part of the World Bank Group, based in Washington DC. The Global Corporate Governance Forum has now been absorbed into IFC's Corporate Governance Group.

Know your Institute: the meaning of professionalism

This second article in our series on the Hong Kong Institute of Chartered Secretaries gives an introduction to the work of the Institute in the critical areas of professional standards, research and advocacy.



What is the purpose of a professional body? Perhaps the best known function of professional bodies is their role in awarding professional qualifications, but, once members have qualified, there remains their ongoing role in maintaining professional standards.

'The professions are built on trust', says George Beaton, Associate Professor at the University of Melbourne, in his January 2010 essay 'Why professionalism is still relevant' (see: http://www.professions.com.au/Files/Professionalism_Beaton.pdf). 'The doctor or the lawyer is trusted to do the best he or she possibly can for a good outcome, even if some patients are not cured and if some cases are lost. Trust remains because of a basic faith in the disinterestedness and selflessness that is instinctively sensed as the essence of professionalism.'

Trust is especially important in today's business environment where a damaging reputation due to unethical conduct by professionals can go viral via the internet in a matter of minutes.

1. Professional standards

The Hong Kong Institute of Chartered Secretaries (HKICS) takes this aspect of its role very seriously. In October 2013, the Institute revised *The Essential Company Secretary* (which functions as a mandatory code of conduct for HKICS members) placing greater emphasis on the need for members to actively promote good corporate governance practices and discharge their duties with a high degree of integrity. The guide points out that the reputation, both of the profession and the HKICS, 'stands and falls on the individual and collective efforts of its members in performing their duties with integrity, skill and dedication'.

Professional standards start, of course, with the quality of the education and training students receive on their way into the profession. Both routes into the HKICS – the International Qualifying Scheme (IQS) and the approved collaborative courses with local universities – are subject to a rigorous quality assurance process. The Institute of Chartered Secretaries and Administrators (ICSA) Professional Standards Committee regularly comes to Hong Kong to ensure that the Institute's qualification process is up to the international standard.

The Institute's work in pre-qualification education will be covered in the next article in this series; this article will focus on the equally important post-qualification training – continuing professional development (CPD).

CPD in Hong Kong

The Institute launched its mandatory CPD programme in August 2011 to set a minimum standard for CPD attendance. HKICS members are now required to accumulate at least 15 CPD points annually. Reinforcing the message of the importance of CPD for company secretaries, the listing rules were revised

in 2012 to introduce a new rule (rule 3.29) which matches the Institute's new CPD requirements.

'Maintaining professional standards is crucial in view of the expectations of stakeholders,' says Jack Chow FCIS FCS, Chairman of the Institute's Professional Development Committee. 'Our Institute has to be the market leader of corporate governance practices. Our CPD programme informs members about corporate governance developments and, at the same time, provides recognition for relevant members' knowledge.'

He adds that the Institute plans to expand the current mandatory CPD programme to include graduates. 'Graduates, like members, are working and therefore require CPD in order to maintain their knowledge and skills. The extension of mandatory CPD to graduates also enables them to make a steady transition to becoming members.'

Lydia Kan ACIS ACS, the Institute's Director of Professional Development, leads a team of four tasked with running the HKICS CPD programme. She explains that the Institute's mandatory CPD

Highlights

- the reputation, both of the profession and the HKICS, stands and falls on the individual and collective efforts of its members in performing their duties with integrity, skill and dedication
- trust is especially important in today's business environment where a damaging reputation due to unethical conduct by professionals can go viral via the internet in a matter of minutes
- the Institute has gained recognition, both in Hong Kong and globally, as a thought leader in the corporate secretarial and corporate governance fields



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Jack Chow FCIS FCS, Chairman,
 Professional Development Committee

programme is being implemented in four stages starting with the most recent recruits to the profession and extending to all HKICS members by 2017. This phased implementation has now reached its second stage with 2,500 members currently subject to the mandatory requirements.

Ms Kan says that mandatory CPD has been well received by HKICS members – the compliance rate has been 98% since its implementation in 2011. ‘Members have also commented positively about the quality and variety of seminars organised by the Institute,’ she adds. Attendance at

Committee in focus: the Professional Development Committee

History: The HKICS Professional Development Committee (PDC) started life as a sub-committee in 1988 when the Institute was still an association of ICSA in Hong Kong.

Remit: The PDC oversees the Institute's work in professional standards, research and advocacy. This includes:

- implementing and monitoring the mandatory CPD programme including the award of mandatory CPD points for members
- implementing and maintaining Enhanced Continuing Professional Development (ECPD) standards, including the award of ECPD points under the ECPD Programme for the Practitioner's Endorsement

- establishing and improving contact with governmental and regulatory bodies in Hong Kong to promote the Institute and the Chartered Secretarial profession
- organising, or jointly organising with other professional bodies, regulators, and competent scholars, professional training seminars and conferences on subjects relevant to members' interests in Hong Kong and Mainland China
- overseeing the composition and operation of the Company Secretaries Panel; Technical Consultation Panel; Professional Services Panel; the Sub-Committee on Continuing Professional Development Curriculum and In-house Training; the Sub-Committee

on Continuing Professional Development Exemptions; and the Editorial Board which oversees this journal and publications

- supervising and publishing research project reports and guidance notes relevant to the Chartered Secretarial profession, and
- contributing comments and opinions to consultations conducted by the government and regulators.

Meetings: Quarterly.

Membership: Jack Chow (Chairman); Dr Gao Wei (Vice-Chairman); Dr Eva Chan (Vice-Chairman); Ken Chan; Ernest Lee; Susan Lo; Joseph Mau; Dr Maurice Ngai; Douglas Oxley; and Grace Wong.

the Institute's CPD events has significantly increased over the last two years. Attendance was up 36% in 2012/ 2013 over the previous year and the last two Annual Corporate and Regulatory Update (ACRU) seminars have attracted record numbers of attendees – over 1,400 attendees in both years, which is roughly double the number of attendees in previous years.

The mandatory CPD programme is designed to allow flexibility in terms of where members can get their CPD training, but, to ensure the relevance of the training, some of the required 15 CPD points must be earned from the Institute's own Enhanced Continuing Professional Development programme. From 1 August 2014 onwards, members outside the corporate secretarial sector must gain at least three points from the ECPD programme.

This programme covers a broad range of subject matter relevant to the work and skill sets of Institute members and enables members in the corporate secretarial sector to ensure that their specialist knowledge is up to date. Such members are expected to gain a minimum of 15 points from the Institute's ECPD programme annually. With these points, if they have the appropriate experience, members can apply for accreditation from the Institute in the form of the 'Practitioner's Endorsement'.

HKICS members self-declare their CPD compliance annually and the Institute carries out checks on a random 10% sample. Members not fulfilling the mandatory requirements are referred to the Investigation Group under the Institute's Membership Committee. The Investigation Group studies each case and may refer cases to the Disciplinary Tribunal for further action.

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we are not just
compiling responses to
consultations but also
proactively looking at
issues we think will
require attention

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April Chan FCIS FCS(PE), Chairperson,
Technical Consultation Panel



There has been an increase in the number of cases referred to the Disciplinary Tribunal since the implementation of mandatory CPD and the first sanctions were applied this year. Two members have been publicly sanctioned via this journal for non-compliance with the requirements. In addition to such reprimands, the Disciplinary Tribunal can impose fines and revoke membership.

CPD in Mainland China

As mentioned in the first article in this series, the Institute has been highly active in professional development training in Mainland China. The topics and directions of the CPD events on the Mainland have to be passed through the Professional Development Committee for approval. 'As the Professional Development Committee secretary, I have a coordinating role,' says Ms Kan. She adds that her team also organises training events in Hong Kong for the Institute's Affiliated Persons from the Mainland and their colleagues.

Just like in Hong Kong, attendance at the Institute's Mainland CPD events

has been on an upward trend over the past years. 'The demand for training in the Mainland, particularly regarding corporate governance, compliance and board secretarial practice, is high and the Institute is playing an important role in contributing to good corporate governance awareness in the Mainland,' Ms Kan says.

Ms Kan, who is an Associate of ICSA and HKICS, says she feels proud to be working in this area. 'The company secretarial profession is playing an extremely important role in keeping companies aware of good governance and compliance standards,' she says. 'But this means that company secretaries need to keep up to date with the changes in rules and regulations in many different areas, both industry specific and generally, such as the listing rules, the Securities and Futures Ordinance, the new Companies Ordinance and the new data privacy, AML and competition regulations. Our CPD requirements have been well received by regulators and employers as a basic means to benchmark professional quality.'



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the importance of our
profession has grown
in view of our practical
approach and position
of influence upon
management with our
cross-industry function
”

Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS

2. Research and advocacy

The HKICS has gained recognition, both in Hong Kong and globally, as a thought leader in the corporate secretarial and corporate governance fields. This reputation has largely come from its research and advocacy initiatives.

'Research and advocacy are part of the core competency of the HKICS,' says Mohan Datwani, the Institute's Director of Technical and Research. 'It contributes to the technical knowledge of members; it promotes our brand to regulators; it provides an opportunity for us to work

with others; and our work products are increasingly finding their way to board members and other employers.'

Consultation submissions

The Institute has played, and continues to play, an integral role in the development of regulatory policy in Hong Kong. Company secretaries, particularly senior members of the profession, have valuable experience to share with regulators and other stakeholders when legislative or regulatory reforms are under consultation. Mr Datwani coordinates the Institute's responses to consultations and he explains that the approach adopted depends on the nature of the consultation.

'If it is of a technical nature, for example relating to accounting standards, then I will source members with the appropriate skill sets and collate their views. If the consultation is appropriate for a wider audience, then I will consult the appropriate panel. In this regard, I am most grateful to Edith Shih FCIS FCS(PE), April Chan FCIS

Panel in focus: the Technical Consultation Panel

History: The Technical Consultation Panel started life as the Technical Committee in the late 1980s when the Institute was still an association of ICSA in Hong Kong.

Remit: As its name implies, the panel is chiefly responsible for coordinating work on the Institute's consultation submissions. However, April Chan, former HKICS President and chair of the panel, emphasises that the panel now takes a very proactive approach to its work. 'We are not just compiling responses to

consultations but also proactively looking at issues we think will require attention. When we see regulatory issues coming up, we put it to the members to see if we need to put out a submission,' she says. She adds that the panel is currently looking at Hong Kong's new competition law. While the new law will not be implemented until next year, the panel is assessing its implications for corporate secretaries in Hong Kong.

Meetings: Quarterly.

Membership: April Chan (Chairman); Professor Anne Carver; Professor Say Goo; Peter Greenwood; Michelle Hung; Dr Brian Lo; Susan Lo; Professor CK Low; Angela Mak; Dr David Ng; CK Poon; Edith Shih; Paul Stafford; Professor Mark Williams; Mike Scales; Paul Kwan; and Wendy Yung.

The Professional Services Panel will be covered in the next article, and the Company Secretaries Panel will be covered in the final article, in this series.

FCS(PE) and Paul Moyes FCIS FCS, as panel chairs for the Company Secretaries Panel, the Technical Consultation Panel and the Professional Services Panel respectively, and the members of these panels. But there are certain topics, such as the new Companies Ordinance, where we seek views from all members through our CPD programme, CSj and other focus groups and forums,' Mr Datwani says.

Publications and events

The Institute issues a wide variety of publications from practical guides addressing technical areas of company secretarial practice to research reports looking at major issues which will have an impact on the work of practitioners in Hong Kong. The Institute has recently published guides on competition law, directors' induction and inside information disclosure for A+H-share companies, and has published research reports on board diversity and the roles and responsibilities of company secretaries in Hong Kong's listed companies (these publications are available on the publications section of the HKICS website: www.hkics.org.hk).

'Our research reports must reflect our practical nature and be of added value in that they must not only be descriptive but forward looking,' says Mr Datwani. 'Again, we look for thought leadership in our research and will be looking at global trends and local issues to determine further research projects.' He is currently working on a research project looking at the gap, if any, between what a company secretary does and what they should be perceived as doing. 'This is a research for which we have allowed academics to be in the driving seat as we value independent views. Depending on the research results, there may be a follow-up research paper,' says Mr Datwani.

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”

Lydia Kan ACIS ACS, Director,
Professional Development

Mr Datwani is also responsible, together with the professional development team, for organising the Institute's highest-profile event – its biennial corporate governance conference (CGC). The latest CGC will be held on 19 September 2014 on the theme of 'Changing rules, changing roles – managing it all'. 'This is the signature event for the HKICS' says Mr Datwani. 'It allows participants to learn of topical issues and also to interact with directors and their peers internationally. It also brings about an understanding of regulatory philosophies and changes on the horizon like implementation of the competition law, corporate regulation by the SFC, upcoming code provisions under the *ESG Reporting Guide*, etc, and is thus highly practical. The places will fill up fast and anyone intending to attend should book early to avoid disappointment.'

Mr Datwani, a Fellow of the ICSA and HKICS, is himself a regular speaker at CPD events and conferences, and, like Lydia Kan, he takes great pride in working in this field. 'Corporate governance has intrinsic



value to me, based on my 20 years plus as a solicitor and seeing the best and the worst business practices and people. I have seen corporate governance, during my two short years at the HKICS, become a buzz word and regulatory and other legal and compliance topics being taken seriously. This is in part a response to the plethora of regulations globally flowing from the financial crisis and also from the behavioural shift of people based on the knowledge that the costs of non-compliance far exceed that of compliance. In line with these developments, the importance of our profession has also grown in view of our practical approach and position of influence upon management with our cross-industry function!

The publications mentioned in this article are available in the publications section of the HKICS website: www.hkics.org.hk. For more information on the Institute's upcoming corporate governance conference to be held on 19 September 2014, see: <http://hkics.org.hk/cgc2014>.



Preparing for the new competition law

The Competition Ordinance, which is expected to be implemented next year, presents unprecedented opportunities and challenges for company secretaries and compliance professionals in Hong Kong. Zoe Chan So Yuen FCS FCIS, Solicitor, argues that it is time for business leaders and company secretaries to have their internal policies reviewed regarding competition law compliance. This article also proposes why company secretaries are well equipped to help implementing a competition compliance programme.

Globally there has been a much more vigorous enforcement of competition legislation. International case decisions highlight that certain established industry practices are now being classed as anti-competitive activities such as price fixing; market allocation in supply chain management; quantitative restrictions on the output of goods or services in distribution networks; and bid-rigging in procurement. We have also seen the globalisation of investigations, huge monetary penalties and the increased use of disqualification orders imposed against individual officers. Compliance with competition legislation has therefore become all the more imperative for businesses globally.

Hong Kong's new competition law is certainly part of this international trend. Many well-established industry practices and commercial agreements or understandings will come under close scrutiny once the law has been

implemented. Particular attention needs to be paid to the first and second conduct rules of the new law which deal with anti-competitive agreements or concerted practices and abuse of substantial market power.

Hong Kong's new competition law should be regarded as both a sword and a shield – while it poses a compliance risk it also defends companies against anti-competitive practices. It is uncertain which industry or sector will be targeted first for investigation or enforcement. Some argue that Hong Kong business practices have unique family-dominated business features and overseas lessons cannot be directly borrowed or used locally. As such, the new rules will provide a good opportunity for business leaders and company secretaries to review their current practices and competition policies. A competition compliance programme (CCP) can be fully and effectually used by business units so as

to ensure they have a sound compliance framework and strategy.

Why implement a CCP?

Hong Kong's new competition law presents a new compliance challenge to company secretaries in Hong Kong and there are uncertainties as to how the Competition Commission will enforce the law. The Hong Kong Institute of Chartered Secretaries has issued detailed guidelines on the new law to assist members in their compliance programmes. Equipped with professional skills in corporate compliance and administration, chartered secretaries are well positioned to work as corporate caretakers of the new law. They can identify the high-risk areas in compliance and recommend frontline staff training to ensure staff are familiar with the law.

Implementation of a CCP will help mitigate your business risks and reduce compliance costs. Moreover, management participation in a CCP can be a mitigating

factor which may substantially reduce any penalties imposed by competition authorities. This is certainly borne out by overseas case experiences. If an undertaking does not qualify for total immunity because the corporation sought leniency after the competition authorities commenced investigations, it may still benefit from a reduction in financial penalties if it can prove it adopted a CCP. Overseas competition case decisions reveal that offenders are often required to take the first available opportunity to apply for leniency with competition authorities and reduction in financial penalties often depends on an assessment of the use of a CCP against the facts of each case and various other factors including and not limited to:

- the managerial approach to the CCP (for example, director's knowledge and training regarding the CCP)
- the timing of the offender's undertaking/ immunity application to the competition authorities, and
- the quality of the information or evidence provided to the competition authorities.

Components of an effective CCP

The UK Office of Fair Trading recommends a four-step competition law compliance process, namely: risk identification, risk assessment, risk mitigation and review. The Australian Competition and Consumer Commission refers to the need for businesses to identify, remedy and reduce the risk of competition law breaches as part of their compliance programmes.

An effective CCP consists of a top-down risk management policy which ensures compliance with competition legislation.

Although corporations' CCPs will differ depending on the nature and type of their businesses, compliance professionals should ensure the following key components are present.

1. A corporate or mission statement, supported by senior management, should set out the priorities, a roadmap and policies relating to competition law compliance.
2. There should be training materials (tailormade to your business and industry needs), particularly for those who work in high-risk areas. Also, periodic reviews involving frontline staff should be carried out to coordinate and confirm that the programme has been working well. This will involve an interdepartmental joint task force headed by the human resources department, business development department, internal audit department, and legal and compliance departments.
3. Reference materials and a work manual should be available evaluating in layman's terms what the competition law means and how it applies to your business, using

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Hong Kong's new competition law should be regarded as both a sword and a shield – while it poses a compliance risk it also defends companies against anti-competitive practices
 ”

relevant examples. For SMEs, this can be a simple list of 'dos' and 'don'ts' or work checklist for frontline staff to comply with the law.

4. An annual compliance report (including an internal control and annual competition audit) should be issued for stakeholders' reference.

Depending on the size of the company, a rigorous CCP should contain a corporate-wide competition law compliance audit of processes and procedures. The UK Office of Fair Trading guidance suggests that

Highlights

- Hong Kong's new competition law provides a good opportunity for business leaders and company secretaries to review their competition policies and implement a competition compliance programme
- with professional training in corporate compliance, the company secretary is well positioned to serve as a competition law manager
- management participation in a competition compliance programme can be a mitigating factor which may substantially reduce any penalties imposed by competition authorities

The do's and don'ts of competition compliance

Do's	Don'ts
Competition awareness training and reviews	
<ul style="list-style-type: none"> Do pay attention to the scope of application of the Competition Ordinance. Do review how it will affect your business operations. 	<ul style="list-style-type: none"> Don't presume that most business activities will be exempted under the law.
Competition compliance and risk assessment	
<ul style="list-style-type: none"> Do implement a Competition Compliance Programme (CCP) at all business units. Do keep records of information and documents received from competitors or outsiders that may be relevant to any competition compliance or case investigation. Do attend regular training events and be familiar with the competition law. 	<ul style="list-style-type: none"> Don't ignore the competition law when setting your business strategies (particularly frontline staff in sales, marketing, human resources, training and internal controls) Don't engage in anti-competitive conduct such as: <ul style="list-style-type: none"> price-fixing sharing markets tender collusion, and bid-rigging.
Vigilance, investigations and enforcement	
<ul style="list-style-type: none"> Do educate your staff about the serious consequences of infringement of law, including details about the penalties and potential business losses (for example, ruining clients' confidence, business reputation and goodwill). Do report anti-competitive complaints to the Competition Commission. Do cooperate and seek approval for immunity under the leniency programme as required under the Competition Ordinance. 	<ul style="list-style-type: none"> Don't wait until it is too late to seek professional advice during investigations by the Competition Commission. Don't turn a blind eye to anti-competitive practices among competitors. Don't delay in making a leniency application to the Competition Commission. Don't underestimate the consequences of violations of the law, such as heavy fines.
Contract management, record keeping and supervision	
<ul style="list-style-type: none"> Do keep detailed records of your meetings. Do ensure retention of agenda, minutes and other important meetings with trade unions and stakeholders. Do have a regular review of the relevance of conduct rules and your relationship with industry stakeholders. Do modify changes in contract clauses which would infringe the law. 	<ul style="list-style-type: none"> Don't discuss sensitive information in meetings without proper authorisation. Ensure business decisions are objectively justified by supporting documentation, for example, include anti-collusive clauses in contracts. Don't enter into secret business deals or social or trade association meetings without following the proper disclosure requirements and company rules.

Do's	Don'ts
Business reviews and operation	
<ul style="list-style-type: none"> • Do minimise the risk that your company becomes a victim of anti-competitive practice. • Do report malpractice to the management team. • Do apply the competition law to every aspect of your daily business activities. • Do remind your staff that the competition law is on your agenda for compliance. • Do stay alert to possible anti-competitive actions (such as price-fixing/ collusion) by trade associations or their members. Know your limits under competition law! 	<ul style="list-style-type: none"> • Don't ignore how the competition law may apply to your day-to-day business activities. • Don't exchange non-public sensitive tender information such as participation in market division or sharing price data among competitors. • Don't gather with your competitors and act collectively to influence prices or other trading conditions unreasonably to coerce particular business outcomes or distort market competition.

such a programme must have four main features to be successful:

1. support of senior management
2. appropriate policies and procedures
3. training, and
4. regular evaluation.

The role of the company secretary

An effective compliance programme should also include a clear channel of communication for whistleblowers. This can be achieved by appointing a member of senior management to take on overall responsibility for the compliance programme. In addition, disciplinary action should follow for employees who involve the company in any infringement of competition law. The company secretary can serve as a competition law manager – this position usually requires an accounting, law and finance background – to monitor

ongoing compliance work. Company secretaries can be given responsibilities to assume administration and managerial control of competition law compliance and audit. They can direct any questions or problems to the right executives internally (such as the board of directors) and externally.

Conclusion

There are still many questions regarding how the Competition Ordinance will be enforced and how competition will be promoted in the Hong Kong business community and SMEs. The priorities, scope and direction of enforcement and competition policy in Hong Kong will be determined by the Competition Commission with ultimate enforcement by the Competition Tribunal. The Competition Commission will issue enforcement guidelines after consulting the public's views on competition issues. Establishing a well-functioning and independent Competition Commission and widespread adoption of CCPs by businesses in

Hong Kong are the next steps to the achievement of the goals of the new competition law.

Zoe Chan So Yuen FCS FCIS, Solicitor

The author can be contacted at: zoechan123@yahoo.com.

The Hong Kong Institute of Chartered Secretaries' 'Guidance Note on Competition Law' is available on the HKICS website: www.hkics.org.hk (see Publications, Guidance Notes).

The Competition Commission has published a discussion note highlighting, and soliciting public feedback on, the key elements of the Ordinance. 'Getting Prepared for the Full Implementation of the Competition Ordinance' is available in the 'Consultations' section of the Commission's website: <http://compcomm.hk>.

香港特许秘书公会 第32期联席成员讲座 在南宁召开 深入探讨关联交易与 内幕信息管控实务

本文是香港特许秘书公会在南宁召开的「第32期联席成员讲座」的内容,当中包括关联交易规则的简化、内幕信息管理的性质、修改H股相关的《特别规定》、董事会秘书的专业化发展等。

为配合内地在香港上市公司合规及更好地把握关联交易新规与内幕交易管控的需要,香港特许秘书公会于2014年5月14-16日在广西南宁举办了主题为“关联交易与内幕交易管控”的“2014年香港特许秘书公会第三十二期联席成员强化持续专业发展(ECPD)讲座”(讲座),逾150名来自H股、A+H股、红筹等上市公司的高管参加了讲座。

公会在港65周年及内地事业发展20年 今年是“特许秘书及行政人员公会”踏足香港65周年,也是公会在港成为独立专业机构20周年,公会副会长高伟博士在致辞中回顾了公会在内地开展工作20多年所取得的成就。高伟博士指出,公会的联席成员计划已实施十个年头,其功能也与时俱进,不断拓展,除了为广大联席成员提供持续专业培训、搭建联席成员之间,以及与两地监管



机构的沟通交流平台之外,公会近年来也重点强化了技术研讨和编写实务指引功能,高伟博士指出,此举旨在进一步发挥专业的优势,发动广大董秘共同推动工作中实务问题的解决,提升董秘的执业能力及上市公司的治理水平。

简化了的“关联交易规则”

香港联交所就现行“上市规则”关联交易某些要求过高的条款做了适当修订,新的《上市规则》将于2014年7月1日生效。欧华律师事务所刘巍与刘江律师就修订后的关联交易规则进行了介绍。刘江律师指出,关联交易规则并不是禁止关联交易,而是要求上市公司按照既定的规范去进行关联交易,规则旨在确保上市发行人进行关联交易时能顾及公司和股东的整体利益;防范上市发行人的董事、监事、最高行政人员及主要股

HKICS 32nd Affiliated Persons ECPD seminars

This article describes the topics discussed in the HKICS 32nd Affiliated Persons ECPD seminars held in Nanning on 14-16 May 2014, including the amendment of connected transaction rules, the importance of managing inside information and the professional development of board secretaries.

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公会除了为广大联席成员提供持续专业培训，及搭建联席成员之间和与两地监管机构的沟通交流平台之外，近年来也重点强化了技术研讨和编写实务指引功能。
 ”



分为6项，挑选标题的原则为：一个公告多个事项或涉及多条上市规则，须选择所有适用的标题；当所有标题不适用时，才选择“其它”标题。

中国石化董秘黄文生对香港与内地关于内幕信息的定义进行了比较：香港和内地的基本精神一致，但在重大性的概念上，内地注重是否对公司证券交易价格有较大影响，香港则注重对投资者买入或卖出的决定的影响，而非着重于证券价格的波动；内地有量化指标，香港仅是原则性规定，没有量化的规定；对于多地上市公司，本着从严的原则确定内幕信息。他在演讲时谈到，目前境内外对内幕交易的监管越来越严格，公司面临内幕信息多，董秘压力大，对内幕信息管控不能放松。上市公司需要不断完善内幕信息认定、流转、保密和披露制度，增强全员，特别是董事、监事、高管的保密意识和诚信意识。一旦发生内幕信息的泄露，也将成为公司、董事和管理层减责的重要保障。针对实践中对内幕信息认定以及披露时点把握等难点，他建议要及时沟通交易所和监管部门，充分发挥法律顾问等中介机构的专业力量，加强主动性的信息披露，增加透明度，防范内幕信息泄露风险。

关于修改H股相关的《特别规定》和《必备条款》以及改革境内企业境外直接上市监管制度课题组的工作报告
 今年初，公会与中国上市公司协会

（以下简称“中上协”）成立了《到境外上市公司章程必备条款》修订联合课题组，以推动相关法规问题的解决。高伟博士执笔完成了“关于修改H股相关的《特别规定》和《必备条款》以及改革境内企业境外直接上市监管制度课题组的工作报告”。根据报告撰写的提案已提交至今年3月召开的人大会议，该报告将由中上协提交至中国证监会。在高伟博士对此报告解读后，与会者按行业分为五个小组进行了深入讨论。五个小组的发言代表充分肯定了公会和中上协开展此项工作的重要意义。中国人保财险董秘张孝礼在发言时指出，推进该项工作宏观上一定要考虑人民币国际化、内地证券市场化和简政放权的国际国内全局发展趋势，遵循提高资本运营效率、降低公司运营成本、保护股东合法权益三项原则强力推进，修订尽可能一步到，与国际接轨。

中上协董秘委员会主任委员、中国神华能源董秘黄清代表中上协简要报告了课题组成立的背景、主要工作进展以及未来安排，现场回应了大家一致要求废除的观点，认同修订是十分困难的工作，应该一步到位废除，此项工作的思路就是先废后立，如果A+H股公司需要有章程指引，再由中上协和公会联合编写，方便大家实际操作。

董秘内幕信息管控角色及专业化发展
 对于董秘的角色，中国南方航空董秘

谢兵总结为三个版本，1.0版本是救火队员，平常不管事，有情况时赶去救火，但有时救不好还会把自己搭进去；2.0版本是守门员，做好合规及内幕信息的管理工作；3.0版本是设计师或者咨询师，从公司治理的高度给出专业建议。

在本次讲座上，大家也谈到了董秘的名称问题。有人提议董秘改为“董事会秘书长”、“首席公司治理官”，黄清表示这些都是可以考虑的建议，并呼吁董秘们多跟董事长们反映名不正言不顺的困难，争取支持，因为董事长的支持对董秘地位的提高至关重要。黄清建议董秘在公司内部执行法律法规时，一定要刚性，否则将渐渐失去权威。董秘越是有理有据的执行相关法规，则可以体现的作用越大。

与会者在讨论时也充分表达了对公会所举办培训和相关活动的充分肯定，有董秘表示，此次参加讲座听到了很多优秀董秘的经验介绍，他们的一些具体做法对新上市的公司甚至已上市的公司有很好的借鉴价值，建议公会以后加多经验分享和交流，这样可全面的提高上市公司的治理水平。一位十年来一直参加公会活动的董秘表示，公会是董秘们的“家”，专业培训水平和服务质量越来越高，每次参加公会的培训都收获很多，切实解决了一些董秘工作中的实务问题。CSj



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

**Changing Rules,
Changing Roles –
Managing It All**

19–20 September 2014
Ballroom, JW Marriott Hong Kong

Day 1 (Friday, 19 September 2014)

Keynote Address

Mr Carlson Tong JP, Chairman, SFC

Long Arm of the Law

Professor John C Coffee Jr, Columbia Law School

Competing to Win

Honourable Anna Wu Hung-yuk GBS JP

Board Shoulders, Broad Shoulders

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

Winds of Reporting Changes

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

and many others
ECPD: 7 points

**Day 2 (Saturday, 20 September 2014)
Limited Places & Optional**

ESG In Action

Site Visit: 9 a.m. – 1 p.m.

ElectriCity/Black Point Power Station, or
Hongkong International Terminals, or
Hong Kong International Airport, or
Nuclear Resources Centre

ECPD: 3 points

Total 10 ECPD points

For enquiries:
Ms Kelly Chow at (852) 2233 9321 or
event@hkics.org.hk

**Fees* (Early Bird Rates on
or before 31 July 2014):**

HKICS Members:	Day 1 at HK\$3,000 (HK\$2,800)
	Days 1 + 2 at HK\$3,500 (HK\$3,300)
Regular:	Day 1 at HK\$3,500 (HK\$3,300)
	Days 1 + 2 at HK\$4,000 (HK\$3,800)

* Conference fee includes lunch, two coffee breaks with refreshments and cocktail after event.

Platinum Sponsors:



Gold Sponsor:



Silver Sponsor:



Bronze Sponsors:



Media Partner:



Seminars: May to June 2014

15 May

What company officers should know about charity law?



Chair: Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS
Speaker: Michelle Chow, Consultant, Withers

21 May

Directors' liability risks in corporate financial distress/ failure



Chair: Edmond Chiu ACIS ACS, Director of Corporate Services, VISTRA
Speaker: Terry Kan, Partner, Restructuring, Investigation & Insolvency of Shinewing Specialist Advisory Services, Shinewing (HK) CPA Ltd

27 May

Cross-border mergers and acquisitions (re-run)



Chair: Grace Wong FCIS FCS, Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd
Speaker: Paul Westover, Partner, Stephenson Harwood

28 May

AML and CFT workshop series (1): risks and methods of money laundering and terrorist financing



Chair: Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS
Speakers: Patrick Rozario, Director and Head of Risk Advisory Services, BDO Ltd; and Cyril Mak, Superintendent of Police and the Head of Joint Financial Intelligence Unit, The Hong Kong Police Force

10 June

Practical solutions in resolving shareholders' disputes



Chair: Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, and Past President of HKICS
Speaker: Terry Kan, Partner, Restructuring, Investigation & Insolvency of Shinewing Specialist Advisory Services, Shinewing (HK) CPA Ltd

New Graduates

Congratulations to the new Graduates listed below.

Ho Ka Yee
Ko Man Kit
Li Hoi Ying
Ng Sze Yan
Wong Ka Yee
Woo Sow Lai
Yu Ngan Hing

Newly appointed company secretaries

The Institute invites Associates and Fellows to provide notification as to their latest appointments as company secretaries of listed companies in Hong Kong for inclusion in this CSj column. Don't be left out – email us your new appointment with supporting documentation at member@hkics.org.hk. The Institute retains all discretion as to publication of such information.

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

New Associates

Congratulations to the new Associates listed below.

Chan Po Yu	Kwong Pui Ming	Ng Wai Yan
Chan Sin Man, Nico	Lai Kam Biu, Billy	Ng Ying Yi
Chan Yun San, Paul	Lam Man Wai	Ngai Wing Yu
Chang Wai Chun, Winsy	Lam On Lei	Ngan Wai Hung, Shirley
Cheng Kam Pik	Lam Ying	Pai Kam Ling
Cheng Sau Lan	Lau Tung Po	Poon Wing Cham
Cheng Yee Kwan	Law Yee Ting	Seto Ying
Cheung Wai Sze, Celia	Lee In Wai	Sham Suk Ying
Chim Oi Wah	Lee Pui Yi	Shek Yuen Ting
Chin Kwan Mei	Lee Yat Sing	So Man Che
Chow Kin Wing	Leung Chung Ping	So Sui Pok, Phoebe
Choy Yu Fung	Leung Hing Yu, Pearl	Tang Chi Wai
Chung Lai Ha	Leung Kwan Wai	Tsoi Kam Man
Chung Wai Mei, May	Leung Pui Ying	Tung Sze Ho, Dicky
Fan Yuk Fun, Cherry	Leung Siu King	Wan Yin Yee
Feng Yu Fei	Leung Suet Ching	Wang Fu Lee
Fok Tat Choi	Leung Wing Ki	Wong Lai Yin
Fung Siu Ling	Leung Wing Yan	Wong On Nei, Annie
Ho Kit Hung	Lok Wai	Wong Yu Kit
Ho Lai Shan	Ma Man Yin	Wu Mei Yee
Hon Hoi Lun, Helen	Mak Yee Ling, Dilys	Xing Jun
Kong Yi Kiu	Mak Yee Mei	Yeung Hoi Ling
Ku Wai Lin	Mok Wan Chi	Yip Yim Ting, Fanny
Kwan Wai Yan	Ng Ka Wai, Kevin	Zeng Jiali
Kwok Chi Kin	Ng Ting Ting	
Kwong Cheuk Ning	Ng Wai Ting	

Membership card photograph for 2014/ 2015

To update your membership card photograph for 2014/ 2015, please submit your digitalised photograph (at least 300 dpi) with your full name and membership number to memberphoto@hkics.org.hk by Thursday 31 July 2014.

New Fellows

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



Lai Kam Kuen, Ricky FCIS FCS

Mr Lai is currently Company Secretary of HKC (Holdings) Ltd (Stock Code: 190) and China Renewable Energy Investment Ltd (stock code: 987). He is mainly responsible for handling company secretarial affairs and monitoring corporate compliance, and participates in the development of the group's corporate affairs. In addition, he is an adjunct lecturer of The University of Hong Kong School of Professional and Continuing Education, teaching the HKICS Examinations Preparatory Programme. Mr Lai holds a bachelor's degree in Business Studies from The Hong Kong Polytechnic University and both bachelor's and master's degrees in Laws from the University of London.



Wong Tak Fong FCIS FCS

Ms Wong is Group Financial Controller of a multinational group of companies, and the Company Secretary of a listed company. She is responsible for the group financing, controlling, treasury, international taxation planning, operational and strategic finance management, corporate structure planning as well as global merger & acquisition. Ms Wong holds an MBA degree from The University of Bradford, UK. She is a Certified Tax Advisor, an Associate of The Taxation Institute of Hong Kong and the Institute of Financial Accountants in the UK.



Lai Yin Ping FCIS FCS

Ms Lai is an Assistant Company Secretary of Sino-Ocean Land Holdings Ltd. She is a Fellow of the Association of Chartered Certified Accountants and an Associate of the Hong Kong Institute of Certified Public Accountants and The Taxation Institute of Hong Kong. She holds a master's degree in International Accounting.



Xiao Ying Lin FCIS FCS

Ms Xiao is currently Company Secretary and Director of Investor Relations of Powerlong Real Estate Holdings Ltd (Powerlong) (HK Stock Code: 1238). She is responsible for providing secretarial support, listing and regulatory compliance, corporate governance, as well as investor relation for the Group. Prior to joining Powerlong, Ms Xiao was the Company Secretary of Lianhua Supermarket Holdings Co Ltd (HK Stock Code: 0980). Previously, she worked for the Institute's Beijing Representative Office from 2008 and was active in promoting the company secretarial profession in China. She gained a master's degree in Economics and Finance from the Shanghai Academy of Social Sciences in 2000. Ms Xiao has 13 years of hands-on experience in the fields of company secretarial, compliance, capital operation and investor relations. She is a member of The Chinese Institute of Certified Public Accountants.



Tam King Tong FCIS FCS

Mr Tam is a practising director of CK Yau & Partners CPA Ltd, which is a firm of over 50 years' establishment. He obtained a bachelor's degree in Accountancy from The Hong Kong Polytechnic University in 1991 and has been a Certified Public Accountant since 1996. Mr Tam is also a Fellow of the Hong Kong Institute of Certified Public Accountants, the Association of the Chartered Certified Accountants and The Taxation Institute of Hong Kong. He is a member of the Institute of Chartered Accountants in England and Wales, the Society of Registered Financial Planners and the Hong Kong Securities and Investment Institute.

So Wai Kei, Godwin FCIS FCS, Group Financial Control Manager, Sun Hung Kai Properties Ltd.

Membership activities

'Young Group' series – preparing for a successful career

A new workshop under the 'Young Group' series was held on 13 June 2014. Senior Consultant Jimmy Heng and Manager Carolyn Woo from Michael Page provided practical tips from the recruitment consultant perspective on how to prepare members to achieve a successful career. Chief Executive Samantha Suen FCIS FCS, shared her more than 30 years of experience in the company secretarial field and her advice on career advancement with members. This workshop helped members prepare for a successful career in the company secretarial profession. The Institute thanks Ascent Partners and Lippo Group for sponsoring the event.



Edmond Chiu ACIS ACS, Director of Corporate Services, VISTRA, presenting souvenirs to Carolyn and Jimmy



Samantha Suen FCIS FCS sharing

Community service activity – PHAB fun day

The Institute organised a community service activity in collaboration with Hong Kong PHAB Association on 5 July 2014. The Association promotes better integration between physically handicapped and able-bodied (PHAB) persons in the community. Participating members learned to play African drums with physically challenged persons and also engaged in games and sharing. Details with photos will be reported in the next issue of CSj.

Happy Friday for Chartered Secretaries – The fantasy of diamond

The Institute is delighted to present 'The fantasy of diamond' on Friday 11 July 2014. A diamond expert from Chow Tai Fook Jewellers will explore interesting aspects about diamonds and give members a chance to appreciate the beauty of diamonds under a microscope. The speakers will include:

- Hamilton Cheng, Finance Director and Company Secretary, Chow Tai Fook Jewellery Group Ltd
- Alan Chan, Head of Branding Department, Chow Tai Fook Jewellery Company Ltd, and
- Sheryl Cashmore, Training Director, Diamond Department, Chow Tai Fook Jewellery Company Ltd.

More event information is available at the events section on the Institute's website: www.hkics.org.hk. For enquiries, please contact Jonathan Chow at 2830 6088, or Ken Lai at 2830 6016, or email: member@hkics.org.hk.

ECPD and MCPD

What you should know about the MCPD requirements

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

CPD Year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Submission deadline
2013/2014	1 January 2000 - 31 July 2013	15	31 July 2014	15 August 2014
2014/2015	1 January 2000 - 31 July 2014	15 (at least 3 ECPD points)	31 July 2015	15 August 2015
2015/2016	1 January 1995 - 31 July 2015	15 (at least 3 ECPD points)	31 July 2016	15 August 2016

Revised mandatory CPD policy (effective 1 August 2014)

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

Abolition of Practitioner's Endorsement fee

From the 2014/ 2015 year onwards new applicants for the Practitioner's Endorsement (PE), or existing PE holders, are not required to pay the annual renewal fee or application fee. Please refer to the new forms at the ECPD section on our website (www.hkics.org.hk) for the 2014/ 2015 application/ renewal.

Forthcoming seminars

Date	Time	Topic	ECPD points
16 July 2014	6.45 p.m. – 8.45 p.m.	Five completely ignored differences between Hong Kong and PRC company law	2
23 July 2014	6.45 p.m. – 8.15 p.m.	Chaos at the co-op: corporate governance failures are not restricted to greedy capitalists	1.5
24 July 2014	6.30 p.m. – 9.30 p.m.	AML & CFT workshop series (2): compliance standards for AML and CFT	2.5
29 July 2014	7.00 p.m. – 8.30 p.m.	IT security – what does it mean for corporate responsibility and liability?	1.5
5 Aug 2014	6.45 p.m. – 8.15 p.m.	Board performance evaluation	1.5
12 Aug 2014	6.45 p.m. – 8.15 p.m.	How to plan for ESG reporting	1.5

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

ECPD seminar enrolment

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

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. Act now and enjoy the exclusive Fellowship benefits:

- 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 Cherry Chan at: 2830 6005, or email: member@hkics.org.hk.

ACRU 2014 photo gallery

The Institute's 15th Annual Corporate and Regulatory Update (ACRU) was held on 5 June 2014 at the Hong Kong Convention and Exhibition Centre. There were four sessions this year with presentations by speakers from Hong Kong Exchanges and Clearing Ltd (HKEx), the Securities and Futures Commission (SFC), the Companies Registry (CR) and the Official Receiver's Office (ORO). This month's CSj brings you full coverage of the event in our cover stories (pages 6–17).

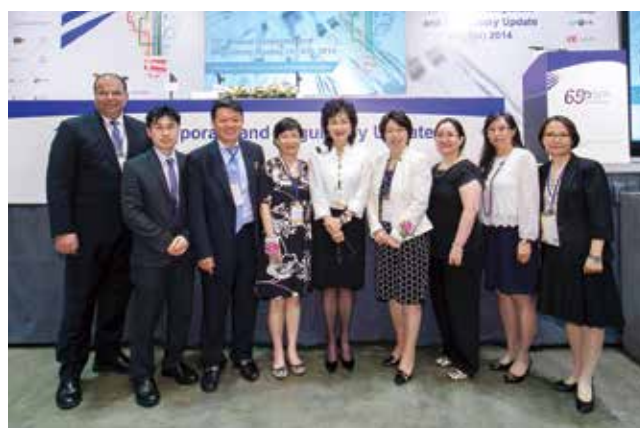
The Institute would like to thank the speakers, regulators, sponsors, supporting organisations, chairpersons of the panel discussions, the Secretariat and the full house of over 1,400 attendees for their support of this event.



Overview



(Left to right) Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS; Sammy Chau, Vice-President of the Compliance and Monitoring Team – Listing Department, HKEx; Edith Shih FCIS FCS(PE), President, HKICS; Katherine Ng, Head of Policy Team – Listing Department, HKEx; and Stephen Jamieson, Senior Vice-President – Listing Department and Head of the Enforcement Team, HKEx



(Left to right) Mohan Datwani FCIS FCS; Tim Chung, Senior Solicitor (Legal Services), CR; Dr Maurice Ngai FCIS FCS(PE), Member, Professional Development Committee, HKICS; Karen Ho, Deputy Principal Solicitor (Company Law Reform), CR; Edith Shih FCIS FCS(PE), President, HKICS; Natalia Seng FCIS FCS(PE), Past President, HKICS; Christine Frances Sit, Senior Solicitor (Company Law Reform), CR; Marianna Yu, Deputy Registry Manager (Registration), CR; and Nancy Yau, Deputy Registry Manager (Company Formation and Enforcement), CR



Dr Maurice Ngai FCIS FCS(PE); Stephen Liu ACIS ACS; Samantha Suen FCIS FCS; Mohan Datwani FCIS FCS; Lydia Kan ACIS ACS, Director, Professional Development, HKICS; the Secretariat staff and student helpers



(Left to right) Mohan Datwani FCIS FCS; Alan Fong, Assistant Official Receiver (Legal Services), ORO; Ophelia Lok, Assistant Principal Solicitor (Legal Services), ORO; Stephen Liu ACIS ACS, HKICS Representative on The Official Receiver's Office Services Advisory Committee



(Left to right) Michael Duignan, Senior Director, Corporate Finance, SFC; Mohan Datwani FCIS FCS; and Dr Maurice Ngai FCIS FCS(PE), Member, Professional Development Committee, HKICS

New ICSA Council and Honorary Officers

HKICS President Edith Shih FCIS FCS(PE); Past President Natalia Seng FCIS FCS(PE); and Chief Executive Samantha Suen FCIS FCS, attended the ICSA Council meeting held on 29 to 31 May 2014 in London. Frank Bush, ICSA Past President and representative of the Australian Division, was elected President, and Edith Shih, and David Venus, representative of the UK, Republic of Ireland and Associated Territories (UKRIAT) Division were elected Vice-Presidents. Other ICSA Council members and Past Presidents are listed below. On 30 May 2014, all ICSA Council members were invited to attend the UKRIAT Graduation and Membership Ceremony 2014.

Name	Position/ Division
Frank Bush	President (Australia Division)
Edith Shih	Vice-President (China Division)
David Venus	Vice-President (UKRIAT Division)
Peter Turnbull	Council Member (Australia Division)
Bruce Murray	Council Member (Canada Division)
Natalia Seng	Council Member (China Division)
Dato' M Hafidz bin Nuruddin	Council Member (Malaysia Division)
John Nimmo	Council Member (New Zealand Division)
Professor Tan Wee Liang	Council Member (Singapore Division)
Jill Parratt	Council Member (Southern Africa Division)
John Heaton	Council Member (UKRIAT Division)
Angela Squire	Council Member (UKRIAT Division)
Ron Rosenhead	Council Member (UKRIAT Division)
Joseph Goromonzi	Council Member (Zimbabwe Division)
Michael Ashford	Past President (Canada Division)
Andy Cowe	Past President (UKRIAT Division)



ICSA Council members at the UKRIAT Graduation and Membership Ceremony 2014



Front row (left to right): Simon Osborne, David Venus, Michael Ashford, Frank Bush, Edith Shih, Peter Turnbull, Andy Cowe and Tim Sheehy. Second row (left to right): Dato' M Hafidz bin Nuruddin and Farai Musamba. Third row (left to right): Bruce Murray, Stephen Sadie, Joseph Goromonzi, Natalia Seng, Jill Parratt and Samantha Suen. Fourth row (left to right): Professor Tan Wee Liang, Angela Squire, Grace Tan and YC Chan

HKICS attends ACMI Launch Summit

Mohan Datwani FCIS FCS, Solicitor and Accredited Mediator, Director, Technical and Research, HKICS, attended and spoke during a panel discussion of the Launch Summit organised by the newly formed Asia Capital Markets Institute (ACMI). The event was held at the Exchange Auditorium on 18 June 2014. Mr Datwani joined Pru Bennett, BlackRock Asia Pacific Head of Corporate Governance and Responsible Investment, Dr Kelvin Wong, Executive Director & Deputy Managing Director, COSCO Pacific Ltd, and Wendy Yung FCIS FCS, Executive Director and Company Secretary, Hysan Development Company Ltd, in a panel moderated by Brian Tang, Managing Director, ACMI, and discussed the role company secretaries play as corporate disclosure professionals in promoting capital market integrity. HKICS was a supporting organisation of this Launch Summit.



Bernard Wu FCIS FCS, Treasurer, HKICS, (second right at the back) and Mohan Datwani (third left at the back) were present for the commemorative group photograph celebrating the launch of the Asia Capital Markets Institute

HKICS attends Family-Friendly Employers Award prize presentation ceremony

Chief Executive Samantha Suen FCIS FCS attended the prize presentation ceremony of the '2013/ 2014 Family-Friendly Employers Award Scheme' on 19 June 2014. She was the representative of The Hong Kong Coalition of Professional Services, of which HKICS is a member, on the Organising Committee of the scheme for the year 2013/ 2014.

The scheme, organised by the Family Council to promote core family values and a loving family culture, awards businesses for the implementation of family-friendly measures.



Samantha Suen as an Organising Committee member of the '2013/ 2014 Family-Friendly Employers Award Scheme' receiving a commemorative certificate from Chief Secretary for Administration Carrie Lam

MTR Society Link Gathering

Louisa Lau FCIS FCS(PE), General Manager & Company Secretary, HKICS, attended the Society Link Gathering on the theme of 'MTR Crowd Easing Measures' on 21 June 2014. During the gathering, representatives from the MTR Corporation explained its crowd management measures for the MTR rail network and provided updates on what it has done to respond to passengers' needs. After the presentation, visits were arranged to the Airport Express In-Town Check-In-Service at Hong Kong Station and the Control Centre at Two International Finance Centre.

Chartered Secretaries scholarships and subject prize

Bernard Wu FCIS FCS, Treasurer, HKICS, attended Lingnan University Awards Presentation Ceremony and Hong Kong Baptist University Scholarship & Bursary Donors' Tea Reception on 14 and 30 April 2014 respectively. He presented the Chartered Secretaries scholarships and subject prize donated by The Chartered Secretaries Foundation Ltd to the students listed below.

Recipients of the Chartered Secretaries scholarship:

- Lo Ka Foon, Year 3 business administration student (BBA programme), Hong Kong Baptist University, and
- Han Jihye, Year 2 business administration student (BBA programme), Lingnan University.

Recipient of the Chartered Secretaries subject prize:

- Fam V Chyi, Year 3 accounting student (Company Law), Lingnan University.



Bernard Wu with Fam V Chyi at Lingnan University Awards Presentation Ceremony

Payment reminders

Studentship renewal

Students whose studentship expired in May 2014 are reminded to settle the renewal payment by 22 July 2014.

Exemption fees

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

Student fee structure 2014/ 2015

The following studentship fee structure will apply from 1 August 2014.

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

Note 1: An administration charge will be applied to late studentship registrations for taking the corresponding examinations in June and December.

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

Note 2: An administration charge for each exemption re-application will be applied to students who do not settle the exemption fee within the designated period of time following the approved exemption.

Mandatory Continuing Professional Development (MCPD) requirement

With effect from 1 August 2015, the MCPD requirement (15 points per year) will be extended to all the Institute's Graduates. New Graduates are required to comply with the MCPD requirement (15 CPD hours per year, of which three hours must be from training provided by the HKICS) starting from the CPD year immediately following the year of Graduation.

Graduate status acquired	Financial year to fulfil MCPD requirement
Before 1 August 2015	2015/ 2016
Between 1 August 2015 and 31 July 2016	2016/ 2017
Between 1 August 2016 and 31 July 2017	2017/ 2018

IQS information session

This free seminar will include information on the International Qualifying Scheme (IQS). A member of the Institute will share her valuable experience on career prospects of professionally qualified Chartered Secretaries. This seminar is open to the public. Members and students are welcome to recommend the seminar to colleagues and friends interested in learning more about the Chartered Secretarial profession.

Date	Monday 21 July 2014
Time	7 p.m. – 8.30 p.m.
Venue	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central, Hong Kong
Speaker	Anita Tsang ACIS ACS Senior Manager – Corporate Services, Tricor Services Ltd

Seminar for Collaborative Course students – board performance evaluation

The Institute organised a seminar for Collaborative Course students on 7 June 2014 at the City University of Hong Kong. Paul Stafford FCIS FCS, Institute Council member and Corporation Secretary of HSBC and Regional Company Secretary for HSBC, gave a presentation on 'Board performance evaluation'. Over 50 students attended the seminar.



At the seminar

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The Hong Kong Institute of Chartered Secretaries Prize 2014

Call for Nominations

The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretarial profession over a substantial period.

Awardees are bestowed with the highest honour – recognition by their professional peers. We urge you to submit your nominations now!

The nomination deadline is Tuesday, 30 September 2014.
Please visit www.hkics.org.hk or contact Cherry Chan at 2830 6005 or email to member@hkics.org.hk for details.

**Please
act now!**

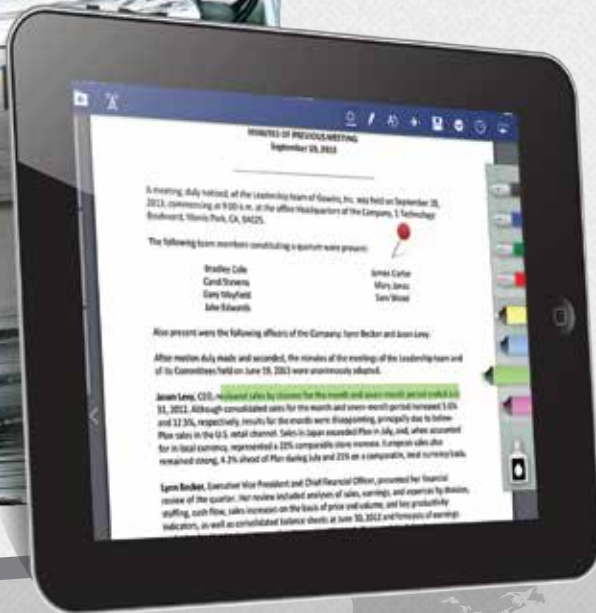
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