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June 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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Congratulations to HKICS and the other regulatory bodies for a wonderful event. We also applaud all participants, for such an enthusiastic attendance of this year's ACRU.

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Good governance comes with membership

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

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Graduates: 529
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Fellows: 504

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June 2014

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上市公司独立董事履职情况报告 30

《上市公司独立董事履职情况报告》是根据中国上市公司协会所发出的《上市公司独立董事履职状况调查问卷》的调查结果而撰写，旨在对已实施十多年的中国上市公司独立董事制度进行全面而客观的评估。本文是该报告的摘要，本期刊载该摘要第一部分，披露中国上市公司独立董事的基本情况及履职情况；第二部分将在下期刊载，论述独立董事制度存在的问题，并提出完善独立董事制度的建议。执笔人为中国上市公司协会公司治理部主任何龙灿，由中国上市公司协会纪委书记兼副监事长杨琳指导。

This article (in Chinese only) is the second of a two-part feature by the China Association for Public Companies (CAPCO) summarising its *Report on the Fulfillment of Duties by Independent Directors of Listed Companies* which was published earlier this year.

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Breaking news

HKICS President Edith Shih has been elected Vice-President of The Institute of Chartered Secretaries and Administrators (ICSA) Council for a term of two years from 1 June 2014. Frank Bush, representative of the Australian Division, has been elected ICSA President, and David Venus, representative of the UK, Republic of Ireland and Associated Territories (UKRIAT) has also been elected as Vice-President. Members of the ICSA China Division/ HKICS congratulate Frank, Edith and David on their election as Honorary Officers of ICSA and look forward to working with the newly constituted ICSA Council.



The Institute's latest AGM was successfully held last month. I would like to congratulate all members elected to Council – in particular David Fu and Paul Stafford, who were newly elected at the AGM; Bernard Wu, who returns to Council and has been elected treasurer of the Institute; and Dr Gao Wei who has been elected vice-president. Dr Gao has been highly successful in building our relations with PRC contacts and promoting the professionalisation of our profession and good governance practices in Mainland China.

I would also like to take this opportunity to recognise the contribution of the three members taking a break from Council work – Dr Maurice Ngai, Alberta Sie and Eddie Liou. We appreciate their work for the Institute and, while they have stepped down from Council, they continue to serve at the committee and sub-committee levels. Thanks are also due, of course, to the secretariat for its hard work in making the AGM a success.

The AGM, as ever, was an opportunity to take stock of the general health of our Institute and I am pleased to report that, as I mentioned in my AGM speech, the Institute is in good shape. We recorded a profit of over HK\$800,000 in the year ended 31 July 2013. This, together with the recovery of non-operating losses of about HK\$400,000, makes the

AGM update

total surplus for the year over HK\$1.2 million. Moreover, our membership and studentship continue to grow at a steady pace – we have in fact just passed the 9,000 milestone.

I am also pleased to report progress on our strategic objectives in Hong Kong, Mainland China and the International arena. We have had a number of breakthroughs on the international front in recent months – in particular, the high-profile launch of the Corporate Secretaries International Association (CSIA) Corporate Secretaries Toolkit in Hong Kong in April and the first meeting of the Institute of Chartered Secretaries and Administrators' (ICSA) newly constituted Council at the end of May.

I would like to say more about the ICSA Council meeting next month, but you can find out more about the CSIA Corporate Secretaries Toolkit on pages 14–17 of this edition of *CSj*. Carina Wessels, CSIA President, and Philip Armstrong, Head of the Global Corporate Governance Forum, were in Hong Kong for the launch of the Toolkit, and *CSj* was able to get their views on both the Toolkit and the latest developments of our profession globally.

Also in this edition – providing in fact the theme for this edition – is the latest in our series of articles addressing the compliance challenges brought by the new Companies Ordinance. Every edition of this journal so far this year has featured at least one article on the new companies law, so you might think that

you are fully prepared for the changes it has brought in. One requirement, however, tucked away in Section 388 of the new law, deserves further attention. Section 388 requires companies, unless exempted, to include a 'business review' in the directors' report section of their corporate reports. Schedule 5 sets out the required contents of this business review and these include a number of environmental, social and governance (ESG) areas such as the company's environmental policies and performance, and the company's key relationships with its employees, customers and suppliers.

Compliance with Section 388/ Schedule 5 will be anything but straightforward for companies new to ESG reporting. ESG disclosure is not just about adding environmental and social factors to your list of things to discuss in your annual report, it often requires fundamental changes to the corporate reporting function and possibly even the way the company is run. Fortunately, however, there is no shortage of guidance, both globally and locally, for companies starting out on this journey and our cover story this month highlights where companies can get help.

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

Edith Shih FCIS FCS(PE)

周年会员大会最新资讯

公会上月成功举行了周年会员大会，我谨此祝贺各位当选理事，特别是新当选的傅溢鸿及邵德勋；再度当选并成为公会司库的吴德龙；以及当选成为副会长的高伟博士。高博士在建立公会与内地之间的联系，促进我们专业在内地的专业化、以及内地良好管治实务，实在是贡献良多。

我亦谨此对三位过去热心服务公会而今年暂时休息的理事——魏伟峰博士、施琪及刘均潮致意。他们虽从今届理事会退下来，惟继续会在各个委员会及小组中贡献其力量。最后，我必须感谢秘书处同事们的辛劳，让是次周年会员大会得以顺利举行。

一如既往，周年会员大会是检视公会健康发展的时候。我很高兴告诉大家，正如我在周年会员大会提及，公会会务亨通。截至2013年7月31日止年度，公会录得80万港元的盈利，连同收回了大约40万港元的非营运亏损，该年度的总盈余逾120万港元。此外，我们的会员及学员数目也持续稳步增加，已突破9,000大关。

我在此欣然向大家汇报我们的策略性发展目标在香港、内地及国际上所取得的进展。近数月来，我们在国际领域取得了若干重大突破，当中包括

公司秘书国际联合会（CSIA）的「公司秘书工具包」于4月份在香港隆重推出，以及特许秘书及行政人员公会（ICSA）新组成的理事会于5月底举行首次会议。

下月我会与大家论及更多关于特许秘书及行政人员公会理事会会议，但大家在本期CSj第14-17页中，可以得悉更多有关公司秘书国际联合会「公司秘书工具包」的详情。公司秘书国际联合会会长Carina Wessels及全球公司治理论坛（Global Corporate Governance Forum）负责人Philip Armstrong亲身到港出席「公司秘书工具包」的发布仪式，CSj也就「公司秘书工具包」以及我们专业在全球的最新发展，邀请他们发表意见。

本刊今期有关新《公司条例》系列文章报道了新条例所带来的合规挑战，也是本期的主题。本年度迄今为止，本刊每期至少登载了一篇有关新公司法的文章，逐一探讨新公司法所带来的各项转变，由此看来，我们似乎已有充分的准备。然而，该条例第388条中的一项规定，值得我们仔细注意。第388条规定，公司报告内的董事报告环节中，必须载有「业务审视」（除非获得豁免）。《附表5》中载列了各项业务审视所需内容，当中包括若干环境、社会和管治（ESG）

范畴，例如：公司的环境政策和表现；公司与其雇员、顾客和供应商的重要关系。

对于首次提交ESG报告的公司来说，要符合第388条／《附表5》的规定也不一定易如反掌。ESG披露并非仅仅是在公司年报的讨论事项中加入各项环境及社会因素，而是要对公司的汇报职能，甚至可能是对公司的运作模式，作出根本改变。可幸的是，不少国内外企业已经在这方面起步，令我们可从而得到指引；本期的封面专题，便谈到公司可从那些方面取得协助。



施熙德

HKICS presents:
*9th Biennial
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Conference 2014*

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

19–20 September 2014
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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.

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Hongkong International Terminals, or
Hong Kong International Airport, or
Nuclear Resources Centre

ECPD: 3 points

Total 10 ECPD points

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

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Ask the Expert

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

Q: *Three out of the 10 directors on our board still request paper board packs – can you suggest the best ways to persuade these directors of the advantages of the digital pack?*

A: Firstly, I would say that your experience in this regard is common, particularly in Hong Kong. Individuals differ in their willingness to accept change and new things so expect that it will take time. In the meantime, you have at least already made a significant change for seven of your directors, as well as hopefully noticed efficiency gains within your company secretarial team.

There are a number of things you can do to encourage those final three directors to switch; the appropriate course of action will depend on those individuals and the working relationship that exists between them and you.

You could take a very passive approach and allow the positive experience of their fellow directors to encourage them over time. If each of the other directors is providing positive feedback and the meetings are running smoothly, then after a while they are likely to ask for their materials to be provided paperless. Another option would be to suggest that they use both the iPad and be provided with a paper copy for an interim period – that way, they can view the two side by side and get comfortable with an electronic board pack before officially moving over. It may also be possible to provide them with a hard deadline after which time, if they require a paper board pack, they or their secretary will be responsible for printing it.

The best way to encourage change, however, is to demonstrate how it will add value for each individual. Educate them on how the solution can benefit them.

- **Prompt and efficient delivery of meeting materials.** For directors who travel regularly or live between cities, electronic board packs allow them to receive materials as soon as they are ready. This allows more flexibility for directors to plan their meeting preparation time.

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

CSj's 'Ask the Expert' column provides you with the opportunity to ask our experts questions specific to the challenges you are facing. To ask a question of our experts, simply email CSj Editor Kieran Colvert at: kieran@ninehillsmmedia.com. Please note that the identity and contact details of questioners will be kept confidential. If you would like information about how your company can join our expert panel then please contact Paul Davis at: paul@ninehillsmmedia.com, or telephone: +852 3796 3060.



The ESG challenge

How to prepare a business review

In March this year, with the implementation of the new Companies Ordinance, Hong Kong imposed its first mandatory environmental, social and governance (ESG) reporting requirement. Hong Kong-incorporated companies, unless exempted, will need to comply with the 'business review' requirement of the new Companies Ordinance for financial years beginning on, or after, 3 March 2014, inclusive of ESG concerns. This article takes a look at what is required and what guidance is available to help companies with their compliance programmes.

There is an increasing trend for businesses to produce information on the environmental, social and governance (ESG) aspects of their operations. Historically, this disclosure has been made on a voluntary basis, but now an increasing number of jurisdictions, in both developed and emerging markets, have brought in mandatory ESG reporting requirements. Here in Asia there are mandatory ESG disclosure requirements in place in Mainland China, Hong Kong, India, Indonesia, Malaysia and Taiwan. In Australia, ESG reporting is subject to a 'comply or explain' enforcement mechanism.

Hong Kong is the latest recruit to this group – it 'upgraded' its ESG disclosure requirements in March this year with the implementation of the new Companies Ordinance (Cap 622). Under Section 388 of the new law, companies, unless exempted, need to include a 'business review' in the directors' report section of their corporate reports. The requisite contents of the business review are set out in Schedule 5, and must 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 that have a significant impact on the company. Interestingly, this also means that Hong Kong-incorporated listed issuers may have additional compliance requirements over and above those incorporated under other jurisdictions, as the ESG Reporting Guide under the listing rules is not as yet mandatory.

The ESG challenge

For companies already well versed in ESG reporting the business review requirement will probably not have much impact, but for companies new to ESG reporting the new requirements will be a significant compliance challenge. In particular, among other things, it will require companies to:

1. quantify non-financial factors using key performance indicators (KPIs)

Highlights

- the new business review requirement is a significant escalation of Hong Kong's ESG disclosure requirements because it is the first time such requirements have been made mandatory
- the new business review requirement will require companies to quantify non-financial factors using key performance indicators, and provide contextual and forward-looking information
- directors are advised to include a caveat in their business review advising readers that any forward-looking information should be treated with caution given the uncertainties involved

“
ESG disclosure requires the adoption of a stakeholder, rather than a shareholder, model of the corporation
 ”

2. provide context for their corporate reports, and
3. report forward-looking information.

These three aspects have historically been major hurdles for companies embarking on ESG reporting. Companies need to acquire the skills to use the metrics for quantifying non-financial factors and there is often a concern that providing contextual and forward-looking information may expose the company to the threat of litigation.

In addition, a recent report by the Global Corporate Governance Forum (GCGF) – *Emerging Trends in Environmental, Social and Governance Data and Disclosure: Opportunities and Challenges* – points out that ESG reporting often requires more fundamental changes to the way companies are run. Firstly, it requires the adoption of a stakeholder, rather than a shareholder, model of the corporation. 'This shift effectively implies commitments to strategic investments in employees, customers, suppliers, communities and the environment in ways that produce rewards for stockowners as well as for these stakeholders,' says the GCGF report.

Secondly, ESG disclosure also means shifting to a long-term focus since it requires companies to monitor matters

relating to the future sustainability of the environment and society.

Given the above, the cost of ESG reporting will clearly be an issue, although the business review requirement is targeted at larger companies which are likely to have already embarked on ESG reporting and are generally better positioned to absorb the extra costs involved. Under the new Companies Ordinance, companies which are eligible for simplified reporting are exempted from the business review requirement and the criteria for companies to qualify for simplified reporting have been relaxed.

Guidance on compliance

For companies not exempted from the business review requirement there are a number of guides, both globally and locally, to help with compliance. Probably the best-known international guide is the latest generation – 'G4' – of sustainability reporting guidelines produced by the Global Reporting Initiative (GRI).

'Awareness of the G4, which comprises underlying principles on content and quality of reports as well as standard disclosures, would assist reporting entities under Section 388 of the Companies Ordinance to prepare the business review,' says the team at SusDev Global, a Hong Kong-based sustainability reporting service provider.

Locally in Hong Kong, the *Environmental, Social and Governance Reporting Guide* published by Hong Kong Exchanges and Clearing (HKEx) provides an excellent introduction to ESG reporting, but there is now a new guide specifically targeted at helping companies comply with the new business review requirement. Published by the Hong Kong Institute of Certified Public Accountants (HKICPA), the *Guidance for the Preparation of a Business Review under the Hong Kong Companies Ordinance Cap 622* (HKICPA Guide) is available in *Accounting Bulletin 5* on the HKICPA website: www.hkicpa.org.hk.

The guide, while only in draft form, not only clarifies what disclosures will be required by the new Companies Ordinance, it is also accompanied by an *Implementation Guidance* which provides highly practical guidance on specific issues companies may encounter in their compliance programmes. For example, the *Implementation Guidance* has useful advice about the three aspects of ESG disclosure mentioned above – quantifying non-financial factors using KPIs, and providing contextual and forward-looking information.

1. Quantifying non-financial factors using KPIs

The *Implementation Guidance* provides illustrative examples of the KPIs in non-financial areas (such as those relating to water and energy use, waste production, CO₂ emission and employee health and safety), which should be disclosed in a business review. A retail company should, for example, be disclosing its waste production due to packaging. This should include the amount of waste arising from packaging (measured, for example, in kilograms of packaging waste per HK\$1,000 of products sold). Another example given is that of the KPIs a

company in the mining industry should be disclosing relating to 'lost-time injury frequency rate' (measured as the number of lost-time injuries per million hours worked).

The *Implementation Guidance* emphasises that reporters should:

- explain the calculation methods
- disclose the source of underlying data and, where relevant, explain the assumptions
- highlight where information from the financial statements has

been adjusted for the purposes of computing a KPI, and provide a reconciliation

- disclose corresponding amounts for the financial year immediately preceding the current year where available, and/ or
- identify and explain any significant changes to the calculation method used to compute the KPIs compared to previous financial years, including significant changes in the underlying accounting policies adopted in the financial statements.

The HKICPA Guide emphasises that KPIs and other information in the business review should be prepared and presented consistently from one year to the next. Where consistency is maintained, it suggests that directors should include a statement to this effect, such as: 'no changes have been made to the source of data or calculation methods used over the periods shown'.

Finally, reporters should bear in mind that the ultimate purpose of including these KPIs is to take the first step towards improving performance in the relevant areas. The HKICPA Guide recommends, therefore, that reporters




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Information Seminar

Date Wednesday, 30 July 2014
Time 7:00pm - 8:00pm
Venue 2-4/F, Pico Tower, 66 Gloucester Road, Wanchai




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It is a matter of discretion for individual employers to recognize any qualification to which these courses may lead.

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should set and communicate its performance targets and measure whether they are achieving them.

2. Providing context

One of the principles emphasised by the HKICPA Guide is that the business

Online resources

- The *Guidance for the Preparation of a Business Review under the Hong Kong Companies Ordinance Cap 622*, published by the Hong Kong Institute of Certified Public Accountants (HKICPA), is available in *Accounting Bulletin 5* on the HKICPA website: www.hkicpa.org.hk.
- The *Environmental, Social and Governance Reporting Guide*, published by Hong Kong Exchanges and Clearing (HKEx), is available on the HKEx website: www.hkex.com.hk.
- The G4 generation of Global Reporting Initiative (GRI) guidelines can be found on the GRI website: www.globalreporting.org, or directly at: <https://g4.globalreporting.org>.
- The *BEC Handbook: Understanding Materiality for Environmental, Social and Governance Reporting*, published by the Business Environment Council (BEC), is available on the BEC website: www.bec.org.hk.

review should both complement and supplement the financial statements in order to enhance the quality of disclosure. 'In complementing the financial statements, the business review provides useful financial and non-financial information about the business and its performance that is not reported in financial statements but which, in the directors' judgement, may be relevant to the members' evaluation of past results and assessment of future prospects,' the HKICPA Guide states.

This might include commenting on the events that have impacted the reporting entity over the reporting period. It might also include changes in market conditions which have had a significant impact on the development and performance of the reporting entity during the period. 'Every company is affected by its external environment. Depending on the nature of the business, the business review should include discussion of matters such as the reporting entity's major markets and competitive position within those markets and the significant features of the legal, regulatory, macro-economic and social environment that influence the business,' the HKICPA Guide states.

3. Reporting forward-looking information

The HKICPA Guide also stresses the need for the business review to report on the main trends and factors that directors consider likely to impact the future prospects of the reporting entity. This advice is supported by SusDev Global. 'Financial reporting has conventionally focused on presentation and analysis of historical data. In contrast, sustainability reporting frameworks, such as the GRI sustainability reporting guidelines, are designed to assist stakeholders to evaluate

how the long-term profitability of any organisation can go hand-in-hand with social justice and protection of the environment,' says the team at SusDev Global.

As mentioned above, many reporters are reluctant to give forward-looking information for fear that this may expose the company to the threat of litigation. The HKICPA Guide therefore advises directors to include a caveat in their business review advising readers that such disclosures are made in good faith but should be treated with caution given the uncertainties involved and the difficulty of getting objective verification.

The significance of the business review requirement

The new business review requirement is a significant escalation of Hong Kong's ESG disclosure requirements, not so much in terms of the specific requirements – these reflect standard ESG disclosure best practice – but because it is the first time such requirements have been made mandatory in Hong Kong.

We will have to wait until next year (2015) to assess the quality of disclosures in the first batch of business reviews included in annual reports, but that quality will not only depend on what is disclosed, but also on how the disclosures are made. Will the business reviews be written in a clear and readily understandable style? Will they provide readers with focused and relevant information?

The SusDev Global team points out that the G4 guidelines offer helpful guidance here. Materiality is a key concept in G4 and the guidelines recommend that reporters document the process for defining report content. 'Inevitably the

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ESG disclosure means shifting to a long-term focus since it requires companies to monitor matters relating to the future sustainability of the environment and society
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process for defining report content requires subjective judgements but the organisation is expected to be transparent about its judgements. Accurate records enable the organisation to explain its chosen approach to reporting on some sustainability impacts rather than others, importantly it also facilitates independent assurance of the process for defining report content,' the G4 guidelines state.

SusDev Global is concerned that companies may have an 'opt out' from disclosing material issues since Schedule 5 of the new Companies Ordinance specifically exempts companies from disclosing 'impending developments or matters in the course of negotiation if the disclosure would be seriously prejudicial to the company's interest'. They suggest that the HKICPA Guide could encourage reporters to adopt the approach taken by the GRI guidelines to any such omissions. 'In exceptional circumstances, if it is not possible to disclose certain required information, the report should clearly identify the information that has been

omitted and explain the reasons why the information has been omitted,' SusDev Global says. The GRI guidelines add that, where the omission is due to the unavailability of data, the organisation should disclose the steps being taken to obtain the data and the expected time-frame for doing so.

Beyond compliance

With the implementation of the new Companies Ordinance in March this year, Hong Kong entered the era of mandatory ESG reporting requirements. Robin Bishop, Director of Corporate Responsibility, Community Business, emphasises however that there are huge gains to be made by companies prepared to go beyond the mandated requirements.

'There is a solid business case for companies to go beyond compliance when it comes to ESG reporting. Organisations increasingly find that their profit and loss statements are influenced by parameters that do not feature on the balance sheet. These external parameters are ESG or "sustainability" issues that could

be economic, environmental or social in nature. Sustainability reporting gives organisations a framework to identify these sustainability issues, and to understand their impacts on its business. There are also direct benefits which include enhanced brand value or reputation, greater success at attracting and retaining talent, operational efficiency, mitigation and/ or reduction of risk, financial impact as well as the opportunity for organisational growth,' she says.

Kieran Colvert
Editor, CSj

The HKICS submission to the 'Guidance for the Preparation of a Business Review under the Hong Kong Companies Ordinance Cap 622', is available in the 'Submissions' section of the HKICS website: www.hkics.org.hk. Enquiries should be directed to Mohan Datwani, Director, Technical and Research – by email: mohan.datwani@hkics.org.hk; or by phone: 2881 6177.

Forging a global profession

The importance of the corporate secretarial role, particularly as the gatekeeper for good governance, is now recognised globally, but there is an increasing demand in emerging and transition economies for practical guidance on how this role should be best carried out. CSj talks to Carina Wessels, President, Corporate Secretaries International Association (CSIA), and Philip Armstrong, Head of the Global Corporate Governance Forum (GCGF), about the joint CSIA/ GCGF 'Corporate Secretaries Toolkit' which is designed as a globally relevant tool for training corporate secretaries and a reference work on the corporate secretarial role.



Thanks for giving us this interview, can we talk first about the genesis of the Toolkit?

Philip Armstrong: 'There is an increasing demand in emerging and transition economies for a better understanding of the practical role of the corporate secretary. We at the International Finance Corporation (IFC) and the Global Corporate Governance Forum (GCGF) issue tools of best practice, though I prefer to use the term 'good' rather than 'best' practice, and the CSIA was the natural partner for this project given that it represents the profession of corporate secretaries.'

Was this demand for guidance on the role of the corporate secretary coming through the CSIA or the GCGF?

Philip Armstrong: 'Through the IFC. We do a lot of work in challenging environments outside the countries where established corporate secretarial national bodies operate, and we identified this as an area lacking professional guidance. We had already been working in this area – we had established the 'Corporate Secretaries Club' in Kazakhstan, for example, but we wanted to put something together that was more professional, coordinated and cohesive with some measure of global utility.'

Am I right in thinking that the Toolkit is primarily designed for training purposes – can it also be used as a reference manual?

Philip Armstrong: 'It is designed primarily as a training tool, but it is also something that a corporate secretary who has been

subject to this training can take away and utilise. People often want to take something away after they have been trained and have a reference for what they have been taught.'

How was the Toolkit put together – was it developed by a joint GCGF/ CSIA team?

Carina Wessels: 'Yes, it was a joint team. We had a pilot launch in South Africa last year where we went through the 'experiential learning cycle' with the authors on the IFC side to see how the Toolkit will work in practice and to see how it can be rolled out.'

Market conditions vary hugely in the different jurisdictions where corporate secretaries work – was this a major challenge for the team developing the Toolkit in terms of making it applicable to different jurisdictions?

Carina Wessels: 'If you take a principles-based approach, it's much easier to make it applicable in a wide variety of countries, and there are many best practice recommendations which are not jurisdictionally based. A piece of legislation may say that a corporate secretary needs to induct the board of directors, but it won't tell you how you need to do that successfully. But it doesn't only have to be based on generic principles, the Toolkit can be "customised" to make it more applicable to a specific country.'

Philip Armstrong: 'I think the important thing is the ability to adapt it – it's really designed to provide a structured basis like



“ I personally think that the board support and administrative functions are as important as the more strategic governance issues and we need to add value to all those areas to be a successful corporate secretary ”

Carina Wessels, President, Corporate Secretaries International Association

a structured curriculum that trainers can use. It comprises 26 modules of seven hours each, and each module can be sliced and diced, adapted and modified, in a way that is best suited to a particular environment. If we take the example Carina gave of the requirement for director induction, any laws and requirements around that would then need to be built from where the Toolkit is being delivered.

We have another tool called 'Board Leadership Training Resources' (BLTR), which is a very comprehensive tool for director training. This Toolkit was built as a supplement and, by agreement from the CSIA, corporate secretaries who get access to the Toolkit also get access to the BLTR – certainly, some aspects of the BLTR will be useful if you are using the Toolkit.'

While we're on the topic of the diversity of corporate secretarial roles globally, could I ask you about another CSIA project – the initiative to survey and benchmark corporate secretary roles around the world?

Carina Wessels: 'Absolutely, yes. We will be looking at the reporting lines, the scope and breadth of responsibilities and the background to corporate secretaries' roles. We have previously done a salary benchmark and we found it difficult to get data from across the globe, but the idea is to get a better sense of the acceptance of the role and the general profile of the corporate secretary in different countries.'

How far has that progressed?

Carina Wessels: 'We have set 2015 as the target for this survey.'

What do you think links the profession globally? Is there something you can point to as defining what a corporate secretary does?

Carina Wessels: 'Legislative responsibility differs quite a bit from country to country, although there are certain core issues which are the same for countries around the globe – board support and

Highlights

- the importance of the corporate secretarial role, particularly as the gatekeeper for good governance, is now recognised globally
- there is an increasing demand in emerging and transition economies for practical guidance on the role of the corporate secretary
- the Corporate Secretaries Toolkit is both a tool for training corporate secretaries and a reference work on the corporate secretarial role

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It doesn't matter if you are in Vietnam or Lithuania or in a jurisdiction where corporate governance is well established like in South Africa... [corporate governance] principles have a very similar foundation. It's more the execution that is different and that's a factor of the legal system and the business traditions.

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Philip Armstrong, Head of the Global Corporate Governance Forum

so forth. Corporate governance is definitely one of the core areas and that's why, if you focus on a principles-based approach, it's so much easier to make it a global solution and put something non-jurisdictional on the table.

But what I also find interesting is that one starts seeing a lot more similarities these days in the legislation of different countries. Just looking at the new Companies Ordinance in Hong Kong for example, there are a lot of similarities between what has been introduced in Hong Kong and the legislation in South Africa. Countrywise they are far apart, but there are a lot of principles around areas such as the increased duties and responsibilities of directors, which are similar.

Do you think corporate governance standards will converge globally in the same way that, say, accounting standards have converged?

Philip Armstrong: 'I think the general principles of corporate governance largely articulated by the OECD principles are really the benchmark. It doesn't matter if you are in Vietnam or Lithuania or in a jurisdiction where corporate governance is well established like in South Africa, the principles have a very similar foundation. It's more the execution that is different and that's a factor of the legal system and the business traditions. If you look at a market like Vietnam, which has just come out of a socialist economy to a market economy in the last 20 years, they see corporate governance principles as a benchmark, but their legal system is just not aligned, so there are a lot of adjustments that have to be made.'

But some principles, surely, continue to be disputed? One of the principles that was included in the 'CSIA Governance Principles for Corporate Secretaries', launched in October last year, was stakeholder inclusiveness, but there are jurisdictions which still hold on to a shareholder focus.'

Philip Armstrong: 'In the less advanced economies, where corporate governance is still a reasonably novel concept, you find that stakeholder inclusiveness has not really found its way into the governance debate. This is primarily because people are still trying to establish a proper functioning independent board, etc. It's definitely not something that people are disregarding, but it hasn't quite caught up with the governance discussion. Where corporate governance standards are much more established, such as in South Africa and the UK – where it is now in the UK law – I think it is a different conversation. The only market that stands out as an exception is probably the US.'

Which seems to be holding on to a shareholder focus?


Philip Armstrong: 'Yes. Personally speaking, I find the US a grave concern in terms of governance and I'm prepared to be quoted on that. The trends and aspects that you see in the US are quite troubling in many ways as it is in some ways, at least in my personal view, an outlier when looking at advances in corporate governance and related issues elsewhere in the world.'

What impact do you think these trends are having on the corporate secretary? For example, is the trend towards principles-based corporate governance regulation having an impact on the perception of the role?

Carina Wessels: 'Absolutely. I think in most areas the corporate secretary is seen as the gatekeeper for good governance and has been central to the governance debate. Much more than in the past, corporate secretaries need to understand what business sustainability is, they need to understand stewardship and the role of the board and the role of management, and how they assist them in that respect. Definitely the focus is much more on the skills and experience and the ability of the corporate secretary to guide the business from a governance perspective in general.'

Do you think the role will go further in that direction and corporate secretaries will become corporate governance specialists – might they even lose other aspects of the role, such as administrative board support?

Carina Wessels: 'I don't think so. I personally think that the board support and administrative functions are as important as the more strategic governance issues and we need to add value to all those areas to be a successful corporate secretary. You can't just focus on the more strategic governance issues, you need to have the other basics in place as well to ensure that the company in general is governed well.'

Philip Armstrong: 'I think the best illustration for the question you are asking, and to support Carina's answer as well, is the demand we found for the Toolkit. That is as explicit as you can get. The role of corporate secretaries and their profile has really been elevated and the demand for the Toolkit has become almost an essential need rather than just a good idea.' 

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. Look out for part two of this interview in next month's 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.

Career notes

Philip Armstrong

Philip Armstrong heads the Global Corporate Governance Forum, based in Washington DC, US. Philip is a widely acknowledged expert on corporate governance and was closely involved with the internationally acclaimed King Reports on corporate governance in South Africa. He was instrumental in producing the Commonwealth Guidelines on corporate governance and served as an expert resource on corporate governance for the NEPAD initiative in Africa. He has received a number of awards internationally including an honorary doctorate in business administration from the Oxford Brookes University in the UK in recognition of his contributions to corporate governance.

Carina Wessels

Carina Wessels is the President of the Corporate Secretaries International Association (CSIA) and a fellow and immediate past president of Chartered Secretaries Southern Africa (CSSA). She holds LLB and LLM degrees, a Certificate in Advanced Labour Law and a PMD (Programme for Management Development). She is an admitted advocate of the High Court of South Africa. Carina spent nine years with De Beers in various operational and head office positions, including human resources, business improvement and corporate secretariat, as well as a period with Investec as corporate secretariat legal adviser. She has been employed as the Group Company Secretary of Exxaro Resources Ltd (Exxaro) since June 2011 and serves on Exxaro's executive committee. Carina is a co-author of the CSSA board exam level *Corporate Administration* textbook, and a past part-time lecturer in the subject, a reviewer of the *Corporate Secretaryship* textbook, a past CSSA examiner and moderator and a regular speaker at corporate governance and company secretariat seminars.

More information is available online at: www.csiaorg.com and www.ifc.org.



Privacy and data protection: from compliance to accountability

Allan Chiang, Hong Kong's Privacy Commissioner for Personal Data, outlines the competitive benefits to be gained by adopting a comprehensive privacy management programme.

The Personal Data (Privacy) Ordinance (the Privacy Ordinance) came into force 18 years ago in 1996. At that time, Hong Kong was the first jurisdiction in Asia to have a dedicated piece of legislation on personal data privacy. As of today, 10 other jurisdictions in the region have similar laws in force or about to be in force. These are South Korea, Macau, Vietnam, Malaysia, Japan, Taiwan, Thailand, the Philippines, India and Singapore. Globally, at least 102 jurisdictions have comprehensive data

protection laws in force or awaiting implementation.

This trend reflects the growing recognition by governments of privacy as a fundamental human right. It also underpins the challenges generated by the pervasive use of new information and communications technologies (ICTs) in today's digital society, which has enabled the collection and use of vast amounts of personal data with phenomenal ease and efficiency.

Highlights

- companies often adopt a minimalist approach which is concerned with just meeting the legal requirements set out in the Privacy Ordinance
- establishing and maintaining a privacy management programme will demonstrate an organisation's commitment to good corporate governance
- in addition to ensuring legal compliance, a privacy management programme can build better relationships with customers, employees, shareholders and regulators

ICT innovations and applications such as the internet, social media, mobile applications and cloud computing have become ubiquitous. No doubt these technologies have created great economic and societal values, and enhance the productivity and competitiveness of enterprises in ways beyond our imagination. At the same time, they also pose immense risks to privacy and raise serious concerns about the protection of personal data.

Against this privacy landscape, public awareness and understanding of individuals' privacy rights concerning personal data has been growing at an accelerating rate. This has been associated with a series of high-profile privacy intrusion events. In particular, the landmark case of privacy contravention by the Octopus group of companies in 2010 has heightened public and media sensitivity and scrutiny over privacy issues.

Meanwhile, a survey conducted by Unisys Security Index in 2012 revealed that over 80% of Hong Kong people surveyed indicated that they were 'very concerned' or 'extremely concerned' about unauthorised access to, or misuse of, their personal data.

Another indicator of the public's growing concern about privacy is that in the past four years, our workload in terms of the number of complaints received has increased by 80%.

Further, the Snowden affair last year has resulted in a public outcry over privacy on a global basis. Indeed 'privacy' was Dictionary.com's word of the year for 2013.

Room for improvement in managing privacy issues

Now, in this age of 'big data' and the unprecedentedly high level of customer

expectations for their privacy rights, where do organisations in Hong Kong stand in terms of managing privacy and data protection? To say the least, this subject has been accorded a low priority in organisations' business agendas and there is definitely room for improvement.

In many of the complaint cases we have investigated, we found that organisations tend to adopt a rather passive attitude. They were reactive instead of proactive and remedial instead of preventative. Privacy concerns were only addressed seriously when mistakes had been made and identified.

Learning points in investigation reports went unheeded

We publish from time to time reports of investigations explaining in detail the privacy contraventions in question, our application of the Privacy Ordinance in determining the contraventions, and the remedies. This practice is intended to encourage compliant behaviour by not just the organisation being the subject of investigation but also other organisations facing similar privacy issues. We hope that every investigation report we issue will prompt many organisations to review their relevant privacy policies and practices with a view to seeking appropriate remedies or improvements. But not infrequently, this proves to be wishful thinking.

For example, one major learning point from the investigation report on the Octopus case is that organisations should not too readily collect from their customers highly sensitive personal data such as those contained in the Hong Kong identity card for authentication purposes which can be met by the supply of other less sensitive personal data. However, recent cases indicate

that many organisations continue to over-emphasise their administrative and operational convenience, at the expense of their customers' privacy and data protection. They tend to require a strong level of authentication irrespective of the nature of the transaction. Little regard seems to have been paid to the fact that identity card data is highly personal and sensitive and if it falls into the wrong hands, the affected persons could suffer from an enhanced risk of identity theft, administrative nuisance or financial loss.

Another major learning point from the Octopus report is that organisations should use clear and specific terms to explain the purpose of use of the data they collect and the class of persons that the data may be transferred to. However, we found again from recent cases that many organisations, including some reputable brands, continue to use the same vague terms that Octopus once adopted to define the third parties that the data could be transferred to, such as 'subsidiaries', 'partners', 'affiliates', 'third parties' and 'any other persons under a duty of confidentiality to us'.

These terms, for some obscure reasons, have been commonly used by many organisations in their privacy notices. But they give no clue to the customers as to the nature of the business of the third parties. Customers may therefore be unable to make an informed choice on whether or not to accept such data transfer.

In December 2011, we published a report of an investigation against Hang Seng Bank with the determination that it was a contravention for them to retain customers' bankruptcy data for as long as 99 years. Since a bankrupt will normally be discharged upon expiry of a



“ people are waking up to the value of their personal data, and companies which fail to handle people’s information properly will lose their trust and even their business ”

period between four to eight years from the commencement of the bankruptcy, I concluded that the bankruptcy data should not be kept for more than eight years. In the report, I expressed the hope that other financial institutions engaging in similar practices would conduct reviews of their data retention policies to ensure they would not repeat Hang Seng Bank’s mistake.

As it later transpired, some major banks continued to keep their customers’ bankruptcy data well beyond eight years despite my intervention. They corrected the practice only when I threatened to take enforcement action.

Beyond legal compliance

On matters of privacy and data protection, it is not uncommon that top management is seldom involved, if at all. The subject is delegated to the legal and compliance staff. This often leads to the adoption of a minimalist approach which is concerned with just meeting the legal requirements set out in the Privacy Ordinance. The infamous Octopus incident of 2010 again serves to illustrate this point. In running its customer loyalty programme

with a database of 2.4 million subscribers, we found the company had committed a very serious contravention, namely, the transfer of the customers’ personal data without their consent to a number of partner companies for use in the marketing of the latter’s products and services. It received monetary gains from the partner companies in exchange for the data transfer. The transaction, in essence, was a sale of private, personal data.

In response, Octopus’ concluding remarks to the case, promulgated widely in a paid advertisement in the media, were that its conduct did have a legal basis but it failed to meet the aspirations of the community (于法有据; 但于情不合). I certainly disagree with Octopus’ legal arguments but I am glad the company has realised that it should consider the issue beyond the bounds of the law.

Another case worth mentioning concerns a determination I made in 2012 on the complaints by three TV artistes against two gossip magazines, namely, *Sudden Weekly* and *Face Magazine*. They concerned the use of systematic surveillance and telescopic

lens photography to take clandestine photographs of the artistes’ daily lives and intimate acts within their private residences over a period of three to four days. These photos, including one showing one of the complainants in an undressed state, were published in the magazines.

I ruled that in the circumstances, taking of the photos surreptitiously amounted to unfair collection of personal data, and directed the magazines to delete the photos from their database and websites, and to establish privacy guidelines for compliance by their staff on the systematic monitoring of the collection of personal data by covert means and/ or long-distance photography.

This determination has been vehemently challenged by the two magazines. They lodged an appeal with the Administrative Appeal Board and failed. They are now seeking a judicial review of the decision of the Administrative Appeal Board. Their arguments are all legalistic, concerning the interpretation of the law, for example, whether I have the legal authority to require them to formulate privacy guidelines for compliance by their staff.

I doubt whether the privacy issues in question should be handled by the magazines merely as a strict legal dispute. Irrespective of whether I have the legal authority to require them to formulate privacy guidelines for compliance by their staff, as responsible employers and news organisations, shouldn't they do it anyway?

From compliance to accountability: adopting a privacy management programme

I submit that we need to consider privacy from a broader management perspective and take into account factors such as corporate reputation and respect for the basic rights of the customers or clients. As responsible corporate citizens, organisations have to proactively embrace personal data privacy protection as part of their corporate governance responsibilities and apply it as a top-down business imperative throughout the organisation.

These all call for a paradigm shift from compliance to accountability and the formulation and maintenance of a comprehensive privacy management programme (PMP).

As promulgated in our *Privacy Management Programme: A Best Practice Guide*, a PMP should be a robust privacy infrastructure that:

- has top management commitment and is integrated into the organisation's governance structure
- treats privacy and data protection as a multidisciplinary issue (not merely as a legal compliance issue), with a special focus on respect for customers' or clients' needs, wants, rights and expectations

- establishes policies, procedures and practices giving effect to the legal requirements under the Privacy Ordinance
- provides for appropriate safeguards based on privacy risk assessment
- ensures that privacy is built by design into all initiatives, programmes or services
- includes plans for responding to breaches and incidents
- incorporates internal oversight and review mechanisms
- is kept current and relevant, and remains practical and effective in a rapidly changing privacy environment, and
- is appropriately resourced and managed by dedicated staff.

Apart from ensuring legal compliance, establishing and maintaining a PMP will demonstrate an organisation's commitment to good corporate governance and is conducive to building trustful relationships with customers or citizens, employees, shareholders and regulators.

Privacy protection as a competitive advantage

Indeed, building and maintaining customers' trust is the cornerstone of a business' competitive advantage. People are waking up to the value of their personal data, and companies which fail to handle people's information properly will lose their trust and even their business. For this reason, many leading companies are proactively

adopting privacy-friendly business practices.

In this regard, it is interesting to watch Microsoft's recent campaign against Google for reading each and every word of the email messages of Gmail users and serving up ads based on the content of these messages. At the same time, this software giant is encouraging people to use Hotmail which reportedly does not go through emails to sell ads.

In a similar vein, we note Yahoo's recent announcement that it had implemented a series of stronger security and privacy measures, including securing traffic that moves between its servers and encrypting most search queries automatically. This has been dogged by critics as a strategy to catch up with its competitors in safeguarding the security of its email delivery systems. For example, the Edward Snowden revelations about the US National Security Agency reportedly showed that the agency was collecting substantially more addresses of webmail users from Yahoo than Hotmail or Gmail.

In Hong Kong, it is very encouraging to witness that all the government bureaus and departments, together with 25 companies from the insurance sector, nine companies from the telecommunications sector and five organisations from other sectors, have pledged to adopt a PMP. It is particularly gratifying to note that Octopus is on the pledge list, as it has been adopting this accountability approach in the aftermath of the 2010 contraventions.

Allan Chiang

Privacy Commissioner for Personal Data

A bird's-eye view

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

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls



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Open-ended fund companies

Salina Yan, Deputy Secretary for Financial Services and the Treasury (Financial Services), of the Financial Services and the Treasury Bureau, outlines a new initiative to further develop Hong Kong's asset management industry.

Asset management has become increasingly prominent in the international financial landscape, and Hong Kong is well placed to establish itself as a premier international asset management centre. To diversify our fund management platform and legal infrastructure, the government has launched a three-month public consultation on introducing a new open-ended fund company (OFC) structure to expand Hong Kong's legal structure for investment fund vehicles.

Hong Kong's advantages

With the fast economic growth and wealth creation in Asia, increase in portfolio allocation into the Asian market, and continued financial market liberalisation in the Mainland, Hong Kong possesses unique strengths in further developing the asset management industry.

As of end-March 2013, the number of unit trusts and mutual funds authorised by the Securities and Futures Commission (SFC) reached 1,847, with a total asset under management of US\$1,238 billion. There has also been a growing trend in funds domiciling in Hong Kong. The total number of Hong Kong-domiciled funds increased by around 61% in the three years between 2011 and 2013 and the

proportion of Hong Kong-domiciled funds as a percentage of total number of SFC-authorized unit trust and mutual funds went up by 7.5% for the same period.

It is our policy objective to attract funds of various types to domicile in Hong Kong, expand the fund distribution network and promote fund origination here to deepen and broaden our asset management industry. This will also drive demand for professional services such as fund management and investment advice, as well as legal and accounting services.

The proposal

The OFC structure is a proposal in response to the market need for a more flexible choice of investment fund vehicles because, under the current law, an open-ended investment fund may be established only in the form of a unit trust but not in corporate form due to various restrictions on capital reduction under the Companies Ordinance. The OFC proposal will allow funds to be set up in an open-ended structure like a company, but with the flexibility not enjoyed by conventional companies to create and cancel shares for investors to trade the funds. This corporate fund structure is gaining popularity internationally. While working to introduce an extra option

for fund structures in sharpening our competitive edge as an asset management hub, we will not lose sight of the need to

Highlights

- the OFC proposal will allow funds to be set up in an open-ended structure like a company, but with the flexibility not enjoyed by conventional companies to create and cancel shares for investors to trade the funds
- the proposed framework for the introduction of the OFC regime has been designed to strike a balance between protecting investors with an appropriate level of regulatory oversight whilst encouraging market development and product innovation in the asset management industry
- the government hopes the new OFC structure will sharpen Hong Kong's competitive edge as an asset management hub

ensure that investor protection will not be compromised when designing the details of this new structure.

What is an OFC?

An OFC is an open-ended collective investment scheme (CIS):

- in corporate form
- with limited liability
- with variable share capital, and
- can be set up as a public or private fund.

The main purpose of an OFC is to serve as an investment fund and manage investments for the benefit of its shareholders.

Key benefits of OFCs

We see the following key benefits of OFCs that make this new fund structure attractive to fund managers:

- variable share capital to meet shareholder redemption requests
- ability to distribute out of share capital subject to solvency and disclosure requirements
- corporate form with legal personality
- shareholder liability will be limited to their shares in OFCs
- streamlined procedures for termination, and
- familiar structure to other fund jurisdictions, particularly those not familiar with trust law.

OFC structure

The proposed OFC structure will have characteristics similar to a conventional limited company in that it will have a separate legal personality; it will be governed by a board of directors; the liability of its shareholders will be limited to their shares in the company; and its constitutional documents will consist of Articles of Incorporation. However, given the nature of OFCs as pure legal vehicles for investment, OFC shareholders do not have day-to-day management rights or control over the underlying assets, but they do have the right to participate in the income/ profits arising from the management of and transactions in fund property via distributions.

Similar to the conventional company model, an OFC will be governed by a board of directors, who are subject to statutory and fiduciary duties. The OFC board will be legally responsible for all the affairs of the OFC and will provide an additional layer of oversight for shareholders. Given the nature of the OFC as an investment fund vehicle, the day-to-day management and investment functions of the OFC must at all times be delegated to an investment manager licensed by or registered with the SFC, while individual directors on the OFC board will not be required to be licensed under the Securities and Futures Ordinance (SFO). This is a common structure for corporate funds.

Investment scope

As the primary purpose of a Hong Kong OFC will be to operate as an investment fund and not designed for general commercial business or trade, we propose that the asset classes in which an OFC may invest should be broadly in line with those of a traditional investment fund within the remit of the SFO. Furthermore, given that

the investment activities of the OFC will be required to be delegated to an investment manager licensed by or registered with the SFC, we propose that the investment scope of OFCs should align with those types of investment activities which are subject to licensing and regulation by the SFC under the SFO, namely, securities, futures and over-the-counter derivatives (once the Securities and Futures (Amendment) Bill 2013 commences operation) as defined under the SFO.

Some of you may ask why, under our proposal, OFCs are not allowed to invest in alternative assets. Besides the rationale of the proposed investment scope explained above, I would also like to point out that the scope of securities and futures currently defined under the SFO is indeed fairly broad. It covers shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority unless such instruments fall within any of the specific exclusions set out in the definition.

Setting up an OFC

To set up an OFC, the applicant would have to apply to the SFC for approval. The SFC would review the application, including whether it meets the regulatory requirements to be stipulated in the SFO and relevant subsidiary legislation, rules, regulations and codes. Upon the Companies Registry's receipt of specified documents and the SFC's issuance of an approval-in-principle for registration, the Companies Registry would incorporate and register the OFC. In addition to registration, like other SFC-authorized unit trusts and mutual funds, OFCs which seek to offer their shares to the public must seek SFC authorisation under the SFO.

The Companies Registry, as the corporate registry of companies registered under the Companies Ordinance, would be responsible for the incorporation and administering the statutory corporate filings of OFCs. The Companies Registry would also maintain a register for OFCs and provide the public with services to access the OFC information that it holds.

Protected cell regime

An OFC may be created as an umbrella fund, which means that the OFC can consist of a number of separately pooled sub-funds and each sub-fund will have a pool of assets that is managed in accordance with the investment objectives and policies for that particular sub-fund. Operationally, each sub-fund will also be distinct. We propose to introduce a protected cell regime to address any possible contagion risk by providing for a legally enforceable segregation of the assets and liabilities of each sub-fund.

Streamlined termination of a solvent OFC

Given the nature of OFCs as investment funds, which are often terminated for commercial reasons, OFCs can be terminated under the new legislation in a more straight-forward and cost-efficient manner, and without compromising investor protection, where:

- the OFC is to be terminated in accordance with the specific provisions in the Articles of Incorporation
- the OFC is solvent as certified by the OFC board and an independent and qualified auditor, and
- reasonable prior notice has been given to shareholders.

Investor protection

As mentioned at the beginning, we will not lose sight of the need to ensure investor protection, and introduce the key investor protection measures:

- mandatory delegation of day-to-day management and investment functions of OFCs to an investment manager licensed or registered with the SFC, subject to the oversight of the OFC board – this would help safeguard the interest of investors, as it separates the investment functions and day-to-day management from that of supervision
- basic eligibility criteria applicable to the OFC board, investment manager and custodian
- segregating assets of the OFC from that of the investment manager and entrusted to a separate, independent custodian for safekeeping – this aims to strengthen investor protection and avoid potential conflicts of interest
- alignment of investment scope with those types of investment activities which are subject to licensing and regulation by the SFC under the SFO, namely securities, futures and over-the-counter derivatives, and
- publicly offered OFCs seeking SFC-authorisation will also have to comply with the applicable requirements under the SFC Handbook, including disclosure requirements.

Legislative framework

Given that OFCs are set up to function as an investment fund vehicle, the new

OFC vehicle will be established under the SFO and be regulated and supervised by the SFC. The enabling provisions will be provided in the SFO to facilitate the making of a separate piece of OFC subsidiary legislation governing the detailed regulation of these new vehicles. The SFO and the OFC subsidiary legislation will set out the full scheme of the OFC and cover matters relating to the creation and regulation of OFCs.

To supplement the SFO and the OFC subsidiary legislation, more detailed requirements relating to OFCs and their operation will be set out in a separate OFC Code to be issued under the SFO, subject to further public consultation. The OFC Code will be applicable to all SFC-registered OFCs, whether publicly or privately offered.

Regulatory framework

On supervision of OFCs, the new OFC legislation and the OFC Code will set out the key functions and duties of directors and other key operators of OFCs, which must be complied with so long as the OFC remains registered with the SFC. The OFC investment managers will also need to comply with existing regulatory requirements including the Code of Conduct for Persons Licensed by or Registered with the SFC and the Fund Manager Code of Conduct. The OFC will be subject to post-registration monitoring and supervision under the new legislation and the OFC Code. Publicly offered OFCs will also be subject to ongoing post-authorisation requirements under the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products including the Code on Unit Trusts and Mutual Funds.



“
I appeal to you to give us feedback to allow us to formulate an OFC regime that can best suit your needs
”

Tax regime for OFCs

This is an area of particular interest to the fund industry. Currently, section 26A(1A)(a)(i) of the Inland Revenue Ordinance provides profits tax exemption for mutual funds, unit trusts or similar investment schemes authorised by the SFC under section 104 of the SFO, that is a publicly offered CIS. Under the OFC proposal, if an OFC wishes to offer its shares to the public, it will also have to seek the SFC's authorisation under section 104 of the SFO as a publicly offered CIS. As such, we consider that the existing tax exemption regime for publicly offered CISs can be equally applied to publicly offered OFCs authorised under section 104 of the SFO as long as the OFCs can satisfy the prescribed conditions for exemption.

For privately offered OFCs, profits tax exemption will be available under the

existing regime for offshore funds with its central management and control located outside Hong Kong. As for privately offered OFCs with their central management and control located onshore, the government will consider carefully the exemption or the extent of exemption that should be applied to such OFCs, having regard to possible read-across implications.

We welcome your views

The proposed framework for the introduction of the OFC regime has been designed with the intention to strike a balance between protecting investors with an appropriate level of regulatory oversight whilst encouraging market development and product innovation in the asset management industry.

The public consultation period will end on 19 June 2014. We look forward to

receiving views from the public and market participants. Together with the SFC and relevant departments, we will work on the details of the proposals set out above, taking into account comments received during the public consultation. I appeal to you to give us feedback to allow us to formulate an OFC regime that can best suit your needs.

Salina Yan

Deputy Secretary for Financial Services and the Treasury (Financial Services)

Financial Services and the Treasury Bureau

The consultation paper is available on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk.

Happy Friday for Chartered Secretaries The Fantasy of Diamond

Diamond, strongest material on earth, yet so beautiful with its sparkling nature, has been the most favourite jewellery among all women across history. The Institute is delighted to present 'The Fantasy of Diamond'. A diamond expert from Chow Tai Fook will lead Members explore interesting aspects about diamond, and Members shall have the chance to use a microscope to appreciate the beauty of diamonds.

Don't miss this great opportunity! Come and join us and learn more about diamonds with your fellow Members.

Event details

Date	: 11 July 2014 (Friday)
Time	: 6.30 p.m. – 6.45 p.m. (Registration) 6.45 p.m. – 7.45 p.m. (Presentation) 7.45 p.m. – 8.15 p.m. (Cocktail & opportunity to purchase selected jewellery with special discounts)
Venue	: Chow Tai Fook Central Branch, No. 39 Queen's Road Central
Fee	: HK\$100 (light refreshment including wine will be provided)
Language	: English

Priority enrolment for Fellows if registered on or before 16 June 2014

Content

Speakers:

Mr Hamilton Cheng, Finance Director and Company Secretary, Chow Tai Fook Jewellery Group Limited & a member of the HKICS Company Secretaries Panel

- Chow Tai Fook's success story covering its business strategies and future plan

Mr Alan Chan, Head of Branding Department, Chow Tai Fook Jewellery Company Limited

- Chow Tai Fook's marketing strategies and latest campaigns

Ms Sheryl Cashmore, Training Director, Diamond Department, Chow Tai Fook Jewellery Company Limited & Graduate Gemologist of Gemological Institute of America (GIA)

- details of 4 C's (Colour, Clarity, Cut & Carat weight) that largely determine the diamonds' value and natural fancy colour diamond



This workshop is open to HKICS members and graduates. For enrolment, please complete and return the enrolment form with payment.

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



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上市公司独立董事履职情况报告摘要 [下]

《上市公司独立董事履职情况报告》是根据中国上市公司协会所发出的《上市公司独立董事履职状况调查问卷》的调查结果而撰写，旨在对已实施十多年的中国上市公司独立董事制度进行全面而客观的评估。上期刊载了该报告的摘要第一部分，本文是第二部分，亦即最后一部分，论述独立董事制度存在的问题，并提出完善独立董事制度的建议。

独立董事制度存在的问题

我国上市公司引入独立董事制度10多年来，在优化上市公司治理结构，促进上市公司规范运作方面发挥了积极的作用。调查显示，调查对象对独立董事在“促进公司整体发展”、“促进公司治理”和“保护中小投资者利益”三个方面所起作用的满意度均超过了一半。但是，独立董事制度在实践中也暴露出了一些不容忽视问题，存在一些不尽如人意的地方，具体表现在以下几个方面：

独立董事的职责定位需要进一步明确

当前，无论是学术界还是相关上市公司，对于独立董事在公司治理中的角色定位究竟是“监督者”还是“咨询专家”，或者是两者兼而有之，存在着较大的分歧。

从以往我国关于独立董事的法规文件看，无论是《指导意见》还是《上市公司治理准则》等，均侧重于发挥独立董事的监督职能。对于独立董事是否有兼担决策咨询的职责，没有进行明确的规定。现实中，当前很多上市公司的独立董事，特别是创业板和民营类上市公司的独立董事，更多地是扮演了“顾问专家”的角色，监督职

能被严重弱化。现实情形与立法本意产生了较大的偏差。

独立董事的作用有待进一步发挥

调查显示，调查对象对独立董事在“促进公司整体发展”、“促进公司治理”和“保护中小投资者利益”三个方面所起作用整体上持较为肯定的态度，满意度分别为54.9%、57.9%和52.4%。但需要注意的是，三个方面的满意度均不到60%，特别是“投资者”在这三个方面的满意度分别为43.2%、45.4%和35.5%，均低于50%，即“投资者”群体对独立董事的作用总体上并不太满意。

现实中，“花瓶董事”、“签字董事”等现象一直被媒体和社会各界所

关注、热议。据深圳证券交易所2013年8月发布的《2012年深市上市公司治理情况报告》，“2012年，中小板和创业板公司没有出现独立董事投反对票、弃权票和质疑的情况。主板公司也仅有一家公司的独立董事投了反对票；另外一家主板公司的独立董事对公司的两个议案投了弃权票”，这种极低的反对票和弃权票率，显然并不反映公司决策的客观事实，不过从侧面印证了当前我国上市公司的独立董事并没有发挥其应有作用的状况。

独立董事的独立性需要进一步加强

独立性是独立董事存在的意义和发挥作用的核心要义，独立性无法保证，独立董事的有效履职便是空谈。调查

Independent directors in the PRC

This article is the second and final part of a feature by the China Association for Public Companies (CAPCO) summarising its *Report on the Fulfillment of Duties by Independent Directors of Listed Companies* which was published earlier this year. The report was based on a comprehensive review of China's 10-year-old independent directors system conducted by CAPCO. This concluding part of the article discusses problems highlighted by the survey and puts forward recommendations designed to improve China's independent director system.

问卷显示，在影响独立董事充分履职的七个因素中，“独立性不足”的得分仅次于“约束不足，缺少相关问责、评价机制”，排名第2，远远高于其他因素的得分。

调研中，上市公司和相关专家也普遍认为，独立性的先天不足是影响独立董事有效履职的根本原因。我国上市公司的股权集中度很高，由大股东来提名独立董事不尽合理，会影响独立董事的独立性，不利于有效维护中小投资者的权益。此外，由上市公司向独立董事发放津贴，“拿人手短”，也会对独立董事的独立性造成影响。

独立董事问责评价机制缺失

目前，中国证监会和证券交易所对独立董事的资格、选聘、职责、培训等均有较为明确的规定，但是，对于独立董事的失职问责以及履职优劣的评价仅有极少的描述。问责约束机制的严重不足，在很大程度上造成了独立董事的责任心不强，诚信勤勉不足。

问卷调查中，关于影响独立董事充分履职的七项因素，调查对象将“约束不足，缺少相关问责、评价机制”选为最主要的因素。

独立董事的职责有待进一步明确

目前，对于上市公司独立董事的职责及履职要求的规定过于笼统、分散，

并且操作性较差，缺乏明确、具体的规定。调研中，许多独立董事，特别是新任独立董事反映，面对众多的法律法规和规范性文件，独立董事“满目茫然”，不清楚到底应当如何寻找履职依据，即便好不容易寻找到了履职依据，也因为相关规定过于概括而不知如何操作，这直接影响了独立董事的履职效率。

独立董事可同时任职的公司家数偏高

当前，《指导意见》及证券交易所相关规则中对于独立董事可同时任职公司的家数，都是“原则上最多在5家上市公司兼任”。调研中，很多上市公司和独立董事反映，同时兼任5家太多，如果独立董事确实按照相关要求充分地履行职责，兼任3家已经非常困难。问卷调查也显示，有近七成（68.7%）的调查对象认为独立董事任职的家数最多为3家或以下。

独立董事培训有待进一步加强

当前，上海、深圳证券交易所对独立董事的培训要求是“每2年参加一次专业培训”。调研中，许多上市公司和独立董事反映，2年一次的培训频率太低。调查问卷也显示，93.3%的调查对象认为，对于担任独立董事的履历少于2年的独立董事，培训应该“每1年1次”或“每半年1次”；对于担任独立董事的履历超过2年独立董事，也有60.1%的调查对象认为应该“每1年1次”或“每半年1次”。

完善上市公司独立董事制度的政策建议

进一步明确独立董事的职责定位

职责定位是独立董事有效履职的基础。制度引入背景、立法宗旨和证券交易所对独立董事任职要求这三个方面，均表明监管部门对独立董事在上市公司中职责的定位是“监督制衡”。而现实中很多公司更多地将独立董事定位为“咨询顾问”，监管部

门有必要对独立董事的职责定位进行进一步的明确，强化独立董事的监督职责。

改进完善独立董事选聘机制

独立性是独立董事存在以及发挥作用的前提和基础，问卷调查显示，认为由大股东提名、选聘的方式对独立董事的独立性“有较大影响”的占19.8%，认为“有一些影响”的占40.4%，认为“基本没有影响”的占39.8%。在“当前上市公司独立董事相关法律法规需要进一步完善的方面”一题中，“独立董事的选聘机制有待进一步调整和完善”的得分最高，意味着，调查对象认为当前独立董事制度中最迫切需要调整和完善的是选聘机制。

对选聘机制的改革可考虑以下方式，或以下方式的组合：

一是大股东回避制，即在董事会提名独立董事人选时，代表第一、二位大股东的董事必须回避，然后再由股东大会进行差额选举；

二是中小股东提名制，即由中小股东提名独立董事候选人，然后由股东大会差额选举。

三是董事会提名委员会提名制。即借鉴美国选聘独立董事的做法，将独董提名权授予由独立董事组成的董事会提名委员会，并对独立董事的提名政策进行充分披露。

四是自律组织推荐制，即由中国上市公司协会建立独立董事人才库，根据上市公司的申请，按照一定的倍数为上市公司推荐独立董事候选人，然后由股东大会差额选举。前三种方式虽然可以在一定程度上解决独立董事的独立性问题，但不能解决独立董事选聘渠道不畅，难以找到合适人选的问题，其中，第三种方式还仅适用于选

摘要

完善上市公司独立董事制度的部分建议如下：

- 进一步明确独立董事的职责定位
- 完善独立董事选聘机制
- 改进独立董事津贴发放方式

“

目前，中国证监会和证券交易所对独立董事的资格、选聘、职责、培训等均有较为明确的规定，但是，对于独立董事的失职问责以及履职优劣的评价仅有极少的描述

”

聘继任独立董事的情形。而第四种方式可同时解决选聘渠道和独立性两个问题。

改进独立董事津贴发放方式

问卷调查显示，认为当前的津贴发放方式对独立董事的独立性“有较大影响”的占比24.5%，认为“有一些影响”的占比为42.9%，认为“基本没有影响”的占32.6%。调研中一些上市公司和独立董事提出，可以考虑让各公司将独立董事津贴统一交中上协或中上协成立的独立董事专业委员会，然后中上协或独立董事专业委员会发放给独立董事。在此基础上，还可以建立独立董事薪酬基金，一方面用于建立独立董事保障机制，为独立董事的非主观履职责任提供救济和法律援助；另一方面，也能够建立独立董事激励机制，对履职优秀的独立董事予以奖励。此外，调研中还有相关专家提出，过高的独立董事津贴会对独立董事的独立性造成较大影响，建议中上协或独立董事专家委员会出台相关规定，对独立董事的津贴上限进行限制和指导。

建立、完善独立董事评价问责机制

目前，“花瓶董事”和“签字董事”的现象使独立董事的公信力备受质疑。问卷调查中，关于影响独立董事充分履职的七项因素，“约束不足，缺少相关问责、评价机制”的得分最高。因此，应尽快建立独立董事评价问责机制，促进独

立董事勤勉尽责。调研中，上市公司和独立董事建议：

- 由公司监事会根据独立董事的实际工作情况和年度述职报告对独立董事进行年度考核，并提交股东大会；
- 中上协在《指引》的基础上，研究编制独立董事履职评价标准，开展独立董事履职评价，并定期公布；
- 中上协建立独立董事诚信档案库，将违反诚信或工作失职的独立董事计入诚信档案，除通告监管部门和对社会公众公开外，还要制定相关自律惩戒制度，予以自律处罚。

进一步明确、细化独立董事职责

问卷调查中，在需要调整和完善的独立董事制度方面，“独立董事的工作职责有待进一步细化和明确”被调查对象选为第二位，仅次于选聘机制。调研中，上市公司和独立董事建议，中上协应尽快出台《指引》，进一步明确独董的职权、义务、审议事项、工作流程等，为独立董事履职提供详细、具体参照和指导，促进独立董事充分、有效履职。

加强对独立董事的服务和日常管理

独立董事制度设立10多年来，我国上市公司独立董事已发展成规模达6、7

千人的庞大群体，成为证券市场中不可忽视的一个精英聚集的群体。调研中，许多独立董事反映，独立董事身份的特殊性，决定了其是一个既游离于任职的上市公司之外，又相互联系松散的群体，缺少组织归属感和固定的诉求反映渠道。独立董事迫切需要上市公司协会尽快成立针对独立董事的自律服务机构，在为独立董事搭建交流平台的同时，加强对独立董事群体的履职指导和日常管理，不断提高独立董事群体的履职素质和能力。中国上市公司协会可以独立董事专业委员会为依托，对独立董事实施一条龙式的服务和管理，即：独立董事资格认证与持续培训，建立独立董事人才库，编制独立董事工作指引，以及开展独立董事履职评价。

综上，调研表明，我国上市公司独立董事制度建立十多年来，在完善上市公司治理、提高上市公司质量、保护中小投资者权益等方面发挥了积极作用。虽然在制度的实施过程中存在着一些不足之处，但相信，经过相关制度的不断改进和完善，独立董事将在未来的上市公司规范发展中发挥越来越重要的作用。

何龙灿 积笔

中国上市公司协会公司治理部主任

杨琳 指导

中国上市公司协会纪委书记兼副理事长

Seminars: April to May 2014

8 April

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



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

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

10 April

Whistleblowing and
internal investigations



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

Speakers: Tim Mak, Partner, Asia Dispute Resolution Group, Freshfields; and Melissa Handover, Senior Associate, Asia Dispute Resolution Group, Freshfields

11 April

Shareholder activism &
proxy campaign



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

Speakers: Vivek Aranha, CEO, ASIA, Orient Capital; and Henry Chik, Senior Client Advisor, Orient Capital

15 April

Case study on the
recent acquisition of
China Mobile Hong
Kong Corporation Ltd
by Hong Kong Television
Network Ltd



Chair: Lydia Kan ACIS ACS, Director of Professional Development, HKICS

Speaker: Brian Lo, DBA MBA MScIT MPA LLB (Hons) FCIS FCS HKPA, CEng MIET, Vice-President and Company Secretary, APT Satellite Holdings Ltd

24 April

IPO readiness – internal control systems (re-run)



Chair: Eva Chan FCIS FCS(PE), Head of Investor Relations, CC Land Holdings Ltd

Speakers: Roy Lo, Deputy Managing Partner, Shinewing (HK) CPA Ltd; and Gloria So, Risk Manager, Shinewing (HK) CPA Ltd

28 April

Members' voluntary liquidation (re-run)



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

Speakers: Annette Lee (Associate Director), Business Recovery Services Division, PwC Hong Kong; and Iris Chan (Manager), Business Recovery Services Division, PwC Hong Kong

8 May

Getting competition law compliant – key things businesses in Hong Kong need to know and do



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

Speaker: Stephen Crosswell, Consultant, Head of Antitrust Hong Kong, Clifford Chance

ECPD and MCPD

What should you 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

Forthcoming seminars

Date	Time	Topic	ECPD points
10 June 2014	6.45 p.m. – 8.45 p.m.	Practical solutions in resolving shareholders' disputes	2
12 June 2014	6.45 p.m. – 8.15 p.m.	ESG reporting – a 360 workshop for corporate secretaries	1.5
17 June 2014	6.45 p.m. – 8.15 p.m.	Setting up a company in Shanghai pilot free trade zone	1.5
19 June 2014	6.45 p.m. – 8.15 p.m.	Responding to a fraud allegation: how to conduct an effective internal investigation	1.5
24 June 2014	4 p.m. – 5.30 p.m.	Data privacy at work	1.5
26 June 2014	6.45 p.m. – 8.15 p.m.	The new Companies Ordinance – Lecture 2: priorities for the next six months (a practical sharing session with company secretaries)	1.5
28 June 2014	10 a.m. – 12 noon	How to run an annual general meeting and manage difficult meetings properly	2
3 July 2014	6.45 p.m. – 8.45 p.m.	Conflict of interest/ fair dealing by directors under new CO and beyond (re-run)	2
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
29 July 2013	7 p.m. – 8.30 p.m.	IT security – what does it mean to corporate responsibility and liability?	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.

New Graduates

Congratulations to the following new Graduates.

Chu Ka Yee

Lam Sin Man

Lau Hiu Tung

New Fellow

The Institute would like to congratulate Kwok Siu Wing FCIS FCS, Senior Vice-President and Head of Commercial Banking, Sumitomo Mitsui Banking Corporation, who became a Fellow of the Institute in April 2014.

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.

BEC EnviroSeries Conference

Mohan Datwani FCIS FCS, Director, Technical and Research, HKICS, was a panellist at the BEC EnviroSeries Conference on the theme 'ESG management: from niche to mainstream' on 23 May 2014. The conference, held at the Exchange Auditorium, Hong Kong Exchanges and Clearing Ltd, covered ESG reporting, policies and



impacts in the business community. Mr Datwani joined the panel discussion on 'ESG technical discussion – materiality and reporting'.

Appointment update

Edith Shih FCIS FCS(PE), President, HKICS, has been appointed a member of the Asian Financial Forum (AFF) 2015 Steering Committee. The Steering Committee comprises 29 senior representatives from the HKSAR Government, regulatory bodies, industry associations and leading financial institutions. It is chaired by Anita Fung, Chief Executive Officer Hong Kong, The Hong Kong and Shanghai Banking Corporation Ltd. The role of the Steering Committee is to provide guidance on the planning and preparation of the AFF 2015.

Fellows-only benefits

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

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

- complimentary attendance at two Institute events – the annual convocation and annual dinner following 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.

Membership activities

Joint seminar on ‘Corporate governance and succession planning’

The Institute jointly organised a seminar on ‘Corporate governance and succession planning’ (企业管治与家族传承成功之道) with HKU SPACE and the Legacy Academy. The seminar was held on 24 May 2014 at the Admiralty Training Centre. Speakers included: Dr Davy Lee FCIS FCS(PE), Past President of the Institute; Dr Michael YK Chan, Honorary Chairman of Legacy Academy; and Dr Amen Lee, President of Legacy Academy. Among the 200 participants, over 100 members and students of the Institute attended the seminar.



(From right) Candy Wong, Director, Education and Examinations, HKICS; Louisa Lau, General Manager and Company Secretary, HKICS; Samantha Suen FCIS FCS, Chief Executive, HKICS; Dr Amen Lee; Dr Michael Chan; and Dr Davy Lee; together with representatives of HKU SPACE.

Business account opening and ongoing maintenance requirements

The Institute organised a talk on business account opening and ongoing maintenance on 22 May 2014. Several HSBC executives shared the key requirements for corporate bank account opening and related services with the Institute's members. This broad business banking talk received an overwhelming response and was attended by more than 100 members. The Institute thanks HSBC for their presentations, Tricor Services Ltd for sponsoring the venue and members for their support of this event.



An overview of electricity supply and regulation in Hong Kong

The Institute organised a seminar to provide an overview of Hong Kong's long-term electricity supply and regulation on 30 May 2014 in response to the Environment Bureau's consultation on the topic. The main speakers from the current power generators agreed that natural gas was a viable solution, with CLP Holdings of the further view that the situation needs to be reviewed for a balanced long-term and sustainable energy mix.

Members are encouraged to respond to the consultation which can be found at the Environment Bureau's website to shape a more sustainable and environmentally-friendly energy mix for Hong Kong. The speakers included:

- Yee Tak Chow, General Manager (Corporate Development), The Hongkong Electric Company, Ltd
- Stephen Chan, Head of Strategic Planning and Regulatory Affairs, CLP Power Hong Kong Ltd
- Suzanne Cheung, Director (Environmental Management), Business Environment Council.



Panel discussion with speakers and Mohan Datwani FCIS FCS, Director, Technical and Research, HKICS

Forthcoming members' events

Come and join the forthcoming members' events for useful career information or a relaxing evening with other fellow members.

'Young Group' series – preparing for a successful career

The Institute has launched its 'Young Group' series which aims to offer young graduates and newly elected associates a series of events furthering their career and personal development. The Institute invites you to join the workshop below to hear practical tips from a Fellow as well as recruitment consultants.

Date	Friday 13 June 2014
Time	6.30 p.m. – 8.15 p.m.
Venue	1804, 18/F, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty
Speakers	<ul style="list-style-type: none"> • Jimmy Heng, Senior Consultant – Michael Page Legal • Carolyn Woo, Manager – Michael Page Legal • Samantha Suen FCIS FCS, Chief Executive, HKICS

Happy Friday for Chartered Secretaries – the Fantasy of Diamond

Date	Friday 11 July 2014
Time	6.30 p.m. – 8.15 p.m.
Venue	Chow Tai Fook Central Branch, 39 Queen's Road Central
Speakers	<ul style="list-style-type: none"> • 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 • Sheryl Cashmore, Training Director, Diamond Department, Chow Tai Fook Jewellery Company Ltd

More 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.

Mainland update

The 32nd Affiliated Persons (AP) ECPD seminars in Nanning

The Institute held the 32nd Affiliated Persons (AP) ECPD seminars in Nanning, capital city of Guangxi province, Mainland China, between 14 and 16 May 2014 under the theme of 'Connected transactions and insider dealing management control'.

The seminars attracted over 150 participants including 38 from A+H share companies, 57 from H-share companies, 21 from red-chip companies, five from non-listed companies, five from A-share companies, as well as speakers and representatives of the sponsors.

Nine speakers delivered speeches covering a wide spectrum of topics, followed by panel and group discussions. During the panel discussion, six senior board secretaries shared their views and experience on inside information disclosure and insider dealing control.

Dr Gao Wei FCIS FCS, Vice-President, HKICS, presented the proposal prepared by a joint working group with the China Association for Public Companies (CAPCO) on the abolition of the pre-requisite clauses for the articles of association of companies seeking listing overseas. Participants later actively exchanged their views, showed great support to the proposal and appreciated the Institute's efforts in proposing the change.

A networking dinner reception was arranged on 14 May 2014. The Institute would like to extend its sincere thanks to all the speakers, as well as the event co-organiser Shinewing CPA Ltd, and sponsors Computershare Hong Kong Investor Services Ltd and DLA Piper UK LLP.

IQS examination information session in Nanning

The Institute held an International Qualifying Scheme (IQS) information session in Nanning on 14 May 2014. Similar to the session held in Hong Kong, it aimed to provide students and potential students with information on what the IQS covers, what routes are available to acquire the Chartered Secretarial qualification and the career prospects of Chartered Secretaries. The seminar attracted 41 students and potential students from listed and private companies.

Carrie Wang, Senior Manager, Beijing Representative Office of HKICS, provided an update on the Chartered Secretarial profession in the Mainland and internationally, and the basics of the IQS. Dr Gao Wei FCIS FCS, Vice-President, HKICS, and Charlotte Xiao ACIS ACS, shared their experience and recommendations on how to gear up for the examinations. In view of the economic development of the country, Dr Gao is optimistic for the future of board secretaries in Mainland China and encouraged participants to get prepared with the internationally recognised Chartered Secretarial qualification.

IQS examination postponement

Candidates who are unwell at the scheduled International Qualifying Scheme (IQS) examination time must hold a satisfactory medical certificate to apply for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the June examination diet, that is, on or before Friday 27 June 2014.

The application form is available at the examinations section on the Institute's website: www.hkics.org.hk.

Chartered Secretaries scholarships and subject prizes

Jerry Tong FCIS FCS, Education Committee member, attended Hong Kong Shue Yan University Annual Scholarship Award Ceremony on 25 April 2014. At the ceremony, he presented the Chartered Secretaries scholarships and subject prizes donated by The Chartered Secretaries Foundation Ltd to the following four students.

Recipients of the Chartered Secretaries Scholarships

- Cheung Ki Ki, Year 2 business administration student (BBA programme)
- Kwok Chun Kit, Year 2 law and business student (Law & Business programme)

Recipients of the Chartered Secretaries Subject Prizes

- Vivien Tang Wai Yu, Year 3 accounting student (Company Law)
- Tsang Wing Yin, Year 4 law and business student (Corporate Governance)



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

Student Ambassadors Programme

Visit to Intertrust Hong Kong Ltd

The Institute organised a visit to Intertrust Hong Kong Ltd for members of the Student Ambassadors Programme (SAP) on 25 April 2014. Participants gained a deeper understanding of the company's development, its services and the career prospects for Chartered Secretaries. The Institute thanks Intertrust Hong Kong Ltd for its continued support for the SAP.



At Intertrust Hong Kong Ltd

Attendance at annual general meetings of listed companies

The Institute arranged for interested student ambassadors to attend the annual general meetings (AGMs) of the following four listed companies during May 2014. The Institute was pleased with the overwhelming response and all sessions were full within a few days of enrolment.

The Institute thanks the following listed companies for their generous support for the SAP:

- CLP Holdings Ltd
- Sing Lee Software (Group) Ltd
- Hutchison Whampoa Ltd
- China Mobile Ltd



At the CLP Holdings Ltd AGM



At the Sing Lee Software (Group) Ltd AGM



At the Hutchison Whampoa Ltd AGM



At the China Mobile Ltd AGM

Academic Advisory Panel luncheon

The Institute held an Academic Advisory Panel Luncheon on 23 May 2014 at the Club Lusitano with representatives from local universities. Polly Wong FCIS FCS(PE), Education Committee Chairman, and Alberta Sie FCIS FCS(PE), Education Committee Vice-Chairman, hosted the lunch, together with Samantha Suen FCIS FCS, Chief Executive; Louisa Lau FCIS FCS(PE), General Manager & Company Secretary; and Candy Wong, Director, Education and Examinations; from the secretariat. They shared their views on the recent developments and future activities of the Institute with the attending academics.



Group photo of the Academic Advisory Panel

The attending academics were (in alphabetical order):

- Dr Dennis Chan, Senior Lecturer, Department of Accounting, The Hong Kong University of Science and Technology
- Dr Derek Chan, Associate Professor in Accounting (Area Co-ordinator), Faculty of Business and Economics, University of Hong Kong
- Professor KH Chan, Head, Department of Accountancy and JK Lee Chair Professor of Accountancy, Lingnan University
- Professor Agnes Cheng, Head, School of Accounting and Finance, The Hong Kong Polytechnic University
- Professor Ip Yiu Keung, Associate Vice-President (Academic Support & External Links), The Open University of Hong Kong
- Ko Man Lut, Lecturer I, Department of Accountancy and Law, Hong Kong Baptist University
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, Chinese University of Hong Kong
- Dr Mark Ng, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Claire Wilson, Associate Head, Department of Law and Business, Hong Kong Shue Yan University
- Professor Yi Cheong Heon, Associate Head & Professor, Department of Accountancy, City University of Hong Kong

Payment reminders

Studentship renewal

Students whose studentship expired in April 2014 are reminded to settle the renewal payment by Friday 20 June 2014.

Exemption fees

Students whose exemption was approved via confirmation letter in March 2014 are reminded to settle the exemption fee by Friday 20 June 2014.

Amendments to Hong Kong's connected transaction rules

Hong Kong Exchanges and Clearing Ltd (HKEx) will bring in amendments, effective 1 July 2014, to Hong Kong's connected transaction rules. HKEx consulted on its proposed amendments, which are designed to simplify and improve the clarity of the rules, in April this year.

Among other things, the amendments will:

- simplify the language of the rules by replacing the current Chapter 14A (GEM Chapter 20) with the plain-language *Guide on the Connected Transaction Rules* issued in April 2012, with minor modifications on drafting
- exempt transactions with connected persons at the subsidiary level from the shareholders' approval requirement
- exclude from the definition of 'associate' any trustee of an employee share scheme or occupational pension scheme if the connected persons' interests in the scheme are together less than 30%; and the scheme is established for a wide scope of participants
- increase the monetary threshold for fully exempt connected transactions from HK\$1 million to HK\$3 million
- remove the 1% cap on transaction value which is currently a condition for the exemption for provision/ receipt of consumer goods or services to/ from a connected person
- exempt indemnities provided to, or purchase of insurance for, directors against liabilities incurred in the course of performing their duties, provided that the indemnity or insurance is in the form permitted under the laws in Hong Kong and the place of incorporation of the company providing the indemnity or insurance, and
- clarify that the independent board committee's opinion on a connected transaction must also cover whether the transaction is on normal commercial terms and in the issuer's ordinary and usual course of business.

The Exchange has also decided to rename the definitions of 'connected person' and 'associate' in Chapter 1 as 'core connected person' and 'close associate' respectively to distinguish them from the Chapter 14A definitions.

The rule amendments, together with new guidance materials and a new series of frequently asked questions (FAQs), can be downloaded from the HKEx website: www.hkex.com.hk.

Companies Registry update

From 3 June 2014 old forms will no longer be accepted for registration by the Companies Registry. Users need to use the new forms specified by the new Companies Ordinance.

Further information is available on the Companies Registry's website: www.cr.gov.hk.

Shanghai–Hong Kong Stock Connect

The China Securities Regulatory Commission and the Securities and Futures Commission have approved, in principle, the development of a pilot programme – 'Shanghai-Hong Kong Stock Connect' – for establishing mutual stock market access between Mainland China and Hong Kong. When launched, the pilot programme will operate between the Shanghai Stock Exchange (SSE), the Stock Exchange of Hong Kong Ltd (SEHK), China Securities Depository and Clearing Corporation Ltd (ChinaClear) and Hong Kong Securities Clearing Company Ltd (HKSCC).

SSE and SEHK will enable investors to trade eligible shares listed on the other's market through local securities firms or brokers. Shanghai-Hong Kong Stock Connect comprises a 'Northbound Trading Link' and a 'Southbound Trading Link'. Under the Northbound Trading Link, investors, through their Hong Kong brokers and a securities trading service company to be established by SEHK, will be able to place orders to trade eligible shares listed on SSE by routing orders to SSE. Under the Southbound Trading Link, eligible investors, through Mainland securities firms and a securities trading service company to be established by SSE, will be able to place orders to trade eligible shares listed on SEHK by routing orders to SEHK.

Shanghai-Hong Kong Stock Connect will be founded on the existing rules and regulations and operational models governing trading and clearing in each market. Set out below are the five principal elements of Shanghai-Hong Kong Stock Connect.

1. **Applicable trading, clearing and listing rules.** Trading and clearing

arrangements will be subject to the regulations and operational rules of the market where trading and clearing take place. Listed companies will continue to be subject only to the listing and other rules and regulations of the markets where they are listed. Shanghai-Hong Kong Stock Connect will only operate on a day which is a trading day of both SSE and SEHK and where the clearing arrangements are in order.

2. **Clearing.** ChinaClear and HKSCC will establish a direct link for the cross-boundary clearing. Each of them will become each other's clearing participant to provide clearing services for Shanghai-Hong Kong Stock Connect.

3. **Eligible shares.** Under the pilot programme, shares eligible to be traded through the Northbound Trading Link will comprise all the constituents of the SSE 180 Index and SSE 380 Index, and shares of all SSE-listed companies which have issued both A-shares and H-shares. Shares eligible to be traded through the Southbound Trading Link comprise all the constituents of the Hang Seng Composite LargeCap Index and Hang Seng Composite MidCap Index, and shares of all companies listed on both SSE and SEHK. The scope of Shanghai-Hong Kong Stock Connect is subject to further adjustment following launch of the pilot programme.

4. **Quotas.** Trading under Shanghai-Hong Kong Stock Connect will, initially, be subject to a maximum

cross-boundary investment quota, together with a daily quota that will be monitored on a real time basis. The Northbound Trading Link will be limited to an aggregate quota of RMB300 billion and a daily quota of RMB13 billion, and the Southbound Trading Link will be limited to an aggregate quota of RMB250 billion and a daily quota of RMB10.5 billion. Quotas may be adjusted in future.

5. **Eligible investors.** Initially, the SFC requires Mainland investors participating in the Southbound Trading Link to be limited to institutional investors, and those individual investors who hold an aggregate balance of not less than RMB 500,000 in their securities and cash accounts.

Both the CSRC and the SFC will actively enhance cross-boundary regulatory and enforcement cooperation. Each of them will take all necessary measures to establish, in the interests of investor protection, an effective regime under Shanghai-Hong Kong Stock Connect to respond to all misconduct in either or both markets on a timely basis. The CSRC and the SFC will improve the current bilateral agreement to strengthen enforcement cooperation in respect of the following areas:

- referral and information exchange mechanisms concerning improper activities
- investigatory cooperation in relation to cross-boundary illegal activities including disclosure of false or

misleading information, insider dealing and market manipulation

- bilateral enforcement exchange and training, and
- enhancement of general standards of cross-boundary enforcement cooperation.

The two Commissions will establish a dedicated liaison mechanism for Shanghai-Hong Kong Stock Connect to deal with any issues that may be encountered during the pilot programme which may require joint resolution.

SSE, SEHK, ChinaClear and HKSCC will collaborate with each other to develop the operational and other components of Shanghai-Hong Kong Stock Connect prior to launch, including all necessary arrangements to ensure an orderly market and prudent risk management.

Launch of Shanghai-Hong Kong Stock Connect will only take place once relevant trading and clearing rules and systems have been finalised, all regulatory approvals have been granted, and market participants have had sufficient opportunity to configure and adapt their operational and technical systems. All necessary investor education programmes must also be in place. The formal launch of Shanghai-Hong Kong Stock Connect is expected early next year.

More information is available on the SFC and HKEx websites: www.sfc.hk and www.hkex.com.hk.

Regulating crowd-funding

The Securities and Futures Commission (SFC) issued a notice last month reminding parties engaging in crowd-funding activities of the potential application of relevant securities laws and regulations, and reminding the public of potential risks relating to participating in crowd-funding activities in view of the increase in such activities internationally and in Hong Kong.

'Crowd-funding' typically refers to the use of small amounts of money, obtained from a large number of individuals or organisations, to fund a project, a business or personal loan, and other needs through an online web-based platform. The more common types of crowd-funding include equity crowd-funding, peer-to-peer lending, donation crowd-funding and reward/ pre-sale crowd-funding.

Parties engaging in crowd-funding activities are reminded that this may be subject to provisions of the Securities and Futures Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and/ or relevant SFC requirements, including regulations on offers of investments, intermediary licensing and conduct of business requirements, and requirements applicable to automated trading services and/ or recognised exchange companies. Other Hong Kong laws and regulations may also apply depending on the features of the activities. Parties looking to engage in crowd-funding activities should seek professional advice if in doubt to ensure compliance with all applicable laws and regulations.

Potential risks involved in participating in crowd-funding activities as an investor include risk of default, risk of illiquidity of the investment, risk of platform failure and insolvency, risk of fraud, risks associated with platforms operating outside Hong Kong, information asymmetry and lack of transparency, cyber security issues and possible illegal activities. Investors considering participating in crowd-funding activities and in doubt about the nature, risk profile and regulatory status of such activities should seek professional advice.

Further information is available on the SFC and Investor Education Centre websites: www.sfc.hk and www.hkiec.hk.

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

“Compliance Standard for Anti-Money Laundering and Counter Terrorist Financing”



- Date:** Thursday, 24 July 2014
- Speaker:** Mr Patrick Rozario, Director, Head of Risk Advisory Services, BDO
- Time/ CPD:** 6.30 p.m. – 9.15 p.m. (2.5 ECPD points)
- Fee:** HK\$250 (HKICS member/ target participant)
- Target participants:** Company Secretaries, Accountants and Business Consultants
- Venue:** Admiralty Conference Centre, 1804A, Tower 1, Admiralty Centre,
18 Harcourt Road, Admiralty, Hong Kong
- For enquiries:** Ms Lisa Lee at 2830 6069 or email to ECPD@hkics.org.hk

Funding Organisation:



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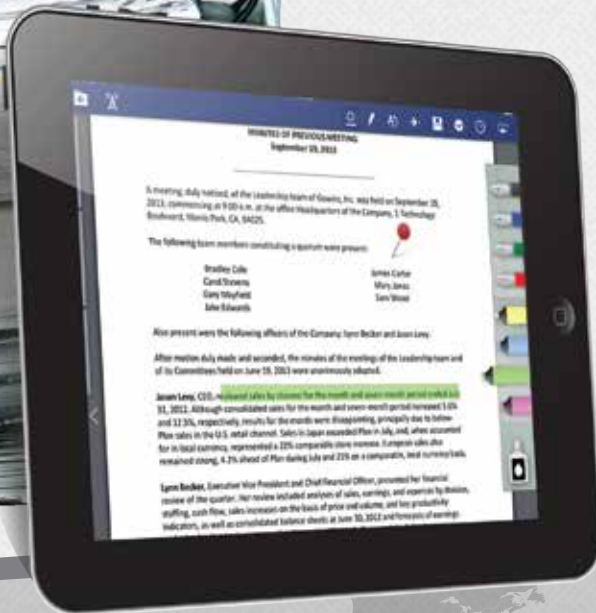
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