

CSj

May 2014

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特許秘書. 潛能. 超越所見.

The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



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65  CHARTERED
SECRETARIES
特許秘書
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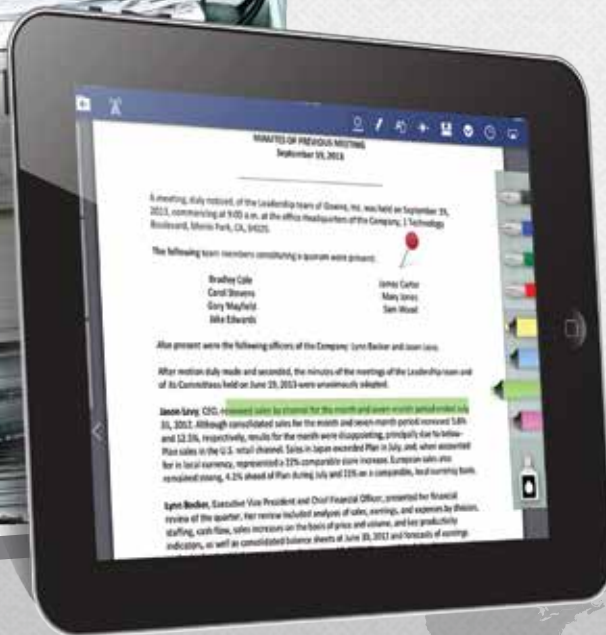
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

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About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, as well as the development of the profession of the Chartered Secretary. The HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994, and today has over 5,800 members and 3,200 students.

Council 2014

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April Chan FCIS FCS(PE) – Ex Officio

Membership statistics update

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

Students: 3,202
Graduates: 526
Associates: 4,790
Fellows: 503

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Education Committee:

Polly Wong FCIS FCS(PE)

Human Resources Committee:

April Chan FCIS FCS(PE)

Membership Committee:

Susie Cheung FCIS FCS(PE)

Professional Development Committee:

Jack Chow FCIS FCS

Nomination Committee:

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& Company Secretary

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Mohan Datwani FCIS FCS LLB LLM MBA(Iowa)

Director, Technical and Research

Cherry Chan Director, Membership

Lydia Kan ACIS ACS Director, Professional Development

Kenneth Jiang FCIS FCS BRO Chief Representative

Karen Ho Senior Manager, Finance and Accounting

May 2014

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CSJ talks to Ada Chung about the lessons she has learned over the last seven years since she took up her post as Registrar of Companies and found herself at the centre of the largest-scale law reform process in Hong Kong's recent history – the Companies Ordinance rewrite.

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上市公司独立董事履职情况报告 26

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

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

Time to review your agency workforce in China 30

New regulations on the deployment of contingent and temporary workers in Mainland China took effect on 1 March 2014. All employers using contingent workers in Mainland China should take immediate steps to audit their practices and ensure compliance.

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Your technical questions answered.





Happy birthday HKICS!

This year is a double anniversary for our Institute – it marks the 65th anniversary of the Institute of Chartered Secretaries and Administrators (ICSA), our founding organisation, in Hong Kong, and the 20th anniversary since the incorporation of the Hong Kong Institute of Company Secretaries, as our Institute was first known.

In those 20 years, both Hong Kong and our Institute have come a long way. Hong Kong has transformed itself from a British colony to a Special Administrative Region of the PRC and our Institute has transformed itself from a branch of the ICSA to an ICSA division and an autonomous local professional body. We have built a solid reputation among our stakeholders, both in Hong Kong, Mainland China and globally, as a professional body with a distinct and valued voice in all areas relevant to our profession.

Many factors have contributed to our success. The history of the last two decades has seen corporate governance rise up the corporate and regulatory agenda, boosting the visibility and importance of the company officer at the heart of companies' corporate governance agendas. Moreover, our geographic position has played a major role in the Institute's fortunes. Back in 1994, the first H-shares were only a year old. Now

H-shares and red chips represent about 40 percent of market capitalisation in Hong Kong. In 1994 our Institute had just started formal contacts with official PRC bodies, but two years later we became the first Hong Kong professional body to set up a representative office in Mainland China. Today, our Institute has a close partnership with relevant Mainland bodies such as the Ministry of Finance, the China Securities Regulatory Commission, the Shanghai Stock Exchange and the China Association of Public Companies.

The pace of change and development in Hong Kong is so rapid that anniversaries are often the only time we pause to reflect on how things have changed over the years and where this journey is taking us. This year I think we can look back with pride on the way our Institute and our profession has progressed. This journey started back in 1891 with the formation of the precursor to the ICSA in the UK. The ICSA went on to become a global organisation with divisions in Australia, Canada, Hong Kong, Malaysia, New Zealand, Singapore, South Africa, and Zimbabwe. More recently, our Institute became one of the founder members of the Corporate Secretaries International Association, established in March 2010, which has further strengthened the global ties of the profession. We are now, therefore, both a local autonomous professional body and an international

organisation numbering over 100,000 governance professionals.

The last 20 years have been an interesting journey for members of our Institute and the next 20 years are shaping up to be even more so. The question I would like to pose to members is this – do you want to be a ringside observer of the evolution of our profession in Hong Kong and Mainland China, or do you want to play an active role guiding and shaping events as they unfold? I urge all members to get involved in the work of our Institute, it is our opportunity to be an active participant in a profession and a city with a fascinating past and a very promising future.

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

Edith Shih FCIS FCS(PE)

香港特许秘书公会生辰快乐!

公会今年庆祝双重周年纪念：就是英国特许秘书及行政人员公会（ICSA）—我们的始创组织—在香港成立65周年纪念，以及香港公司秘书公会（我们公会最初的名称）成立20周年纪念。

在这20载光阴中，香港与公会都经历了许多变化。香港从一个英国殖民地成为目前的中华人民共和国特别行政区；而我们的公会，则从ICSA的香港分会演变成ICSA的分支机构，继而成为一个独立自主的本地专业团体。在本港、中国内地以至全球的利益相关者之间，我们建立起一个专业团体的良好声誉，而在与我们专业相关的所有不同领域里，我们的意见铿锵有声、备受尊重。

好些因素造就了我们今天所取得的成果。过去20年，企业管治在企业与监管范畴中，地位愈益重要；企业人员的参与及重要性，也益发成为公司企业管治纲领的核心。此外，公会今天的成就也与其地理位置有很大关连。回顾1994年首批H股问世刚一年，至目前H股与红筹股已占香港资本市场市值约百分之四十。公会亦于1994年

与中国内地官方机构展开正式接触，两年后，我们成为首个在内地设立代表处的香港专业团体。目前，公会与内地相关部门和机构，例如财政部、中国证券监督管理委员会、上海证券交易所和中国上市公司协会等，都建立了紧密的协作关系。

香港发展一日千里，唯有在此周年纪念之际，才让我们停下来回顾过去，展望未来。在我看来，我们今年确可自豪地回顾我们的公会和专业所取得的成就。这一旅程始于1891年ICSA的先导机构在英国成立。其后，ICSA发展成为一个全球性组织，在澳洲、加拿大、香港、马来西亚、新西兰、新加坡、南非及津巴布韦等地均设有分支机构。最近，公会又成为「公司秘书国际联合会」的创会成员之一。该会于2010年3月成立，以加强这专业的全球性连系为宗旨。因此，我们现时既是一个独立自主的本地专业团体，也是一个拥有超过10万名企业管治专业人士的国际组织。

对于公会的会员来说，过去20年是一个饶有趣味的旅程；下一个20年将会更加精彩。我谨向各位会员提出以

下问题：在我们专业于香港和内地的的发展上，你是否只愿作为旁观者？抑或，你希望担当积极的角色，引领和塑造行业的发展？我诚恳邀请各位会员积极参与公会会务，并把握机会，在这拥有辉煌过去、前景充满希望的专业和城市里，积极投身为参与者。

施熙德

The Hong Kong Institute of
Chartered Secretaries
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Corporate Governance
Conference 2014

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Keynote Address

Mr Carlson Tong JP, Chairman, SFC

Long Arm of the Law

Professor John Coffee Jr, Columbia Law School

Competing to Win

Honourable Anna Wu Hung-yuk GBS JP

Board Shoulders, Broad Shoulders

Mr Ashley Alder CEO, SFC
Ms Ada Chung FCIS FCS JP, Registrar of Companies, CR

Winds of Reporting Changes

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

and many others
ECPD: 7 points

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**Total 10
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For enquiries:
Ms Lisa Lee at (852) 2830 6069 or
event@hkics.org.hk

**Fees* (Early Bird Rates on
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HKICS Members: Day 1 at
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Days 1 + 2 at
HK\$3,500 (HK\$3,300)

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

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

Ask the Expert

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

Q: *Aside from reporting my company's interim and annual results, what else can I do to effectively engage with current and prospective investors?*

A: Going beyond basic financial reporting requirements and increasing engagement with investors is a vital strategy for any publicly-listed company looking to increase its valuation and enhance corporate reputation. Best practices in this area combine a variety of important investor relations initiatives.

First, it is critical to create a well-rounded corporate narrative.

It is important that you create a strong narrative about your business – one that is factual, transparent, and differentiates your business and investment proposition from others. To do this, you must describe your financial track record and goals, but also go beyond this and include important points about your brand strength, market position, senior management team and growth strategy.

Second, focus on developing a dialogue with the investment community that leverages diverse communications channels.

Once you have crafted the best possible corporate story to share, employing diverse communication initiatives will ensure that you are effectively reaching your targeted investors.

- **Create pristine documents that tell a comprehensive business story and 'speak for you'.** A strong set of well-articulated messages and visually appealing communications materials, including well-written press releases, investor presentations, investor newsletters, corporate fact sheets, and corporate announcements, can work together to articulate your investment proposition and build consistent visibility with your targeted audiences.
- **Leverage your investor relations website to reach and engage remote investors.** A sophisticated investor relations website that includes a good deal of information and uses creative design, video and other modern tools is an important initial channel that will help you engage virtually with investors who may be far removed from Hong Kong and your business.

Computershare

- **Organise in-person meetings and events between results announcements.** Rather than just conducting regularly scheduled results announcement events and roadshows, your company should consider hosting site visits at key facilities, executing company-sponsored investor days in different locations, and conducting periodic calls or meetings with key shareholders and targets throughout the year.
- **Use media relations as a communications tool.** Financial and business media, as well as trade media, are proven channels that help expand and amplify the delivery of important corporate information. It is also one of the most efficient ways to reach a wide audience quickly. A company's investor relations and public relations communications teams should work closely together to identify opportunities to use the media to widely disseminate key aspects of both the corporate and financial story.
- **Bring others into your dialogue by integrating social media.** Utilising digital channels can extend your reach and deepen your interaction with the investment community. Social media and the use of apps are becoming increasingly common ways of providing accessible information to stakeholders and are worthwhile additional channels to broadcast corporate news.

While there are a number of ways to engage with investors, a company must be aware that there is no simple 'off-the-shelf' solution for how best to reach its current and prospective shareholders. Each company needs to develop an engagement programme to suit its own needs and meet the increasingly stringent demands of the investment community.

*Cara O'Brien
Senior Managing Director in the Strategic Communications practice of FTI Consulting. FTI Consulting is a Computershare partner.
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Know your Institute: a bird's eye view

The Hong Kong Institute of Chartered Secretaries (HKICS) has a well-known and well-loved icon in the shape and form of *Sagittarius serpentarius*, better known as the secretary bird, but what exactly does the secretary bird represent? How is the HKICS structured? What is its relationship with the Institute of Chartered Secretaries and Administrators in the UK and the Corporate Secretaries International Association globally? What role does it play in the development of the corporate secretarial profession in Mainland China? Starting from this month, *CSj* launches a series of articles seeking to familiarise readers with the structure and work of the HKICS. This first article in the series gives an overview of the Institute and takes a look at its history in Hong Kong.

In 1891 a group of 18 company secretaries got together in the UK to form the Institute of Secretaries. The body was granted a Royal Charter in 1902 to promote and advance 'the efficient administration of commerce, industry and public affairs'. The body was renamed in 1971 as the Institute of Chartered Secretaries and Administrators (ICSA) following a merger with the Corporation of Secretaries.

International development has always been a focus for the ICSA. It opened its first overseas branch in South Africa in 1909. Subsequently, branches were opened in Australia, Canada, Hong Kong, Malaysia, New Zealand, Singapore and Zimbabwe – these later became divisions.

The ICSA's history in Hong Kong dates from 1949. At that time it was an association of Hong Kong ICSA members. For two decades it remained an informal grouping, with members getting together for lunch when they had time, usually at the Hong Kong

Club. There was a Management Committee made up of interested members for activity planning and lobbying. In the 1980s there was a strong growth in student numbers in Hong Kong. The Institute became an official branch ('Association') of the ICSA in 1986 and engaged a small full-time staff for routine administration activities, including administering the qualifying examinations. Funds from the ICSA paid the office rent and staff salaries.

In 1990, following rapid growth in Hong Kong, Singapore and Malaysia, the ICSA International Affairs Committee (IAC), comprising an international membership from different territories, felt that it was time that more work should be devolved to the overseas Associations in Hong Kong, Singapore and Malaysia. The autonomy deal meant that these Associations now set their own membership fees, collected examination

Highlights

- in 1996 the Institute became the first Hong Kong professional body to set up a representative office in Mainland China
- a number of amendments to the ICSA Charter and Byelaws are currently being effected which will, among other things, end the UK's in-built majority of votes on ICSA Council
- the Institute's membership has nearly doubled since 1990 when the Institute was first formally incorporated

fees, set their own variant examination papers and paid a fee to London based on the size of membership in their locations. The Institute – then known as The Institute of Chartered Secretaries and Administrators in Hong Kong Ltd – bought its own office in Causeway Bay in 1990 and started expanding its membership services and research and advocacy work.

The Institute gained local status as 'The Hong Kong Institute of Company Secretaries Ltd' in 1994 (the Institute adopted its current name – 'The Hong Kong Institute of Chartered Secretaries' – in 2005). The development meant that members still enjoyed membership of the UK Institute, while gaining an additional membership of the Hong Kong Institute. This arrangement has worked very well for the Institute, but it, along with other ICSA Divisions, lobbied for a number of reforms to the constitutional structure of the ICSA – principally, ending the UK's guaranteed majority of votes on the ICSA Council.

In 2013, the ICSA (UK) agreed to these reforms and a number of amendments to the ICSA Charter and Byelaws are currently being effected. These will, among other things, mean that the UK, Republic of Ireland and Associated Territories (UKRIAT) will become an ICSA Division and the composition of ICSA Council is based on the proportion of the membership each Division represents.

HKICS: an overview

The Institute's organisational structure (see graphic opposite) is focused on the three main areas of the Institute's work, namely: education, professional development and members' services, in its three main arenas of work, namely: Hong Kong, Mainland China and internationally.

HKICS Council

Honorary officers

- President – Edith Shih FCIS FCS(PE), Head Group General Counsel and Company Secretary, Hutchison Whampoa Ltd
- Vice-President – Ivan Tam FCIS FCS, Deputy Managing Director, Chevalier International Holdings Ltd
- Vice-President – Dr Gao Wei FCIS FCS, Board Secretary and General Counsel, Sinotrans Ltd
- Treasurer – Bernard Wu FCIS FCS, Honorary Chairman, Qianhai SAR Private Equity Investment (Shenzhen) Ltd
- Susie Cheung FCIS FCS(PE), General Counsel and Company Secretary, The Hong Kong Mortgage Corporation Ltd
- Jack Chow FCIS FCS, Managing Director – Private Equities, VMS Investment Group
- David Fu FCIS FCS, Company Secretary, Swire Pacific Ltd
- Paul Moyes FCIS FCS, Executive Director and Head of Practice Development Marketing & Communications, Director – Corporate Services, Tricor Services Ltd

Ex officio member

- Past President – April Chan FCIS FCS(PE), Company Secretary, CLP Holdings Ltd
- Douglas Oxley FCIS FCS, Consultant, Conox & Associates
- Paul Stafford FCIS FCS, Corporation Secretary, The Hongkong and Shanghai Banking Corporation Ltd

Council members

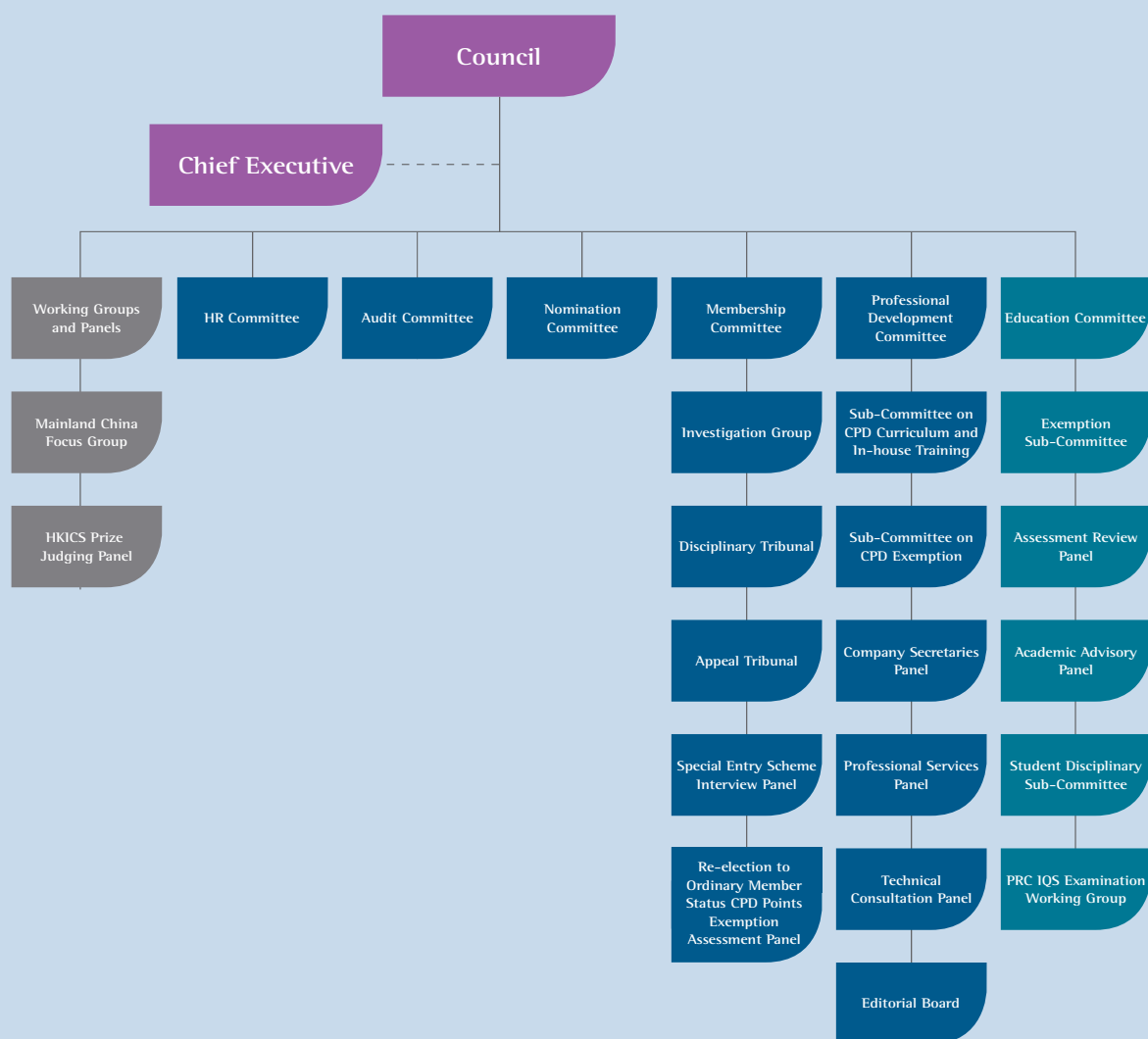
- Dr Eva Chan FCIS FCS(PE), Head of Investor Relations, CC Land Holdings Ltd
- Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd

Council

The Institute's Council is its highest decision-making body and sets its strategic direction (see the box above for the current Council membership). It meets six times a year and has its annual strategy meeting in January or February. The Council's committees are each chaired by a Council member. The committees report directly to Council

and are responsible for implementing the Institute's strategic policies. The three principal Council committees are the:

1. Education Committee – comprising nine members and chaired by Polly Wong FCIS FCS(PE)
2. Professional Development Committee – comprising 10 members



and chaired by Jack Chow FCIS FCS, and

- Membership Committee – comprising 11 members and chaired by Susie Cheung FCIS FCS(PE).

In addition to these committees, the Council also has a Nomination Committee, chaired by Past President Neil McNamara FCIS FCS,

Group Corporate Secretary: Director, Group Corporate Affairs, Jardine Matheson Ltd. This committee reviews the structure, size and composition of the Council on a regular basis and makes recommendations to Council regarding any proposed changes, and identifies suitable Council members and makes recommendations to Council on the selection of Honorary Officers.

Council also has two new committees established in 2012 to enhance its internal controls and governance structures – these are the:

- Audit Committee, chaired by Paul Moyes FCIS FCS, which is principally responsible for monitoring and advising on financial reporting including the integrity, truthfulness

and fairness of the view given by the financial statements of the Institute and the integrity of its financial systems and process, and

2. Human Resources Committee, chaired by Past President April Chan FCIS FCS(PE), which is principally responsible for monitoring and advising on human resource requirements to cope with the objectives and development of the Institute in Hong Kong, Mainland China and internationally.

Secretariat, working groups and panels

The Institute's Council sets the strategic direction of the Institute but it is guided, particularly in technical areas, by experts and professionals serving on a number

of panels and working groups (we will look at these in more detail in subsequent articles in this series).

The Institute's operational work is carried out by the secretariat, headed by HKICS Chief Executive Samantha Suen FCIS FCS. The operational work in Hong Kong falls into three main areas: education, professional development and members' services.

1. Education. The Institute's Education and Examinations Department comprises five staff members and is headed by the Department Director, Candy Wong. This team is principally responsible for recruiting and assisting students to qualify as Chartered Secretaries. This involves overseeing

and running the two main routes into the Institute – the International Qualifying Scheme (IQS) examinations and the approved collaborative courses with three local universities. The education and examinations team also promotes the IQS, the Institute and the Chartered Secretarial profession to local undergraduate students. Other important areas of its work are attending to exemption assessment as well as disciplinary matters for students.

2. Professional development. The Institute's Professional Development Department comprises six staff members headed by the Department Director, Lydia Kan ACIS ACS, together with Director of Technical & Research FCIS FCS, Mohan Datwani. Professional development

What does the secretary bird represent?

The secretary bird, or *Sagittarius serpentarius* if you want the scientific designation, was adopted as the Institute of Chartered Secretaries and Administrators (ICSA) crest in 1896. It is not a creature of mythology, it is a very real, though highly unusual, bird of prey widespread across Africa. It is instantly recognisable by its eagle-like head and long crane-like legs. The adult bird can grow as tall as 1.4 metres – unusual enough for raptors – and it is largely terrestrial, hunting its prey on foot. Much has been made of its predilection for snakes, and venomous snakes are often on the menu, but its diet also consists of insects, small mammals and reptiles.

The story of how the secretary bird became the icon of the Chartered Secretarial profession starts with its very striking crest of long black feathers. These were thought to give the birds the appearance of 'secretaries' with quill pens tucked behind their ears. Rusell Day, the ICSA's first Secretary, suggested adopting the bird as the icon of the profession and its popular name clearly had something to do with the choice, though many of the bird's characteristics were thought to be a perfect match for the aspirations of the profession. These include its alertness and its loyalty to its partner (the birds mate for life). It has also been suggested that the secretary bird's most famous characteristic – its ability to prey on snakes – symbolises the Chartered Secretary's pursuit of high ethical standards.





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 The Institute has been
 gaining a growing
 presence and influence
 in Mainland China
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is, of course, a fairly wide remit. This department, in addition to overseeing and managing the Institute's Enhanced Continuing Professional Development (ECPD) programme, also maintains regular contacts with governmental and regulatory bodies in Hong Kong and Mainland China to promote the Institute and the Chartered Secretarial profession in both territories.

Professional development also encompasses the Institute's research and advocacy work. The Institute makes submissions on major legislative initiatives. It also publishes topical research reports and guidelines particularly in the areas of corporate governance and company secretarial practice. This highly technical and complex area is handled by the Institute's Director of Technical and Research, Mohan Datwani. Mohan also acts as secretary

to the three main panels working in this area – the Company Secretaries Panel, the Technical Consultation Panel and the Professional Services Panel. In recent years, Dr Gao Wei FCIS FCS, Vice-President, HKICS, assisted by Chief Representative of the Institute's Beijing Representative Office, Kenneth Jiang FCIS FCS, and other senior Affiliated Persons of the Institute, has also published guidelines and has made submissions to the relevant Chinese authorities on proposed changes to relevant administrative regulations and laws in Mainland China.

3. Members' services. The Institute's Membership Department comprises five staff members headed by the Department Director Cherry Chan. It is principally responsible for improving and maintaining members' services and benefits, and catering for diverse members' needs (excluding continuing professional

development and publishing). This team is also responsible for overseeing and managing membership admission policies, processing applications and maintaining standards for acceptance to membership of Institute graduates, as well as processing and maintaining standards for acceptance to Fellowship status of Associate applicants. Another important area of work for the Membership team is attending to disciplinary matters and the setting, monitoring and implementation of codes of ethics and conduct for members.

A global profession Mainland China

As mentioned above, the Institute's work is not confined to Hong Kong. The Institute has been gaining a growing presence and influence in Mainland China. The Institute's work in this area is overseen by its Mainland China Focus Group.

In 1996 the Institute became the first Hong Kong professional body to set up a representative office in Mainland China. The Beijing Representative Office (BRO) comprises: Kenneth Jiang FCIS FCS, BRO Chief Representative; Carrie Wang, Senior Manager; and two staff members. The BRO staff liaise closely with HKICS General Manager and Company Secretary Louisa Lau FCIS FCS(PE) in Hong Kong.

The BRO implements the Institute's objectives in Mainland China, namely to:

- establish and enhance the Institute's image and influence among Mainland stakeholders including

regulators, board secretaries, Mainland companies, academics, and the public, and

- promote the professionalisation of board secretaries in Mainland China.

The Institute launched its Affiliated Person (AP) programme in Mainland China in 2004 in order to provide professional services to board secretaries of H-share companies. The BRO is responsible for providing professional services to APs by working with the professional development and membership teams at the Hong Kong office. The services to APs include

providing ECPD training, networking events for APs and a communication conduit with both Mainland and Hong Kong regulators. The Institute now has 135 registered APs in the Mainland and the AP programme has not only attracted board secretaries from H-share companies but also, increasingly, from red-chip and A-share companies.

The Institute started student recruitment in Mainland China in 2006 and the BRO, working closely with the Education and Examination team at the Hong Kong office, is responsible for student recruitment and student services in Mainland China.

HKICS fact file

Legal status and office address:

The Hong Kong Institute of Chartered Secretaries is a company limited by guarantee, and is incorporated and domiciled in Hong Kong. Its registered office and principal place of business is at 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong.

Principal activities: The HKICS sets and holds international standard professional examinations and assists students to qualify as Chartered Secretaries and members of the Institute. It also promotes good governance and secretaryship. The Institute actively supports and protects the character, status and interests of its members, graduates and students.

Membership: Students: 3,202; Graduates: 526; Associates: 4,790; Fellows: 503 (as of 10 April 2014)

Affiliations: As mentioned in the main article, the HKICS is part of a global profession of corporate secretaries and governance professionals as a member of the Institute of Chartered Secretaries and Administrators (ICSA) and the Corporate Secretaries International Association (CSIA). The

HKICS is a founder member of the CSIA and has played an important role in forging closer ties among corporate secretaries and governance professionals globally. The Institute is also a member of a number of local organisations, including:

- the Hong Kong Coalition of Professional Services (HKCPS) – the HKCPS provides a platform through which professionals can meet with government officials from Hong Kong and Mainland China as well as with professionals from the other 10 body members
- the CPD Alliance – this grouping of 20 professional bodies in Hong Kong promotes, delivers and enhances continuing professional development, and
- the Institute also has Collaborative Course Agreements (CCAs) with three local universities – these provide students with a direct route to completing the International Qualifying Scheme (IQS) as CCA graduates are eligible to apply for full exemption from the IQS examinations.



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



確保規管更為妥善
Ensure Better
Regulation



使公司法例現代化
Modernise
the Law



Team effort

The job of rewriting a law of the size and complexity of Hong Kong's Companies Ordinance does not come around very often. This month CSj talks to Ada Chung about the lessons she has learned over the last seven years since she took up her post as Registrar of Companies and found herself at the centre of the largest-scale law reform process in Hong Kong's recent history – the Companies Ordinance rewrite.

Thanks for giving us this interview. I know you are busy with the implementation of the new Companies Ordinance, how has the transition to the new regime been going?

'I'm happy to say that the implementation has been going very smoothly. We have been incorporating companies under the new regime, the majority of documents have been filed using the new forms and there hasn't been any system breakdown. I want to stress that we adopted an entirely new system on the third of March. In the past we had eight categories of companies, now we only have five categories. We also have new requirements such as the need to file a statement of capital and this has required the introduction of new forms.'

The Companies Ordinance rewrite has been a massive undertaking, both for you personally and the Companies Registry – what have you learned from this process?

'I would say the main lesson I have learned from this mammoth exercise is that no one single person can make this happen. You need a great team effort and I am very grateful I do have a very good team here at the Companies Registry. I must say that we are also very much indebted to members of the HKICS, who have given us very valuable advice and input all along the process, and to all those who responded to the public consultation exercises. In total we held eight public consultations since March 2007 and we received a lot of responses.

I'm also grateful to members of the legislature who undertook a detailed scrutiny of the bill – that involves a lot of hard work and consideration as well. I attended the meetings in LegCo and for the main Companies Bill itself we had over 40 meetings taking over 120 hours – I think that must be a record.

So this is not down to any one single person's effort, you need to have a whole team working together to accomplish this. Another

lesson I learned is that you really can't rush something like this, you have to take it step by step.'

There have been criticisms, however, that the process took too long.

'The Companies Ordinance deals with very complicated and technical matters. Given the complexity of the work involved, this was not something we could rush into. We wanted to resolve all the issues by taking into account appropriate market conditions, and also market responses, to arrive at a policy decision. All these processes take time, but I do believe that the end result is something good for the market; it reflects the wisdom and the valuable contributions of all relevant stakeholders.'

Having been through that elaborate process, is there a sense of frustration that the Companies Ordinance only applies to

Highlights

- the new Companies Ordinance attempts to strike a balance between enhancing corporate governance standards without increasing companies' compliance costs unnecessarily
- in some areas, such as the requirement for companies to include a business review in their annual reports, the Companies Ordinance imposes a standard comparable to that of the listing rules
- the Companies Registry hopes its new compound offer regime will enable it to focus its resources on more serious defaults

companies incorporated in Hong Kong and the majority of our listed companies are incorporated overseas?

'The intention of the administration all along has been that the Companies Ordinance will lay down the legal framework for the operation and the incorporation for all companies incorporated in Hong Kong. This is in line with the regimes in other comparable common law jurisdictions such as the UK, Australia and Singapore where their company laws mainly govern companies incorporated in their respective jurisdictions.

There is a separate regime which governs all companies listed in Hong Kong regardless of their domiciles, and that is the Securities and Futures Ordinance and the listing rules. They contain comprehensive requirements which aim to protect the investing public with specific regard to the nature of listed companies and are not applicable to non-listed companies in Hong Kong.

I don't think we can belittle the Companies Ordinance because, by the end of February this year, there were over 1.17 million companies registered with the Companies Registry and around 99% of those companies are private companies. Only 1% are public companies. Among listed companies, companies such as China Mobile, which is the second largest company in terms of capitalisation, and Cheung Kong and Henderson Land are all Hong Kong companies.'

With the implementation of the 'business review' requirement in the new Companies Ordinance, is it fair to say that the Companies Ordinance actually imposes a higher standard on ESG reporting than the listing rules?

'In certain areas, and the business review is one such area, we have moved ahead. I believe this is a good thing because internationally there is a development towards integrated reporting. We consulted the market and respondents believe that they are in a position to comply with the requirement. I've also personally checked the experience in the UK. A survey to assess the effect of a similar requirement introduced by the Companies Act of 2006 found that directors didn't find this to be problem and everyone switched to the new system quite readily. So I don't believe that this will be a problem for the Hong Kong market.'

Do you agree that the problem with relying on the listing rules to govern listed companies is that there is not much sanction available to regulators if a listed company breaches the rules, whereas with the Companies Ordinance there are very clear sanctions involved?

'There is no doubt that the Stock Exchange of Hong Kong is committed to the enforcement of the listing rules. Sanctions that can be imposed include, among other things, a reputational public sanction; directing remedial and enhancement action to be taken; denial of facilities of the market; directing trading suspension; and in exceptional cases, cancelling the listing of the issuer. There have been discussions over the years about giving statutory backing to the listing rules. I'm sure you are aware that statutory backing has been given to the disclosure of price-sensitive information.

In certain areas, we have taken into account the requirements in the listing rules in drafting the new Companies Ordinance. For example, under the new Companies Ordinance, approval of members must be obtained for any contracts under which the guaranteed term of employment of a director with the company exceeds three years; this length of time was actually taken from the listing rules. Another example is the new requirement for the inclusion of a 'business review' in directors' reports. Taking into account the nature of private companies, private companies are allowed to disapply the provisions relating to the business review by virtue of a special resolution. Similarly, the provisions for disinterested members' approval do not apply to private companies.

We have to strike a balance. While we are trying to enhance corporate governance by introducing new rules we don't want to increase companies' compliance costs unnecessarily.'

Few would argue that the consultation process is a bad thing, but is there a danger that it can get hijacked by vested interests? Are there times when the government needs to push ahead with reforms that are in the best interests of the market as a whole?

'In so far as the rewrite exercise is concerned, if we are talking about whether we have to take into account the views that are expressed in response to the public consultations, I would say yes, we tried to do that as far as possible. Otherwise I think it would be fruitless to hold public consultations – it's not just a rubber stamping exercise.

But market views do vary over time. I think a very good example of that is the disclosure of directors' residential addresses. Back in 2011 when we consulted on this issue, the views were already divided but there was a majority in support of introducing the new regime and that's why we went ahead and introduced the new regime. Subsequent to the amendment of the law, when the

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subsidiary legislation was going to be discussed in LegCo in 2013, the media came back with very strong objections and we had to review the whole thing again. For the time being the law is still there, but we have suspended the commencement of the relevant provisions pending further consultations with the market players and all relevant stakeholders.

Directors' duties is another very controversial area. When we consulted the market on directors' duties in 2008, the administration had no definite stance on whether we should codify the whole range of directors' duties, or whether we should only codify certain aspects. We consulted the market and the response was again very divergent. About half of the respondents were in support of the codification of the full range of directors' duties and there was a bare majority against. We tried to strike a balance by codifying directors' duties of care, skill and diligence in the Companies Ordinance.'

Now that the rewrite has been completed, are there areas where you personally would have liked the ordinance to have gone further than it does – are there reforms that didn't make it into the law that you would have supported?

'Yes. I think it would be a good thing to codify the full range of directors' duties in the Companies Ordinance to make them more accessible to directors. The beauty of codification is that it provides clear guidance to everyone.'

Would you have supported the inclusion of the duty to act in the interests of the company?

'That is more controversial. The UK moved ahead and included

this duty but respondents to our 2008 consultation said that they had doubts about the UK approach. Including this duty would have meant that directors would have to take into account the interests of employees, creditors, etc, and the market had concerns about that. We agreed to wait and see how the UK implemented this provision at the time – so far I don't think it has caused any major problems.'

The new Companies Ordinance has brought in extra enforcement powers for the Companies Registry – how will this impact your work?

'The new powers are essential for the Registry to operate efficiently. In the past we had to rely on people's cooperation, but under the new Companies Ordinance, if we suspect that a certain specified offence has been committed, we have the power to ask people to provide further information and explanation. We have also introduced a new 'compound offer' regime. In relation to certain simple and straightforward filing offences, we are now able to make a compound offer to the defaulters. This is something like a traffic fine; as long as they pay the penalty and comply with the filing requirements, then we can dispense with prosecution. This will mean that we can save very precious judicial resources since we will not need to go through the judicial process for each and every filing default.'

Our policy direction is to devote more resources to investigating problematic cases and making more inspections. We have set up a new inspection team since the implementation of the new Companies Ordinance and this team will be focusing on things like checking the correctness of companies' registered office

addresses and conducting site visits. We have come across cases where the registered office address is incorrect.'

Was this one of your own initiatives?

'Yes. We get a lot of filing defaults that are minor and routine, but before the new Companies Ordinance we had to spend quite a lot of resources on them. We hope that the compound offer regime will free up some of our resources so we can focus on more serious defaults.'

Company legislation doesn't stand still, how do you see things moving in the future in Hong Kong and how would you like to see it moving?

'The business environment is changing all the time and I don't believe that the Companies Ordinance will stop here. We will need to review the ordinance from time to time and introduce amendments, for example, to enhance the transparency of reporting. Internationally, there has been a consultation paper on integrated reporting already so I'm glad we moved ahead with the business review provisions, but there may be other provisions which will be enforced internationally and which may necessitate further amendments to the Companies Ordinance.'

Alongside that, there have been developments locally, for example the transition to a scripless securities market. Sometime this year, a bill will be submitted to LegCo on scripless shares and we will need to amend the Companies Ordinance in order to tie in with the proposal in relation to scripless securities. So the world is changing all the time and this is an ongoing process.'

One of the trends that has interested Chartered Secretaries is the move towards principles-based regulation. At the moment, of course, Hong Kong only has the Corporate Governance Code subject to a principles-based approach, but do you see that as a trend that may develop in Hong Kong?

'The Corporate Governance Code is quite different because it is not legislation. When we talk about legislation, certainty is a must. If the law is vague it will be very difficult to enforce and it will be unfair to all those who may be in breach of the law.'


So, as far as legislation is concerned, I think we would have difficulty in taking a principles-based approach. In the new Companies Ordinance there are quite a number of areas where we tried to set out more details in the law to make it easier for people to comply. For example we added new rules relating to proposing and passing written resolutions which were not in the old law.'

Do you think in the future there will be more convergence with PRC companies law?

'I think that is a possibility, but the PRC situation is quite different. Their system is a civil law system and our system is a common law system, so I don't think it will be possible for a complete convergence to happen. Notwithstanding that, there are some possible areas of convergence. For example, the PRC has been streamlining its company registration system making it more similar to our own. In the past you had to get several licences in the PRC before you could incorporate a company, now you can incorporate a company first before you get the other licences. In the past they also had a minimum capital requirement but they have removed that as well for most cases.'

I think our exchanges with our counterparts in the PRC are of mutual benefit. We may be able to take the good things from each other's laws. It may not be a one-way process, the Hong Kong and the PRC companies laws can benefit from each other.'

One final question – do you have any particular message for company secretaries?

'I would like to thank all members of the profession who have provided us with valuable advice in the Companies Ordinance rewrite process. Members of the profession sat on the advisory boards and the president of HKICS sat on the Standing Committee on Company Law Reform, we are much indebted to them for their contributions. For company secretaries in general, we are looking forward to working with them hand in hand in implementing the new Companies Ordinance. We will continue with our efforts to promote awareness of the ordinance and we are happy to assist them if they have any questions in relation to the new law.' 

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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:

- Companies Registry
- Official Receiver's Office
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The new Companies Ordinance: your guide

This month the Companies Registry concludes its series of articles introducing the major changes brought in by the new Companies Ordinance. In this final article in the series, Ada Chung, Registrar of Companies, and Phyllis McKenna, Deputy Principal Solicitor, HKSAR Government, look in more detail at two major initiatives of the new law, namely, the abolition of the memorandum of association and the abolition of the par value of shares.



One of the major policy objectives behind the new Companies Ordinance (Cap 622) (NCO) is to modernise the law. With this objective in mind, the requirement for companies to have a memorandum of association as a constitutional document and the par value of shares of all local companies have been abolished since the commencement of the NCO on 3 March 2014.

1. Abolition of the memorandum of association

Under section 67 of the NCO, any one or more persons may form a company by signing the articles of association of the company intended to be formed and delivering to the Registrar of Companies for registration a copy of the articles in the same form as those signed by the founder members together with a completed incorporation form. The agreement by the founder members to form a company and take up membership of the company to be formed, previously contained in the memorandum of association, are now contained in the articles.

Background

Since the abolition of the *ultra vires* rule in 1997 pursuant to the Companies (Amendment) Ordinance 1997, for most companies an objects clause has become less significant, with all companies having the capacity and the rights, powers and privileges of a natural person. Furthermore, as most of the conditions of the memorandum of association could be amended, the need for the memorandum as a separate constitutional document has diminished and the memorandum is therefore abolished for all companies under the NCO.

Mandatory articles of association

Companies to be incorporated under

the NCO are required to have certain mandatory articles of association and these are set out in sections 81 to 85 of the NCO. For the most part, these mandatory articles are the conditions that have been contained in the memorandum of association of companies incorporated under the old Companies Ordinance (Cap 32). These mandatory articles deal with, for example, the company name (section 81) and details of the liabilities or contributions of the members (sections 83 and 84). For companies incorporating under the NCO, they are required to have as one of their mandatory articles a statement of their capital and initial shareholdings as required to be contained in their incorporation forms. This requirement applies only to companies to be incorporated under the NCO which require such a statement to be contained in their incorporation form, and it is not necessary for companies incorporated under the old law to amend their articles to include such a provision (section 85(1)).

Model articles of association

As well as the mandatory articles of association which a company is required

to have, a company may choose to adopt all or any of the provisions of the model articles of association prescribed for the type of company to which it belongs (section 79). These model articles are prescribed in Schedules 1 to 3 of the Companies (Model Articles) Notice (Cap 622H). Three sets of model articles are prescribed by the Notice for public companies limited by shares, private companies limited by shares and companies limited by guarantee.

As previously, the model articles prescribed for the type of company to which the company belongs form part of the articles of the company if the company does not register any other articles. Even if the company does register bespoke articles prescribing regulations for the company, the model articles will still apply insofar as they are not excluded or modified by the bespoke articles (section 80).

Under the NCO, incorporation is very easy. If a company wishes to adopt the model articles in full, they need only submit for registration with the Registrar

Highlights

- the requirement for companies to have a memorandum of association as a constitutional document and the par value of shares of all local companies have been abolished since the commencement of the new Companies Ordinance on 3 March 2014
- companies incorporated under the new Companies Ordinance are required to have certain mandatory articles of association
- deeming provisions mean that the new regime does not require specific action by companies incorporated under the old Companies Ordinance (Cap 32), but this may be an opportune time for such companies to review their documentation, particularly if they want to benefit from some of the business facilitation measures brought in by the new law

of Companies a completed incorporation form and their mandatory articles. The model articles prescribed for that type of company will apply by default.

Optional articles

Companies may still choose to include objects in their articles (section 82(2)). However, there is no need to do so unless the company intends to seek a licence to dispense with the use of the word 'limited' or the Chinese characters '有限公司' in its name (section 82(1)).

The articles of a company with a share capital may also state the maximum number of shares that the company may issue (section 85(2)).

Companies incorporated under the old Companies Ordinance

A condition that immediately before the commencement of the NCO was contained (and was in force) in the memorandum of association of companies incorporated under the old Companies Ordinance (existing companies) is for all purposes regarded as a provision of that company's articles, except any such condition stating the authorised share capital or the par value of shares, which are regarded as deleted for all purposes (section 98).

The deeming provisions set out in the NCO should be sufficient to ensure that existing companies comply with the requirements of the NCO and there is nothing which they are required to do immediately to comply with the new requirements under the NCO. If companies so wish, however, this may be an opportune time for them to consider their constitutional documents to see if they want to make any amendments, for example, to benefit from some of the

initiatives of the NCO. These initiatives include, among others, dispensing with annual general meetings for one-member companies and, in other cases, where unanimous shareholders' consent has been obtained; capitalisation of profits under the no par regime and a new court-free procedure for reduction of capital.

It is also noteworthy that the articles of existing companies remain unaltered except insofar as a provision of the NCO has overridden them. In this regard, the Companies Registry has compiled a list of the provisions of the NCO which override provisions of articles of association. Please visit the Registry's website (at www.cr.gov.hk/en/companies_ordinance/docs/articles_made_void-e.pdf) for details.

Transitional arrangements

There are no transitional arrangements as such, and all companies wishing to incorporate under the NCO need only submit an incorporation form and articles of association to the Companies Registry. The deeming provisions are effective for existing companies immediately upon commencement of the NCO. There is no conversion process necessary to take the benefit of the deeming provisions.

2. Abolition of the par value of shares

Section 135 of the NCO provides that shares in a company will have no nominal value, and section 135(2) makes it clear that this applies to both shares issued before the commencement of the NCO and shares issued thereafter. This initiative, commonly referred to as 'retiring the concept of par', is in line with international trends and has already formed part of the company law of other common law jurisdictions, such as Australia, New Zealand and Singapore.

Background

Nominal value, or par value as it is otherwise known, is the minimum price at which a share having such value can be issued. Authorised share capital is closely connected with the concept of par value. It is the maximum amount of nominal share capital that a company may have. Historically, it was considered that par value and the statutory framework in which it operated was necessary for protecting shareholders against dilution of their rights, and creditors by virtue of their knowledge about the issued and authorised share capital of the company. However, it is now accepted that these historical reasons for requiring shares to have a nominal value are no longer valid. The authorised share capital can be altered by resolution of the company and creditors seldom rely upon the authorised share capital or par value of shares to any great extent when extending credit to the company.

There is essentially no difference between a share of no par and one having a par value as both represent a share, or fraction, of the equity of the company, but any share issued at par has a fixed face value. In many circumstances, shares are issued at prices exceeding the par value and the excess of the issue price over the par is designated as share premium. Under the old Companies Ordinance, there were restrictions on how a company could use the share premium which it received and how the share premium had to be accounted for. Under the old law, companies must also set out in their memorandum of association their authorised share capital and the par value of their shares.

Migration to no par

As a result of the migration to mandatory no par, relevant concepts such as 'par

“
 we believe that the changes brought about
 by the NCO will benefit all companies in
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 and directors, and reinforce Hong Kong’s
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 ”

value', 'share premium' and 'authorised capital' are abolished as they serve no purpose. Upon commencement of the NCO, conditions in the memorandum of association of an existing company (meaning a company incorporated under the old Companies Ordinance) relating to authorised capital and par value are for all purposes regarded as deleted (section 98(4)).

The full proceeds of a share issue are credited to the share capital account under the new regime, thus an amount previously designated as share premium will now simply form part of the share capital. In other words, share capital will represent the total amount that the company actually receives from its shareholders as capital contribution, and the need for maintaining a separate share premium account will disappear.

Alteration of share capital

A company has greater flexibility in a no par regime to alter its share capital. Section 170 of the NCO provides that, for example, a company can capitalise profits without issuing new shares, where the amount of share capital will increase but the number of issued shares will remain unchanged; and allot and issue bonus shares without increasing its share capital,

where the amount of share capital will remain unchanged but there will simply be more issued shares. Companies are able to consolidate and subdivide shares more easily by simply reducing or increasing the number of shares and there will be no effect on share capital. Bonus shares may still be issued in the absence of share premium, as in a no par environment shares can be issued without transferring an amount to the share capital account.

Transitional arrangements

The new regime has become effective upon commencement of the NCO on 3 March 2014. There is no conversion process necessary for existing companies. The NCO does, however, contain transitional and deeming provisions relating to the migration to no par (sections 35 to 41 of Schedule 11 to the NCO).

In particular, there are deeming provisions which provide for the amalgamation of the existing share capital with the amount in the company's share premium account and capital redemption reserve (section 37 of Schedule 11 to the NCO). The permitted uses of share premium under the old law have continued to apply to the amount standing to the credit of the share premium account upon the commencement of the NCO.

The transitional provisions also provide that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par. Whilst the provisions should save considerable work and expense for companies, this may be a good time for companies to review their documentation to see if any changes are desired to be made as a result of the migration to mandatory no par.

3. A new era

The commencement of the NCO in March 2014 marks the beginning of a new era in corporate regulation in Hong Kong. We believe that the changes brought about by the NCO will benefit all companies in Hong Kong, including their shareholders and directors, and reinforce Hong Kong's competitiveness as a place to do business.

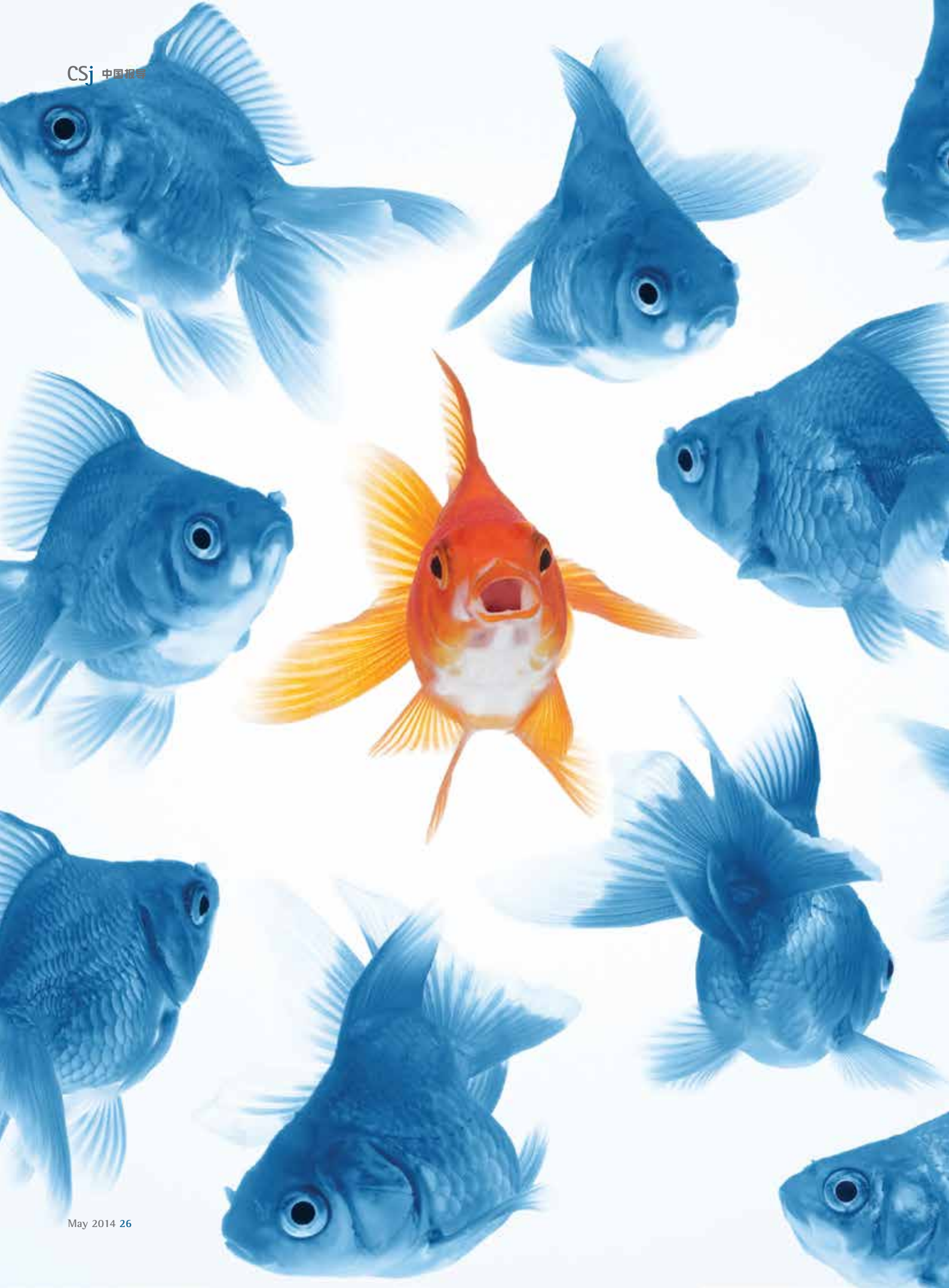
Comprehensive information about the NCO, which includes briefing materials, highlights of major changes and answers to frequently asked questions, are available at the 'New Companies Ordinance' section on the Companies Registry's website at www.cr.gov.hk. A dedicated hotline (3142 2822) has also been set up since January 2014 for enquiries relating to the NCO.

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 series were published in the
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上市公司独立董事履职情况报告

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

为了对上市公司独立董事制度实施十多年来的效果进行全面、客观的评估，2013年8月，中国上市公司协会面向上市公司独立董事、上市公司管理人员、投资者（含机构投资者和个人投资者）、其他相关人员（含上市公司监管部门人员、自律机构人员，研究机构人员及其他相关人员）发放了《上市公司独立董事履职状况调查问卷》（以下简称《问卷》）。在问卷分析和相关调研的基础上，撰写了《上市公司独立董事履职情况报告》，旨在对当前上市公司独立董事群体的基本情况、履职现状，以及独立董事制度实施的效果、存在的问题和完善的思路进行全面的分析和阐述。

我国上市公司独立董事的基本情况

根据同花顺相关统计，截止2012年底，沪深两市在职的独立董事共5972人，平均每个独立董事在1.39家公司任职。2494家上市公司共聘任独立董事8225名，平均每家上市公司聘任3.3名。其中，上海证券交易所上市公司平均每家聘用3.47名，深圳证券交易所上市公司平均每家聘用3.19名，沪市略高于深市。

上市公司聘任独立董事的数量分布

全部上市公司中，聘任2名及以下独立董事的有106家，占比4.2%，3名的有1785家，占比71.6%，4名的有454家，

占比18.2%，5名及以上的有149家，占比5.9%。根据中国证监会2001年发布的《关于在上市公司建立独立董事制度的指导意见》，上市公司董事会成员中应当至少包括1/3独立董事，因此，上市公司中独立董事的“三人现象”和董事会的“九人现象”明显。

独立董事的兼职情况

2012年底沪深两市在岗的5972名独立董事中，有4520名仅在1家上市公司任职，没有兼任，占全部在职独立董事的75.7%；922名同时担任2家上市公司的独立董事，占比15.4%；311名同时担任3家上市公司的独立董事，占比5.2%；167人同时担任4家上市公司的独立董事，占比2.8%；52人同时

担任5家上市公司的独立董事。统计资料中，没有独立董事的任职公司数量超过5家，这也符合《指导意见》的规定：独立董事原则上最多在5家上市公司兼任独立董事。

独立董事的年龄分布

2012年底，沪深两市上市公司独立董事的平均年龄为54.7岁，最大的84岁，最小的28岁。从年龄的区间分布来看，独立董事主要集中在41-70岁，占比达到87.6%，说明有一定工作经历和经验的人受到相当重视；从细分区间来看，41-50岁占比最高，占33.8%；51-60岁占比32.5%，61-70岁占比21.4%，71岁以上和30-40岁占比分别为6.9%和4.6%。

Independent directors in the PRC

This article is the first of a two-part article by the China Association for Public Companies (CAPCO) summarising its *Report on the Fulfillment of Duties by Independent Directors of Listed Companies* which was published earlier this year. The report was based on a comprehensive review of China's 10-year-old independent directors system conducted by CAPCO. This first part of the article describes the existing independent director system and the survey findings. The second part of the article, which will be published in the next issue of CSj, will discuss problems highlighted by the survey and will put forward recommendations designed to improve China's independent director system.

独立董事的学历分布

2012年底在职的5972名独立董事中大多数具有本科及以上学历，占比为89.9%。其中，硕士以上学历的独立董事占比61.1%，博士学历的占比30.8%，大专学历的占比4.5%，中专和高中学历的占0.15%。此外，还有324名独立董事在上市公司的年报中没有披露学历信息。

独立董事的薪酬分布

2012年，全部独立董事的平均年薪为8.9万元，年薪的中位数为6万元，即有一半的独立董事年薪在6万元以上，一半在6万元以下。80%的分位数为12万，即有80%的独立董事年薪在12万以下。独立董事的最高年薪为124万，高于50万的有13人。

独立董事的履职情况

本次调查共回收问卷275份，其中，有效问卷253份。

调查对象身份分布

本次调查的有效样本为253人，其中，上市公司管理人员104人，占比41.1%；上市公司独立董事61人，占比24.1%；而投资者和其他相关人员都是44人，均占17.4%；样本分布基本均匀。

对独立董事履职情况的评价

独立董事在上市公司所起的作用

问卷对独立董事在“促进公司整体发展”、“促进公司治理”和“保护中

小投资者利益”三个方面所发挥的作用进行了调查。

在促进公司整体发展方面，被调查者选择“较好”的最多，占52.2%；其次是“一般”，占40.3%；选择“比较差”和“很好”的都较少，占4.7%和2.8%；没有选择“很差”的样本。认为独立董事在促进公司整体发展方面发挥“很好”或“较好”作用的合计占比超过半数，为55%，表明，调查对象对独立董事在促进公司整体发展方面所起的作用持较为肯定的态度。

在促进公司治理方面，认为独立董事所起作用“较好”的最多，占55.2%；选择“一般”的次之，占37.7%；选择“比较差”和“很好”的较少，分别占4.4%和2.7%，没有选择“很差”的样本。认为独立董事在促进公司治理方面发挥“很好”或“较好”作用的合计占比57.9%，接近60%，表明，调查对象对独立董事在促进公司治理方面所起的作用持较为肯定的态度。

在保护中小投资者利益方面，选择“较好”的占50.8%，“一般”的占41%，“比较差”的占6.0%，“很好”的占1.6%，还出现了1个选择“很差”的样本，占比为0.5%。其中，选择“很好”和“较好”的合计占比52.4%，超过半数，表明，调查对象对独立董事在保护中小投资者利益方面所起的作用持较为肯定的态度。

独立董事工作尽职情况。对于独立董事的工作尽职情况，调查对象选择“较好”的超过了60%，为60.9%，其次是选择“一般”的，占37.7%，而选择“比较差”和“很好”的都很少，分别为3.8%和2.2%，没有选择“很差”的样本。可见，调查对象对独立董事的工作尽职情况较为认同。

影响独立董事履职的因素。影响独立董事充分履职的主要因素：

- 问卷中列出了七个可能影响上市公司独立董事充分履职的因素，请被调查者选择自己认为比较重要的并排序。
- 我们将调查对象的选择按照其排序进行7, 6, 5, 4, 3, 2, 1的赋值，分别计算各因素的得分。调查对象认为影响独立董事充分履职的最主要因素是“约束不足，缺少相关问责、评价机制”和“独立性不足”，得分分别为861和679，远远高于其他因素的得分。接下来是“主观不努力”和“津贴低责任大，风险收益不对等”，得分分别为366和324。“经验不足”、“上市公司提供支持和保障不够”以及“专业能力欠缺”得分较低，分别为242、229和141，表明，调查对象认为“经验不足”、“上市公司提供支持和保障不够”和“专业能力欠缺”不是影响独立董事充分履职的关键因素。

关于独立董事提名、选聘方式对其独立性的影响：

- 当前的独立董事选聘方式是由上市公司董事会、监事会以及单独或者合并持有上市公司已发行股份1%以上的股东提名，现实操作中，往往是由公司的大股东提名，难以避免地跟上市公司的大股东存在或多或少的关系。这种提名、选聘方式对独立董事的独立性是否造成影响？调查问卷显示，调查对象中认为“基本没有影响”的占39.8%，认为“有一些影响”的占40.4%，认为“有较大影响”的占19.8%。

津贴发放方式对独立董事独立性的影响：

- 当前独立董事的津贴由上市公司直接为独立董事发放，对于这种发放方式是否会对独立董事的独立性产生影响，问卷统计结果显

摘要

对独立董事履职情况评价的部分重点如下：

- 独立董事在上市公司所起的作用
- 影响独立董事履职的因素
- 独立董事制度的实施效果

“

我国上市公司的股权集中度很高，由大股东来提名独立董事不尽合理，会影响独立董事的独立性，不利于有效维护中小投资者的权益

”

示，认为“基本没有影响”的占32.6%；认为“有一些影响但影响不大”的占比为42.9%，认为“有较大影响”的占比为24.5%。

关于当前津贴标准是否适当：

- 据前面统计，当前上市公司独立董事的津贴一般为每年5-10万元，平均为8.9万。对于当前的津贴标准是否适当，调查显示，绝大多数调查对象认为当前的独立董事津贴标准比较合适，占比78.3%。这与前面影响独立董事充分履职的7个因素中，“独立董事津贴水平太低，职责太多，责任太大，风险收益不对等”的重要性排名靠后相一致。

关于独立董事任职家数：

- 对于上市公司独立董事最多同时担任几家才不至于明显影响其充分履职，调查统计结果显示，调查对象选择最多3家的比例最大，为50%，其次是最多5家和最多2家，分别占19.8%和18.7%，选择可以5家以上的最少，仅占3.3%。选择最多2家和最多3家的比例合计为68.7%，即有近七成的调查对象认为独立董事任职的家数最多为3家或以下，意味着，目前最多任职5家的规定有些偏

高，会明显影响独立董事的充分尽责履职。

关于独立董事参加专业培训的频率：

- 对于担任独立董事的履历少于2年的独立董事，调查对象选择“每1年1次”的有64.4%，选择“每半年一次”的有28.9%，合计为93.3%，即绝大多数调查对象认为对于担任独立董事的履历少于2年的独立董事来说，当前每2年1次的培训要求不能够保障其专业高效履职。对于担任独立董事的履历超过2年的独立董事，被调查者选择最多的也是“每一年一次”，有142人，占56.1%，其次是“每二年一次”，有80人，占31.6%。

独立董事制度的实施效果及完善

关于当前独立董事职责的相关规定是否过高：

- 对于当前相关法律法规对独立董事职责的规定是否超出了一般独立董事的能力范围，调查结果显示，选择“比较适当”的占51%，选择“还不够充分”和“超出”的比例相当，分别为26.4%和22.5%，前者稍高于后者。

关于我国上市公司治理模式中同时设置独立董事和监事会的看法：

- 对于当前我国上市公司治理模式中同时设置独立董事和监事会的做法，调查对象中选择“各有侧重，各有特点，相辅相成”占比为50.5%。选择“各有特点，但职能有交叉，同时设置有一定必要，但也可合二为一”的占比第二，为31.5%。选择“职能交叉，完全可以二选一”的为17.9%，占比最少。表明，认为独立董事和监事会应该“同时设置”和“可以合二为一或二选一”的各约占一半。

- 从不同的调查对象看，“投资者”选择“各有侧重，各有特点，相辅相成”的比例高达64.9%，显著高于其他调查对象，甚至明显高于“上市公司独立董事”选择此项的比例（58.1%）。选择此项比例最低的是“上市公司管理人员”，为46.2%，不足一半。

对于独立董事制度实施效果的总体评价：

- 对于十多年来我国上市公司独立董事制度实施效果的总体评价，调查数据显示，调查对象认为“较好”和“很好”的，与认为“一般”和“比较差”的各约占50%，前者稍高于后者。其中，认为“很好”的占比2.2%，“较好”的占比48.4%，“一般”的占比42.9%，“比较差”的占比6.5%。可见，调查对象对我国上市公司独立董事制度实施十多年来的总体评价尚可。

独立董事法律法规体系中需要重点完善的方面：

- 问卷列出了上市公司独立董事制度体系建设的五个方面，结果显示，“独立董事的选聘机制有待进一步调整和完善”的得分最高，其次是“独立董事的工作职责有待进一步细化和明确”和“独立董事履职的评价、问责机制有待进一步完善”，然后是“对独立董事的任职资格的认证和管理有待进一步明确”和“独立董事的薪酬发放机制有待进一步调整和完善”。各选项得分差别不大，表明，调查对象认为这五个方面都是亟待进一步完善，其中，选聘机制、细化明确工作职责和建立评价问责机制三个方面的需求更为迫切。

(待续，本文第二部分将在本刊下期刊载。)

Time to review your agency workforce in China

New regulations on the deployment of contingent and temporary workers in Mainland China took effect on 1 March 2014. All employers using contingent workers in Mainland China, typically referred to as an 'agency workforce' or as 'labour dispatch employees', should take immediate steps to audit their practices and ensure compliance.



The agency workforce model in Mainland China involves a staffing agency which hires a person (the agency worker) and sends the person to work for, and under the direct management of, another entity (the user entity). In China, enterprises, governmental authorities and state-owned not-for-profit organisations extensively use agency workers in their businesses.

To regulate agency workforces and deter potential abuse, on 28 December 2012 the National People's Congress promulgated the Amendment on Employment Contract Law (ECL Amendment), which enhances the restrictions on the use of agency workers. Thirteen months later, on 24 January 2014, the Ministry of Human Resources and Social Security released the long-awaited Tentative Provisions on Agency Work (Provisions), which set forth implementing rules of the ECL Amendment. The Provisions will redefine the agency workforce regulations in Mainland China.

Which user entities are subject to the Provisions?

The Provisions apply to all types of enterprises, that is for-profit organisations. They also apply to partnerships such as accounting firms and law firms, funds, and non-state-owned not-for-profit organisations. Besides legal entities, foreign enterprises are also allowed to set up representative offices in China, which are not Chinese legal entities and usually are only allowed to do liaison work. Representative offices are prohibited from hiring Chinese employees directly and can only use agency workers under Chinese law. For this reason, representative offices of foreign enterprises are exempted from the restrictions on the positions that can

use agency workers and the number of agency workers.

Restrictions on the use of agency workers

The Provisions restrict the employment of agency workers to three categories of positions: temporary, auxiliary and substitute. 'Temporary positions' exist for six months or less. 'Auxiliary positions' refer to non-core business positions that support the core business positions. 'Substitute positions' are created to fill in for regular employees who are on leave.

The definitions of temporary positions and substitute positions are straightforward. By contrast, the definition of 'auxiliary position' seems relatively broad and unclear. The reason is that the scope of auxiliary positions varies significantly from industry to industry, which makes it very difficult to give a more precise definition. For example, a security guard in a manufacturing company no doubt works in an auxiliary position, but works in a core position in a security service company.

As a result, the Provisions give user entities the right to determine the scope of auxiliary positions, but user entities

are required to solicit comments from the relevant employees, and consult with union or employee representatives regarding the scope of auxiliary positions.

In addition to the restrictions on the types of positions where agency workers can be employed, the Provisions also require user entities to limit the number of agency workers. A user entity may not employ more than 10% of its total workforce as agency workers. For user entities that currently exceed this threshold, they have two years to reduce their agency workforce to the 10% level. However, until this threshold is reached, user entities are prohibited from hiring any new agency workers.

Equal work, pay and benefits

Agency workers frequently complain that they work as hard as, or even harder than, regular employees, but receive less pay and benefits. To address this issue, the ECL Amendment provides that agency workers have the right to equal work and equal pay compared to their regular employee colleagues. The Provisions further require that user entities provide agency workers with employee benefits based on their position and prohibit

Highlights

- agency workers have the right to equal work and equal pay compared to their regular employee colleagues
- an agency worker may bring a lawsuit to hold the staffing agency and/ or user entity jointly and severally liable for economic losses resulting from the violations of the new requirements
- companies are recommended to conduct a self-audit of their agency workforce in Mainland China and prepare and execute an overall compliance plan based on the result of the self-audit

discrimination against agency workers with respect to benefits.

It is not uncommon that a staffing agency will seek to save costs by enrolling its agency workers in the social insurance programmes in the city where the staffing agency is located. Usually, the benefits under such social insurance programmes are less robust than those under the social insurance programmes in the city where the user entity is located. To address this issue, the Provisions require staffing agencies to enroll agency workers in the social insurance programmes where the user entity is located. If the staffing agency is unable to enroll the employees at that location (for example because it does not have a legal entity in that location), the user entity is required to enroll the agency workers on behalf of the staffing agency.

The Provisions also make it clear that staffing agencies are mainly responsible for work-related injuries of agency workers. But staffing agencies and user entities may share such responsibility between them by agreement.

Limited circumstances to return agency workers

Under the ECL Amendment, a user entity may return an agency worker to the staffing agency, and the staffing agency can thereafter terminate employment of the agency worker for reasons under Article 39 of ECL Amendment (material misconduct), Article 40.1 (sickness), or Article 40.2 (incompetence). It has been unclear whether user entities can return agency workers for reasons under Article 40.3 (a material change of objective conditions rendering the employment contract incapable of performance), Article 41 (mass layoff for

economic reasons), or Article 44 (when the user entity is bankrupt, dissolved or deregistered), or when the staffing service agreement between the user entity and the staffing agency expires.

Under the Provisions, user entities are now allowed to return agency workers under those circumstances, but the staffing agency is not allowed to subsequently terminate employment of the agency workers after they are returned. The staffing agency may terminate employment of the returned agency workers if they refuse to be reassigned to another user entity on the same, or better, employment conditions. In such a circumstance, the staffing agency is required to pay severance for the termination. An agency worker may refuse to be reassigned to another user entity on worse employment conditions. In such a case, the staffing agency must retain the worker until the termination or expiration of the employment contract and pay a minimum wage during the retention period.

Penalties for non-compliance

The penalties for non-compliance with the Provisions appear to be modest. The labour authorities must first order user entities and staffing agencies to correct their violations. Fines, which can range from RMB5,000 to RMB10,000 per agency worker, may only be assessed if the user entity or the staffing agency in question refuses or fails to correct the violations.

An agency worker may bring a lawsuit to hold the staffing agency and/ or user entity jointly and severally liable for economic losses resulting from the violations of the Provisions. However, an agency worker does not have the right to be converted to a regular employee

if the worker is wrongfully hired for a position that cannot lawfully be filled by an agency worker.

Actions to take

We recommend that multinational companies that have legal entities in China, especially those having a significant number of employees in China, take the following actions to ensure compliance with the ECL Amendment and Provisions.

1. Conduct a self-audit of your agency workforce in China. The following information should be reviewed:

- How many agency workers are used and what percentage of the total workforce do they constitute?
- What positions do the agency workers hold?
- What is the term of secondment of each agency worker? What is the signing date and expiration date of his/ her existing employment contract?
- Is there any difference in the compensation and benefits between regular employees and agency workers who work in the same or similar positions?
- Which city's social insurance programmes did each agency worker enroll in? Is the city different from the one where he/ she works?
- Which staffing agency is used? Does the staffing agency obtain the required permit to do the staffing business? What are terms and conditions of the staffing service agreement with the staffing agency?

2. Prepare an overall compliance plan based on the result of the self-audit and execute the plan properly.

- Review the business case to determine whether and how much the agency workforce is needed in the coming years.
- Review and determine which positions are properly classified as temporary, auxiliary and substitute under the Provisions. For agency workers who work in other positions, a plan should be prepared to transfer them to permitted positions. Note that user entities must consult with the employees (and unions and employee representatives) regarding the scope of auxiliary positions.
- Reduce the number of agency workers to 10% or less of the workforce within two years, if the number currently exceeds 10%. To achieve that target, a user entity could convert agency workers to regular employees, terminate their employment, or a combination of both. To convert an agency worker to a regular employee, the user entity, the staffing agency, and the agency worker should enter into a three-party transfer agreement. The user entity should further conclude an employment contract with the agency worker. Termination of the employment of agency workers would be much more complicated. The ECL Amendment and Provisions only allow the user entity to return/ terminate the employment of the agency worker under limited circumstances. Therefore, user entities should carefully choose the approach to terminating the employment of agency workers. In particular, where a large number of employment contracts of agency workers are being terminated, user entities should try to avoid workplace unrest. It is recommended that user entities seek legal advice when preparing the plan on reduction of its agency workforce. Note that under the Provisions, user entities are also required to file their plan on adjustment of agency workforce with local labour authorities.
- Review the existing compensation and benefits policies and practices to determine whether any policy or practice discriminates against agency workers. Proper action should be taken to eliminate any discriminatory elements, for example by amending existing policies or practices to equalise compensation or benefits. Note that if any such action results in an adverse impact on the compensation and benefits of the existing regular employees and/ or agency workers, for example, a user entity chooses to reduce the regular employees' pay or benefits to make them equal to what agency workers have, we strongly suggest that user entities seek legal advice before doing so. A reduction of compensation or benefits may not be allowed under the employment contracts or law. In addition, the consultation procedures under Article 4 of the ECL Amendment must also be followed.
- Review the agency workers' enrollment in social insurance programmes and take proper steps to ensure that they are enrolled in the social insurance programmes of the city where they work. If the existing staffing agency cannot enroll the agency workers in the required city, the user entity will either have to arrange to have the agency workers enrolled in its own name or switch to another staffing agency that can provide the proper enrollment.
- Review the service agreement with the staffing agency to determine whether any amendment is warranted to bring the service agreement into compliance with the Provisions. In addition, if the staffing agency fails to obtain the required permit for the staffing business, a plan should be prepared to switch to another qualified staffing agency, which will involve the transfer of the agency workers between the old and new staffing agency.
- Evaluate and determine whether to use other alternative workforces to cover manpower shortages caused by compliance with the Provisions. For example, consider outsourcing an aspect of the business that heavily relies on agency workforce, or use independent contractors. However, the line between outsourcing and agency work, and that between *de facto* employees and independent contractors, can be quite elusive. If considered as a subterfuge to avoid the restrictions under the Provisions, the user entities may be penalised. Legal advice should be sought when considering the use of an alternative workforce.

Gordon Feng

Of Counsel, Employment Law Department, Paul Hastings

Seminars: March to April 2014

6 March

Resolving cross-border commercial disputes



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

Speaker: Mary Thomson, Barrister-at-law, Arbitrator & Mediator, Pacific Chambers

11 March

New reporting exemption for non-public companies and other impacts of the new Companies Ordinance on financial reporting for the non-accountant



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

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

18 March

Further liberalisation of tax information exchange – what does it mean for businesses in Hong Kong?



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

Speakers: Tracy Ho, Tax Managing Partner, Hong Kong & Macau, Ernst & Young; and Kathy Kun, Senior Manager, National Tax Centre, Ernst & Young

19 March

The new Companies Ordinance is here! What to do and how to do it? Sharing with practitioners



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

Speakers: Wendy Yung FCIS FCS, Executive Director and Company Secretary, Hysan Development Company; April Chan FCIS FCS(PE), Past President, HKICS, and Company Secretary, CLP Holdings Ltd; Liza Murray, Special Counsel, Baker & McKenzie; and Edith Shih, FCIS FCS(PE), President, HKICS, and Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd

20 March

Resolving shareholders' disputes in private & listed companies



Chair: Richard Leung FCIS FCS, FCPA, Barrister-at-Law, Des Voeux Chambers, Past President, HKICS
Speaker: Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyer

26 March

New reporting exemption for non-public companies and other impacts of the new Companies Ordinance on financial reporting for the non-accountant (re-run)



Chair: Mohan Datwani FCIS FCS, LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS
Speaker: Catherine Morley, Partner, Department of Professional Practice, KPMG China

26 March

Joint seminar with HKICPA and Law Society of Hong Kong on 'Fraud and corruption – what company executives should know'



Chair: Mohan Datwani FCIS FCS, LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS
Speakers: Jim Sturman QC, LLB (Hons), International Fraud and Arbitration Specialist, Deputy Head of 2 Bedford Row Chambers, London, and Member of Silk Road Chambers Ltd, Hong Kong; Jessica Pyman, Managing Director, Mintz Group, Hong Kong; Diana Shin, Partner, Ernst & Young's Fraud Investigation & Disputes Services Practice; and TJ Tan, Managing Director, Forensic Accounting and Advisory Services, FTI Consulting

2 April

Facing legal disputes originating in Mainland China – tips and experience sharing for company secretaries



Chair: Grace Wong FCIS FCS, Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd
Speakers: Peter Bullock, Partner, Pinsent Masons; and Rachel Cheng, Solicitor, Pinsent Masons

ECPD and MCPD

What you should know about the MCPD requirements

All members who qualified between 1 January 2000 and 31 July 2013 are required to accumulate 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 most appropriate for 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.

New Graduates

Congratulations to the following new Graduates.

Cheng Kam Pik	Kwong Pui Ming	Lam Yau Wai	Leung Kwan Wai	Tsang Yiu Man
Cheng Yu Ting, Jenifer	Kwong Tsz On	Lam Ying	Ng Kwok Nang	Wan Yin Yee
Fan Yuk Fun, Cherry	Lai Kam Biu, Billy	Lau Oi Yan	Ng Yim Fong	Wang Fu Lee
Ho Lai Shan	Lai Yan Yi	Lau Shuk Man	Pai Kam Ling	
Kan Ling Yun	Lam Lau Mei	Leung Chung Ping	So Sui Pok, Phoebe	

New Fellows

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



Leung Tak Hing, Johnny FCIS FCS

Currently General Manager of The "Star" Ferry Company Ltd, Mr Leung is a Certified Public Accountant; Specialist and Financial Expert in the Hong Kong Council for Accreditation of Academic & Vocational Qualifications; Chartered Marketer of the Chartered Institute of Marketing; Member of the Royal Institution of Navak Architects; Chartered Member of the Chartered Institute of Logistics and Transport; and a Professional Member in the Hong Kong Institute of Human Resource Management. Mr Leung holds master's degrees in Commercial Law; Professional Accounting; International Business Management; and a Postgraduate Diploma in Corporate Administration.



Ng Wing Hong FCIS FCS

Mr Ng is one of the founders and Managing Director of the environmental service group, Baguio Group Ltd. He is responsible for the overall management, strategic planning and business development of the Group. Mr Ng is a fellow member of both the Institute of Certified Public Accountants and the Association of Chartered Certified Accountants. He holds a Bachelor's degree from The University of Hong Kong and a master's degree in Administration from The Chinese University of Hong Kong, a bachelor's degree in Law from the University of London, and a Postgraduate Certificate in Law from The University of Hong Kong.



Professor Say Goo FCIS FCS

Professor Goo is Professor of Law at The University of Hong Kong, Director of the Asian Institute of International Financial Law and Deputy Director of the Ronald Coase Centre for Property Rights Research. He is a graduate of University of Leicester (LLB) and University of East Anglia (LLM); Honorary Visiting Professor at University of Exeter; Co-Principal Investigator of a Research Grants Council-funded project on Enhancing Hong Kong's Future as a Leading International Financial Centre; member of the Standing Committee on Company Law Reform; member of the International Advisory Board of the Centre for Corporate Law and Securities Regulation in Melbourne; an editorial member of leading international journals and a reviewer for well-known publishers and journals.

Additional New Fellow:

Fok Pik Yi, Carol FCIS FCS, Company Secretary, Silver Base Group Holdings Ltd

New Associates

Congratulations to the following new Associates.

Chan Kan
 Chan Wing Chung
 Cheung Tsz Wai
 Cheung Wai Fan, Jacqueline
 Chiu Tsz Woon
 Chow Man Yee
 Chung Fong Hang
 Fung Mei Yan, Tiffany
 Hui Ka Fun, Annie
 Kong Ling Yan
 Kwan Lok Lam
 Kwan Lok Yan
 Kwong Suk Fan, Fanny
 Lam Pui Ling
 Lam Yuen Hing
 Lau Chi Wing
 Lee Chi Wai
 Limuran, Bernice
 Liu Wing Sze
 Mak Yin Ting
 Ng Yuk Ting
 Pang Wah On, Nelson
 Poon Po Han, Lisa
 So Shuk Ling
 Sy Heung Sang, Connie
 Tam Ka Wing
 To Hin Pak
 Tong Ka Man
 Wong Kin Wing
 Wu Sze Lee
 Yeung Lai Man, Sandy
 Yeung Wing Sze
 Yiu Bo Bo, Regina
 Yu Man Kit

World-class toolkit launched in Hong Kong

The Corporate Secretaries International Association (CSIA), in partnership with the International Finance Corporation (IFC), launched its highly-anticipated Corporate Secretaries Toolkit in Hong Kong on 16 April 2014. The launch ceremony was co-organised by the Institute.

The toolkit provides training materials covering the full spectrum of a corporate secretary's role, functions and responsibilities and was developed in response to strong demand from companies and organisations in emerging markets for training and skills development in corporate governance. CSIA President Carina Wessels remarked that the toolkit was designed as a cross-cultural, thought provoking training material to promote corporate governance from the perspective of corporate secretaries.

Philip Armstrong, Head of the IFC's Global Corporate Governance Forum, and the national representative organisations of CSIA were present at the ceremony to celebrate the coming to market of the toolkit. The CSIA members also held their Executive Committee meetings in Hong Kong on 16 and 17 April 2014.

An Interview with Carina Wessels, CSIA President, and Philip Armstrong, Head of the Global Corporate Governance Forum, will be published in next month's CSj.



Philip Armstrong and Carina Wessels



From left to right: Edith Shih, Carina Wessels and Samantha Suen

HKICS attends non-executive director forum

Mohan Datwani FCIS FCS, Director, Technical and Research, HKICS, attended and spoke at a workshop for the Financial Times Non-Executive Director Diploma programme – a post-graduate level qualification for current and aspiring non-executive directors (NEDs) – at the Mandarin Oriental Macau on 15 April 2014.

Mohan shared his experience in corporate governance and updated attendees on the latest developments in this area. The participants, coming from diverse international and business backgrounds, enjoyed a lively set of discussions which focused on expected norms of behaviours for NEDs, the role of family businesses in Asia, and issues relating to good governance.

Also on the panel were Paul Sheehan, CEO, Melmotte Partners (Asia) and Christine Brendle, Founding Partner, Kids Dailies. Murray Steele, Workshop Director and Presenter, moderated the panel. The debate adjourned to Fernando Restaurant where FT hosted a sumptuous meal for the aspiring NEDs.



Mohan Datwani sharing his views

Lunch meeting with British Consul General

The British Consul General, Caroline Wilson, hosted a delegation from the Institute on 22 April 2014 for lunch at her residence in Hong Kong. President Edith Shih FCIS FCS(PE) led the discussions centered on the role of family businesses in Hong Kong and touched upon the extent of family ownership, board structure, including the number of family members, diversity, age and length of tenure of board members in general.

Also discussed were the importance of good governance and alignments that can exist between the minority and majority in properly run family businesses. Participating in the discussions were Davy Lee FCIS FCS(PE) from Lippo Ltd; Ivan Tam FCIS FCS from Chevalier International Holdings Ltd; Neil McNamara FCIS FCS from Jardine Matheson Ltd; Melanie Ng ACIS ACS from SOCAM Development Ltd; Paul Mok FCIS FCS from Orient Overseas (International) Ltd; and Richard Law FCIS FCS from



Hopewell Holdings Ltd. Samantha Suen FCIS FCS, Chief Executive, and Mohan Datwani FCIS FCS, Director, Technical and Research joined in the discussions.

Also present were Jo Hawley, new Director of UK Trade & Investment (UKTI) Hong Kong, and her team members: Andy Burwell, Regional Director of Investment Asia Pacific, UKTI, and

Ivan Yip, Inward Investment Manager, UKTI. The discussions were balanced and interesting from the broad-based experiences shared by the participants.

If you have any views on family businesses in Hong Kong, especially from a governance perspective, please send these to the Institute's Director of Technical and Research at mohan@hkics.org.hk.

Newly appointed company secretaries

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

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

Adjourned Annual General Meeting held

The Institute held the Adjourned 2013 Annual General Meeting (AGM) on 30 April 2014, followed by a Council meeting.

Details are available on the Institute's website: www.hkics.org.hk.



Mainland update

Meeting with officials from Qianhai, Shenzhen

On 17 April 2014, Council member-elect Bernard Wu FCIS FCS joined the representatives of the Hong Kong Coalition of Professional Services and met He Zijun of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen (Qianhai Authority), in a meeting organised by the One Country Two Systems Research Institute. The purpose of the meeting was to share views from professionals on the possible engagement of Hong Kong professionals in Qianhai. Bernard discussed the roles of Chartered Secretaries in enhancing good corporate governance and compliance. He presented to Qianhai Authority the Institute's proposal to introduce corporate governance, compliance and corporate secretarial professionals to provide services to corporations in Qianhai and to consider requiring all corporations registered in Qianhai to appoint a company secretary to safeguard good corporate governance practices.

Regional Board Secretary Panel meetings

The Institute organised three Regional Board Secretary Panel (RBSP) meetings and dinner gatherings in Shenzhen, Beijing and Shanghai on 3, 9 and 18 April 2014 respectively. Over 100 participants joined the events, including board secretaries from H-share, A-share, A+H share and red chip companies; officials from the Beijing and Shanghai Regulatory Bureaus of the China Securities and Regulatory Commission; the China Association for Public Companies; Shenzhen Stock Exchange; Shanghai Stock Exchange and the Shanghai Listed Companies Association.

During the meetings, Dr Gao Wei FCIS FCS, the Institute's Council Member and Vice-Chairman of Professional Development Committee, put forward a proposal for 'the Abolition of the Prerequisite Clauses for the Articles of Association of Companies Seeking for Listing Overseas'. Participants showed support for the proposal and provided valuable feedback. The revised proposal, incorporating the feedback from RBSP participants, will be submitted to the Chairman of the China Securities and Regulatory Commission.

In addition, President Edith Shih FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS joined the Shanghai meeting and exchanged views on topical matters with the participating board secretaries.

The Institute would like to express its sincere gratitude to Ping An Insurance (Group) Company of China, DLA Piper UK LLP, Haitong Securities and Wonderful Sky Financial Group for their support of the three meetings.



Beijing meeting



Shanghai meeting



Shenzhen meeting



Edith Shih and Jin Xiaobin, Board Secretary, Haitong Securities

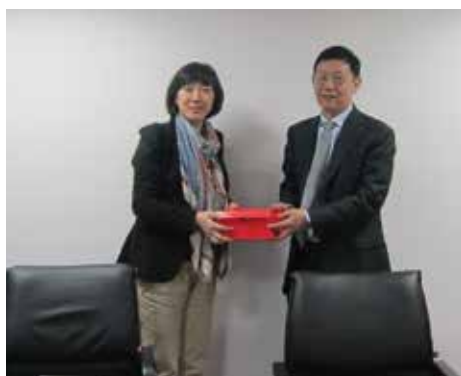
Meeting with Shanghai Stock Exchange

During the RBSP meeting in Shanghai, President Edith Shih FCIS FCS(PE); Chief Executive Samantha Suen FCIS FCS; Kenneth Jiang FCIS FCS, Chief Representative of Beijing Representative Office (BRO); and Carrie Wang, BRO Senior Manager, met with Shi Douli, Director, Education and Training Department of the Shanghai Stock Exchange (SSE), and Fan Zhipeng, Deputy Director of Listed Companies Administration Department of SSE, and discussed ways to strengthen their co-operation in promoting corporate governance and compliance. Since 2011, the Institute has jointly held several well-received training programmes with SSE for A+H share companies.

Meeting with the China Capital Market Institute

Kenneth Jiang FCIS FCS, Chief Representative of Beijing Representative Office (BRO) of the Institute, and Carrie Wang, BRO Senior Manager, visited the China Capital Market Institute (CCMI) and met with Jiang Hua, Head of Department of Education and Training of CCMI, on 3 April 2014. The two parties discussed current developments in corporate governance in Mainland China, as well as the professionalisation of board secretaries. They shared similar views on training the professionals required by the Chinese business community and are exploring possible collaborative training opportunities on corporate governance best practices.

Founded in 2012, CCMI is a not-for-profit organisation under the China Securities Regulatory Commission (CSRC), with an aim to provide intellectual support to, and cultivate, quality talent in the Chinese financial sector.



Jiang Hua and Kenneth Jiang

Institute representatives attend HKEx training seminar in Beijing

On 8 April 2014, Kenneth Jiang FCIS FCS, Chief Representative of the Beijing Representative Office (BRO) of the Institute, and Carrie Wang, BRO Senior Manager, attended the training seminar organised by Hong Kong Exchanges and Clearing (HKEx) in Beijing, and mingled with over 160 attendees from H-share and red-chip companies.

Four HKEx officials delivered presentations on topics including the latest amendments to the listing rules on connected transactions and the implementation review of inside information regulations. Kenneth Jiang also briefed Peng Jingling, Vice-President of HKEx Listing Division, on the Institute's recent developments in Mainland China and discussed with Ms Peng opportunities for closer training cooperation between the Institute and HKEx for Mainland companies listed in Hong Kong.



At the seminar

Membership activities

Members' networking – Visit to China Aircraft Services Ltd

The Institute organised a visit to China Aircraft Services Ltd (CASL) on 28 March 2014. The event was well received and participants learned about trends in corporate social responsibility and CASL's core values from an exclusive presentation by its Chief Executive Officer, Dr Angus Cheung. The presentation was followed by a guided tour introducing aircraft maintenance services. Ascent Partners was the sponsor of this event.

More photos are available at the gallery section on the Institute's website: www.hkics.org.hk.



Group photo



Dr Cheung giving an exclusive presentation

Board readiness series – preparing for board directorships

On 9 April 2014, the Institute unveiled its new series of 'Board Readiness' workshops. The Institute took pleasure in inviting Elsie Leung FCIS FCS, GBM, JP, and Alice Au, Head, Private Equity Practice, Asia and Co-Head, CEO & Board Practice, Asia, Spencer Stuart, as inaugural speakers for the workshops. During the discussions, members gained practical tips from these seasoned speakers on issues such as how to prepare themselves for career advancement. They were also given the opportunity to mingle with the speakers and their peers. Ascent Partners and Lippo Group were the event sponsors.

More photos are available at the gallery section on the Institute's website: www.hkics.org.hk.



From left to right: Alice Au, Susie Cheung, HKICS Membership Committee Chairman, and Elsie Leung



Panel discussion

Luncheon with the financial secretary

On 2 April 2014, the Hong Kong Coalition of Professional Services (HKCPS) organised a luncheon with John Tsang, Financial Secretary, HKSAR, as guest of honour. President Edith Shih FCIS FCS(PE) and other members of the Institute attended the event, which was entitled 'Sustainability of Public Finance in Hong Kong'.

During the luncheon, the financial secretary presented his views as to the importance of ensuring the long-term sustainability and viability of Hong Kong's public finances. The attendees from various professional bodies were given the opportunity to share their perspectives as well as to ask questions during the lively and interactive session with the financial secretary.



Financial Secretary John Tsang (middle), Edith Shih and other representatives of HKCPS



The financial secretary giving his speech



Interactive session



At the luncheon

Invitation to offer internships

The Institute will provide two-week placements for Form 5 students from secondary schools in Tin Shui Wai to provide work experience to broaden the horizon of the students and help build their self-confidence. Members are invited to provide internships under this programme organised by the Hong Kong Coalition of Professional Services (HKCPS).

For details, contact HKCPS at 2169 3128, or 2231 9115.

Fellows-only benefits

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

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

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

Application requirements:

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

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

Support The Chartered Secretaries Foundation Ltd

Following the fund raising event at this January's Annual Dinner, the Institute is pleased to announce that The Chartered Secretaries Foundation Ltd (the Foundation) has achieved its target of obtaining funding of HK\$200,000 in 2014, and would like to extend its heartiest appreciation to all donors for their generosity.

With the generous support of the donors, the Foundation will step up its efforts in promoting business, general ethics and corporate governance among undergraduates and secondary school students through a 'knowledge transfer' programme. The Institute aims to partner with local universities and organise a number of workshops and seminars on business and general ethics.

The Foundation has, since 2012, supported education and research in the field of company secretarial and business studies and helped strengthen public knowledge in the area of corporate governance. Please continue your support for the Foundation by participating in the activities to be held and by making donations.



For enquiries, please contact Louisa Lau at 2881 6177, or email info@csfoundation.org.hk.

International Qualifying Scheme examination – 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

Admission slips

Admission slips, together with 'Instructions to Candidates', will be posted to candidates during the second week of May 2014. The slip specifies the date, time and venue of the examination. Candidates are also reminded to read through the Instructions before taking the examination.

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our contact



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IQS information session

The Institute held an International Qualifying Scheme (IQS) information session on 16 April 2014 for the general public interested in pursuing a career as a Chartered Secretary. Davis Lau ACIS ACS, Manager of Computershare Hong Kong Investor Services Ltd, shared his collaborative course study experience and career development with the attendees.



Davis Lau sharing his experience

Orientation for new students

The Institute organised an orientation for Master of Corporate Governance students from The Open University of Hong Kong on 25 March 2014. The Institute and its studentship requirements were introduced. Fanny Cheng ACIS ACS shared her study experience with 20 attending students.



At the orientation

Student Ambassadors Programme – visit to the Companies Registry

The Institute organised a visit to the Companies Registry for its student ambassadors on 10 April 2014. A group of 14 local undergraduates and five registered students joined the visit. The Institute would like to thank the Companies Registry for its continued support for the Student Ambassadors Programme.



At the Companies Registry

Payment reminders

Studentship renewal

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

Exemption fees

Students whose exemption was approved via confirmation letter in February 2014 are reminded to settle the exemption fee by 4 June 2014.

Careers

To advertise your vacancy, contact Abid Shaikh:
Tel: +852 3796 3060
Email: abid@ninehillsmidia.com



Lai Sun Group is well diversified with principal activities in property development, property investment, hotels, media and entertainment. To cope with our business expansion, we are inviting competent candidates to join us.

Company Secretary

Job Description:

- Named company secretary of the assigned listed companies reporting directly to Executive Director and senior management
- In-charge of performing of a full range of company secretarial duties and services as well as statutory compliance for the assigned listed and private company(ies) within the Group
- Oversee and manage routine secretarial duties, ad-hoc projects, logistics planning and records maintenance with the support of other company secretarial professionals

Requirements:

- Degree holder in relevant discipline and a Qualified Member of The Hong Kong Institute of Chartered Secretaries
- A minimum of 15 years company secretarial experience in Hong Kong listed company(ies) and at least 8 years of which gained at supervisory / managerial level
- Well versed in the Companies Ordinance, Hong Kong Listing Rules and the relevant corporate governance requirements
- Strong analytical, interpersonal and communication skills
- Self-motivated, well-organized, detail orientated and a good team player with strong sense of responsibility
- Good command of both written and spoken English and Chinese
- Conversational Mandarin is a definite advantage
- Proficient in MS Word, Excel and Chinese Word Processing

Please quote the position in your application and apply with full resume, stating date available, present and expected salary to:

Group Human Resources & Administration Controller
Lai Sun Development Company Limited
11/F Lai Sun Commercial Centre
680 Cheung Sha Wan Road, Kowloon
Fax: 2742 3389, E-mail: hr_10@laisun.com
Website: www.laisun.com

Personal data provided in the employment applications will be treated in strict confidence and used only for recruitment purpose by the Lai Sun Group Companies. All unsuccessful applications will be destroyed upon completion of the process.

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@ninehillsmidia.com

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MICHAEL PAGE LEGAL

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.

IN-HOUSE CORPORATE

Assistant Company Secretarial Manager

- › Listed Property Developer
- › 6+ years of experience

Our client is a sizable PRC-based listed property developer. In this role, you will be required to handle a full range of company secretarial duties and compliance issues for the group companies, such as preparing of press announcements, circulars, annual and interim reports, organising board of directors and shareholders' meetings as well as maintain and register all legal and statutory documents. The ideal candidate must have a good knowledge of the Listing Rule, SFO and Company Ordinance and must be an Associate Member of the HKICS / ICSA. Good command of written and spoken English, Chinese and Mandarin is required.

Ref: H2221680

Company Secretarial Manager

- › Listed Solar Energy Firm
- › 10+ years of experience

This is a newly created headcount aimed at candidates who are experienced and also looking for a new challenge for career advancement. This is a relatively new and rapidly growing business under our client's group, the company is extremely active with corporate transactions and ad hoc projects. Highly independent and efficient candidates are needed. Associate membership of HKICS is required, with minimum 8 years of experience, and able to work under pressure and possibly work long hours. Excellent exposure to corporate transactions and a competitive salary package is on offer.

Ref: H2226530

Company Secretarial Officer

- › Extremely Sizable Conglomerate
- › 5+ years of experience

Our client is one of the most well-known and well-reputed conglomerates in Hong Kong, with multiple listed companies under the group. This is a newly created headcount with the non-listed holding company, mainly covering a full range of work for the private group and its subsidiaries. A very competitive package is on offer with stable hours and good work-life balance. Staff turnover is extremely low and the work environment is very friendly with a caring management team. Student membership of HKICS or above is required; experience in handling trust matters is a plus.

Ref: H2160450

PROFESSIONAL FIRMS

Company Secretarial Senior Assistant

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

Our client is a top tier International Law firm with a portfolio of more than 800 local and international clients. In this role, you will handle a full spectrum of company secretarial duties and will be responsible for statutory compliance work for Hong Kong, BVI and Cayman companies. You will also liaise with lawyers and other offshore offices of the firm. You should be well versed in Hong Kong Companies Ordinance and familiar with regulations of BVI and Cayman Islands preferably gained from another top tier law firm. The ideal candidate will have good command of Cantonese, English and Mandarin. Open to HKICS Student Members.

Ref: H2177600

Senior Administrator

- › Leading Professional Firm
- › 5+ years of experience

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. You will also 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. Candidate must be proficient in English and Chinese and ideally available immediately.

Ref: H1858250

Senior Manager

- › International Professional Firm
- › 8+ years of experience

Our client is a professional firm, with more than 40 years of experience in providing global solutions and professional services to a diverse client base. Their office in Hong Kong opened recently with over 60 people, being the biggest in the APAC region. Reporting to the Director, you will be responsible for supervising the team's work and you will also involve some interesting BD work and client facing time. The ideal candidate is a stable and mature HKICS Associate Member with at least 8 years of relevant experience (at least 3 of which at supervisory level). Candidates coming from other leading professional firms will be highly regarded.

Ref: H2208650

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

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

“Risk and Methods of Money Laundering and Terrorist Financing”



Date:	Wednesday, 28 May 2014
Speakers:	Mr Cyril Mak, Superintendent, Joint Financial Intelligence Unit, The Hong Kong Police Force Mr Patrick Rozario, Director, Head of Risk Advisory Services, BDO
Time/CPD:	6.30 p.m. – 9.15 p.m. (2.5 ECPD points)
Fee:	HK\$250 (HKICS or HKICPA member / target participant)
Target participants:	Company Secretaries, Accountants and Business Consultants
Venue:	Admiralty Conference Centre, 1804A, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty, Hong Kong
For enquiries:	Ms Lisa Lee at 2830 6069 or Ms Ivy Chow 2830 6011, or email to ECPD@hkics.org.hk

Funding Organisation:



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“Spring is the time of plans and projects”

一年之計在於春。

- 托爾斯泰

Leo Tolstoy



Quorum is a company secretarial and practice management software solution, used by providers around the world since 1995. Our clients include accounting, legal and specialist fiduciary firms as well as groups of companies and family offices that want to better manage their operations.

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- Increases productivity of your staff
- Reduces errors and omissions

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