

CSj

March 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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share certificates?

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CCRU review

HKICS Prize winner

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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, as well as the development of the profession of the Chartered Secretary. The HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994, and today has over 5,800 members and 3,300 students.

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March 2014

CSj, the journal of The Hong Kong Institute of Chartered Secretaries, is published 12 times a year by Ninehills Media and is sent to members and students of The Hong Kong Institute of Chartered Secretaries and to certain senior executives in the public and private sectors.

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Circulation: 9,100

Annual subscription: HK\$2600 (US\$340)

To subscribe call: (852) 2982 0559 or

email: enquiries@ninehillsmedia.com

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ISSN 1023-4128

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Since the global financial crisis, there has been a significant tightening of regulatory controls globally, particularly in the financial sector. In Mainland China, by contrast, the key theme is deregulation. The Institute's latest China Corporate and Regulatory Update seminar, held on 7 January 2014 in Hong Kong, focused on a number of deregulatory reforms in the PRC.

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自全球金融危机以来，多个国家相继加大了对市场的监管力度，尤其是金融业的监管。相反，这几年中国经济发展的关键字依然是市场自由化。公会最近主办的中国企业规管最新发展研讨会（CCRUC），于2014年1月7日在港召开，国家近年多项市场自由化的改革举措，成为了这次研讨会的焦点。

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A new chapter

By the time you read this month's President's Message, Hong Kong will have entered a new chapter in the history of our companies legislation. Quite literally in the sense that, on the 3rd of March 2014, Chapter 622 of the laws of Hong Kong – the new Companies Ordinance – replaced Chapter 32, which has been repurposed as the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

But we have also entered a new chapter in the sense that Chapter 622 brings our companies law into the 21st century. Chapter 32 dates back to mid-20th century companies legislation, having been originally modelled on the UK's Companies Act of 1948. The Companies Ordinance rewrite exercise was, from the outset, more than an amendment exercise – it has completely redrafted the law, stripping out the outdated concepts and terminology of Chapter 32, to make the ordinance 'fit for purpose' in today's business environment.

This 'modernisation' process is a central theme of this month's journal. Our new section on the Companies Ordinance (see pages 20-23) features the first in a series of articles from the Companies Registry on our new companies law. This month, Ada Chung FCIS FCS, Registrar of Companies, and Karen Ho, Deputy Principal Solicitor, Companies Registry, look at the reforms brought in by the new Companies Ordinance designed to enhance corporate governance and modernise the law. To coincide with this series of articles from the Companies Registry, CSj will be interviewing Ada Chung, together with her predecessor in the Registrar of Companies role, Gordon Jones FCIS FCS, on the Companies Ordinance rewrite exercise. Look out for that interview next month.

The cover theme this month looks at another modernising reform currently making its way onto our statute books – adopting an electronic or 'scripless' securities regime. Hong Kong, you might argue, already has an electronic securities system – shares can be traded electronically on the Central Clearing and Settlement System (CCASS). True enough, but investors wishing to trade their shares in CCASS have to surrender their legal title to the shares to the operator of CCASS – the Hong Kong Securities Clearing Company Nominees Ltd (HKSCC). This is what the government seeks to remedy with its proposals to transition Hong Kong to a 'scripless' securities regime. It seeks to enable investors to hold shares in CCASS in their own names and consequently enjoy the full benefits of legal ownership.

Our Institute supports this reform. One fairly obvious benefit will be a closer linkage between companies and their investors as they will have a better idea of the identity of their investors. They will therefore be able to improve their shareholder engagement and corporate communications functions.

There will, however, be a number of things company secretaries need to consider ahead of the implementation of the new scripless securities regime. The cover story this month (see pages 8-13) highlights the fact that companies' share registers will become more complex, and more complex to manage, than presently. Investors will still be able to hold their shares in paper form outside CCASS. They will be able to trade their shares electronically within CCASS in their own names or in the name of a nominee CCASS participant. Moreover, they will be able to operate their own account in CCASS, or opt for an account controlled by their broker, bank or custodian.

This is an improvement on the current system, but it will clearly require an efficient system of co-ordination between the many parties involved – such as the companies themselves, HKSCC, the share registrar and the Securities and Futures Commission (SFC). Our Institute has already highlighted this issue in its meetings with the government and the SFC. At a meeting in January this year with the Financial Services and Treasury Bureau (FSTB) and the SFC, for example, we suggested implementing a mechanism to resolve disputes arising from any errors in the new system. Going forward, rest assured, we will continue to ensure that the collective expertise of our profession contributes to the ongoing effort to keep our statutory and regulatory infrastructure up to date in Hong Kong.

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

Edith Shih FCIS FCS(PE)

迈进新纪元

当大家阅读本期《会长的话》之时，香港已进入一个公司法的新纪元。更确切地说，从2014年3月3日起，香港法例第622章一新《公司条例》—已取代香港法例第32章，而后者则改称《公司（清盘及杂项条文）条例》。

香港法例第622章的实施，标志着本港公司法进入21世纪，我们也因此迈进了新纪元。香港法例第32章之制定，始于上世纪中期关于公司法的立法，并以英国的《1948年公司法》为蓝本。香港《公司条例》的重写，从一开始就并非单纯的法例修订，而是全面性地重新草拟公司法，并删除第32章中的过时概念和用语，使《公司条例》切合于今天的商业环境。

我们以「现代化」进程作为本期的中心主题。在有关《公司条例》的新栏目（见第20-23页）中，我们刊登了公司注册处就新公司法而发表的系列文章之首篇。公司注册处处长鍾丽玲女士及该处副首席律师何刘家锦女士在本期论述新《公司条例》所带来的改革，而重点在于强化企业管治及将相关的法例现代化。为了配合公司注册处所发表的该系列文章，CSj将会访问鍾丽玲处长及该处前处长鍾悟思先生，邀请两位介绍《公司条例》的重写工作。请大家密切留意本刊下期的内容。

本期的专题报道关于另一项正在酝酿立法的现代化改革—电子化或「无纸化」证券方案。读者也许会说，香港目前岂不已建立一个电子化证券交易系统，

投资者可透过「中央结算及交收系统」（以下简称CCASS），以电子方式买卖股份吗？这是事实，但投资者如欲透过CCASS买卖股份，须先将有关股份的法定所有权，移交给CCASS的运营者—香港中央结算（代理人）有限公司。政府建议实施「无纸化」证券方案，正是为这问题作出补救，其目的是让投资者能以自己的名义在CCASS中持有股份，从而享有法定所有权所赋予的整全利益。

公会对这项改革表示支持。该方案所带来的一个明显好处，是公司能更了解其投资者的身份，从而在公司与投资者之间建立更紧密的连系，以促进股东的参与和强化企业传讯功能。

然而，在实施这无纸化证券新方案之前，公司秘书必须对若干问题作出考虑。本期的专题报道（见第8-13页）特别指出，公司股东名册将因此变得更复杂，而在管理上也会更繁复。在CCASS以外，投资者仍将可持有纸张形式的股票。在CCASS之内，他们可以自己的名义，或是以中央结算系统参与者的名义，透过电子方式来买卖股份。此外，他们亦将可在CCASS内自行运作其账户，或是选取一个由其经纪、银行或保管人操控的账户。

这无疑是对现行制度的改良，同时有一点明确的是，我们必须先建立一个行之有效、得到各方参与（例如：公司本身、HKSCC、股份过户登记处及证监会）的协调制度。公会在与政府及证监会磋商时，已曾特别强调这点。例如，今年一月本会与财经事务及库务局和证

监会举行会议，在会议过程中，我们提议设立一个机制，以解决因新制度的任何错误所产生的争议。展望未来，可以肯定我们将继续努力不懈，确保我们的专业发挥团结的力量，使我们在香港有关法定与规管基建方面，能紧贴时代步伐发展。



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Responding to strong demand in both developed and emerging markets for the training of corporate secretaries, the Corporate Secretaries International Association (CSIA) has partnered with the International Finance Corporation (IFC) to develop training materials for corporate secretaries, based on the Corporate Governance Board Leadership Training Resources.

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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: *My company's annual general meeting (AGM) is scheduled to be held in May. What practical suggestions do you have?*

A: Good preparation is always the key to success. Some practical suggestions for holding a successful AGM are set out below.

- Reserve a suitable meeting venue well in advance. The general trend for shareholder attendance is increasing (especially for those AGMs with souvenirs), so you may need a bigger venue.
- Consider enhancing onsite security arrangements if the expected attendance is high.
- Confirm the auditor's presence to answer questions about the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence. Best practice is that any advisers providing opinion on issues material to a resolution should also attend the general meeting to answer possible queries.
- Partner with a PR firm to handle media and demanding shareholders if necessary. If your company decides to give souvenirs, it is a good idea to display a gift policy clearly in the registration area to minimise potential disputes.
- Make sure there is consistency in resolution details (including sequences and numbering of resolutions) in the circular, proxy form, voting paper and meeting agenda, for both Chinese and English versions.
- Engage early for shareholder identification and/ or proxy solicitation if necessary. Generally speaking there are typically few contentious resolutions at an AGM, but we've seen general mandates voted down and in other countries the 'no' vote is certainly increasing.
- Prepare your chairman and senior management for potential questions posed by shareholders. For smooth proceedings, you may consider a time limit for Q&A, and offer to answer the remaining questions in writing within a reasonable period of time.

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- Have contingency plans in place for typhoons or adverse weather and outline them in your meeting announcement or circular. This will minimise confusion and uncertainty for shareholders.
- If your company is incorporated in Hong Kong, the points outlined below need to be noted as a result of the new Companies Ordinance which is effective from 3 March 2014.
 - o Section 596(3) now allows multiple proxies in the case of a company having a share capital (previously limited to two). This may increase the number of proxies being appointed and the number of persons attending the annual general meeting. You may need to reserve a bigger venue.
 - o Section 584 permits a company to hold a general meeting at two or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting; subject to any provision of the company's articles.
 - o Section 594 states that the following items must be recorded in the AGM minutes:
 - result of the poll
 - total number of votes that could be cast on the resolution
 - number of votes in favour of the resolution, and
 - number of votes against the resolution.

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Going scripless

Farewell to paper share certificates?

Since the mid-1960s, jurisdictions around the world have been phasing out paper share certificates. Hong Kong has been slow to join this trend, but the government has now put forward a set of detailed proposals designed to transition the HKSAR to an electronic or 'scripless' securities regime. *CSj* looks at the implications for company secretaries.

The proposal to implement a paperless securities regime has had, even by Hong Kong standards, a very 'extended' consultation period – namely 26 years and counting. 'Dematerialisation' – abolishing paper share certificates – was one of the proposals of the Ian Hay Davison Report back in 1988. The Securities and Futures Commission (SFC) conducted its first consultation on moving to scripless shares in 2002, followed by another consultation by Hong Kong Exchanges and Clearing (HKEx) in 2003. Both of these consultations failed to drum up sufficient support from investors and brokers for the operational model proposed.

Then, in 2009, a working group from the SFC, HKEx and the Federation of Share Registrars was formed to put forward new proposals. A public consultation on these proposals was conducted from December 2009 to March 2010 and, according to the consultation conclusions published in September 2010, found general support for the revised operational model. It seems, then, that Hong Kong is ready to join the many other jurisdictions around the world (including Mainland China) to go 'scripless'. The government is currently finalising a Bill for introduction into the

Legislative Council in the second quarter of 2014.

Bad news for termites?

Hong Kong already has a settlement system where shares can be electronically traded. The Central Clearing and Settlement System (CCASS) enables investors to trade their shares electronically, but only via a legally convenient sleight of hand. The shares are considered to be still in paper form and held by the operator of CCASS – the Hong Kong Securities Clearing Company Nominees Ltd (HKSCC) – in a central depository linked to the settlement system. The paper securities are

'immobilised' in this central depository and do not need to be moved or re-registered every time they are bought or sold. In fact, only the beneficial interest in the securities is transferred when the shares 'change hands' – legal ownership of the securities remains with HKSCC.

This system has been in operation for over 20 years, but some fairly obvious disadvantages have emerged. First of all, the CCASS arrangement has been a hurdle to better shareholder engagement. Companies don't always know who their actual investors are since the legal title for their shares within the CCASS system remains with HKSCC. Moreover,

Highlights

- companies will have new opportunities for improving shareholder transparency and corporate communications, but they will have to adapt their internal control systems to accommodate the necessary changes to the company's share register
- the reform will allow investors holding electronic shares in CCASS to be able, for the first time, to register their securities in their own names and enjoy the full benefits of legal ownership
- investors who prefer to hold on to their share certificates will be able to do so

“
investors who choose to stash their shares under their bed or in their bedroom closet... may find their hard-earned investments fall prey to hungry termites
 ”



investors do not always receive corporate communications and proxy voting materials as they are not the registered holders of the shares.

One of the main drivers of the dematerialisation reform, therefore, has been to facilitate direct ownership, shareholder transparency and enhance corporate communications. In addition to these motives, however, there are other reasons why dematerialisation makes sense. Perhaps most obviously, moving to electronic ownership of shares reduces the risk of loss or destruction. Investors who choose to stash their shares under their bed or in their bedroom closet, which is not as unlikely a scenario as it may seem, may find their hard-earned investments fall prey to hungry termites and other household insects – particularly in subtropical Hong Kong.

There are also significant efficiency gains to be made by going scripless. Changes

of ownership are far easier, cheaper and quicker to implement. The government has also made the point that dematerialisation will harmonise links with other scripless securities markets.

What will this mean for company secretaries?

Company secretaries will need to bring to the attention of the board a number of issues raised by the introduction of scripless securities. In particular, companies will have new opportunities for improving shareholder transparency and corporate communications, but they will also have to change their internal control systems to accommodate the necessary changes to the company's share register and corporate actions.

According to the government's latest operational proposals, the reform will split the share registers of listed companies offering paperless shares into two parts

– one recording paperless shares held in CCASS, and the other recording paper shares which will be kept and maintained by the relevant share registrar as an agent of the company outside CCASS. Participating companies' share registers will therefore be more complex than presently, but investors will have more options in terms of the form, type of ownership and extent of control over their holdings (see Figure 1 on page 13).

Investors will be able to choose between:

1. holding their securities in paper or paperless form
2. holding their securities in their own names or in the name of a nominee CCASS participant (this could be a broker, a bank or a custodian), and
3. holding their securities through an account that they can control

directly, or through an account controlled by their broker, bank or custodian.

One potential problem area highlighted by the HKICS is that this model will require an efficient and coordinated interaction between many different parties – such as HKSCC, the share registrar, and the SFC. At a meeting in January this year with the Financial Services and Treasury Bureau (FSTB) and the SFC (see 'Scripless securities: the HKICS view' below), the Institute suggested that it may be appropriate to consider implementing a cost-effective mechanism to resolve disputes arising from any errors in the new system. The government is considering this alongside proposed security measures, in particular arrangements to ensure the accuracy and

safety of shareholders' information in a scripless environment.

New rules

The implementation of scripless shares will have regulatory implications company secretaries need to be aware of. Currently, the proof of ownership of a share in Hong Kong is a share certificate. Enabling the new regime will require amendments to any legislative references that currently (either expressly or implicitly) require the issue of certificates and the use of paper instruments of transfer.

The government proposes to have regulatory and operational matters relating to the new paperless securities market environment overseen by the SFC. To this end, it proposes to create a new part in the Securities and Futures

Ordinance (SFO) defining the key concepts and principles. In particular it will define what 'prescribed securities' are, and how they may be evidenced and transferred without paper documents. It will also define what an 'uncertificated securities system' is and require that such a system may only be operated by a recognised clearing house (RCH) that is approved by the SFC. To complement this, the SFC's existing powers in respect of RCHs will be correspondingly expanded to cover the operation of such systems.

The new part of the SFO will also enable the SFC to prescribe offences for contravention of the requirements. Additionally, as it is envisaged that share registrars will take on a more active and involved role in the paperless environment, the government proposes to empower the SFC to authorise and regulate share registrars who wish to provide share registrar services in respect of participating companies. The SFC's new rule-making powers will include the authorisation and regulation of such share registrars.

These new rules will take the form of subsidiary legislation made by the SFC and, as such, will be subject to negative vetting by the Legislative Council.

Fees and charges

The government seeks to ensure that fees arising from the scripless securities regime will be reasonable for all parties concerned and commensurate with the services provided. To that end, any fees charged by an RCH will be subject to the SFC's approval.

Currently, a HK\$5 fixed rate stamp duty is chargeable on the instrument of transfer in respect of any sale or purchase of Hong Kong stock. Under the scripless securities

Scripless securities: the HKICS view

The Hong Kong Institute of Chartered Secretaries supports the introduction of a scripless securities regime in Hong Kong. 'This is in line with international developments and will enhance the position of Hong Kong as a leading international financial centre,' says April Chan FCIS FCS(PE), Company Secretary of CLP Holdings and Chair of the Institute's Technical Consultation Panel. The Institute does, however, have some concerns about its implementation. At a meeting in January this year with the Financial Services and Treasury Bureau and the Securities and Futures Commission, the Institute raised the following points:

- there should be equality of treatment for all shareholders, whether their shares are held in paper or paperless form
- there should be proper checks and balances relating to the functions of the share registrar and the clearing houses for investor protection
- it may be appropriate to consider some cost-effective mechanism to resolve disputes, and
- the principle should be that the user bears the costs.

market regime, participating securities may be transferred without an instrument of transfer in certain circumstances, and consequently, the \$5 fixed duty will no longer be chargeable on such transfers.

The chargeability of the *ad valorem* stamp duty will not be affected, however. In general, *ad valorem* stamp duty is chargeable on all transfers of shares listed in Hong Kong involving a change in beneficial interest. Under the uncertificated securities market regime, *ad valorem* stamp duty would be collected electronically through the stock exchange for all on-exchange transfers

in the same manner as the current situation.

Farewell to paper shares?

The wheels are now in motion for Hong Kong's transition to a scripless securities regime. As mentioned at the beginning of this article, the latest public consultation on the government's revised operational model found general support and the necessary legislative amendments will be presented to LegCo in the second quarter of 2014.

Does this mean we will soon be saying farewell to paper share certificates in

Hong Kong? Well, no. The government is not proposing to make the paperless securities regime compulsory, at least initially. It proposes to allow the existing paper-based system to operate in parallel with the paperless system until the market is ready.

This might mean that the number of companies participating in the paperless securities scheme will be quite low, at least in the early stages. This is borne out by the overseas experience. Taiwan, for example, opted for a dual regime and found that uptake was disappointingly low. It subsequently moved to a compulsory

Why has it taken so long?

One of Hong Kong's key competitive advantages as an international financial centre is its excellent legal system. It has well drafted and administered laws and an independent judiciary. In this context, we should perhaps not be too quick, if you'll excuse the pun, to berate the glacial pace of the law reform process in Hong Kong.

The extended consultation process which has delayed Hong Kong's adoption of scripless securities is by no means unique. It took 10 years, for example, to partially implement the proposal to give statutory backing to key listing rules. First proposed in 2003, this reform made it onto the statute books in the form of the revised Securities and Futures Ordinance implemented in January 2013, although by that time it had been whittled down to apply only

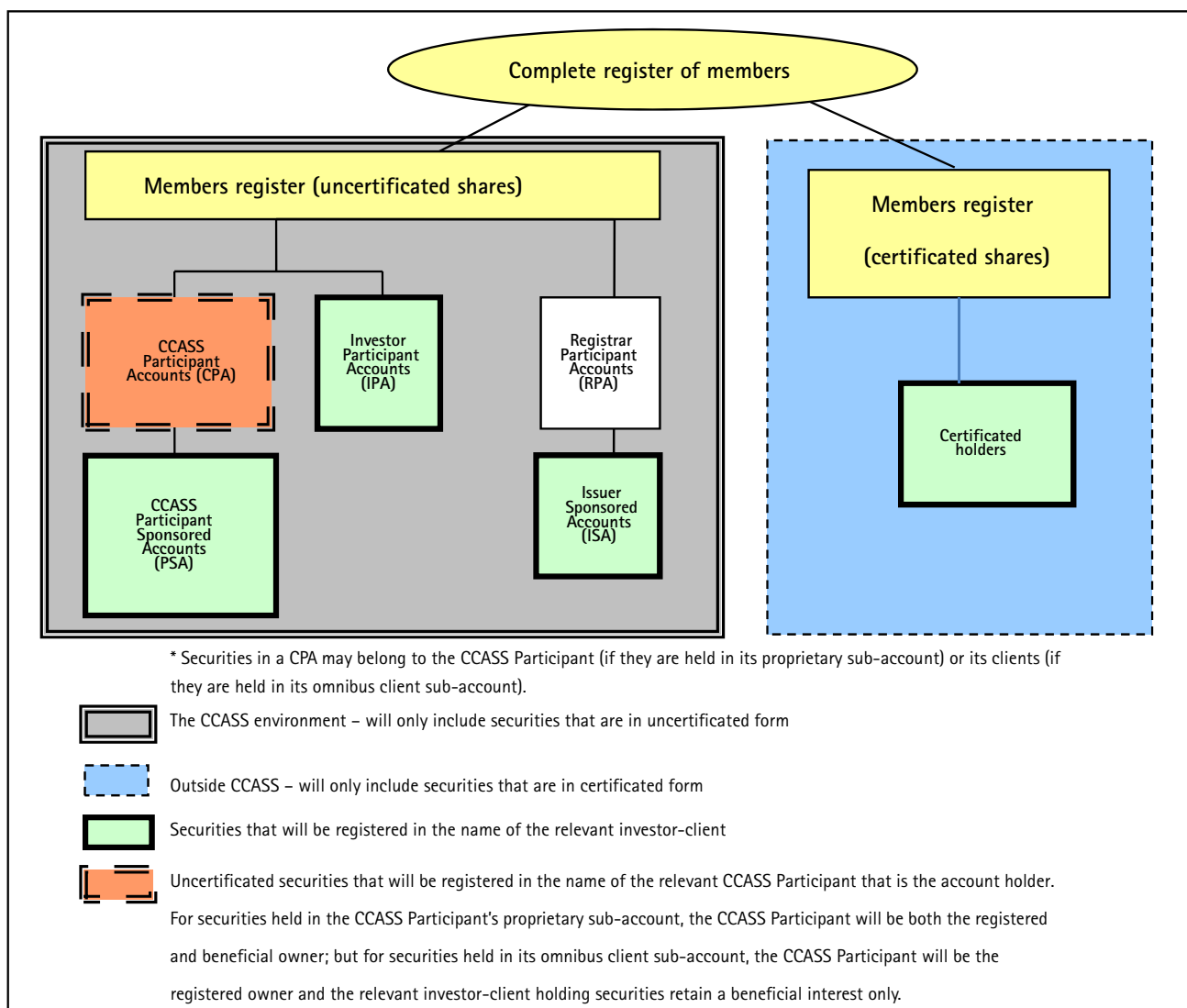
to information disclosure. Similarly, implementing a statutory corporate rescue procedure has so far taken 18 years. That reform was first suggested in 1996 and has yet to make it out of the consultation stage.

While this contrasts rather starkly with the speed at which reforms can be adopted in Mainland China, there are credible reasons for caution. Regarding scripless securities, for example, some investors want to retain their share certificates as tangible evidence of their ownership. 'How can I trust just a number on the computer screen to show my stock holdings?' says 78-year-old housewife Chan Ng-fong, interviewed by the *South China Morning Post*. In the article – 'Hong Kong investors turn away from paperless scrip' (4 January 2010), she was quoted as saying: 'This is my entire life savings.

I need the share certificates with my name written on them to show my ownership.'

Other investors want paper share certificates for their historic value. April Chan, Company Secretary of CLP Holdings and Chair of the Institute's Technical Consultation Panel, points out that investors in long-standing businesses such as CLP might keep share certificates dating back many years.

The government hopes its proposed model will be a win-win situation. Those investors who prefer to hold on to their share certificates will be able to do so, but the reform will allow investors holding electronic shares in CCASS to be able, for the first time, to register their securities in their own names and enjoy the full benefits of legal ownership.



Source: Financial Services and Treasury Bureau, and the Securities and Futures Commission, December 2013

scripless securities regime. The UK also opted for a dual regime and there are still an estimated nine million paper share certificates in the UK, despite the fact that dematerialisation was launched in 1996.

Moreover, the scope of the new regime will be quite limited in the early stages. It will only be applied to listed companies and the government will focus initially on Hong Kong-incorporated companies as these are governed by Hong Kong law.

That will mean that the majority of Hong Kong-listed companies, being domiciled abroad, will not have to participate. Companies coming to list in Hong Kong, however, would be required to provide the option of scripless securities to investors.

The government hopes that the many benefits of the proposed scripless securities regime will provide a powerful incentive for companies to participate, and, looked at in the context of the digital

revolution which has been transforming many different aspects of our lives, the transition does seem to be inevitable. The SFC will also launch educational programmes to familiarise market participants with the scripless regime, and Hong Kong Exchanges and Clearing is considering measures to encourage market participants to use the model.

Kieran Colvert
CSj Editor



CHARTERED
SECRETARIES
特許秘書

How did we
get here,
where are
we going?



CSj talks to this year's winner of the HKICS Prize, former HKICS President Edwin Ing FCIS FCS, about the past and the future of the company secretarial role.

Congratulations on winning the HKICS Prize – what are your feelings on receiving the prize?

'I am very touched. I didn't expect it at all and I am aware of course that the previous winners are all highly illustrious people, so I am very honoured!'

In your acceptance speech at the HKICS annual dinner, you mentioned that your career has paralleled that of the Institute of Chartered Secretaries and Administrators (ICSA) in London and the HKICS here in Hong Kong?

'Yes. When I was advised that I had been awarded the prize, I did reflect on certain similarities between my own career and the recent development of the ICSA. I was born and grew up in the UK and I came to Hong Kong in the 1980s just as the ICSA in London was realising the importance of the divisions in the future development of the ICSA. Membership in many of the divisions was booming so the ICSA had to start thinking more globally about the profession. Then, in the 1990s when I had decided to make Hong Kong my home and pursue my career here, the ICSA agreed to the important strategic move to allow the incorporation of the HKICS as a local autonomous professional body and grant members in Hong Kong dual qualifications.'

Did you have family ties here?

'My parents emigrated from Hong Kong to the UK before I was born. I only came here once when I was about seven years old for a holiday, but when I graduated from university my parents gave me a trip to Hong Kong as a graduation present. So I came to Hong Kong and found work in an accountancy firm. The job was really only about using my English skills. The staff needed help with their English so I spent a lot of my time writing or re-writing – I always got them to write a first draft otherwise they wouldn't have learned anything – letters to the Inland Revenue Department for example. So, apart from having to think up creative reasons for not being subject to tax, I was basically an English teacher.'

At what point did you opt for the Chartered Secretarial career?

'While working for the accountancy firm I learned about the ICSA. I decided to take the Chartered Secretary exams and I went back to the UK to study for the qualification.'

What attracted you to this career?

'I knew I could make out a case for the Chartered Secretarial profession to my parents because you get post-nominals. In a traditional Chinese family you can only be a doctor, a lawyer, an accountant, maybe an architect or an engineer! I knew I couldn't be a doctor because I couldn't stand the sight of blood. I'd looked at becoming a lawyer but I didn't like the idea of learning lots of case law and I didn't think my numbers were strong enough to become an accountant.'

But, joking aside, this career really fitted in well with me because of the kind of person I am. It may work out for others for completely different reasons and lead to completely different directions. One of the bizarre features of this career is that nobody can be really sure about what direction it will take you in!

Do you think that is one of the main attractions of this career? Interviewing company secretaries for CSj, I have often been struck by how varied their backgrounds are.

'I think you'll find that with a lot of professions – there will be a lot of variety in terms of people's backgrounds whatever profession they choose. But with the other professions, once individuals choose their path, their careers tend to become more uniform. Of course, an accountant can choose to work in an audit firm or in a listed company for example, but what I find interesting about our profession is that this is a career of

Highlights

- the emerging regulatory environment, with its increased reliance on principles-based compliance, will test the abilities of company secretaries
- there is great potential for tailoring the company secretarial career to your own personal strengths and abilities
- the future of the role will depend heavily on regulatory and corporate governance developments



your own making. This is a point I make when I talk to younger members. Now that can be a good thing and a bad thing – good because you can really tailor your career to your own abilities and strengths, bad because people still find it hard to define what a company secretary is.

But certainly, this career can take you to places you never thought it would. Because I joined a retailing company, I found myself running department stores and logistics operations, which I never thought I would be doing. I also ran the HR, administration and property departments!

This was as company secretary for Dickson Concepts (International)?

'Yes. I came back to Hong Kong after qualifying in the UK and, after working for the same accountancy firm, it was time to move on. I had two choices – join KPMG or Dickson. At KPMG I would get good training and a very rounded career path, but if I chose to join Dickson I would be joining a commercial business so I would learn much more about doing business but only related to the particular sector the company was in – in this case retail.

In the end I chose to work for Dickson as it offered me the chance to try something new – the job also paid more! But it worked out well – working for a smaller-sized listed company you have to handle all aspects of the company secretary role, so it was

an excellent opportunity. I was initially appointed as company secretary and was then made an executive director. Actually I'd set myself a target to be an executive director by the age of 30 and I was made a director of Dickson just a few months before my 30th birthday.'

Were you already involved in the Institute's work at that time?

'I was just an ordinary member of the Institute until I was asked to a lunch by Neil McNamara FCIS FCS. The Institute was looking for people to assist in its work and someone had suggested me. I have no idea to this day who this person was! Anyway, after the lunch I joined the Institute's Professional Development Committee and I joined the HKICS Council in 1995.

With 1997 approaching, there were many questions about what impact the handover would have on Hong Kong. Everyone had their own view about this, there were those who regarded it with fear and those who regarded it as an opportunity. The Institute had decided that, to safeguard members' interests, it would be advisable to make the HKICS an autonomous professional body.

The HKICS was set up in 1994 and, towards the end of 1995, the Institute was looking for a new president. The president of the Institute at that time, Horace Wong FCIS FCS, proposed that I

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I think the term ‘company secretary’ is right for the position we hold, and we have got to the stage where it is much better understood now, certainly in the listed environment

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stand as a candidate but I was reluctant to put myself forward. There were members of Council who I felt were more qualified for the presidency, so I only wanted to put myself forward if I had unanimous support. In the end, I stood unopposed and served as president for three years from 1996 to 1998. I think I was seen as the ideal candidate for the presidency over the handover years because I straddled both the UK and Hong Kong Chinese cultures.

From a personal point of view, becoming HKICS president at that time was a great opportunity – I was invited to all of the handover ceremonies, for example. My only regret is that, because no cameras were allowed, I don’t have any photos of those events. I have kept the badges and the booklets, of course, but if it had been today everyone would have been taking pictures with their smart phones!

You have also witnessed the changes in the role of the company secretary over the course of your career – can you talk a little about that?

‘The importance of the position has grown significantly over the period of my career. When I joined Dickson few public companies had an individual as the named company secretary with a role specifically dedicated to company secretarial work, as opposed to the CFO or the legal director doubling up as the company secretary. I don’t have any statistics to substantiate this, but when

I joined Dickson in 1987 I was solely responsible for the company secretarial function and that was relatively unusual – particularly since Dickson was a smaller listed company.

After the 1993 *Cadbury Report* in the UK, the role has taken a higher profile and has been increasingly tied to corporate governance. This has been a very good development for company secretaries and for the Institute. As a relatively small professional institute, the HKICS could easily have found itself squeezed out by other professions.

There have been many discussions over the years about whether the position of the company secretary should remain in legislation, but the Institute has done a good job of highlighting the importance of the role. In Hong Kong, all companies must have a named company secretary and, in terms of the qualifications considered acceptable for an individual to take on this role, first on the list is being a member of the HKICS. The Institute has also been successful in building its relationship with regulators – particularly the stock exchange. The role is much better understood now. If you have any connection with the listed company sector, you will know what the company secretary does.’

There has been a debate, both internationally and in Hong Kong, about whether the ‘company secretary’ title should be changed – what’s your view?

‘I may be a traditionalist but I still like the title of company secretary. My own personal view is that it encapsulates quite clearly what the position is. There have been suggestions that the name should be changed to “board secretary” – the translation of the term used in Mainland China. But the obligations and responsibilities of the company secretary are to the company as a whole, “board secretary” is a narrower term implying the obligations and responsibilities are to the board alone.

I think the term “company secretary” is right for the position we hold, and we have got to the stage where it is much better understood now, certainly in the listed environment.’

How do you think this evolution of the company secretary role will play out in the coming years?

‘I think it will continue as the demand for better corporate governance develops. The development of the Institute and the profession has really followed in tandem with the development of the corporate governance debate. The Institute will have to stay



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 In the past, if there was concern about compliance with the rules, the company secretary would dig out the relevant rule and inform the board of the requirements... Now, being compliant with regulation is more of a judgement call and, as an adviser, the company secretary is in a more difficult position.
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on top of its game. Maybe down the line the job will be redefined as "corporate governance officer" or something like that. I think down the line you might also find that the Practitioner's Endorsement becomes mandatory for company secretaries in the listed company sector.

The Institute also needs to look at regulatory developments. Will the trend be towards more and more regulation? Will there be a loosening of a company's regulatory burden to avoid strangling business? These trends will certainly affect the Institute and the profession!

Interesting that you mention that since the changing regulatory environment is one of the themes of the Institute's corporate governance conference later this year. What do you think about the trend for increased reliance on principles-based regulation?

'That can put the company secretary in a difficult spot. In the past, if there was concern about compliance with the rules, the company secretary would dig out the relevant rule and inform the board of the requirements – "the rule says this... and the threshold is x". Now, being compliant with regulation is more of a judgement call and, as an adviser, the company secretary is in a more difficult position. Where compliance is a judgement call, there is more leeway for a dominant CEO, for example, to push ahead against the advice of the company secretary.

I think this will test the abilities of company secretaries greatly in the future. Other developments have also made compliance work a lot less straightforward. For example, companies can no longer send draft announcements for review by the stock exchange


before they are published. For most of my career the Listing Division played a more assertive advisory and consultative role.'

In the scenario you have just mentioned – where a CEO wants to push ahead with something against the advice of the company secretary – what should the company secretary do?

'The company secretary has to assess the situation as it relates to the views of all the executive directors and make a judgement call. That would be to consider if he or she deems it necessary to discuss the issue with the independent non-executive directors (INEDs). The INED role has also evolved over the years of my career. In the early days they tended to be friends of the family and would do whatever the CEO/ chair asked them to do. Today, they are not "yes men" and they can play an important role where there is concern about executive decisions. There is a close relationship between INEDs and the company secretary.

But these issues are much more difficult for those in the company secretary role now. In the old days it was more clear cut, you were either in breach of the rule or you were not. Now there is much more of a grey area.'

Thanks very much for giving us this interview, is there anything else you would like to add?

'I never expected to get so involved with the Institute, but I got a lot out of it personally so I would like to urge people to get involved in the Institute's work. There is a small group of people who are very passionate about the Institute, while the vast majority don't get involved. I'm not sure why that is, or how it can be changed, but certainly I would urge members to get involved.' 

2014年3月開始實施 新《公司條例》

Commencement of New Companies Ordinance in **March 2014**

方便營商
Facilitate Business



加強企業管治
Enhance Corporate
Governance



確保規管更
為妥善
Ensure Better
Regulation



使公司法例現代化
Modernise
the Law



The new Companies Ordinance: your guide

In this first of a series of articles by the Companies Registry looking at the reforms introduced by the new Companies Ordinance, Ada Chung, Registrar of Companies, and Karen Ho, Deputy Principal Solicitor, Companies Registry, highlight the major changes introduced to enhance corporate governance and modernise the law.

The commencement of the new Companies Ordinance (NCO) on 3 March 2014 marks a new chapter in the company law of Hong Kong. The NCO, which was passed in July 2012, aims to achieve four main objectives, namely, enhancing corporate governance, facilitating business, ensuring better regulation and modernising Hong Kong's company law.

The NCO (Cap 622) replaces those provisions in the old Companies Ordinance (Cap 32) governing the formation and operation of companies, which are repealed upon the commencement of the NCO. The provisions of Cap 32 which are not repealed relate mainly to prospectuses and insolvency. These remain in Cap 32 which has been renamed the Companies (Winding up and Miscellaneous Provisions) Ordinance.

This article aims to set out some of the major changes introduced by the NCO to enhance corporate governance and modernise the law. The next article in this series will look at the major changes introduced to facilitate business and ensure better regulation.

1. Enhancing corporate governance

With the aim of enhancing corporate governance, the NCO introduces the major initiatives outlined below.

Strengthening the accountability of directors

There were provisions in Cap 32 prohibiting all public companies, as well as private companies which are members of a group of companies of which a listed company is a member, from appointing a body corporate as their director. There was no restriction for other private companies. The NCO requires, on top of

these restrictions, that private companies must have at least one director who is a natural person.

There were no provisions on directors' duty of care, skill and diligence in Cap 32 and the common law position in Hong Kong in this respect is not entirely clear. The standard of the duty in old case law, which focuses on the knowledge and experience which a particular director possesses (the subjective test), is considered too lenient nowadays. In the light of overseas developments, the NCO introduces a statutory statement to provide clear guidance to directors. The new provision stipulates that a director must exercise reasonable care, skill and diligence, and sets out a mixed objective and subjective test in the determination of the standard. The objective test looks at the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of the director in question.

Enhancing shareholder engagement in the decision-making process

To enhance the rights of shareholders, the expenses of circulating members' proposed resolutions for annual general meetings (AGMs), and members' statements relating to the proposed resolution or other business to be dealt with at AGMs, will be borne by the company if the required threshold for requests are met and the requests to circulate such documents are received in time for sending with the notice of the relevant meeting.

Cap 32 provided that anything which might be done by a company by resolution in a general meeting might be done by a written resolution signed by all members without convening a meeting.

However there were no statutory rules on proposing or passing a written resolution. The NCO provides the procedures for proposing, passing and recording written resolutions. A company's articles may set out alternative procedures for passing a resolution without convening a meeting, provided that the resolution is agreed to by the members unanimously.

Under Cap 32, a poll would be called for if the demand is made by not less than five members, members representing not less than 10 percent of the total voting rights, or members holding not less than

Highlights

The new Companies Ordinance:

- brings the legal framework for the incorporation and operation of companies in Hong Kong in line with modern international standards
- fills up certain lacunas in the old Companies Ordinance, such as the absence of any provisions on directors' duty of care, skill and diligence, and new statutory rules on proposing or passing written resolutions
- requires all private companies to have at least one director who is an individual
- requires public companies and companies not qualified for simplified reporting to report on environmental and employee matters that have a significant impact on the company

10% of the total paid-up share capital of the company carrying the right to vote at the meeting. The threshold for demanding a poll is lowered from 10 percent to 5 percent of the total voting rights under the NCO. The threshold of five members is retained but the threshold based on the total paid-up capital is removed.

Improving the disclosure of corporate information

The NCO requires public companies and companies not qualified for simplified reporting (details of the simplified reporting provisions will be covered in the next article in this series) to prepare a more comprehensive directors' report which includes an analytical and forward-looking 'business review', whilst allowing private companies to opt out from the requirement by a special resolution. The review should contain, for example, information relating to environmental and employee matters that have a significant impact on the company. The new requirement is in line with the international trend on integrated reporting.

Modifying the headcount test

The 'headcount test', pursuant to which a majority in number of the members present and voting is required to pass a resolution to approve a scheme involving a takeover offer or general offer to buy back shares (including a privatisation scheme), is replaced under the NCO by a new requirement that the number of votes cast against a resolution to approve such a scheme must not be more than 10 percent of the votes attached to all disinterested shares. 'Disinterested shares' basically means shares held by non-interested parties. For other members' schemes, the headcount test is retained, with a new provision giving the court a discretion to dispense with the test where appropriate.

To address the concern that minority shareholders are reluctant to challenge a scheme in court because of the potentially substantial legal costs, it is provided that a dissenting member might be ordered to pay legal costs only if his or her opposition to the scheme is frivolous or vexatious.

Fostering shareholder protection

To avoid potential conflict of interests, Cap 32 prohibited a company from entering into loans or other similar transactions with a director. For a listed company or a private company that is within the same group as a listed company, the reference to 'director' was extended to cover persons or corporations closely associated with a director. The NCO expands the prohibition to cover a wider category of entities connected with a director. In the case of a 'specified company', that is, a public company or a private company or company limited by guarantee that is a subsidiary of a public company, the prohibition also covers, among others, an adult child, a parent, a cohabitee, a minor child of the cohabitee who lives with the director and an associated body corporate.

The NCO also introduces a requirement for members' approval of any long-term employment of a director, so as to minimise the risk that a director may entrench himself in office. It provides that the approval of members must be obtained for any contracts under which the guaranteed term of employment of a director with the company exceeds or may exceed three years.

Except for some specified transactions (most of which relate to the purchase or redemption of a company's own shares), there was no provision in Cap 32 restricting members' rights to vote or requiring members to abstain from

voting on transactions in which they have an interest. In the NCO, there is a new requirement for disinterested members' voting for connected transactions, namely, in considering if the relevant resolution is passed, every vote in favour of the resolution cast by interested members would be disregarded. The requirement is applicable to a 'specified company' for various prohibited transactions.

Lastly, the scope of the 'unfair prejudice' remedy is extended to cover proposed acts and omissions, so as to remove the uncertainty as to whether a member can bring an action for unfair prejudice where a course of action is only at the proposal stage, or where there is only a threat to do or not to do something. The remedies that may be granted by the court are also extended to cover an order restraining the proposed act or requiring the doing of an act that the company has proposed not to do.

2. Modernising the law

To modernise the law, the NCO introduces the major initiatives outlined below.

Rewriting the law in simple and plain language

The Companies Ordinance rewrite exercise has modernised the language and rearranged the sequence of some of the provisions in a more logical and user-friendly order, so as to make the NCO more readable and comprehensible. Under the current drafting convention, the NCO is written in simple and plain language.

Abolishing the memorandum of association

The memorandum of association has been abolished for all companies. For existing companies, the conditions in the memorandum are deemed to be

contained in the articles of association, except for conditions relating to authorised share capital and par value, which are regarded to be deleted for all purposes. For companies which apply to be incorporated under the NCO, they need to submit their incorporation form and articles of association only. In addition to the mandatory articles required for every company, companies may choose to adopt all or any of the provisions of the model articles prepared for the type of companies to which they belong. These model articles are set out in the Companies (Model Articles) Notice (Cap 622H).

Abolishing par value

In line with international trends, the opportunity has been taken to migrate to a mandatory no-par regime for all companies. As a result, relevant concepts such as 'authorised share capital', 'share premium' and 'nominal value' no longer exist. Retiring the concept of par value creates an environment of greater certainty, simplifies accounting entries and gives companies greater flexibility in structuring their share capital.

Streamlining the types of companies

The types of companies that can be formed under the NCO have been streamlined:

- unlimited companies without share capital are abolished
- companies limited by guarantee, whether private or non-private, are categorised as a separate type of company, and
- a definition for 'public company', that is a company other than a private company or a company limited by guarantee, has been introduced.

The five types of companies that can be formed under the NCO are:

1. public company limited by shares
2. private company limited by shares
3. company limited by guarantee without share capital
4. public unlimited company with share capital, and
5. private unlimited company with share capital.

Clarifying the rules on indemnification of directors

There were no provisions in Cap 32 regulating a director's right to be indemnified against liabilities to third parties. The case law in this area is rather difficult for directors to understand. In particular, the scope of the right of directors to be indemnified against liabilities to third parties is not clear. The rules on indemnification of directors against third parties are clarified under the NCO. With the exception of certain liabilities and costs (such as fines and penalties), a company is permitted to indemnify a director against liabilities to a third party if the specified conditions are met.

3. Looking forward

The NCO brings the legal framework for the incorporation and operation of companies in Hong Kong in line with modern international standards, and ensures that the infrastructure of Hong Kong's company law will continue to best serve the needs of Hong Kong as an international commercial and financial centre. It also reinforces Hong Kong's competitiveness as a place to do business.

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we aim to achieve a smooth transition to the new regime for all concerned
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To prepare all parties for the change, the Companies Registry has sent circular letters to over one million companies on the register to announce the commencement of the NCO, highlighting the major changes. From January 2014, a dedicated hotline has been set up to answer enquiries relating to the NCO. Comprehensive information about the NCO is available at the 'New Companies Ordinance' section on the Companies Registry's website at www.cr.gov.hk. We aim to achieve a smooth transition to the new regime for all concerned.

Ada Chung, Registrar of Companies, and Karen Ho, Deputy Principal Solicitor, Companies Registry

Ada Chung is a Fellow of ICSA/ HKICS.

Next month the Companies Registry will look at the changes introduced under the new Companies Ordinance to facilitate business and ensure better regulation.

For enquiries, email: cr.nco@cr.gov.hk, or call the Companies Registry new Companies Ordinance hotline: 3142 2822 (available Monday to Saturday 9:00 a.m. to 8:00 p.m. excluding public holidays).

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Deregulation

China experiments with a liberalised marketplace

Since the global financial crisis, there has been a significant tightening of regulatory controls globally, particularly in the financial sector. In Mainland China, by contrast, the key theme is deregulation. The Institute's latest China Corporate and Regulatory Update seminar, held on 7 January 2014 in Hong Kong, focused on a number of deregulatory reforms in the PRC.

Keeping up with Mainland China's fast-changing corporate and regulatory environment can be quite a challenge for practitioners, but the Institute's China Corporate and Regulatory Update (CCRU) seminar, launched in 2006, certainly helps keep track of this fast-moving scene. The latest CCRU, held on 7 January 2014 in Hong Kong, attracted over 30 attendees, representing both Hong Kong- and Mainland-listed companies. The three speakers at this year's CCRU forum focused on key deregulatory developments in the PRC.

The Shanghai Free Trade Zone

Officially launched on 29 September 2013, the Shanghai Free Trade Zone (FTZ) is China's new vision of a liberalised marketplace open to foreign investment and international trade in both goods and services. In his CCRU presentation, Caesar Wong, Partner, Tax and Business Advisory Services, Deloitte, highlighted the measures in the FTZ designed to loosen restrictions and red tape for foreign companies. Simply put, the establishment of the FTZ is expected to radically change the way foreign companies do business in China:

- investment approval procedures will be simplified
- foreign companies will be allowed to invest in a number of industries currently off limits
- businesses will be able to freely convert renminbi into foreign currencies
- new tax rules will encourage investments
- interest rates will be determined by market forces, not the central bank
- customs supervision procedures will be streamlined, and
- companies in the FTZ will be given 'pre-establishment national treatment'.

Wong also addressed the motives behind the creation of the FTZ. Apart from the desire to test the waters for a broader liberalisation of the country's economic policies, he said that the Shanghai FTZ is also part of the country's overall strategy

to counter the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) led by the US, from which, he said, China had been 'deliberately excluded'.

While the Shanghai FTZ has attracted a lot of attention, Wong pointed out that it is not the country's only experiment in

Highlights

Deregulatory measures discussed in the Institute's latest China Corporate and Regulatory Update include:

- the establishment of the Shanghai Free Trade Zone
- fewer restrictions on securities firms and fund management companies
- loosening of the restrictions on companies seeking to raise funds on the over-the-counter stock market

market liberalisation. Hengqin, Qianhai and Nansha, all located in Guangdong Province, have a similar status. In order to attract foreign investment and talent, tax rates for selected companies in the Guangdong FTZs are set at 15 percent instead of the standard 25 percent, Wong pointed out. In addition, Qianhai and Hengqing are offering different Individual Income Tax (IIT) rebates for expatriates working in these areas. In Qianhai, qualified overseas talent or professionals in short supply are entitled to a rebate if the IIT exceeds 15 percent of the taxable employment income. In Hengqing, qualified Hong Kong and Macau residents are also entitled to a rebate if the IIT exceeds the hypothetical individual tax in both SARs.

Wong also looked at China's booming e-commerce sector. Citing Tencent as an example of the immense success of China's e-commerce companies, Wong said some leading Chinese enterprises are ready to branch out abroad as they are running out of room to expand domestically. He emphasised that in the globalised world Chinese companies should also 'improve their physical strengths in order to take on a greater challenge'.

Furthermore, he explained that the high penetration of social media platforms is playing a key role in driving the e-commerce market. Online sales recorded on 11 November 2013 (11 November is *Guanggun Jie*, the day celebrated by young singles), soared 83 percent to over 35 billion yuan from the same day in the previous year, according to Wong.

Because e-commerce has become a vital tool for small and large businesses

in China, not only to sell to customers, but also to engage them, Wong strongly suggested that domestic and foreign companies, especially those with retail business, apply for a third-party payment licence from the People's Bank of China (PBoC). This permission allows non-financial institutions to provide payment services including accepting online payments, issuing and accepting prepaid cards, collecting bills via banks cards and other types of payment-related services determined by the PBoC.

He went on to discuss the issuance of the first batch of Mobile Virtual Network Operator (MVNO) licences. The licences were awarded to 11 companies, allowing them to rent wireless capacity from China's existing telecom operators and market their services under their own brands. He also shared briefly his views on China's property cooling measures, and private banks and other financial institutions being allowed to run on a trial basis this year.

Capital market liberalisation in China

Deregulation was also the central theme of the presentation by Dr He Jie, Director of the Shenzhen Stock Exchange Research Institute. He focused his presentation on the ongoing liberalisation of the rules governing capital markets and the financing activities of companies.

He pointed out that capital market liberalisation is structured in three directions – marketisation, internationalisation and enhancement of the legal framework, with marketisation at its core. The overall aim is to 'stimulate the creativity of market players and promote endogenous development of capital markets to enable market forces to determine resource allocation'.

“
the Shanghai Free Trade Zone is China's new vision of a liberalised marketplace open to foreign investment and international trade in both goods and services
”

Dr He remarked that the China Securities Regulatory Commission (CSRC) has relaxed the qualification requirements for setting up new branches and trading outlets by securities firms. Moreover, they now enjoy greater flexibility in planning and structuring the businesses, locations and numbers of their branches and trading outlets subject to certain compliance requirements. The CSRC plan also made it easier for securities firms to innovate and diversify into new businesses through deregulation.

Fund management companies (FMCs) have also benefited from similar deregulation. For example, the prohibition on the key shareholder of a domestic FMC company holding more than 49 percent shares has been lifted. FMCs are now permitted to establish subsidiaries to undertake asset management business approved by the CSRC, and are allowed to determine the types and numbers of products at their sole discretion based on market conditions.



On the simplification of the approval process for Initial Public Offerings (IPOs), Dr He remarked that the new rules on the country's IPO system announced by the CSRC in April 2012 were designed to improve the accuracy of information disclosures and make initial pricing more reasonable. The rules were further updated in November 2013.

He also shed light on the government's plans to improve access to the capital market system. In addition to the main boards, companies can seek to raise funds on the SME boards, GEMs (also known as second boards), as well as the proposed over-the-counter (OTC) stock market that aims to offer fresh funding channels to small businesses.

Previously, only unlisted firms in high-tech zones in four cities were eligible to raise funds through the national OTC market, called the National Equities Exchange and Quotations System. It was created to help unlisted firms that do not

meet listing requirements by letting them raise funds through share sales. It was initially limited to companies registered in a special development zone for high-tech companies and was expanded to firms in high-tech zones in Shanghai, Wuhan and Tianjin in 2012.

Now any joint-stock company that meets certain requirements will be able to apply for the right to transfer shares, obtain equity or debt financing or reorganise its assets through the OTC market. Unlike on the main bourses, which have stricter profit requirements, companies that are not profitable will be eligible for trading on the OTC market. Companies on the OTC market can also apply for a listing on the stock markets once they meet listing requirements.

In addition to reforming the current IPO system and expanding capital-raising channels to lend more support to small businesses, the CSRC has also announced plans to liberalise rules governing

mergers and acquisitions (M&A) of listed companies, and encourage the use of preferred shares and M&A funds for investments.

Regarding capital market internationalisation, Dr He looked at the overseas expansion of Chinese securities companies; the relaxation of the rules on foreign investment in domestic securities companies; the expansion in the scope of services to foreign investors and Chinese companies abroad; the opening up of China's capital account via various schemes to allow Hong Kong, Macau and Taiwanese residents to open accounts to trade A shares; and the QDII scheme that allows financial institutions to invest in offshore markets.

He added that qualified overseas individuals working in the Shanghai FTZ will also be allowed to open investment accounts with financial institutions in the Shanghai FTZ to make various inbound investments, including investing

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 ”

in A shares, and even trade domestic energy futures.

Dr He emphasised, however, that a stringent legal framework must be set out in order for market liberalisation and internationalisation to be successful. He therefore went on to discuss the effectiveness of China's recent tightening of rules governing insider trading in the M&A approval process; the auditing standards of IPO candidates; cash dividend requirements in favour of shareholders; and rules to protect the legitimate rights of small investors.

In the final part of his presentation, Dr He addressed the issue of board effectiveness. He noted that low attendance rates of independent directors at board meetings are commonplace and 'a culture of debate' is frequently missing from the board room.

Creating a level playing field

'Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.' Professor Liu Junhai from the Law School (and director of Business Law Centre) of Renmin University of China, began his presentation with this famous quote from Louis Brandeis (1856-1941), an important litigator and Supreme Court Justice of the US.

Throughout his presentation, Professor Liu emphasised that the rule of law is key to market liberalisation, ensuring that every individual or company is entitled to full equality under the law and a level playing field. 'If the constitution is the fundamental law according to which a state is governed,' he said, 'then the company law is the fundamental law according to which the state's economic activity is governed.'

Professor Liu reviewed some of the important reforms made to China's company law in October 2005, including: reduced and simplified minimum capital requirements; permitting single shareholder limited liability companies; improved public and shareholder access to company information; controls on the abuse of shareholder rights; limitations on third-party loans and guarantees; and legal remedies for improper acts of directors and senior management.

Professor Liu also looked at the revised consumer protection law, which takes effect on 15 March 2014 and was passed by the National People's Congress in October 2013. The key objectives include stiffening the punishments for businesses that mislead shoppers, better regulation of the e-commerce sector, and

a strengthening of the role of the China Consumers' Association.

To encourage private investment, an executive meeting of the State Council led by Premier Li Keqiang in October 2013 unveiled an unprecedented reform to China's company registration system. Professor Liu remarked that this reform aims to create fair competition and support smaller businesses, especially innovative enterprises, by establishing a transparent and efficient modern company registration system.

Professor Liu believes that the renewed consumer protection rules are designed to improve consumer confidence, while the company registration reform will encourage investment in the private sector. These two key initiatives, complementing each other, will foster a virtuous cycle and wealth effect by encouraging people to spend and invest, thereby helping China to counter economic slowdown, he said.

Jimmy Chow
Journalist

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市场自由化

中国为新一轮改革开放探路

自全球金融危机以来，多个国家相继加大了对市场的监管力度，尤其是金融业的监管。相反，这几年中国经济发展的关键字依然是市场自由化。公会最近主办的中国企业规管最新发展研讨会（CCRU），于2014年1月7日在港召开，国家近年多项市场自由化的改革举措，成为了这次研讨会的焦点。

对公司秘书和合规负责人员而言，要紧贴内地时刻变化的企业运营和监管环境，谈何容易。有见及此，公会自2006年起，每年都会举办中国企业规管最新发展研讨会（CCRU），旨在为会员提供内地最新之行业法规及监管信息。今年的CCRU于1月7日在香港举行，逾三十位来自香港和中国内地上市企业的代表参与了是次研讨会，而演讲嘉宾的研讨主题都离不开市场自由化的实践。

上海自由贸易区

2013年9月29日，上海自由贸易区（上海自贸区）正式启动，肩负探索中国改革开放之路的使命，进一步推进中国商品与服务对外资及国际贸易的全面开放。德勤中国合伙人黄信安先生在演讲中强调，自贸区设立的目的，是为了让投资和贸易更自由化，以及简化外国投资者的审批程序。一言蔽之，上海自贸区将彻底改变外资在华营商的旧有模式，具体目的如下：

- 简化投资审批程序
- 允许有限的外国公司投资于新的经济领域
- 企业将能自由地将人民币兑换成外币
- 引入新征税规则，鼓励投资
- 利率将由市场力量决定，而非央行
- 简化清关程序
- 自贸区内外商享有准入前国民待遇

黄先生续说，上海自贸区设立的目的，除实现贸易自由化外，某种程度上是为了抗衡以美国为首之《跨太平洋伙伴关系协定》（TPP）及《跨

大西洋贸易和投资伙伴关系协定》（TTIP）。他认为，中国是遭到刻意孤立，才没被邀请参与TPP谈判。

上海自贸区固然是镁光灯的焦点，但他补充，广东横琴、前海及南沙等新区同样发挥类似自贸区的「境内关外」作用。例如，三个新区对合资格企业将按15%的优惠税率征收企业所得税，而不是国内标准25%税率。在前海新区，境外高端和紧缺人才，将享受15%个人所得税优惠。在横琴新区，合资格港澳居民，同样享有该15%个人所得税优惠。

黄先生还讨论了中国蓬勃发展的电子商务。他以腾讯为例，指出一些具领导地位的企业正积极「走出去」，并说在市场全球化的环境下，国内企业更有需要「把身体练好，准备迎接更大的挑战」。他解释，社交平台的高渗透率，是推动电子商务高速发展的关键所在。去年11月11日中国的「光棍节」，网上销售金额便突破了350亿元人民币，比前一年同日大幅上升83%。

电子商务不仅成为了大小企业不可或缺的销售渠道，企业还可通过社交媒体留住客户群。正因为此，黄先生建议，无论是本地还是外资企业，特别是经营零售业务的，应尽最大努力，向中国人民银行申请《第三方支付业务许可证》。《第三方支付业务许可证》允许非金融机构利用交易支持平台，向其客户提供个性化支付结算与增值服务。

在演讲中，黄先生还提及中国去年向11家民营企业首发虚拟运营商牌照。获发牌的企业，可通过租赁基础电信营运商网络的方式，向其客户提供其品牌的电信业务和服务。其他的讨论议题包括：房地产市场调控措施，以及今年首批民营银行试点名单上报一事等。

中国资本市场自由化

深圳证券交易所综合研究所所长何杰博士具体论述了中国资本市场迈向自由化的进程。在演讲中，他就目前资本市场自由化的最新发展，以及拓宽民企融资渠道的有关政策，作了较深入的分析。

何博士解释，资本市场改革分三轨进行，分别是资本市场的市场化、国际化和法治化，其中「三化」的核心是市场化，旨在「激发市场主体的创造力，增强资本市场发展的内生动力，使市场在资源配置中起决定性作用」。

他续说，中国证监会去年放开了分支机构设立的主体资格限制、地域限制、数量限制，并指示公司应结合自身实际及发展战略、业务类型和实际管理能力，审慎决定设立和布局。证监会的新措施，也有助于证券公司推进产品、交易机制及技术创新。

对于基金管理公司，证监会也取消了内资基金公司主要股东持股比例不超过49%的规定；获证监会准许后，基金公司可在境内设立子公司从事资产管理业务，并可根据市场情况，自主决定产品种类及数目。

在简化首次公开发行（IPO）审核过程方面，据何博士介绍，证监会已于

摘要

中国企业规管最新发展研讨会的部分重点如下：

- 上海自贸区的设立
- 放开某些对证券和基金公司的限制
- 放宽公司在场外交易市场集资的限制

2012年4月发布《关于进一步深化新股发行体制改革的指导意见》，目的是提升信息披露的准确性，同时令新股定价更加合理。其后，证监会优化了相关措施，并于2013年11月发布《关于进一步推进新股发行体制改革的意见》。

何博士还就中央政府加快发展多层次资本市场的计划作了深入探讨。为向不同发展阶段的企业提供更多元化的融资渠道，《中国共产党十八届三中全会全面深化改革决定》提出建构一个健全、多层次的资本市场体系。除了主板，企业的融资渠道将包括中小板、创业板（或称二板市场），及建议的场外交易市场，从而为小微企业提供融资新渠道。

此前，只有在四个指定城市高新区的非上市公司，才能通过全国场外交易市场筹集资金，此交易系统称之为全国中小企业股份转让系统（简称全国股转系统）。其原意是让未符合上市资格的中小企业，通过在这个全国场外交易市场挂牌以筹集所需资金。全国股转系统原来只限于高新区注册的公司，后来于2012年扩展至上海、武汉、天津等多个高新区。

今后，任何一家符合要求的股份制公司，都可以通过这个场外交易市场，进行股权转让、购买股权、债务融资或重组资产等融资活动。跟主板的要求不同，没有盈利记录的公司，一样可在这个俗称新三板的市场挂牌。

除了改革现行新股发行制度、扩宽中小企业之融资渠道外，证监会还宣布了放宽规管上市公司并购的规则，并鼓励企业利用从发行优先股和并购所得的资金，进行投资活动。

就资本市场国际化，何博士扼要讲解了一系列的政府举措，如何帮助中国证券公司「走出去」；放宽外资参券商的要求，把机构「引进来」；扩

大本地金融机构对在华外资及海外中国企业所提供的金融服务；进一步开放中国的资本账户，容许港澳台胞开户买卖A股；以及通过QDII制度，容许中国金融机构投资到海外市场。

何博士补充，在上海自贸区工作的合格境外人士，可在金融机构开户买卖A股、甚至买卖国内的能源期货。

他强调，资本市场的法治化，是资本市场自由化和国际化的成功基石。然后，他跟大家探讨了并购重组相关的内幕交易监管措施；IPO财务核查；强化股东回报的新措施；以及保障中小投资者合法权益的新「国九条」。

在演讲末段，何博士指出了一些内地上市公司企业管治的常见问题，例如，独立董事出席率长期偏低；以及上市公司董事会会议呈现严重的形式化，没有真正形成辩论说服的董事会文化。

创造公平竞争环境

在演讲开始时，中国人民大学商法研究所所长、中国人民大学法学院教授兼博士生导师刘俊海借用了美国知名律师兼最高法院大法官路易斯·布兰戴斯（1856-1941）的经典名言：「阳光是最好的防腐剂，灯光是最好的警察」。

演讲期间，刘教授多次强调，法治是市场自由化的基本要素，保障所有个人和企业法律面前享有平等权利，公平竞争。他铿锵有力的说道：「如果说宪法是政治生活的根本大法，那么公司法则是经济生活中的根本大法。」

其后，刘教授就在2005年经重新修订的《公司法》中的一些主要改革内容作深入分析，包括：放宽和简化最低资本注册的条件及要求；允许单一股东注册有限责任公司（俗称一人公司）；完善公司登记信息查询制度，增加对公众及股东的透明度；控制股东滥用控制权行为；对公司给予董事

“上海自贸区肩负探索中国改革开放之路的使命，将进一步推进中国商品与服务对外资及国际贸易的全面开放”

贷款及贷款担保之限制；以及因应董事、监事及高级管理人不当行为，公司应当采取的补救措施。

除了对「新公司法」详加说明外，刘教授还提到于2014年3月15日生效的新《消费者权益保护法》。该法案于2013年10月由人大通过，主要目的是加强惩罚误导消费者的企业、更有效管理电子商务活动、加强了中国消费者协会的角色等。

为鼓励民间投资，国务院总理李克强于10月25日主持召开国务院常务会议，宣布推进公司注册资本登记制度改革，降低创业成本。刘教授指出，改革注册资本登记制度，目的是推进建立高效、透明、公正的现代公司注册制度，最终目的是营造出公平的竞争环境，以及促进小微企业特别是创新型企业成长。

刘教授相信，新《消费者权益保护法》和公司注册资本登记制度改革两者存在相辅相承的关系，前者加强消费者信心，后者激发投资活力，齐驱并驾，能促进经济良性循环，产生财富效应，鼓励人们消费和投资，为中国经济增长注入新动力。

Jimmy Chow
记者

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單元五 中國公司法律 Corporate Law in PRC

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9 January 2014

Understanding the new no-par value share capital regime



Chair: Natalia Seng FCIS FCS(PE), Chief Executive Officer – China & Hong Kong, Tricor Group and Tricor Services Ltd

Speaker: Catherine Morley, Partner, Department of Professional Practice, KPMG China

14 January 2014

Managing directors' risks – duties and obligations under the new Companies Ordinance and regulatory risks



Chair: Dr David Ng FCIS FCS, Director, Lippo Asia Ltd

Speaker: Tim Mak, Partner, Asia Dispute Resolution Group, Freshfields

15 January 2014

Notifiable transactions



Chair: Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd

Speakers: Edwin Li, Partner; and Brian Wong, Associate; Baker & McKenzie

16 January 2014

Share buy-back under the new Companies Ordinance



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

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

21 January 2014

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



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

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

10 February 2014

New Companies Ordinance M&A case study and reminder of traps for existing companies when amending articles



Chair: Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd

Speakers: Peter Brien, Senior Partner; Peter Lake, Partner; and Charlton Tse, Senior Associate; Slaughter and May

New Graduates

Congratulations to the following new Graduates.

Chan Cheung Wa	Kong Yi Kiu	Leung Siu King	Chan Siu Kwan
Chan Kan	Ku Wai Lin	Li Ching Man	Cheng Sze Wai
Chan Ngan See	Kwan Lok Lam	Li Wing Man	Chow Kin Wing
Chan Siu Kwan	Kwan Lok Yan	Liu Wei	Fung Mei Yan, Tiffany
Chan Suk Wah	Kwok Chi Kin	Mak Yee Ling, Dilys	Ip Yiu Tak
Chan Wai Nga	Kwong Cheuk Ning	Mak Yee Mei	Kwan Lok Yan
Chang Wai Chun, Winsy	Lai Ka Yan	Mak Yin Ting	Lam On Lei
Cheng Sze Wai	Lam On Lei	Ng Ka Wai, Kevin	Lee Hiu Mei
Cheung Tsz Wai	Lam Pui Ling	Ng Leung Chi	Lee Yat Sing
Cheung Wai Sze, Celia	Lau Tung Po	Ng Nga Wun	Leung Pui Ying
Chim Oi Wah	Lee Chi Wai	Ngai Suk Fong	Liu Wei
Chow Kin Wing	Lee Hiu Mei	Ngai Wing Yu	Ng Ka Wai, Kevin
Choy Yu Fung	Lee Kin Yip	Ngai Ying Suet	Ngai Wing Yu
Chung Chiu Yin, David	Lee Man Wai	Po Mei Ling	Sham Suk Ying
Fok Tat Choi	Lee Wai Keung	Poon Kit Ling	Tang Chi Wai
Fung Mei Yan, Tiffany	Lee Yat Sing	Sham Suk Ying	Tsoi Kam Man
Fung Siu Ling	Lee Yu Ting, Scarlett	Sheung Yin	Wong On Nei, Annie
Ho Ki Yan	Leung Hing Yu, Pearl	Sze Nga Ting	Yeung Hiu Kwan
Hui Ka Fun, Annie	Leung Kwan Yee	Tam Ka Wing	Yung Pik Chu, Judy
Ip Yiu Tak	Leung Pui Ying	Tang Chi Wai	

Newly appointed company secretaries

The Institute congratulates the following members on their appointments as company secretaries of listed companies in Hong Kong.

Company secretary	Listed company	Date of appointment
Kwok Siu Man FCIS FCS	YuanShengTai Dairy Farm Ltd (stock code: 1431)	7 November 2013
	China Binary Sale Technology Ltd (stock code: 8255)	9 November 2013
	South West Eco Development Ltd (stock code: 8291)	27 December 2013
Ho Wing Yan ACIS ACS(PE)	China Wood Optimization (Holding) Ltd (stock code: 8099)	6 January 2014
Lee Kwok Wan ACIS ACS	Major Holdings Ltd (stock code: 8209)	10 January 2014
Cheng Chung Yung ACIS ACS	Sino Prosper State Gold Resources Holdings Ltd (stock code: 766)	13 January 2014
Ng Cheuk Him ACIS ACS	Miko International Holdings Ltd (stock code: 1247)	15 January 2014
Kam Mei Ha, Wendy FCIS FCS(PE)	Nanjing Sinolife United Company Ltd – H Shares (stock code: 3332)	15 January 2014
Ngai Wai Fung, Maurice FCIS FCS(PE)	China Gold International Resources Corp Ltd (stock code: 2099)	16 January 2014
Yue Ming Wai, Bonaventure FCIS FCS	Feishang Anthracite Resources Ltd (stock code: 1738)	22 January 2014
Ling Kwok Kwong ACIS ACS	Min Xin Holdings Ltd (stock code: 222)	23 January 2014
So Yee Kwan ACIS ACS	Prince Frog International Holdings Ltd (stock code: 1259)	24 January 2014
Chan Yuen Ying, Stella FCIS FCS	Flying Financial Service Holdings (stock code: 8030)	27 January 2014
Cheng Man Ching FCIS FCS	Norstar Founders Group Ltd (stock code: 2339)	27 January 2014

Remarks: The Institute shall not be held responsible for missing any new appointments.

The Institute hereby 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 Ken Lai or Jaymee Pernet at 2881 6177 or email to member@hkics.org.hk.

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.

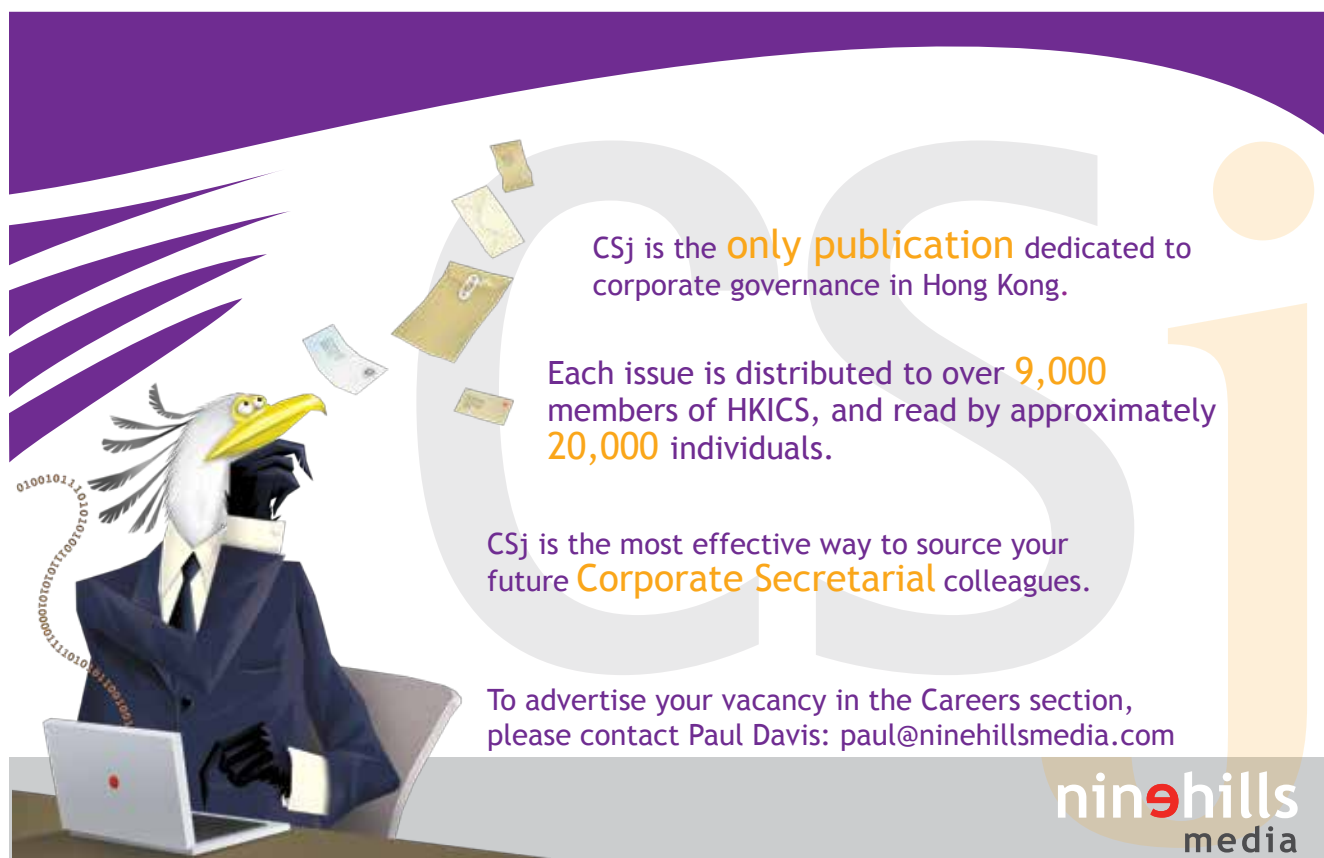
As per Council's direction, the promotional campaign to increase the number of Fellows continues. Act now and enjoy a special rate for the Fellowship election fee of HK\$1,000 and the following exclusive Fellowship benefits:

- 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 Jaymee Pernet or Cherry Chan at the Membership section at 2881 6177, or member@hkics.org.hk.



CSj is the **only publication** dedicated to corporate governance in Hong Kong.

Each issue is distributed to over **9,000** members of HKICS, and read by approximately **20,000** individuals.

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To advertise your vacancy in the Careers section, please contact Paul Davis: paul@ninehillsmedia.com

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ECPD

What you should know about the MCPD requirements

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

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

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

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

ECPD seminar enrolment

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

Correction

The name of HKICS Prize winner 2013 Edwin Ing was misspelled in the Institute News section of last month's journal (page 43). Sincere apologies to Mr Ing for this error.

Membership activities

Members' networking: Zhuangzi – social skills – company secretary

Following the overwhelming response to Dr Davy Lee's last talk on 'Chinese ethics in business' (「应用于商业之中式道德观念 - 儒家思想」) in June 2013, a members' networking event about Zhuangzi was held on 23 January 2014 at Club Lusitano.

Dr Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group and HKICS Past President, shared his insights on the topic of 'Zhuangzi – social skills – company secretary' (「庄子 - 处世 - 公司秘书」). Members enjoyed the interactive sharing, together with the fine wine, drinks and snacks in a relaxed setting.

Ascent Partners and Lippo Group were the sponsors of this event. More photographs are available at the 'Gallery' section on the Institute's website (www.hkics.org.hk).



Susie Cheung FCIS FCS(PE), Council Member and Membership Committee Chairman, sharing her views



Dr Davy Lee giving his insights at the event



At the event

Members' networking – Visit to China Aircraft Services Ltd

The Institute is offering a rare opportunity to visit China Aircraft Services Ltd (CASL) – one of the two maintenance, repair and overhaul service providers with its own aircraft maintenance hangar in Hong Kong. CASL is capable of providing aircraft maintenance services to worldwide airline customers at Hong Kong International Airport. This networking event is to be held on Friday 28 March 2014. This visit will offer you an interesting experience in understanding aircraft maintenance services business. CASL CEO Dr Angus Chung will be there to share on its corporate core values. Limited seats are available on a first-come first-served basis, so be sure to register as soon as possible!

For more information, please visit the Institute's website (www.hkics.org.hk). For enquiries, please contact Jonathan Chow or Ken Lai at 2881 6177, or by email at member@hkics.org.hk.

IQS examinations

IQS examination pass rates (December 2013)

Subject	Pass rate
Part One	
Strategic and Operations Management	39%
Hong Kong Corporate Law	20%
Hong Kong Taxation	31%
Hong Kong Financial Accounting	29%
Part Two	
Corporate Governance	19%
Corporate Administration	30%
Corporate Secretaryship	32%
Corporate Financial Management	33%

Subject prize winners and merit certificate awardees

The Institute is pleased to announce the following awardees of subject prizes and merit certificates at the December 2013 examination diet. Congratulations to all awardees!

Subject	Subject prize winners
Hong Kong Corporate Law	Wong Pui Yin Lee Yu Ting, Scarlett
Corporate Administration	Sze Nga Ting Ho Sum Yi

Subject	Merit certificate awardees
Strategic and Operations Management	Yip Yim Ting, Fanny
Hong Kong Taxation	Lau Tung Po
Corporate Governance	Cheung Ka Po, Phoenix
Corporate Financial Management	Ho Choi Ting
Hong Kong Corporate Law	Chan Yuk Yee Tsui Pui Ying Xing Jun
	Chan Wang Yue
Corporate Secretaryship	Law Sin Pui Lee Yu Ting, Scarlett Li Ho Yin Tam Wai Keung Tang Sin Yu
	Ip Ka Ki
	Ip Yiu Tak
	Lam Chi Shan
	Lam Yuen Yee
Corporate Administration	Law Hiu Mei Tsoi Kam Man Wong Chow Sim Wong Fung Ki Wong Yee Ling Yeung Wai Yan

Examination timetable – June 2014 diet

The June 2014 examination timetable is set out below.

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

Examination enrolment – June 2014 diet

The examination enrolment period is from 1 to 31 March 2014. The Examination Entry Form is available for download from the 'Studentship' section of the Institute's website (www.hkics.org.hk). All entries must be received by the Secretariat by 6 p.m. on 31 March 2014, and, if by post, with a post-mark on or before 31 March 2014. Late applications will not be accepted under any circumstances. To avoid postal errors or delays, students are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre selected after the examination application has been submitted.

HKICS examination technique workshops

The Institute will organise a series of three-hour workshops for each of the eight IQS examination subjects. These workshops, commencing from 22 April 2014 to early May, aim to help students improve their examination technique. Each workshop costs HK\$450. Students may download the enrolment form from the 'Studentship' section of the Institute's website (www.hkics.org.hk).

IQS examination reminder – Hong Kong Corporate Law Study Pack

The Hong Kong Corporate Law Study Pack is **mandatory** for students who enrol for the Hong Kong Corporate Law examination. Students who have not yet purchased this study pack should place an order with the Education and Examinations section at 2881 6177 or email to student@hkics.org.hk.

Professional seminars

The Open University of Hong Kong

On 24 February 2014, Jerry Tong FCIS FCS, Financial Controller and Company Secretary of Sing Lee Software (Group) Ltd, was invited to deliver a seminar on 'The role of the company secretary and its importance in corporate governance'. Over 40 students attended the seminar.



Jerry Tong at the seminar

Taxation in PRC – new HKU SPACE course

The new 'Taxation in PRC' module under the programme series 'PRC Corporation Practices' organised by HKU SPACE aims to equip participants with knowledge on corporate practices and enhance their understanding of relevant legislation in Mainland China. Up to 18 HKICS ECPD points will be awarded to participants who have attained 75% attendance. Details are listed opposite.

For information, please contact HKU SPACE at 2867 8481, or prcprogramme@hkuspace.hku.hk.

Course name	Taxation in PRC
Speaker	Professor Long Zhaohui (龙朝晖教授), Department of Public Finance and Taxation, Lingnan College of Sun Yat-sen University (中山大学岭南学院财税系副教授)
Date	12 April, 26 April, 3 May and 10 May 2014 (all Saturdays)
Time	2 p.m. – 5 p.m. and 6 p.m. – 9 p.m.
Venue	HKU SPACE Learning Centre (Hong Kong Island) – to be confirmed by HKU SPACE

New students orientation

Students who have registered since September 2013 are invited to attend the 'New students orientation' to be held on Tuesday 11 March 2014. This event aims to give new students up-to-date information on HKICS and serves as a platform to meet with other students. The IQS examination awardees will also share their examination preparation tips at the event.

Date	Tuesday 11 March 2014
Time	7 p.m. – 8:30 p.m.
Venue	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central
Cost	Free of charge

The enrolment form can be downloaded from the 'Studentship' section of the Institute's website (www.hkics.org.hk). Please fill in the reply slip and return it by email to student@hkics.org.hk. For enquiries, please contact the Education and Examinations section at 2881 6177.

Policy – payment reminder

Studentship renewal

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

Exemption fees

Students with exemptions approved via confirmation letter in December 2013 are reminded to settle the exemption fee by 27 March 2014.

The Hong Kong Institute of Chartered Secretaries

15th Annual Corporate and Regulatory Update 2014

Date:	Thursday, 5 June 2014
Time:	8.45 a.m. - 6.20 p.m.
Venue:	Hall 5G, Hong Kong Convention and Exhibition Centre
Co-sponsors & speakers from:	<ul style="list-style-type: none">• Companies Registry• Official Receiver's Office• Securities and Futures Commission• The Hong Kong Exchanges and Clearing Limited

Further details will be announced soon, please mark your diary for this conference.

For enquiries:
Ms Lisa Lee at 2830 6069 or lisa@hkics.org.hk



The Corporate Secretaries Toolkit

Responding to strong demand in emerging markets and developing countries for the training of corporate secretaries, the Corporate Secretaries International Association (CSIA) has partnered with the International Finance Corporation (IFC) to develop training materials for corporate secretaries, based on the *Corporate Governance Board Leadership Training Resources*. This publication, due to be launched in Hong Kong in April 2014, has been called the *Corporate Secretaries Toolkit*.

Corporate secretaries are a catalyst for implementing good governance in companies' business practices, organisational culture, and strategic affairs. In modern business, corporate secretaries have become key to the efficiency and effectiveness of board processes and the smooth running of the company's legal and corporate advisory department; they are commonly

described as the 'governance adviser'. In this role, the corporate secretary must keep current with the legal and regulatory requirements relevant to the company, and must also be able to give impartial advice and support to directors, particularly the chairman of the board.

The CSIA *Corporate Secretaries Toolkit* provides trainers with materials and instructions for conducting training for corporate secretaries. Participants in the training may include individuals who are not certified as corporate secretaries but who carry out some or all of the related duties in the corporate secretarial and compliance department.

The toolkit covers the full spectrum of a corporate secretary's role, function, and remit of responsibilities – those that are at the core of a company's governance structure and ecosystem. It aims to clarify the duties of corporate

secretaries, develop their skills, and emphasise their role in developing good corporate governance practices in their organisations, in line with their country's code on corporate governance. The essential principles are universally applied to listed and unlisted companies and to the private, public and not-for-profit sectors. The toolkit provides a portfolio of workshops that cover topics of interest and value to those carrying out the role of a corporate secretary and to the organisations they serve.

The launch of the CSIA 'Corporate Secretaries Toolkit' will be hosted by CSIA and co-organised by The Hong Kong Institute of Chartered Secretaries, a founder and Full Member of the CSIA. This is a by-invitation only event.

For more information please contact Helen at events@csiaorg.com.

Companies Registry update

To prepare for the commencement of the new Companies Ordinance (Cap 622) on 3 March 2014, the Companies Registry has issued five external circulars. The circulars provide information to assist companies to comply with the new Companies Ordinance (NCO). They address: changes brought in by subsidiary legislation made under the NCO; changes in the regime of registration of charges; rectification of information on the companies register; requirements for documents delivered for registration; and introduction of templates of newly specified forms at the e-Registry.

The 92 forms newly specified by the Registrar of Companies for use after the commencement of the NCO have been uploaded onto the thematic section of the Companies Registry website dedicated to the NCO. A CD-ROM containing a full set of the new forms and hard copies of individual forms is also available for purchase at the information counter on the 14th floor of the Queensway Government Offices, 66 Queensway, Hong Kong.

Further details are available on the Companies Registry website: www.cr.gov.hk.

The new Companies Ordinance: impact on the listing rules

The Stock Exchange of Hong Kong has conducted a comprehensive review of the impact that the new Companies Ordinance (NCO) will have on the listing rules, and has published a new set of frequently asked questions (FAQs) to provide guidance on the listing rules affected.

The abolition of par value under the NCO, for example, has required a change to the way the Exchange calculates the annual listing fees of issuers since these were previously calculated by reference to the par value of an issuer's securities.

As part of its review, the Exchange has identified additional areas which may require further amendments to the listing rules. These include the provisions relating to:

- disclosure requirements for financial statements
- loans to directors and connected entities
- provision of financial assistance by a company
- common and official company seal
- general meetings, and
- abolition of the memorandum of association.

As noted in the FAQs, the Exchange intends to consult the market on amendments to the listing rules relating to notice periods for general meetings and disclosure of financial information, and to update cross-references to the Companies Ordinance so that they align with the NCO.

The FAQs (see Series 26) are available on the Hong Kong Exchanges and Clearing website: www.hkex.org.hk (see 'Rules & Regulations – Rules and Guidance on Listing Matters – Interpretation and Guidance').

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The new Companies Ordinance business review requirement

Under the new Companies Ordinance (Cap 622), companies, unless exempted, are required by section 388 to prepare a business review. The business review requirement is Hong Kong's first statutory requirement for environmental, social and governance (ESG) reporting since, among other things, it requires companies to give an analysis of the company's environmental policies and performance, and an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends.

Section 388 of the new Companies Ordinance (NCO) will come into effect for the first financial reporting year beginning on or after the commencement date of the NCO (3 March 2014). Therefore these requirements will typically apply for the first time in financial years ending in 2015. At the invitation of the Companies Registry, The Hong Kong Institute of Certified Public Accountants (HKICPA)

Financial Reporting Standards Committee (FRSC) proposes to issue *Accounting Bulletin 5* to provide guidance on the preparation of a business review under the NCO.

The proposed bulletin will set out the key elements for the contents of a business review, including details on particular matters that should be disclosed to the extent necessary to meet the minimum requirements of the NCO. It will also be accompanied by implementation guidance which contains application examples.

Last month, the HKICPA FRSC published its draft *Accounting Bulletin 5* seeking comments from interested parties. The HKICPA will be responding to this consultation which runs until 22 April 2014.

*The draft 'Accounting Bulletin 5' is available on the HKICPA website: www.hkicpa.org.hk (see *Standards and regulation/ Technical resources*).*

Outstanding Women Professionals and Entrepreneurs Award

The Hong Kong Women Professionals and Entrepreneurs Association (WPEA) is seeking nominations for its latest 'Outstanding Women Professionals and Entrepreneurs Award'. The award honours and celebrates prominent leading women in business and non-profit organisations, or women entrepreneurs who have stood out in their achievements. The award is given in two categories: outstanding women professionals and outstanding women entrepreneurs.

Further details are available on the WPEA website: www.hkwpea.org. For enquiries, contact Rebecca Choy (2561 5566) or Caroline Mak (2299 3380). Nomination closes on 15 March 2014.

Amendments to PRC company law

New amendments to the PRC company law came into force this month. The major changes brought in will simplify company registration procedures, in particular the amendments cancel the previous registration capital thresholds. The amendments to the PRC company law were approved by the Standing Committee of the National People's Congress on 28 December 2013 and became effective 1 March 2014.

The new Companies Ordinance: section 612

Section 612 of the new Companies Ordinance allows companies, under certain conditions, to dispense with an AGM. Members of the Institute raised a query last month as to whether companies with a provision in their Articles of Association requiring an AGM to be held, need to amend their Articles in order to take advantage of section 612. In response to this query, the Companies Registry confirmed that a company with Articles requiring an AGM to be held must amend the Articles before taking advantage of section 612.



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COMPANY SECRETARY RECRUITMENT

Our strong client network sees us working closely with international and local law firms, listed and private companies, global and local corporations including financial institutions, as well as Hong Kong regulatory bodies.

Senior Manager, Company Secretary

- › Investment Holding Company (Hong Kong Listed)
- › 7 – 10 years of experience

As Senior Manager for this Hong Kong listed investment holding company, you will primarily oversee listing matters of the company in Hong Kong on top of its subsidiaries, mainly in the South East Asia region. You will manage a full set of listed and private company secretarial duties, on top of being involved with corporate matters including acquisitions, connected transactions, disclosed transactions and more. The ideal candidate must have between 7 – 10 years of experience gained from listed companies. Experience in handling companies in China, Vietnam, Hong Kong and Thailand will be highly regarded. You must be an Associate member of the HKICS/CSA. Candidate must be proficient in English and Chinese.

Ref: H1931330

Senior Company Secretarial Officer

- › Hong Kong Conglomerate
- › 6 – 10 years of experience

Our client is a local conglomerate with highly regarded listed companies under their umbrella. Working with a sizable team of dynamic company secretaries, you will be responsible for a full range of company secretarial duties for the Group. Your duties will include maintaining minutes books, corporate and statutory records, preparing statutory forms, drafting minutes, resolutions and correspondences. The ideal candidate must have 6 – 10 years of experience gained from a law firm, accounting firm or an in-house role. Those with knowledge of compliance (including Takeovers Codes, Listing Rules, SFO filings) will be highly regarded. You must be an associate member of the HKICS/CSA. Candidate must be proficient in English and Chinese.

Ref: H2058510

Company Secretary

- › International Law Firm
- › 10+ years of experience

In this newly-created position, you will be working alongside key corporate partners on a full range of secretarial duties. You will assist in the preparation of documents for IPO restructuring and ad-hoc assignments, including setting up, maintenance and dissolution of local and overseas companies. You will have client facing opportunities and help build the company secretary team in the future. You should be an Associate or Fellow member of the HKICS with at least 10 years of experience gained in a Hong Kong listed company or an international law firm with IPO experience. You must have extensive experience in listing matters and several years of supervisory experience. Our client offers top-of-the-market remuneration and benefits package.

Ref: H2098280

Senior Company Secretarial Officer

- › NASDAQ and HKEX Listed Company
- › 5+ years of experience

Reporting directly to the Company Secretarial Manager, you will be responsible for performing all company secretarial related work for companies of the group and ensuring compliance with applicable laws, rules and regulations, NASDAQ listing rules and HKEX listing rules. On a daily basis, you will prepare and maintain minutes books, corporate and statutory records and the database in a systematic and effective way. You will also be required to participate in the arrangement and preparation of all related meetings. The ideal candidate should be a meticulous individual and an associate member of HKICS with at least 5 years of relevant experience gained in professional firms or listed companies.

Ref: H2089870

Trust Manager

- › Professional Firm
- › 7+ Years of experience

In this role, you will be responsible for leading a team of 5 members in providing professional trust administration and company secretarial services to our clients. Your responsibilities will include setting up and maintenance of trusts and companies, compliance on statutory filings, preparation of trust documents and minutes, termination of trusts and winding up of companies. You should possess at least 7 years of experience gained in a professional firm at a supervisory level. Experience in trust administration and offshore entities such as Cayman Islands and BVI entities are a must. You must be an associate member of HKICS/CSA and be proficient in English and Chinese.

Ref: H2007810

Senior Administrator

- › Professional Firm
- › HKICS Associate

Leading a team of 4, you will be responsible for managing a portfolio of onshore and offshore companies by providing all types of corporate, business, management and administration services. On top of this, you will be exposed to some business development work including marketing, developing and promoting the business by building up opportunities for additional services from existing clients. You must be an associate member of the HKICS with over 5 years of experience gained from professional firms and at least 2 years at a supervisory level. Prior experience in a client servicing environment will be highly regarded. Candidate must be proficient in English and Chinese and ideally available immediately.

Ref: 1858250

To apply, visit www.michaelpage.com.hk/apply quoting the reference number or contact the following consultants:

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