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November 2014

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The journal of The Hong Kong Institute of Chartered Secretaries

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

Membership statistics update

As of 10 October 2014, the Institute's membership statistics were as follows:
Students: 3,178
Graduates: 497
Associates: 4,910
Fellows: 514

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Contents

Independent directors

Before turning to the theme of this month's journal, I would like to say a few words about two very important events in October. Firstly, the latest ICSA Council meeting was held in Hong Kong on 17–18 October. This important meeting formulated the new mission for ICSA: to be the leading global professional body in governance. It also discussed new strategies for the global institute going forward. The ICSA Executive Committee and ICSA President and Vice-Presidents met with regulators in Hong Kong, and the ICSA President and Vice-Presidents met with regulators in Shanghai to update them on the latest developments relating to the ICSA, HKICS and the Chartered Secretarial profession in Hong Kong, Mainland China and internationally. At the meeting with the regulators in Shanghai, both parties also shared views on the possible professionalisation of company/board secretaries in Mainland China (for further details see page 41).

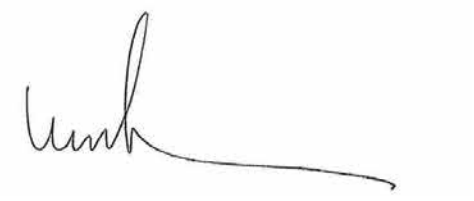
The second event I would like to mention is our very successful '20+65 Double Anniversary Cocktail Reception' held on 20 October. We were delighted and honoured to have the Chief Executive of HKSAR, CY Leung, GBM, GBS, JP, as our Guest of Honour, and the Secretary for Financial Services and Treasury, Professor KC Chan, GBS, JP, as our Honorary Guest. About 250 guests comprising senior government officials and regulators, representatives from fellow professional institutes and business associates, as well as ICSA and HKICS Councils and members made a toast to the Institute (for further details see page 42).

While celebrating the past, the Institute is also looking ahead to the future – it will have a key role to play in the governance arena in Hong Kong, Mainland China and globally in the years ahead. It will be a privilege and honour for us as members of the Institute to play our part in the next chapter in this ongoing development.

Moving on to this month's journal – our theme this month is the relationship between independent non-executive directors and the company secretary. I am sure readers of this journal will be well aware that this relationship is a crucially important one. The company secretary plays a vital role in ensuring that all directors, executive and non-executive, have the information support and advice they need to fulfil their roles effectively. Furthermore, the services of the company secretary are particularly crucial in the case of non-executives since they are generally not as close to the company's business as their executive colleagues.

Many aspects of this theme are addressed in our two cover stories this month. Perhaps most relevant for our members is the issue of how company secretaries can best fulfil their obligations under Section F of Hong Kong's Corporate Governance Code to facilitate induction and the professional development of directors. The first cover story (see pages 8–11) offers practical advice on how to tailor an induction programme to ensure that it meets the needs of each independent director. Independent directors come from different backgrounds and have different areas of expertise so a lot of thought needs to go into ensuring that the information supplied is relevant.

Another important issue which inevitably arises in discussions of the independent director role is how to define 'independence'. CK Low FCIS FCS, Associate Professor in Corporate Law, Chinese University of Hong Kong Business School, addresses this in the second cover story this month (see pages 12–14). He points out the difference between 'résumé independence' (the apparent degree of directors' separation from the company), and genuine independence (their willingness to ask questions and offer a constructive challenge to executive directors). I agree with this argument and I would add that this is also true for the company secretary. The company secretary is an officer of the company but we combine a position at the heart of the company with an independent gatekeeper role and this is the foundation of the value we bring.



Edith Shih FCIS FCS(PE)

独立董事

在谈论本期主题之前，我要先与大家分享在10月举行的两项重大活动。首先，本年度的ICSA理事会会议已于10月17-18日在香港举行。是次会议确立了ICSA的新使命：作为全球企业管治的专业领导机构，而当中也讨论了这一环球机构的未来新策略。ICSA的执行委员会联同其会长和副会长与香港的监管机构会面，而会长和副会长及后亦与上海的监管机构会面，并向他们讲解了ICSA、HKICS及特许秘书专业于香港、内地和国际的最新发展。与上海的监管机构会面期间，双方就内地公司/董事会秘书专业化发展的可能交流了意见(详情请参阅第41页)。

第二项我希望提及的活动，是我们在10月20日顺利举行的「20+65双重周年志庆酒会」。当晚我们很高兴邀得香港特别行政区首长梁振英先生GBM, GBS, JP担任主礼嘉宾，而财经事务及库务局局长陈家强教授GBS, JP亦担任荣誉嘉宾。莅临当晚活动的来宾约250人，包括政府高级官员和监管机构人员、各界专业机构代表、业务伙伴，以及ICSA与HKICS的理事和一众会员，举杯同贺公会的双重周年志庆(详情请参阅第42页)。

在庆祝过去的辉煌成就之余，公会也对未来作出了展望。公会将在香港、内地及环球企业管治领域扮演显要角色。作为公会会员，我们有幸在这持续发展的新一页作出贡献，实在与有荣焉。

至于本期内容，主题是独立非执行董事与公司秘书之间的关系。我认为本刊读者必然已留意此关系何等重要。公司秘书在其中扮演着一个非常重要的角色，就是确保所有董事一不论是执行董事还是非执行董事一均获得资讯上的支持和意见，从而有效履行其职务。此外，非执行董事通常不会如执行董事般紧贴公司的业务状况，因此公司秘书提供的服务，对于他们来说格外重要。

这一主题有许多方面均在本期的两个封面故事中论及，但也许与本会会员最息息相关的，是公司秘书如何根据《香港企业管治守则》第F节最有效地履行其义务，从而安排董事的入职简介及专业发展。第一个封面故事(第8-11页) 就如何精心设计一个入职简介计划，以确保因应每位独立董事之需要而提供适切意见。独立董事来自不同背景，各有不同领域的专长，因此必须周详考虑，以确保所提供的资讯能够切合其需要。

在讨论独立董事的角色时，另一个无可避免的重要议题，就是如何界定「独立」一词。香港中文大学商学院公司法副教授刘殖强FCIS FCS在本期的第二个封面故事中论述了这一议题。他点出résumé independence (董事与公司之间保持距离的明显程度)与genuine independence (非执行董事愿意提出问题，并向执行董事提出具建设性的挑战) 之间的区别。我同意教授的见解，而且该论述亦适用于公司秘书。公司秘书是公司的高级管理人员，但我们的特点，是将公司的核心职务，与作为独立把关者的职能连结于一起，而这正是我们所贡献价值之基础。

施熙德

65 CHARTERED SECRETARIES 特許秘書 Years in Hong Kong

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

"How to Support and Carry out Internal Money Laundering Investigation?"

Date:	Wednesday, 10 December 2014
Speakers:	Mr Patrick Rozario, Director, Head of Risk Advisory Services, BDO Mr Russell Harding, ex-Police Officer, Financial Investigation, Hong Kong Police
Time/CPD:	3.00 pm – 5.40 pm (2.5 ECPD points)
Fee:	HK$250 (HKICS member/target participant)
Target participants:	Company Secretaries, Accountants and Business Consultants
Venue:	Admiralty Conference Centre, 1804A, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty, Hong Kong
For enquiries:	Ms Lisa Lee at 2830 6069 or email to ECPD@hkics.org.hk

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Ask the Expert

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

The identity and contact details of questioners will be kept confidential

Q: *The 'against' votes for some of our resolutions at our AGM have increased in the past few years. How can we mitigate this?*

A: Try to identify your shareholder base, understand their concerns and communicate with them effectively. Consider using shareholder identification and proxy solicitation if necessary, which can help you understand who the real beneficial owners and voting decision makers are, especially for institutional investors.

In Hong Kong's stock market structure, HKSCC Nominees Ltd (HKSCC) is a registered shareholder, under which there are many layers of custodian banks, brokers, institutional investors and retail investors. As the share register records information of registered shareholders only, ultimate beneficial owners or institutional investors may not be revealed. When major shareholders need to abstain on a certain resolution due to a conflict of interest, supporting votes from independent shareholders become critical. However, if you don't know who your independent shareholders are, it's far more difficult to know whether the resolution will be carried or not.

To manage this uncertainty, issuers can consider conducting an exercise of shareholder identification and proxy solicitation – working out who the underlying shareholders are and contacting them to provide them proactively with information on the reasoning behind your resolutions.

A shareholder identification report provides a snapshot of shareholder composition at a certain date, including those under HKSCC. It goes beyond the listing rule requirement on substantial holding disclosure (which does not require disclosure down to ultimate beneficiary owner level) and it includes the most up-to-date information. For example, under US SEC requirements, foreign institutions managing over US$100 million in assets must file their holdings on a quarterly basis: however there is a permitted time lapse of up to 45 days. This means that while you can consult such publicly available information, it may not be up-to-date enough for the purpose of specific shareholder identification. By conducting a thorough shareholder identification exercise, you can find out who your institutional investors and ultimate beneficial owners are, allowing you to plan investor relations more effectively.

When the shareholder identification is completed, issuers can make use of the full shareholder report and conduct proxy solicitation exercises to help communicate the purpose of a resolution. Such services can help you communicate the right messages to institutional investors and work on your investor relationships. They also help to ensure that voting instructions from custodians and brokers are received and processed by intermediaries and not lost in the chain. This is very important in securing sufficient supporting votes for contentious resolutions.

Using proxy solicitation, a FTSE-350 company in the UK recently managed to secure sufficient votes for a special resolution when originally they had received over 20% of votes against the proposal. The key institutional investors who had already registered a 'no' vote were identified and convinced, after representation from the issuer, to change their vote. In the end the special resolution was carried with more than 80% in favour.

Make sure to contact your registrar well in advance of your AGM so that they can assist with these services.

Ying-ci, Computershare Managing Director
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Your chance to ask the expert...

The challenges company secretaries face in their work tend to be much broader in scope than those faced by other professionals. Their remit goes from technical areas of corporate administration to providing high-level corporate governance advice to the board. This means that practitioners need to be competent in a wide range of fields.

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

If you would like to ask our experts a question, simply email CSj Editor Kieran Colvert at: kieran@ninehillsmedia.com.

If you would like information about how your company can join our expert panel then please contact Paul Davis at: paul@ninehillsmedia.com, or telephone: +852 3796 3060.

Please note that the identity and contact details of questioners will be kept confidential.

A special relationship?

Independent non-executive directors and the company secretary

Regulators and senior company secretaries give their views on how the company secretary can support the effectiveness of independent non-executive directors.

Within a unitary board system, corporate governance relies on independent non-executive directors to provide independent oversight and constructive challenge to executive directors. Given the concentrated shareholding structure prevalent in Hong Kong, the independent director role is all the more crucial and regulators here have been gradually fine-tuning the requirements of the listing rules regarding their number and the criteria determining independence.

Since December 2012, for example, the listing rules have required independent non-executive directors to account for one third of the board. Moreover, Hong Kong has elaborate requirements relating to the independence of such directors from the companies they serve. Recent amendments to the listing rules added to these requirements by introducing Code Provision A.4.3 to the Corporate Governance Code requiring independent non-executive directors who have been with a company for more than nine years to get shareholders' approval to continue to serve.

Some commentators have cast doubt on whether these measures will have the desired effect. In the following article (see pages 12–14), for example, CK Low FCIS FCS, Associate Professor in Corporate Law, Chinese University of Hong Kong Business School, argues that the requirements designed to ensure the independence of independent directors from the company's executive and its controlling shareholders may be missing the point. Independence is a 'state of mind', he argues.

There is much more consensus, however, regarding the importance of independent directors' access to accurate, timely and high-quality information. This has been recognised by Hong Kong Exchanges and Clearing (HKEx) – it amended the listing rules in 2012 to introduce a code provision, on a 'comply or explain' basis, stating that management should provide all directors, including independents, with monthly updates on the company's performance and business outlook. That same raft of changes to the listing rules also focused on the role of the company secretary in the information chain. The newly created Section F of Hong Kong's Corporate Governance Code, for example, made explicit the company secretary's role and responsibility to facilitate induction and the professional development of directors.

Bridging the information gap

'The role of independent directors has changed over the past 20 years from just showing up at board meetings to meet the basic requirements of the listing rules to making meaningful contributions to the company in implementing best corporate governance practices,' says Ernest Lee, Partner, Ernst & Young, China. 'Greater commitment in terms of time and effort are expected of independent directors to meet the governance objective these days. In addition to their own expertise and experience, independent directors should also possess a minimum level of accounting knowledge to enable them to raise questions when reading the more complex financial statements,' he adds.

Mohan Datwani FCIS FCS(PE), HKICS Director of Technical and Research, says

the company secretary plays a facilitative role and serves as a bridge between the management and independent directors in all information exchange. 'If you look at the role of the company secretary, he or she is actually part of the management team and serves the board in all communications. That means that the company secretary has a dual role; on the one hand to instil good corporate governance practices and on the other hand to facilitate the communication among all board members, including independent directors,' he says.

One of the key ways in which company secretaries support the board is by managing the induction process for newly appointed directors. This is especially important for independents. Paul Stafford FCIS FCS, Corporation Secretary and Regional Company Secretary Asia-Pacific, The Hongkong and Shanghai Banking Corporation Ltd, points out that independent non-executive directors need to undertake their own due diligence before any board appointment, but, since they will generally not be as close to the company's business as their executive colleagues, they will be looking for a deeper understanding of the company in the induction process to supplement the due diligence they have already undertaken.

Highlights

- the company secretary serves as a bridge between the management and independent directors in all information exchange
- the company secretary needs to adopt an impartial mind and a neutral stance to build trust and a good working relationship with all directors, including the independents
- Section F of Hong Kong's Corporate Governance Code makes explicit the company secretary's role and responsibility to facilitate induction and the professional development of directors

'Independent directors rely heavily on the company secretary to obtain adequate information to help them discharge their duties properly,' says April Chan, Company Secretary, CLP Holdings. 'All directors are expected to make contributions to their best and therefore a tailor-made induction programme for each independent director is necessary. They need to familiarise themselves with the business and its operating environment – including the political landscape. Independent directors come from different backgrounds and have different expertise so the induction programme has to be tailored to meet their areas of focus.'

For all incoming directors, a formal induction programme comprises basic information explaining their responsibilities as a director and providing an overview of the company and its business. An information pack will also be given to the incoming director giving details of the disclosures that directors are obliged to make to the company in order to comply with relevant rules and regulations. In addition to these materials, a good induction programme will usually arrange meetings between the incoming directors and the executive directors and the department heads of the company's main business units to provide them with a detailed and in-depth understanding of the business. 'Depending on the independent director's individual expertise and experience, meetings may be arranged with department heads, such as that for sustainability, to discuss issues of most concern,' says April Chan.

Induction programmes should therefore be very interactive, Mohan Datwani adds. 'If the company has an in-house compliance officer, the company secretary might call in the compliance officer to brief the independent director on the compliance issues. Similarly, meetings or site visits could be arranged for an incoming independent director, so these inductions are not only classroom-based,' he says.

After the induction process, the ongoing support and advice provided by the company secretary to independent directors serving on the board is equally important. This helps bridge the information gap between executive and non-executive directors. April Chan emphasises that it is important for the company secretary to build trust and a good working relationship with all directors, including the independents. 'The company secretary needs to have an impartial mind and a neutral stance in order for the directors to feel that the company secretary is reliable and willing to follow up the issues with management. The trust-building process is a long journey but also very fruitful,' she says.

If a good rapport has been established with the independent directors, it will be easier to introduce new corporate governance initiatives to the board. 'Consulting them on proposed corporate governance practices and getting their early views/consent on the feasibility of such practices is often key to the successful introduction of a new corporate governance practice. You want more allies when the plan is being discussed at the board,' she says.

Reform ideas

As mentioned in the introduction, regulators have adopted a number of different measures designed to boost the effectiveness of independent directors. Currently, the regulatory regime relating to such directors focuses on ensuring that boards have enough of them and that they are genuinely independent from the company's executive and its controlling shareholders, but are these rules effective? And are there other reform ideas Hong Kong should consider?

Introducing SID

One suggestion originating in the UK's 2003 Higgs review (*Review of the Role and Effectiveness of Non-Executive Directors*) is that boards should appoint a senior independent director (SID) from among their independent non-executives. Higgs felt that the SID would give shareholders a point of contact alternative to the chairman or chief executive.

In addition, the SID would be expected to:

- serve as the 'deputy' to the chairman of the board as and when required
- chair meetings with other independent directors (in the absence of the chairman) encouraging open dialogue, particularly regarding the chairman's performance, and
- act on the results of performance evaluation of the chairman.

Respondents to this article expressed doubts as to whether this innovation could be usefully introduced in Hong Kong. 'My concern is that it may not be very practical taking into account the culture of local companies,' Mohan Datwani explains. He adds that any SIDs would need a very well-defined role on the board, and that more research and consultation would be needed before such a practice was added to our regulatory regime whether as a recommendation or requirement.

April Chan points out that the concept of the SID is counter to the principle

> "independent directors rely heavily on the company secretary to obtain adequate information to help them discharge their duties properly"

that all directors should be regarded as equal. Moreover, she points out that each committee under the board, such as the audit and remuneration committees, has a chairperson to lead meetings and therefore this proposed function of the SID would be redundant.

David Graham, Head of Listing at HKEx, also expressed concerns about the practicality of this board model and pointed out that the UK's proposal to introduce SIDs was greeted with scepticism with some corporate leaders seeing the role as unnecessary or divisive. The creation of an additional SID position could potentially increase bureaucracy and distract from the authority of the chairman of the board.

Independent election of independents

Another reform proposal relating to independent directors concerns the manner in which they are recruited to the board. David Graham points out that regulators in the UK have introduced a dual-voting structure in which independent directors of premium listed companies with a controlling shareholder are elected with the approval of both the shareholders as a whole and the independent shareholders.

'The dual-voting structure was only introduced in the UK this year, we should wait and see how the issuers and shareholders are embracing this new structure and the effects it has on corporate governance before we consider the appropriate way forward for Hong Kong,' he says.

David Webb has been lobbying to exclude controlling shareholders from independent director elections in Hong Kong, and, in the following article, Professor CK Low puts forward a 'negative voting' proposal – a process through which the election or re-election of independent directors requires not only the majority support of shareholders, but also requires no more than a certain percentage of 'dissenting or opposing' votes from independent shareholders.

Capping directorships

In December 2010, HKEx sought market views on whether to introduce a cap on the number of independent non-executive director positions an individual may hold and, if a cap is to be imposed, what the maximum number of such positions should be (see *Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules* of December 2010). 'The overwhelming response we received from the market was a strong objection to a cap on the number of directorships that an individual can hold,' says David Graham. 'Given the market's strong resistance, we decided not to pursue this issue further at this time.'

April Chan believes that this question should be left to the discretion of the individuals and the companies concerned. 'Independent director candidates are required to disclose the directorships they hold in other organisations, including NGOs, to the company in the first place, and it would be up to the nomination committee to judge their competence and time available for the company,' she says.

However, a certain number of directorships may even be seen as an asset to the company since the independent director could leverage on this experience in other companies and exposure to other industries, she adds. By the same token, she supports company secretaries taking up independent director roles in other companies so that they could look at corporate governance issues 'from both sides of the table'.

Jimmy Chow, Journalist, and Kieran Colvert, Editor, CSj

> *In March 2014, the HKICS published a guidance note on the company secretary's roles and responsibilities under Section F of the listing rules to facilitate induction and professional development of directors (see 'Guide on Directors' Induction (An Overview)' in the publications section of the HKICS website: www.hkics.org.hk).*
>
> *In January 2013, the Institute of Chartered Secretaries and Administrators (ICSA) published a guidance note on the role of non-executive directors (see 'ICSA Guidance on Liability of Non-Executive Directors: Care, Skill and Diligence' on the ICSA website: www.icsa.org.uk).*

Rethinking independent non-executive directors

CK Low FCIS FCS, Associate Professor in Corporate Law, Chinese University of Hong Kong Business School, argues it is time for a shift of focus away from complex definitions of the independence of independent directors and towards the importance of ensuring appropriate expertise and diversity on the board. He also puts forward a new proposal to empower independent shareholders in the process of electing INEDs.

As regulations place an increasing emphasis on the 'independence' of independent non-executive directors (INEDs), one should ask whether this is but a state of mind in many jurisdictions throughout Asia where the family- and/or state-owned company dominates. After all, no definition of independence, no matter how exhaustive, is completely foolproof.

There have been suggestions that many INEDs, although they comply fully with the listing requirements, are in reality only 'résumé independent'. There may be some truth to this since it is extremely difficult to fathom how an individual would be invited to serve as an INED of a company unless there had been some prior relationship and trust, whether direct or indirect. In short, no candidate would even be nominated, let alone get appointed, as an INED unless he or she has the blessing of the controlling shareholder.

In such circumstances, would the proposed INED not already be subject to some degree of bias in favour of the management and/or the controlling shareholder upon his or her appointment to the board? With this in mind, can one unequivocally say that the INED is truly independent and would be able to represent the interests of all the shareholders of the company?

If the INEDs were truly independent, their positions should not be affected by any changes in the ownership structure of the company, regardless of whether such changes arise through a voluntary sale of shares by the controlling shareholder or through a contested hostile takeover. However, in reality it is not uncommon for the INEDs to step down from the board of directors when control of a company changes hands so as to facilitate their replacement by a new 'team'. Herein lies the irony: if the INEDs were truly independent and can be called upon to effectively discharge their duties in the interest of all the shareholders of the company, then why would it be necessary for the new controlling shareholder to appoint persons of their choice to the office?

Numerous academic studies have affirmed that there is no correlation between the number of INEDs and the financial performance of the company. Having a higher degree of independence on the board does not guarantee better financial

Highlights

- no definition of the independence of independent non-executive directors (INEDs), no matter how exhaustive, is completely foolproof
- the focus of Hong Kong's regulatory regime relating to INEDs should shift from complex definitions of independence to the importance of ensuring appropriate expertise and diversity on the board
- the election or re-election of INEDs should require not only the majority support of all shareholders, but also no more than a certain percentage of 'dissenting or opposing' independent shareholders

> "we should candidly admit that independence is not a panacea and that the time has come for the focus to shift towards expertise and diversity of the board"

Professor CK Low presenting his proposals for rethinking independent directorships in Hong Kong at an HKICS breakfast seminar on 9 October 2014

performance. Similarly, research indicates that INEDs may not necessarily enhance the effectiveness of monitoring executive management although there are some positives with respect to the 'quality' of financial reporting. That said, with respect to the latter, one may legitimately query whether this is due more to the introduction of new and more rigorous accounting standards following the global financial crisis rather than being attributable to the presence of INEDs.

While recognising that the concepts of independence and of the INED bode well for good corporate governance, one must take a realistic view of the issue in its widest perspective and in light of its limitations. In the circumstances, rather than continue or tinker about with a system that is at best difficult to apply, and at worst impossible to effectively monitor, it may be appropriate to think outside the box and consider options that are not presently practised in other jurisdictions. We should candidly admit that independence is not a panacea and that the time has perhaps come for the focus to shift towards expertise and diversity of the board.

On another note, is it possible to empower minority or independent shareholders in the process of electing INEDs without disenfranchising the majority? The Financial Conduct Authority in the UK has taken a step forward with its Policy Statement PS14/8 which provides for enhanced voting power for minority shareholders when electing or re-electing INEDs for a premium listed company where a controlling shareholder is present. However, this may not be sufficient for Asia and due consideration must be given to the pitfalls of regulatory transplanting since what works well in one jurisdiction might not necessarily achieve the same results in another. One must recognise the various legal and cultural differences that prevail. For example, cross-directorships across 'friendly' corporate groups are not uncommon in Asia where the family and/or the state dominate the shareholding landscape.

Perhaps it is high time for regulators in Asia to innovate by thinking about 'negative voting' – a process through which the election or re-election of INEDs requires not only the majority support of shareholders but also draws no more than a certain percentage of 'dissenting or opposing' independent shareholders. The latter can be based upon a sliding scale depending on the numbers of years which the INED has served on the board of the company. After all, if the shareholders of the company are happy with the performance of their INED, what moral right has the regulator got to interject by stating that one loses his or her independence after a set number of years in office? Shouldn't this decision be best left to the contributor of the company's capital who must surely be the better judge as his or her money is at stake?

Low Chee Keong
Associate Professor in Corporate Law, Chinese University of Hong Kong Business School

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Know your Institute: Mainland China

The board secretary role has gone from being virtually unknown in Mainland China 20 years ago to commanding increasing importance and respect today. This fourth article in our 'Know your Institute' series looks at the role that the Hong Kong Institute of Chartered Secretaries has played in the development of the board secretarial profession in Mainland China, and looks at the challenges for both the Institute and the profession in the years ahead.

The board secretary role was first introduced in A-share companies in the PRC as recently as 1996, but today the value of well-qualified board secretaries is well recognised in the Mainland and experienced practitioners can now command high salaries and enjoy a high status within Mainland companies.

With so recent a history, there are understandably still areas of under-development – the PRC does not have a national board secretarial qualification or a national board secretarial professional body, for example – but the first tentative steps towards these goals have been made.

This article will look at the development of the board secretarial profession over the last two decades in Mainland China, focusing on the role that the HKICS has played in that development, and will look at the challenges facing both the Institute and the profession in the years ahead.

Stage one (1996–2002)

Kenneth Jiang FCIS FCS(PE), Chief Representative of the Institute's Beijing Representative Office (BRO), divides the development of the profession on the Mainland into four stages. The story starts with the first introduction of the board secretary post in A-share companies in 1996.

'When I was appointed as the board secretary of First Tractor Company Ltd,' says Jiang, 'the concept of the board secretary post was very vague and barely known by most people. It was the H-share training programme in 1998 for chairmen and board secretaries, jointly organised by the China Securities Regulatory Commission (CSRC), Hong Kong Exchanges and Clearing (HKEx) and the Hong Kong Institute of Chartered Secretaries in Hong Kong, that made me understand the corporate secretarial system in Hong Kong and its core duties and responsibilities particularly in terms of corporate governance.'

With this experience in mind, Jiang is well aware of the value of the Institute's training programmes on the Mainland, both in terms of the practical value for practitioners and in terms of the boost it gives to the Institute's profile. CPD training has in fact been the cornerstone of the Institute's strategy in Mainland China.

The first training programmes – held jointly with key stakeholders on the Mainland – were set up in the 1990s when the Institute's China strategy was the responsibility of its China Affairs Committee (CAC). Dongfang Gumi was recruited as a part-time consultant in

1995 and she helped set up the Institute's Beijing Representative Office in 1996. She became the Institute's first Chief Representative of the BRO in that year.

The Institute was eager to promote better knowledge of the board secretary role and the importance of good corporate governance and that strategy dovetailed with that of regulators on both sides of the border. In the 1990s the HKICS started to enter into agreements with stakeholders in the Mainland to jointly provide such training.

Meanwhile, the Mainland was building up its regulatory and legislative infrastructure to support better corporate governance. The Code of Corporate Governance for Listed Companies in China was issued in 2001 and the CSRC's International Department and Listing Company Supervision Department started to promulgate a clearer definition of the board secretary's duties and responsibilities in listed companies. This was eventually backed up by the introduction of a statutory requirement in PRC company law for the role to be at the senior manager level in 2005.

Stage two (2003–2006)

The key event in this second period of development was the launch of the Institute's Affiliated Persons (AP) programme. After consultation with HKEx and Mainland regulators, the Institute officially launched the programme in 2004 and set up its own CPD series designed for APs in the Mainland (The AP ECPD programme). The Institute now has 135 registered APs from H-share companies but also, increasingly, from red-chip and A-share companies.

Dr Gao Wei FCIS FCS(PE), Vice-President of the HKICS, says that the Institute's AP ECPD programme was one of the main drivers for his decision to seek HKICS membership. He points out that the programme is particularly relevant for board secretaries and related personnel in H-share companies in Mainland China, not only for CPD training but also as a communication platform for all stakeholders.

'The company I work for, Sinotrans Ltd, is an H-share company listed on the Hong Kong Stock Exchange, which means that I need to abide by the law and listing rules of Hong Kong. Being a member of HKICS provides me with training and communication with market participants and board secretaries of Hong Kong and international leading corporations in order to better perform my duty as a board secretary,' he says.

Stage three (2007–2011)

In this period the Institute embarked on its promotion of the professionalisation of the board secretarial role. As mentioned at the outset, the PRC does not have a national board secretarial qualification or certification system. The rules and regulations of the Shanghai and Shenzhen stock exchanges restrict the appointment of board secretaries to those attending the training and examinations organised by these stock exchanges, but the Institute believes that Mainland China would profit from having a national board secretarial qualification to provide a quality assurance system for board secretaries.

Highlights

- providing CPD training relevant to corporate governance and the corporate secretarial profession has been a key focus of the HKICS' work in Mainland China
- the HKICS believes that Mainland China will profit from having a national board secretarial qualification
- the HKICS seeks 'mutual recognition' of appropriate professional qualifications attained in Mainland China or Hong Kong

> "corporate governance lays down the rules of the game and Chinese enterprises need to learn these rules during their internationalisation"

Dr Gao Wei, Vice-President, HKICS

While it is too early to say what form any eventual board secretary qualification system will take, the Institute seeks 'mutual recognition' of appropriate professional qualifications attained in Mainland China or Hong Kong. The Institute believes that the Chartered Secretarial qualification can be one of the qualifications pertinent to the appointment of the board secretary for Mainland China listed issuers in the long term.

In 2007, an examination centre was set up in Beijing and the Institute started to recruit students from H-share companies. The Institute currently has 151 registered mainland students and 13 graduates via its IQS examinations. Dr Gao was one of the first Mainland China-based members to gain HKICS membership via the IQS exams.

'The IQS provides the necessary expertise board secretaries need to acquire to fulfil their obligations,' he says. 'You need to master this knowledge whether you take the exam or not, but I found that the IQS helped me to understand the concepts of corporate governance better and to know how our global peers run their companies. This is an international profession and, through the HKICS, board secretaries in Mainland China can learn about the corporate secretarial profession globally. Although different markets have different features, the basic logic of corporate governance is the same. Corporate governance lays down the rules of the game and Chinese enterprises need to learn these rules during their internationalisation.'

In this period the Institute also revised its Mainland affairs structure. In 2008 it dissolved its China Affairs Committee and incorporated its work into the work of its three principal Committees:

- the Professional Development Committee is responsible for CPD training and research reports
- the Membership Committee is responsible for the admission of APs, and
- the Education Committee is responsible for studentship admission and the IQS examinations in Mainland China.

The Institute also set up its Mainland China Focus Group to implement the initiatives set by Council and to coordinate the Institute's Mainland work. Members of the Group are: Edith Shih FCIS FCS(PE), (Convener); Jack Chow FCIS FCS; Dr Gao Wei FCIS FCS; Maurice Ngai FCIS FCS(PE); Ivan Tam FCIS FCS; and Yao Jun FCIS FCS.

Stage four (2012 to the present)

The key event in this current phase of development of the board secretarial profession was the creation of China's first national self-regulatory organisation for board secretaries in July 2013. Kenneth Jiang believes that the launch of the China Association for Public Companies (CAPCO) Professional Committee of the Board Secretary may represent China's first step towards the professionalisation of the board secretary position in China.

Another key development was the publication of the Institute's research report – *Guidelines on Practices of Inside Information Disclosure of A+H Companies*. 'This was the first time we organised board secretaries of H-share companies to sum up our experiences and write a guideline on compliance with domestic laws and the laws of Hong

> "as the fast-growing Mainland capital market continues to converge with its international counterparts, the need for corporate governance professionals with international perspectives keeps growing"

Kenneth Jiang, Chief Representative, Beijing Representative Office, HKICS

Kong,' says Dr Gao, who played a central role in writing the Guidelines.

He adds that the disclosure of price-sensitive information (PSI) has become a major compliance challenge for H-share and A-share companies in the Mainland. In particular, the implementation of the revised Securities and Futures Ordinance in Hong Kong in January 2013 brought in new and complex requirements regarding the disclosure of PSI. The Guidelines attempt to clarify the appropriate compliance best practices since the requirements regarding PSI disclosure in Hong Kong and China are not identical.

'Although the regulatory purposes of the two laws are almost the same, the specific regulations of the two laws are quite different, which makes it more difficult for H-share companies and the A+H-share companies on the Mainland to deal with compliance work. I hope that the Guidelines can provide help with this compliance work and I also hope that in the future we can do more work in this field to support Chinese enterprises to abide by foreign laws and internationalise successfully,' says Dr Gao.

The future

This article has traced the evolution of the board secretarial profession over the last two decades in China, but what challenges will it face in the future? Kenneth Jiang points out that many key trends in the corporate and regulatory environment in the Mainland bode well for board secretaries. These include:

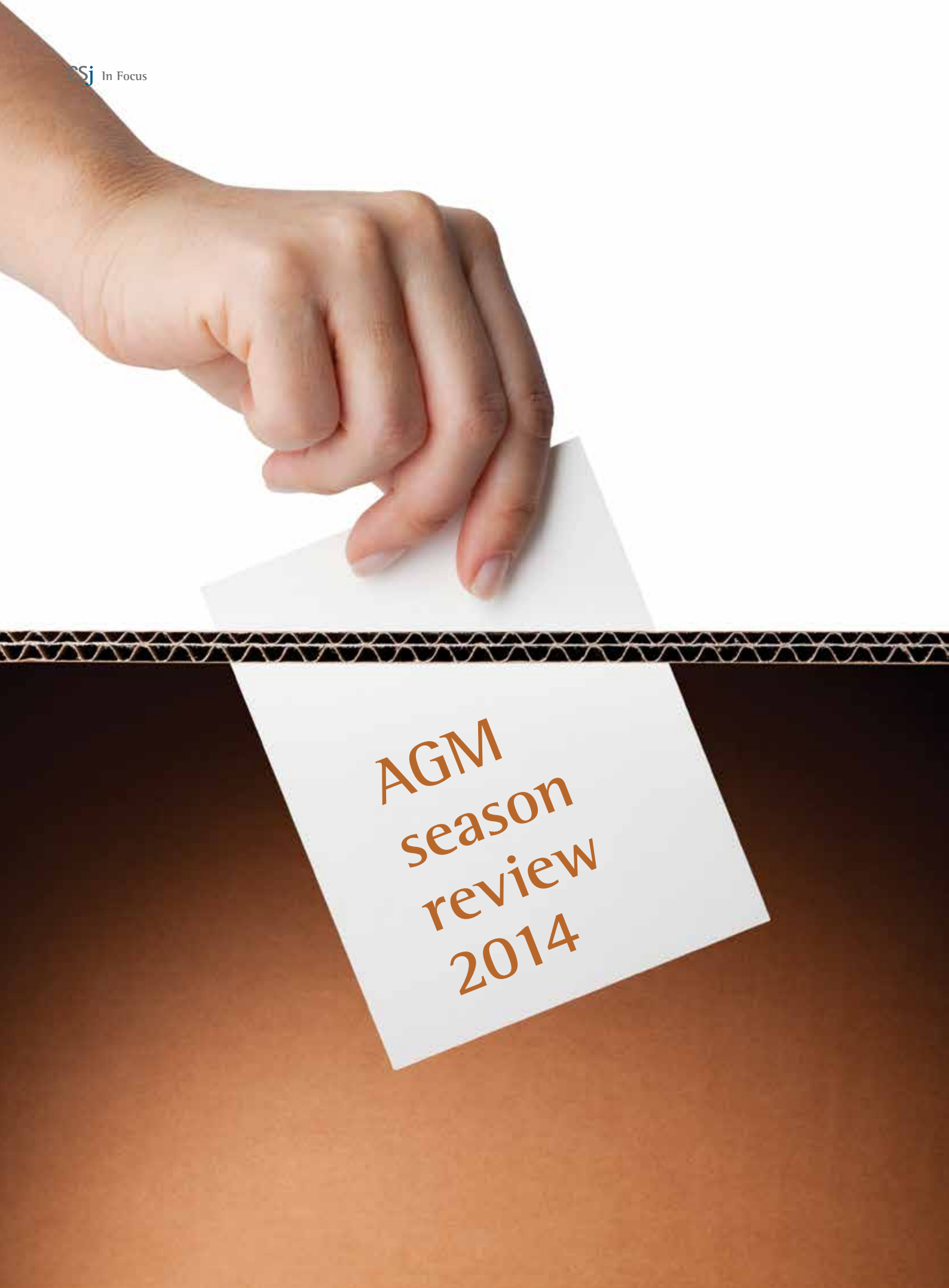
- the impact of deregulatory reform
- the ongoing reform of state-owned enterprises and the development of 'mixed-ownership' enterprises
- the continuing trend for increasing numbers of Mainland companies to seek listings overseas, and
- the professionalisation of the board secretary role.

'As the fast-growing Mainland capital market continues to converge with its international counterparts, the need for corporate governance professionals with international perspectives keeps growing,' says Jiang.

Dr Gao points out, however, that there are challenges ahead. 'Board secretaries enjoy a high status in the PRC as they are by law part of senior management, but they make less of a contribution than expected to corporate governance. I anticipate that, with the development of the capital market in Mainland China and the improvement of the level of internationalisation, the board secretarial profession will have an increasing social influence.'

Both Jiang and Dr Gao believe that the Institute will continue to play an important role in the development of the profession in China. 'The Institute will further strengthen its student recruitment to a wider group, including red-ship companies, to-be-listed companies, A-share companies and multinational companies. It will also further strengthen services to its Mainland students so as to enlarge the member pool and boost its professional influence in Mainland China,' says Jiang.

Look out for the concluding article in this series in next month's journal (December 2014 edition).


AGM
season
review
2014

Lucy Newcombe, Corporate Communications Director at Computershare, takes us through the 2014 AGM season around the globe.

It has been another packed AGM season around the world in 2014, with remuneration remaining the prime focus of attention in many countries; attendance and voting generally continuing to slide in the West; and some changes in legislation meaning altered operating procedures for AGMs in various countries.

Hong Kong and Mainland China

Ahead of this year's AGM season, there was an increase in corporate actions being undertaken in Hong Kong and Mainland China, meaning companies were particularly stretched for resources. Consequently, some large company meetings were held a month later than in previous years.

This didn't affect attendance however, with the number of shareholders pitching up in person at AGMs continuing to rise steadily.

The best attended AGM was once again that of a Chinese bank, with 4,601 people arriving at the meeting venue.

Overall, the average number of attendees at meetings over 100 people in size increased dramatically, with a leap from 456 per meeting in 2013 to 558 in 2014.

As highlighted in previous years, an increase in attendance does not necessarily correlate with voting statistics – and indeed, in 2014, for the fourth year in a row, voting figures in Hong Kong and Mainland China dropped significantly – with an almost 20% decrease in the voting in just the past four years.

This increased attendance without a corresponding increase in voting is naturally continuing to cause concern for companies, both relative to venue size and also cost. Companies in Hong Kong which give souvenirs to shareholders face the biggest issue as, traditionally, one souvenir is handed out for each shareholder represented, rather than each shareholder who physically attends. This means that there is a trend for shareholders to appoint each other as proxies – so they can then collect one gift themselves, and one for each of the people they are representing as proxy. If Mr A and Mr B appoint each other as proxies and both turn up to the meeting, they walk away with four gifts rather than two. The gift culture also continues to encourage the practice of splitting shareholdings into small chunks amongst family members – again to maximise the freebies obtained. Companies end up handing out multiple gifts to one person – who then often exits, laden down, without voting or participating in any other governance aspect of the AGM. This has led to some companies changing their policy and they are now stating that they will give only one souvenir to each attendee who turns up, no matter how many other shareholders that person may be representing. Other companies may also wish to consider this policy as a way of cutting down on cost.

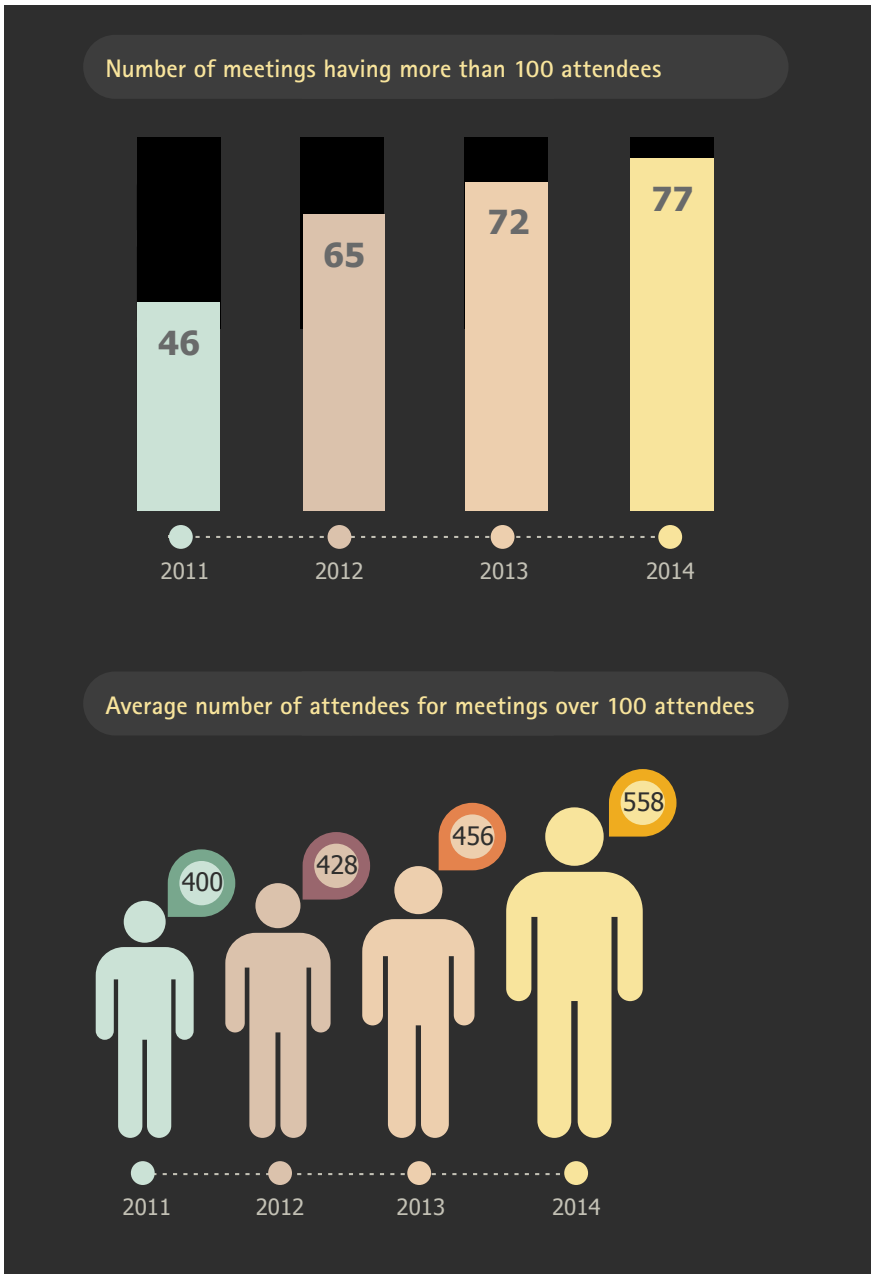
Unlike last year, undesirable shareholder behaviour was not a particular issue at this year's Hong Kong-based AGMs.

In the Mainland, the China Securities Regulatory Commission (CSRC) revised the 'Rules for the General Meetings of Shareholders of Listed Companies' in June. Protecting the rights of the small and individual investors saw increased focus, with companies required to separately tabulate, disclose and report to the regulatory body the outcome of resolutions which will impact small investors. Also in line with the new rules, and again designed to recognise the rights of the small investor, all listed companies with A-shares must now provide both an online voting and physical meeting at the same time and make the two voting channels very clear in their

Highlights

- the number of shareholders attending AGMs in Hong Kong and Mainland China continued its upward trend in 2014 but, for the fourth year in a row, voting figures dropped significantly
- Unlike last year, undesirable shareholder behaviour was not a particular issue at this year's Hong Kong-based AGMs
- online voting is increasing around the world, assisted by new legislative requirements designed to facilitate such voting in many jurisdictions

Hong Kong and Mainland China



All statistics are based on the meetings Computershare manages locally in each country.

AGM notification. This past season saw companies implement this requirement.

Overall, the outcome of voting is obviously of vital importance to listed companies – and this year we again saw a number of resolutions being rejected and others only narrowly scraping through. This is still a relatively new phenomenon for Hong Kong and Mainland China and highlights a continuing need for companies to focus more attention on likely vote outcomes – as we've seen listed entities in the US, UK, Australia and across Europe have had to do in recent years. Being sufficiently clear on who your shareholders are, what their current opinions are and consequently how they are likely to vote, is of increasing importance if you want your resolutions to pass the shareholder vote. Your registrar should be able to recommend a proxy solicitor and provider of underlying shareholder ID reports to assist with this.

Lastly, journalists have started to wake up to the fact that if they own shares or get themselves appointed proxy, they can obtain entrance to a particular meeting they're interested in writing about, rather than waiting outside to ask shareholders who have been through the doors what went on. With this in mind, having your PR person present at the meeting is a good idea – as is reaching out to journalists who regularly write about your company in advance, and just as with your other shareholders, ascertaining whether they are likely to attend and if so, what their topics of interest will be.

India

2013 was a significant year for India with its new Companies Act coming into force – replacing the Act of 1956. The new Act is being notified in phases and most were announced in April of this year, meaning they were in force in time for the AGM season. The biggest change from an AGM perspective is the introduction of compulsory e-voting (via tablet at the event) for companies with more than 1,000 shareholders. Though actually not compulsory until 31 December, Reliance Industries shareholders got a taste of the future when the company took the opportunity to introduce tablets

> “being sufficiently clear on who your shareholders are, what their current opinions are and consequently how they are likely to vote, is of increasing importance if you want your resolutions to pass the shareholder vote”

to register shareholder votes with everything going very smoothly and one attendee commenting: 'Earlier when I used to vote through show of hands it felt like just a formality. But now I actually felt I voted for the first time.'

While its population is significantly smaller than that of China, India experiences a much larger shareholder turnout at AGMs – the largest in the past season was for the government-owned National Hydroelectric Corporation Ltd with over 37,000 attendees. People attending for gifts is also a significant problem – with over 90% of the attendees not making it past the free snacks and gifts and into the meeting itself.

Shareholder activism continues to rise across the subcontinent, with Tata Motors – the largest domestic automobile company – seeing minority shareholders advised by shareholder advisory firm Stakeholders Empowerment Services (SES) successfully fighting a management proposal to let three directors keep excess payments made to them. Two thirds of institutional and retail shareholders voted against the management proposal as a result.

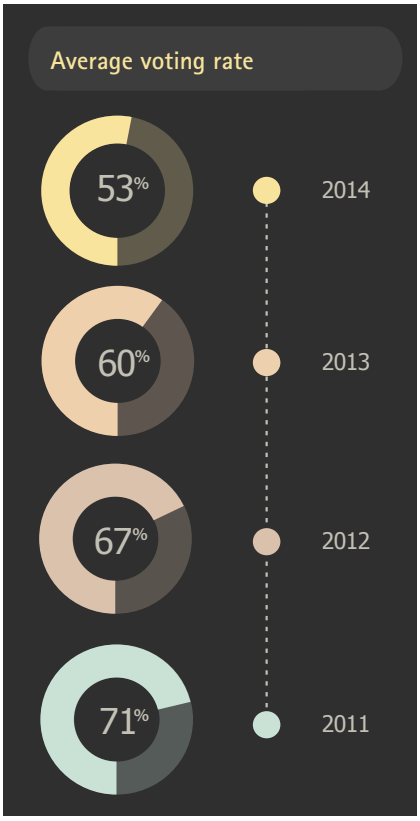
Australia

Across the Indian Ocean, AGM attendance is not in nearly such good shape – with Australia's largest meeting comprising just 580 shareholders and the number of investors voting continuing to decrease – only 5.3% of all shareholders voted in 2013 compared with 5.9% in 2012. In the last five years there has been a 29% drop in the number of shareholders voting at company meetings. Attendance numbers also continued to decline, with less than a quarter of one percent of shareholders turning up on the day. However, the total amount of issued capital voted increased from 42.9% in 2012 to 45.3% for Computershare clients.

Although the traditional proxy form continued to be the primary voting method, voting via the web was at its highest ever level, with almost 30% of investors who voted doing so online. Ten percent of these used a mobile device to cast their vote. It's probable that the increasing pressure from the Financial Services Council (FSC) and the Australian Council of Superannuation Investors (ACSI) on institutional investors to vote on all meetings will continue to drive higher levels of issued capital voting in the future.

The 2013 meeting season was the third season that the Australian two strikes

Hong Kong and Mainland China



legislation was in operation, and the second year of companies facing their second strike (the data for 2014 is not yet available). Requiring the board to stand for re-election if 25% or more of votes are cast against remuneration two years in a row, the rule is designed to give investors more power. In 2013, fewer companies received a first strike (80 in 2013 compared with 99 in 2012) while in a similar result to 2012, almost a quarter of all ASX listed issuers facing a second strike in 2013 actually received a second strike (22 in 2013 compared with 25 in 2012).

North America

Heading to North America, Canada's largest meeting attendance was just 212

UK

The contentious resolution countdown

1. Remuneration report
2. EGM notice
3. Remuneration policy
4. Long-term incentives
5. Issue of shares and pre-emption rights

shareholders in spite of a large number of meetings taking place. Voting is also on the decline and recent Canadian proxy battles have all been relatively small with the majority being settled behind the scenes. This highlights the fact that proactive management teams and even boards of directors across Canada are actively courting their shareholders to understand their views and opinions on an ongoing basis – rather than waiting to find out at their meeting that several resolutions aren't going to make it through the vote.

After a significant blip in 2012, voting at US AGMs is back at historical levels and indeed climbing slightly. In 2013, 2.7 million shareholders registered a vote, compared to just 1.8 million in 2012. With the 2014 season still underway, figures are already on a par with 2013. However, just 20 meetings saw attendance figures climb over 100.

As of 1 January 2009, the SEC's 'Shareholder Choice Regarding Proxy Materials' rule made internet posting of proxy materials and notification of availability – 'notice and access' or 'e-proxy' – mandatory for all issuers and registered investment companies soliciting proxies.

Issuers may include the notification of internet availability of materials as part of their traditional proxy materials mailing, or may elect to send a one-page notice document to holders – the 'notice-only option' – informing them of the online location of the materials. This type of mailing continues to increase in the US, with nearly 350 recorded so far in 2014 versus 50 in 2008 and 320 last year.

Europe

UK

Things have once again been busy in the UK. For the first time, shareholders have had a binding vote on company pay policy, meaning more work for companies in implementing the new rules and engaging with investors to understand which way the vote would go. Dissent across the board has fallen slightly, however the remuneration policy is a new entry in the top five contentious resolutions for UK companies (see graphic above).

Across the UK's top 350 listed companies, 3.96% more shareholders participated at AGMs compared to 2010, indicating a more active approach to investing. Sainsbury's had the largest attendance, with 535 shareholders turning up in total.

Continental Europe

Italy continues to buck the attendance trend seen in Northern Europe, with its largest AGM seeing 6,543 attendees – otherwise, the season was generally unremarkable. Russia's AGM season peaked on 30 June, with 36 AGMs taking place that day. Forty-six percent of companies in Russia saw between 90 and 100% of their issued share capital voted at the AGM. In Denmark, the season was notable for the same shareholder asking the same eight questions at 22 AGMs!

South Africa

2014 heralded the requirement for South African companies to publish detailed voting results, rather than to merely indicate if a resolution passed or failed; and also saw an increase in shareholder activism – including the use of online tools to motivate shareholders to vote against resolutions.

The country's largest AGM was that of Sasol Inzalo Ltd, where 359 members and 175 visitors attended the meeting and 1,273 members voted via proxy. This meeting was advertised on the radio and in newspapers, as well as SMS notifications being sent to shareholders, which resulted in the relatively large attendance size. The company has announced that next year it will be hiring a bigger venue as it plans to continue its promotional campaign to ensure maximum shareholder attendance.

Lucy Newcombe
Corporate Communications Director at Computershare

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Your questions answered

The Securities and Futures Commission answers questions relating to corporate announcements, profit warnings and the SFC's review and investigation process raised by attendees at this year's Annual Corporate and Regulatory Update seminar.

1. Announcements and profit warnings

Q: Are companies obliged to disclose quantitative details in profit warnings?

A: This is entirely dependent on the circumstances and the context for the issue of the profit alert/warning. Such alerts/warnings are driven by the obligation to disclose inside information (information that is likely to have a material effect on the price of the company's securities when the information is made public). If the inside information relates to specific figures then those figures may need to be included. Some profit alerts/warnings include such things as vague references to 'market conditions' which suggest that either an announcement should have been made earlier because the effect of market conditions on trading performance would have been identified during the year, or this is an excuse to explain other factors.

Q: The number of corporate announcements has surged since the inside information regime was implemented, but only 14% of these announcements have actually resulted in material market movement. Does this indicate that the majority of announcements are not actually important, but have been issued to avoid SFC queries?

A: Profit alerts/warnings should only be issued when the company believes that knowledge of the change to the company's profits is information that is likely to have a material effect on the price of the company's securities when made public. It is possible that some companies are issuing profit alerts/warnings in the belief that this will avoid SFC queries. In fact, if the profit alerts/warnings provide insufficient information to allow an investor to assess its importance, or give a false or misleading impression regarding the profits of the company, then such an announcement is more likely to generate interest from the SFC.

It is also worth noting that no investors have made complaints to the SFC that too many announcements are being made to the market leading to them being unable to identify the important announcements against the background chatter.

Q: Does the SFC inform the Stock Exchange when an announcement has been found to be misleading?

A: If a company has made an announcement that appears to be misleading then it would be referred to the Enforcement Division within the SFC. Following more detailed investigation, the SFC may determine that the company had made a false or misleading statement. The appropriate response in such circumstances depends heavily on the particular facts of the case, the seriousness of the apparent breach, the impact of the announcement, etc. There are lines of communication between the SFC and the Exchange which ensure that, where action by the Exchange is merited, it has the information it needs to address the issue appropriately.

Q: If a company's profit has increased drastically solely because of valuation gains (which is in line with the market, and so the directors expect that the gain is known by the market/investors) and no profit alert announcement is made, will it be deemed as failing to make due disclosure should the share price go up?

A: It is not possible to give a definitive answer to this question as it will depend so much on the specific facts. Paragraph 89 of the *Guidelines on Disclosure of Inside Information* makes it clear that general external developments would not normally be expected to lead to a disclosure by a listed company. However, if the information has a particular impact on the company then this might be inside information requiring disclosure.

The question implies that the market would already know that the profits will have increased drastically because of valuation gains. This will depend significantly on the level of previous disclosure regarding the assets held by the company.

If there has been detailed disclosure of the assets held by the company and the increase in value of such assets is widely known, then it would be possible to argue that investors have sufficient information to be able to anticipate the increase in the company's profits. However, this ignores the impact of the other activities of the company and any other issue that might impact on the increase in valuation of the company's assets.

Although that asset class may have increased during the period, has that general level of increase been replicated by the specific assets held by the company? What has the company said previously about the assets held? What proportion of the company's financial health is determined by the value of the assets held? Are the assets fungible and liquid or bespoke and illiquid? These are just some of the questions that would have to be considered before deciding that the increase in valuation is effectively already public knowledge.

Q: Would it be a problem if the purchase consideration of a VSA transaction in an announcement is based on a desktop valuation report; it is stated in the desktop valuation report that the value may be changed upon a detailed inspection and/or verification of the value; but subsequently the formal valuation report included in the relevant circular reflects a value much lower than the one in the desktop report?

A: Announcements regarding proposed transactions will often be made on the basis of information that is to some extent dependent on events. When an announcement is made about the proposed terms of a transaction and the purchase price, for example, is determined on the basis of a calculated value, then the details of, and rationale for, that calculated value should be made clear. If there are any uncertainties inherent in that calculation, or the calculation may change after receipt of further information, there should be full disclosure of those possibilities.

If the previously announced anticipated value of the transaction is changed in the light of new information, there should be full disclosure of the change in expected value and how that affects the purchase price that will be paid. The fact that a valuation has changed as a result of new information being obtained does not mean that the original announcement must by definition be regarded as being false or misleading.

But the existence of other factors may call into question the reasons for the disparity or the nature of the announcements. For example, a situation where a company announced that a valuable asset was going to be obtained for a discounted price and following an increase in the company's share price there was a placing of shares, which was then followed by another announcement which revised the valuation of the asset being purchased substantially downwards. The decision to do a share placement following the share price increase generated by the first announcement based on a much higher asset valuation, might call into question the basis for the first valuation and the motives behind making the announcement.

Q: When we are preparing a profit alert/warning, should we consider/

Highlights

- announcements regarding proposed transactions will often be made on the basis of information that is to some extent dependent on events... there should be full disclosure of any uncertainties in the information given
- each member of the Corporate Regulation team has a portfolio of companies and all announcements made by companies in their portfolio are reviewed, usually on the same day
- the SFC is able to provide whistleblowers with a gateway to provide information on a confidential basis, and to give whistleblowers legal protection for providing information

compare 'profit for the period' or 'profit attributable to the owner of the group'? If 'profit for the period' and 'profit attributable to the owner of the group' move in different directions (for example, the former increases and the latter decreases), how should this be considered?

A: This question seems to relate to the situation where a holding company has an interest in one or more subsidiaries that are not necessarily wholly owned. So, not all of the profit made by the subsidiary would relate to the holding company. On the assumption that a listed company wholly owns a subsidiary, then the test of whether the information about a subsidiary is inside information depends on the materiality of the subsidiary to the listed group. For example, if one subsidiary doubled its profits, but these profits still only amounted to an increase of contribution to group profits from 1% to 2% then it is unlikely that this information would be inside information for the listed holding company.

If the level of holding in the subsidiary changed during the year then this might result in the unusual situation described where the profit for the period and the profit attributable to the owner of the group moved in different directions. So, if a subsidiary's profits were on track to increase from HK$100m to HK$150m, but the holding company had sold 49% of the company, then the level of profit attributable to the owner would have gone down despite the level of profits increasing (at the subsidiary company level). To some extent the answer to the question will then depend on what had previously been announced. If nothing had previously been announced then the disclosure of the sale of 49% could be inside information and the disclosure of profit figures might form part of that announcement. If the disposal had already been announced, then the market's expectation may be that profits attributable to the owner would be HK$51m assuming profit figures were flat. The question to be asked then would be whether the expected increase to HK$76.5m as a result of increased profits would be inside information for the holding company.

Q: Do you agree, that, because of differences in the PRC and Hong Kong accounting standards, it is unwise for a PRC company listed in Hong Kong to make a profit/loss alert until the Hong Kong auditor has examined the accounts audited by the PRC auditor?

A: If a company has been keeping the market updated sufficiently regularly, then it will only be infrequently that the final accounts would be inside information. Our understanding of the differences between PRC and Hong Kong accounting standards is that the differences are relatively small and so will only have a significant impact in rare cases. We would also expect that any PRC company for which such a difference in standards would have a material effect would already be aware that this difference in standards could have such an effect and would have made plans to deal with effects accordingly.

Q: In what circumstances does the SFC require listed issuers to provide agreements, or supporting documents, for their review after listed issuers have published an inside information announcement?

A: The SFC will only require supporting or other documents to be supplied when it has some concerns about the nature of the information, the transaction, the announcement or some other circumstances surrounding the matter which is the subject of the announcement.

2. The review and investigation process

Q: How does the SFC manage to review every inside information announcement every day?

A: Each member of the Corporate Regulation team has a portfolio of companies and all announcements made by companies in their portfolio are reviewed, usually on the same day, and any issues of concern are discussed to agree what issues need to be considered in more depth. Letters seeking further information or clarifications are usually written to the company within 24 hours of any announcement.

Q: What is the interaction between the Corporate Regulation team and the Enforcement Division?

A: The Corporate Regulation team conducts preliminary reviews. They will often be the first point of contact between the SFC and the listed company. Where the information available suggests that there may have been a breach of the provisions of the Securities and Futures Ordinance, the Corporate Regulation team will refer the case to the Enforcement Division for consideration. This internal referral process allows a wider consideration of the merits of the case and provides a degree of independent challenge. Once a case has been accepted for in-depth investigation by the Enforcement Division, there will be an ongoing dialogue between the investigation team in the Enforcement Division and the Corporate Regulation team.

As well as the processes relating to the passage of cases to the Enforcement Division, there are many discussions concerning specific aspects of other cases. The Corporate Regulation team takes advantage of the Enforcement Division's

> "our understanding of the differences between PRC and Hong Kong accounting standards is that the differences are relatively small and so will only have a significant impact in rare cases"

knowledge of how best to conduct enquiries and obtain the right evidence in the most efficient manner. Likewise, the Enforcement Division will seek the Corporate Regulation team's advice on market issues and opinions on corporate disclosure issues.

Q: How long do SFC investigations generally take?

A: The length of an investigation is dependent on a variety of factors, including the location of witnesses, the availability of documents, including whether there are extra-territoriality issues, the degree of cooperation from all relevant parties and the complexity of the matters to be investigated. For these reasons, the SFC, like other law enforcement agencies, does not impose any deadline on completion. At the same time, most investigations are completed within seven months of commencement.

Q: Will the SFC formally notify the company of the closure of an investigation?

A: The SFC conducts a range of engagements with listed companies including preliminary reviews, fact-finding exercises and full investigations using statutory powers. Where statutory information gathering powers have been exercised the company will be informed that the SFC has no further questions if the decision has been taken to close the case. This may take the form of a guidance letter which sets out how the actions of the company officers, the company or the company's procedures could be improved to provide investors with appropriate information going forward.

Q: How long will the review usually take after a listed issuer provides documents to the Corporate Regulation team and will there be feedback to the listed issuer?

A: When the Corporate Regulation team conducts a preliminary review of the circumstances surrounding an announcement or other action taken by a company it is not possible to predict the length of time such a review will take. It will depend heavily on the nature of the circumstances and the surrounding facts. The length of time taken by the company to respond to SFC enquiries is a major component in the duration of such reviews. However, most reviews are completed within three months of the initial contact from the SFC.

Q: Is the SFC going to promote the role of whistleblowing?

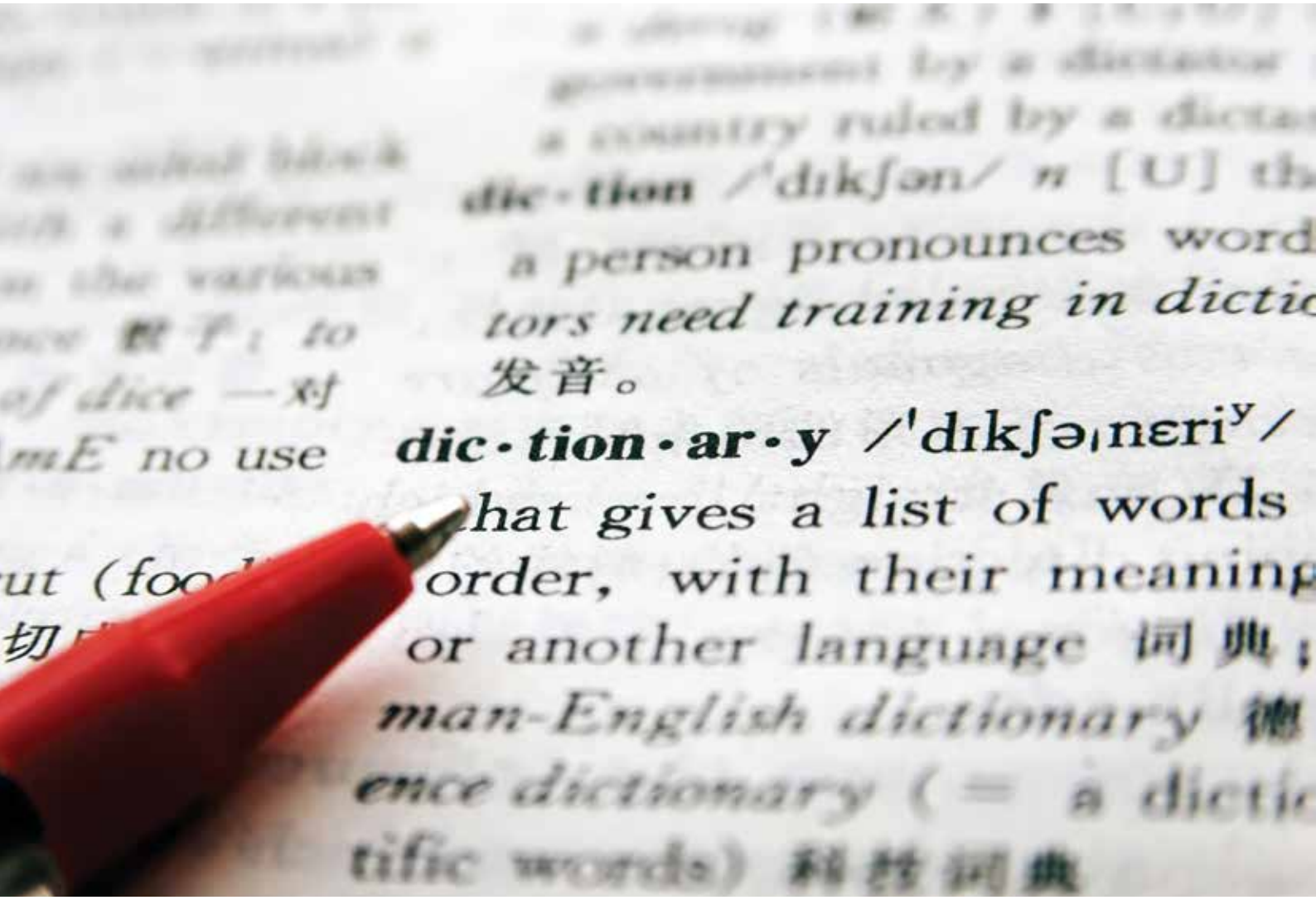
A: While there is no specific whistleblowing regime in the Securities and Futures Ordinance, the SFC is able to provide whistleblowers with a gateway to provide information on a confidential basis, which will also give the whistleblower legal protection for providing the information to us. In those circumstances, whistleblowers should contact the SFC for more details.

Further guidance

The SFC's *Guidelines on Disclosure of Inside Information* are available on the SFC website (www.sfc.hk – Regulatory Functions/Listings and Takeovers/Corporate Disclosure). The SFC also provides a consultation service to the market with a view to assist listed corporations in understanding and complying with statutory disclosure provisions. Consultations generally take the form of verbal discussions. The views expressed by the SFC are preliminary and non-binding in nature.

The contact details are: Tel: (852) 2231 1009; Fax: (852) 2810 5385; Email: cfmailbox@sfc.hk; Address: Corporate Disclosure Team, Corporate Finance Division, Securities and Futures Commission, 35/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong.

Many thanks to Michael Duignan, Senior Director, Corporate Finance, SFC, for his help in preparing this Q&A. Further information can be found in the SFC's new 'Corporate Regulation Newsletter' available from the link on the HKICS homepage (www.hkics.org.hk).



Disclosure of bilingual names: a legal update

Patrick Wong, Partner, and Loretta Chan, Consultant, Mayer Brown JSM, look into the compliance obligations relating to the disclosure of bilingual names.

On 3 March 2014, the Companies Ordinance (Cap 622), together with 12 items of subsidiary legislation, commenced operation. One item of the subsidiary legislation – Companies (Disclosure of Company Name and Liability Status) Regulation (Cap 622B) (the Regulation) – has rather unexpectedly led to some serious concerns from the market. Practitioners and compliance professionals, in particular, have been concerned about early indications from the authorities that, for a Hong Kong company registered by both an English name and a Chinese name, full compliance requires it to state both names in all circumstances where its registered name is required to be displayed or disclosed under the Regulation.

In response to these concerns, the Registrar of Companies has considered the matter further and sought legal advice. On 24 July 2014, the Companies Registry published External Circular No 13/2014 (External Circular), stating that for the purpose of compliance in ensuring that a company is properly identified, the Companies Registry considers that it is sufficient for a company with bilingual names to display or state either its English name or Chinese name. Of course, such a company may still choose to display or state both its English name and Chinese name. The External Circular further states that the Companies Registry will enforce the provisions accordingly.

This has gone a long way in addressing the concerns of compliance professionals, and the responsiveness of the Companies Registry should be applauded. However, while dealing with the issues identified by the market by way of an external circular may be a very good interim measure, longer term we believe that the Regulation should be amended after consultation.

In this article we discuss why we consider, despite issue of the External Circular, an amendment of the Regulation is still necessary. In addition, we study a few other areas of the Regulation in respect of which refinements should preferably be made.

Market concerns

As pointed out by the Companies Registry on several occasions, the requirement for disclosure of a company's registered name in its communication documents and transaction instruments is not a new requirement because there were similar disclosure requirements under Section 93 of the old Companies Ordinance. Yet, people have been quick to note the difference in the wording, that is Section 93 of the old Companies Ordinance only stated 'its name' while the Regulation now uses 'registered name', and the rationale for and implications of such a difference have never been highlighted during the consultation and legislative process. One possible reason for the difference in wording is that, in making reference to the UK Companies Act 2006 and the Companies (Trading Disclosures) Regulations 2008 (which uses 'registered name') during the Companies Ordinance rewrite exercise, the special circumstances of Hong Kong, being a place which adopts the policy of bilingualism in law, have not been fully considered. The issue of bilingual names is relevant in Hong Kong but has no relevance in the UK. The replacement of 'the name' by 'registered name' in the Regulation has therefore resulted in confusion which is most probably an unintended result of the rewrite exercise.

In response to initial enquiries from practitioners on the scope of 'registered name', the Companies Registry indicated that for a company with bilingual names, its full registered name consists of both its English and Chinese names and therefore they both need to be disclosed in accordance with the Regulation together. This prompted a strong reaction from companies with bilingual names

Highlights

- the Companies Registry External Circular No 13/2014 confirms that, for the purposes of ensuring that a company is properly identified, it is sufficient for a company with bilingual names to display or state either its English or its Chinese name
- in bills of exchange, promissory notes, cheques or orders for money or goods, the authors advise companies with bilingual names to state both their English and Chinese names
- while the Companies Registry circular is a useful policy statement from the regulator, the authors recommend that a public consultation should be conducted with a view to amend the Companies Ordinance subsidiary regulation on the disclosure of company names (Cap 622B)

since most of them had only used either the company's English name or Chinese name before the commencement of the Regulation, in the belief that this practice was in full compliance with Section 93 of the old Companies Ordinance. And the lack of any enforcement by the Companies Registry in respect of this practice under the old regime has in a way reinforced this belief. If it is the intention of the legislature to bring about a change in the practice which is likely to affect the daily operation of companies with bilingual names, it is generally felt that this should have been highlighted during the consultation stage of the rewrite exercise.

While disclosing and displaying both names all the time is surely not impossible, this could be extremely burdensome for companies, taking into account that the broad definitions of 'communication documents' and 'transaction instruments' would capture intra-group agreements and those to be circulated by electronic means. It will also give rise to certain unforeseen practical difficulties when it comes to documents to be published and circulated outside of Hong Kong. For example, it may not be practical for a company with bilingual names to use its English name in Mainland China. Similarly, it is also odd if not impractical for a company with bilingual names to use its Chinese name in countries where Chinese is not a language in general use.

Putting aside the above practical inconvenience and difficulties that may arguably be overcome, the approach to enforcing the Regulation in a way that requires both the English and the Chinese names to be stated seems to be inconsistent with the general policy of bilingualism in law in Hong Kong. This policy means that legal obligations imposed by statutes can generally be satisfied by using the English language or the Chinese language. For example, statutory filings under the Companies Ordinance and other statutes can be satisfied by either using English or Chinese. There are of course exceptions in specific circumstances, for example a prospectus in English must be accompanied by a Chinese translation and vice versa, but these are exceptions rather than the rule.

Does the Companies Registry circular suffice?

Amid the confusion in the market over the Regulation, the External Circular is a welcome move which shows the Company Registry's responsiveness and receptiveness to market concerns. The External Circular states that the Company Registry has sought legal advice, presumably from the Department of Justice on the question. Apparently, a more purposive interpretation of 'registered name' has been found acceptable in the context of enforcing the Regulation. Hence, for compliance purposes, it seems to be safe for companies with bilingual names to rely on the External Circular as a policy statement of the regulator. These companies can now be freed from any worry that a failure to disclose both names may lead to criminal prosecution under the Regulation.

The next question is whether it is sufficient or satisfactory from the perspective of civil liabilities.

We consider that there still remain justifiable concerns about the adequacy of the External Circular as a solution in so far as civil consequences for the companies

and their officers are concerned. A claim under common law that a contract is void because the other side has not stated, say, its Chinese name, which in turn is a breach of the Regulation (but which is not considered a breach by the enforcement authority) would probably be so disreputable that the possibility of such a claim being upheld in court should be minimal. We will come back to this later in the article. On the other hand, a claim for statutory remedy under Section 661 is a different matter.

Section 661 of the Companies Ordinance (previously Section 93(5) of the old Companies Ordinance) provides that if an officer of a company or a person acting on the company's behalf signs or authorises to be signed on behalf

of the company, any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name is not mentioned in the manner as required by the Regulation, that officer or person is personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount (unless it is duly paid by the company).

Therefore, if a company with bilingual names fails to honour a cheque for whatever reasons, for example it is on the brink of insolvency, it would be possible for the payee to make a claim against the director who signed the cheque pursuant to Section 661 on the basis that only the English name (or only the Chinese name) of the company has been stated in the cheque. Further, commentators have raised the possibility that if an officer is held liable under Section 661, he may have a cause of action against the bank which supplied the pre-printed cheque forms in negligence. In these situations, the court has to determine whether the Regulation has been breached. Given that one reasonable interpretation of the requirement of the Regulation is that both names need to be stated, the director would be exposed to such a claim if such an interpretation is adopted by the court. After all, while the External Circular can serve as a statement of policy when it comes to enforcing the Regulation by the Companies Registry, it does not have the effect of changing the Regulation. Therefore, in bills of exchange, promissory notes, cheques or orders for money or goods, it is advisable for companies with bilingual names to state both their English and Chinese names.

> "there still remain justifiable concerns about the adequacy of the External Circular as a solution in so far as civil consequences for the companies and their officers are concerned"

Now let's turn to other possible civil consequences of a breach of the Regulation. The primary purpose of the Regulation is to ensure that a company will be properly identified. In the External Circular, the Companies Registry has stated that it considers that disclosing either name is sufficient for the purpose of properly identifying a company. Apart from the imposition of a fine and the civil consequence provided for in Section 661, neither the Regulation nor the Companies Ordinance has provided for any other consequences for contravention. It is therefore unlikely to be the intended consequence that a breach of the Regulation, on its own, has the effect of rendering a transaction void or voidable. In any event, there are always express provisions to that effect in the Companies Ordinance when this is indeed the legislative intent.

Despite the absence of any such provision in the Companies Ordinance, a mistake as

> “it is possible that a company’s failure to disclose both of its names in a contract will still be raised by a contracting party who desperately wants to get away from the transaction”

to identity can be a ground for arguing that a contract is void under common law. It is possible that a company's failure to disclose both of its names in a contract (despite the External Circular) will still be raised by a contracting party who desperately wants to get away from the transaction. Although the risk is minimal, this cannot be removed entirely.

The way forward – public consultation?

As with all new legislation, no matter how thoroughly the market was consulted when the statute was formulated, there are bound to be issues which would only surface after implementation. The difficulties encountered by compliance professionals on commencement of the Regulation are a case in point. In addition to the problems discussed above which are specific to companies with bilingual names, a number of other issues regarding the Regulation have been identified. We cover some of these issues here.

It is a new requirement that a company must state its registered name on any website of the company. It is common practice for a corporate website to include profiles and information about various companies within the group. Does this mean that all companies within the group have to disclose their registered names on the website? Also, would it be acceptable if the registered name is only found after clicking several links? The Regulation is not particularly helpful on these points.

The Regulation has broadened the scope of 'communication document' and 'transaction instrument' by providing that a reference to a communication document or transaction instrument is a reference to it in hard copy form, electronic form or any other form. With electronic circulation becoming increasingly prevalent, the requirement to disclose the company's registered name in these electronic messages and documents (even if it has only an English or Chinese name) could be rather challenging for companies which frequently send out notices and marketing materials to clients by way of SMS messages, emails, etc.

Last but not least, the exact meaning of 'communication document' is a bit unclear as part of its definition – 'official publication of the company' – has not in turn been clearly defined. To what extent would internal communication documents such as staff newsletters, notices to staff, etc, fall within the term 'official publication of the company'? This is a common query raised by many companies. It would be desirable for the Companies Registry to provide some guidance on the criteria, whether by way of refining the Regulation or by issuing a FAQ.

The scale of the rewrite exercise was massive, taking more than seven years to complete. The public were engaged all along and were given plenty of opportunities to express their views on the draft legislation. The Companies Registry did a very good job in briefing the public and practitioners on the changes and initiatives introduced by the Companies Ordinance with a view to getting them fully prepared for the implementation. And, as evidenced by the issue of the External Circular, the Companies Registry has been very quick in addressing the concerns of the market after the implementation, and its efforts are to be commended. However, given the important implications of all these changes for local companies – for example the Regulation does have a lot of impact on the daily operation of Hong Kong companies – it is important to collect feedback from the market on a regular basis after implementation, and conducting a public consultation in due course and suitably amending the Regulation, as well as other parts of the Companies Ordinance (about which the market may also have some concerns), would be highly desirable.

Patrick Wong, Partner, and
Loretta Chan, Consultant,
Mayer Brown JSM

CHARTERED SECRETARIES
特許秘書

Invitation to

The Hong Kong Institute of Chartered Secretaries

Annual Dinner 2015

Date	Wednesday, 14 January 2015
Time	6.30 pm Cocktail Reception
	7.30 pm Dinner
Venue	Grand Ballroom, Conrad Hong Kong
Dress code	Lounge suits
Reservation fees	HK$600 per Student
	HK$850 per Member/Graduate
	HK$950 per Non-Member
	HK$10,200 per table (12 seats)

For registration, please visit the Institute's website: www.hkics.org.hk.
For enquiries, please contact the Membership Section
at 2881 6177 or member@hkics.org.hk.

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Seminars: September to October 2014

12 September

中国公司法调整对外资企业的影响

Chair: *Grace Wong FCIS FCS(PE), Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd*

Speaker: *Joe Zou, Managing Partner, Shenzhen Guangshen CPAs(GRI)*

25 September

Corporate governance update and the business review reporting requirement under the new Companies Ordinance

Chair: *Ernest Lee FCIS FCS, Partner, Assurance, Professional Practice, Ernst & Young*

Speakers: *Eric Zegarra, Senior Manager of Risk Advisory Services, BDO, and Vivian Chow, Manager of Risk Advisory Services, BDO*

26 September

Environmental social and governance factors at listed companies in Hong Kong

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

Speaker: *Gloria So, Risk Manager, Shinewing Risk Services Ltd*

6 October

AML & CFT workshop series (3): AML compliance policies/ programme within a company

Chair: *Samantha Suen FCIS FCS(PE), Chief Executive, HKICS*

Speakers: *Patrick Rozario, Director, Head of Risk Advisory Services, BDO, and Natalia Seng FCIS FCS(PE), Chief Executive Officer – China & Hong Kong, Tricor Group/Tricor Services Ltd*

Annual subscription 2014/2015

Members and Graduates are reminded to settle their annual subscription for the financial year 2014/2015. Members should note:

1. The annual subscription can be settled by the Chartered Secretaries American Express Credit Card, EPS or cheque (made payable to 'HKICS'). For details of card benefits and the application form, please refer to the Institute's website: www.hkics.org.hk.

2. Failure to pay by Saturday 31 January 2015 constitutes a ground for membership removal. Reinstatement by the Institute is discretionary, subject to payment of all outstanding membership and re-election fees and levies, if any, during the removed period.

3. Please complete and return the Personal Data Update Form to the Institute together with your payment by using the return envelope.

Members and Graduates who have not received the Membership Renewal Notice for the financial year 2014/2015 should contact Jonathan Chow at: 2830 6088, or Connie Ng at: 2830 6021, or email: member@hkics.org.hk.

9 October

HKICS breakfast seminar for directors – rethinking independent directorships in Hong Kong

Chair: *Edith Shih FCIS FCS(PE), Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd*

Speakers: *Professor CK Low FCIS FCS, BEc LLB (Monash), LLM (HKU), Associate Professor in Corporate Law, The Chinese University of Hong Kong Business School, and Mohan Datwani FCIS FCS(PE), LLB LLM MBA (Distinction) (Iowa) Solicitor & Accredited Mediator, Director, Technical and Research, HKICS*

13 October

Directors' and officers' series – session one: assessing D&O risk – issues which affect insurance coverage and premiums/cost

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

Speakers: *Philip Chiu, Head of Financial Lines, Greater China/ Directors and Officers, Asia, Zurich Insurance Company Ltd, and Simon McConnell, Partner, Clyde & Co, Hong Kong*

14 October

An overview of the latest taxation environment in Hong Kong and China

Chair: *Dr Davy Lee FCIS FCS(PE), Group Company Secretary, Lippo Group*

Speakers: *Daniel Hui, Partner, China Tax, KPMG, and Curtis Ng, Partner, Corporate Tax, KPMG*

Membership application deadlines

Members and Graduates are encouraged to advance their membership status once they have obtained sufficient relevant working experience. Fellowship and Associateship applications will be approved by the Membership Committee on a regular basis, subject to receipt of all necessary application and supporting documentation and fulfilling all the criteria. If you plan to apply, please note the last submission deadline and approval date in 2014 is Wednesday 12 November 2014 and Thursday 11 December 2014 respectively.

For enquiries, please contact Jonathan Chow at: 2830 6088, or Connie Ng at: 2830 6021, or email: member@hkics.org.hk.

Annual Dinner 2015

The Institute's Annual Dinner 2015 will be held on Wednesday 14 January 2015 at the Conrad Hong Kong. For details and registration, please visit the Events section on the Institute's website: www.hkics.org.hk.

ECPD and MCPD

What you should know about the MCPD requirements

All members who qualified between 1 January 2000 and 31 July 2014 are required to fulfil at least three enhanced continuing professional development (ECPD) points out of the 15 CPD points for members subject to mandatory CPD requirements. Members are reminded to maintain their training records for at least five years for random audit checking of compliance. The respective submission deadlines are set out below.

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

Revised mandatory CPD policy (effective 1 August 2014)

	Current MCPD policy	Revised MCPD policy (for 2014/2015)
Minimum CPD requirements	At least three ECPD points out of 15 CPD points for members working in corporate secretarial (CS) sector/trust and company service providers (TCSPs)	At least three ECPD points out of 15 CPD points for members subject to mandatory CPD requirements in *all* disciplines
Practitioner's Endorsement	Accumulate at least 15 ECPD points in last CPD year; and Fulfilment of at least 30 ECPD points in last two consecutive CPD years	Accumulate at least 15 ECPD points in last CPD year

Abolition of Practitioner's Endorsement fee

The application fee and the annual renewal fee for new applicants for the Practitioner's Endorsement (PE) and existing PE holders respectively have been waived for the financial year 2014/2015. Please refer to the new forms at the ECPD section on the Institute's website: www.hkics.org.hk for the 2014/2015 application/renewal.

New policy on seminar enrolment (effective 1 August 2014)

Effective from 1 August 2014, no cancellation is allowed once a seminar enrolment has been confirmed. Substitution of enrollee is eligible with a HK$100 administration fee together with the 'Transfer of Enrolment Form' received by the Institute at least two clear working days prior to the event date.

Please note that a confirmed seat of a member can only be substituted by a member; if a confirmed seat of a non-member is substituted by a member, the remaining enrolment fee would not be refunded.

Substitution of enrollee is not applicable to an ECPD Programme Package (Individual) holder.

New ECPD programme package for individuals (effective 1 August 2014)

	Practitioner's Endorsement holder	Individual without Practitioner's Endorsement
Discounted price	**HK$2,800**	**HK$3,300**
Package benefits	Participants are entitled to attend 10 HKICS ECPD seminars (1.5 or 2 hours each) held within a CPD year. The final decision is subject to the discretion of the Institute.	
Discount to be enjoyed	Up to 30%	Up to 17.5%
Remarks	This package is offered to Institute members and students only.	

Change in ECPD programme package for corporates (effective 1 August 2014)

The validity period for ECPD programme corporate packages has been changed. The corporate package must be used to pay for HKICS ECPD seminars that are held within a CPD year.

HKICS speaks at HKICPA Career Forum

Two HKICS fellows, Wendy Yung FCIS FCS and Past President Natalia Seng FCIS FCS, were invited to share their career experiences with some 700 participants who attended the annual Career Forum organised by the Hong Kong Institute of Certified Public Accountants (HKICPA) on 6 October 2014.

At the event

HKICS senior fellows speak at governance-themed roundtable

Council Member Susie Cheung FCIS FCS(PE) and Past Presidents April Chan FCIS FCS(PE) and Natalia Seng FCIS FCS, attended a roundtable organised jointly by the Asia-Pacific Structured Finance Association and the Asian Institute of International Financial Law on 25 September 2014. The roundtable discussed the research paper *Corporate Governance in Hong Kong as an International Financial Centre*. The participants made suggestions on corporate governance arrangements and how such arrangements would help solidify Hong Kong's position among international financial centres.

HKICS attends study tour to Mainland

President Edith Shih FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE) attended a study tour to Inner Mongolia from 12 to 15 September 2014 organised by the Coordination Department of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region.

Membership activities

Senior Management/Board Readiness series

Attendees at this second workshop in the 'Senior Management/Board Readiness' series, held on 30 September 2014, had the benefit of three thought leaders in board matters – Anthony Neoh FCIS FCS QC SC JP; Su-Mei Thompson, Chief Executive Officer, The Women's Foundation; and Robert Knight, Partner, Global Chief Executive Officer, Board of Directors Practice, Heidrick & Struggles, Hong Kong.

The speakers emphasised that the expectations on directors have increased in recent years and new recruits to boards need to recognise and understand their duties and responsibilities. Anthony Neoh stressed that it is often attitude, rather than expertise or intelligence, that is the differentiating factor between directors.

Su-Mei Thompson focused on the need for a new approach to the board recruitment process. She highlighted the tendency of many Hong Kong boards to rely largely on their own networks to fill board openings.

Robert Knight highlighted the fact that the time required to do justice to a board position should not be underestimated. The increasing complexity of board work means that directors need to ensure that they will have sufficient time to devote to board matters before accepting a board position.

Feedback from attendees on this workshop was positive. They appreciated the chance to gain a much better understanding of board roles and also the opportunity to mingle with the speakers and their peers.

The Institute would like to thank Ascent Partners and Lippo Group for sponsoring this event and the Women's Foundation for being a supporting organisation.

At the panel discussion

Happy Friday for Chartered Secretaries – networking for success

This workshop, held on 10 October 2014, focused on the importance of networking for career advancement. Allan Lee, FCIS FCS, Director, Allan Lee Professional Solutions Ltd, shared his insights on the ways in which the benefits of networking can be harnessed to improve your career. Members enjoyed the interactive sharing and also the chance to practise their skills in networking with other fellow members.

The Institute would like to thank Ascent Partners and Lippo Group for sponsoring the event.

Edmond Chiu ACIS ACS, representing the Membership Committee, and event chair, presents a souvenir to Mr Lee

ICSA Council meeting in Hong Kong

The Institute hosted the ICSA Council meeting in Hong Kong on 17 and 18 October 2014, with representatives of all nine ICSA divisions and their Chief Executives attending. During the two days, a new mission was formulated and new strategies and plans for the global institute going forward were discussed.

On 20 October 2014, ICSA President Frank Bush FCIS; Vice-President David Venus FCIS; and ICSA Vice-President and HKICS President Edith Shih FCIS FCS(PE); ICSA Council Member and HKICS Past President Natalia Seng FCIS FCS; and HKICS Chief Executive Samantha Suen FCIS FCS(PE); met with the following regulators in Hong Kong:

Ada Chung JP, Registrar of Companies, Companies Registry;

ICSA and HKICS Presidents' visit to Shanghai

On 23 October 2014, a delegation led by ICSA President Frank Bush FCIS and HKICS President and ICSA Vice-President Edith Shih FCIS FCS(PE) visited the Shanghai Stock Exchange (SSE) and Shanghai Listed Companies Association (SLCA). The delegation comprised ICSA Vice-President David Venus FCIS; HKICS Vice-Presidents Dr Gao Wei FCIS FCS(PE) and Ivan Tam FCIS FCS; HKICS Chief Executive Samantha Suen FCIS FCS(PE); HKICS Beijing Representative Office (BRO) Chief Representative Kenneth Jiang FCIS FCS(PE); and BRO Senior Manager Carrie Wang.

At the meeting with SSE's General Manager Huang Hongyuan and his team, the two parties exchanged views on the development of the company secretarial/board secretarial profession in Hong Kong, Mainland China and internationally. Huang Hongyuan indicated that Mainland China may learn from Hong Kong and overseas practice. He also indicated that an efficient board secretarial system (including a common board secretarial professional standard system) should be developed and implemented to ensure good corporate governance in Mainland China. Huang Hongyuan also updated the delegation on the latest development of the ongoing reform of the registration-based stock issuance system in Mainland China, and the progress of the 'Shanghai – Hong Kong Stock Connect'.

SLCA General-Secretary Zhou Zehong shared the same view as Huang Hongyuan on the common board secretarial professional standard system in Mainland China. He indicated that the Mainland board secretarial qualification system should be brought in line with international practice in consideration of the increasing connection and integration of the Mainland capital markets with overseas markets.

Edith Shih expressed to Huang Hongyuan and Zhou Zehong that the HKICS will continue to provide enhanced training to board secretaries of companies listed in Hong Kong and Mainland China, and the HKICS and ICSA are willing to contribute to the development of the Mainland board secretarial profession. Frank Bush FCIS and David Venus FCIS provided an update on the latest developments of the ICSA and the Chartered Secretarial profession, and shared information on the company secretarial qualification system in the UK and Australia.

The delegation also took the opportunity to meet with 33 members and students in Shanghai at a dinner gathering on 22 October 2014. The Institute would like to express its sincere thanks to Huang Hongyuan and Zhou Zehong for receiving the delegation, as well as Gao Guofu, Chairman of the board of China Pacific Insurance Co Ltd, and Fang Lin, board secretary of China Pacific Insurance Co Ltd for hosting the dinner gathering.

Visit to SSE – from left: Ivan Tam, Gao Wei, Huang Hongyuan, Frank Bush, Edith Shih and David Venus

Ivy Poon, Deputy Registry Manager (Company Formation & Enforcement Division), Companies Registry;

Grace Hui, Managing Director, Chief Operating Officer, Listing (Listing and Regulatory Affairs), Hong Kong Exchanges and Clearing Ltd;

Katherine Ng, Senior Vice-President, Head of Policy of Listing Department, Hong Kong Exchanges and Clearing Ltd;

Michael Duignan, Senior Director of Corporate Finance Hong Kong Securities and Futures Commission; and

Benjamin Cheuk, Director of Corporate Finance, Hong Kong Securities and Futures Commission.

The ICSA and HKICS representatives provided an update on their latest developments to the regulators including ICSA's global presence, its new mission and its international standards and internationally recognised professional qualification. The regulators were pleased to have such an opportunity to learn more about the development of the ICSA and HKICS.

Events

Double Anniversary Cocktail Reception

The Institute celebrated its 20th anniversary as an autonomous professional body in Hong Kong and also the 65th anniversary of the presence of the ICSA in Hong Kong at its 20+65 Double Anniversary Cocktail Reception on 20 October 2014.

The Institute would like to extend its appreciation to the Chief Executive of the Hong Kong Special Administrative Region, the Honourable CY Leung, GBM, GBS, JP, who attended the event as Guest of Honour, and the Secretary for Financial Services and the Treasury, the Honourable Professor KC Chan, GBS, JP, as Honorary Guest. The Institute would also like to thank the representatives from the government, regulators, business associates, other professional bodies, as well as Institute Council, Committee members and Institute members for joining this happy occasion.

Convocation 2014

The Institute's annual Convocation was held on 18 October 2014 at Agnès b. Cinema of the Hong Kong Arts Centre with Dr Kam Pok Man FCIS FCS, former Chief Executive Officer of the Financial Reporting Council, as the Guest of Honour. This year, as the ICSA Council meeting was being held in Hong Kong, we had the unique opportunity to have our fellow ICSA Council members and chief executives from all over the world attend this significant event. This was also the first time newly elected members were offered academic gowns for the convocation ceremony.

Both Dr Kam and ICSA President Frank Bush FCIS gave inspiring speeches to the newly elected members. The new Fellows and Associates received their certificates from Dr Kam; HKICS President Edith Shih FCIS FCS(PE); and HKICS Council member and Membership Committee Vice-Chairman Paul Stafford FCIS FCS.

More photos taken at the event are available at the Gallery section on the Institute's website.

IQS December 2014 examination timetable

	Tuesday 2 December 2014	Wednesday 3 December 2014	Thursday 4 December 2014	Friday 5 December 2014
9.30am–12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2pm-5pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

IQS examination (December 2014 diet) – admission slips

Admission slips, together with 'Instructions to Candidates', will be posted to candidates during the second week of November 2014. The slip specifies the date, time and venue of the examination. Candidates are also reminded to read through the Instructions to Candidates before taking the examination. If students have not received the admission slip by Friday 21 November 2014, please contact Ruby Ng at: 2830 6006 or Mandy So at: 2830 6068, or email: student@hkics.org.hk.

Payment reminders

Studentship renewal
Students whose studentship expired in September 2014 are reminded to settle the renewal payment by Saturday 22 November 2014.

Exemption fees
Students whose exemption was approved via confirmation letter on 5 September 2014 are reminded to settle the exemption fee by Saturday 29 November 2014.

The Open University of Hong Kong – students orientation for the Master of Corporate Governance programme

The Institute organised an orientation for students taking the Master of Corporate Governance (MCG) programme at The Open University of Hong Kong on 9 October 2014. The Institute and its studentship requirements were introduced. Simon Lee ACIS ACS, an alumnus of the MCG programme, shared his study experiences with attendees.

At the orientation

Student Ambassadors Programme 2014 – tea reception

A tea reception was held on 27 September 2014 to kick off the Student Ambassadors Programme (SAP) for the new academic year. Mentors met with new mentees at the event. Polly Wong FCIS FCS(PE), Education Committee Chairman, presented souvenirs to the mentors to acknowledge their contribution and certificates to mentees of the previous year. Two student ambassadors, Cheryl Yip from The University of Hong Kong, and Katelyn Ma from Hong Kong Shue Yan University, also shared their experiences at the tea reception.

The Institute would like to thank the following members (in alphabetical order of surname) for their valuable contributions as mentors of the programme.

Angel Chan ACIS ACS
Eric Chan Bing Kuen ACIS ACS
Eric Chan Chun Hung FCIS FCS(PE)
Elly Chan FCIS FCS
Douglas Chanson ACIS ACS
Cavan Cheung ACIS ACS
Nelson Chiu ACIS ACS
Edmond Chiu ACIS ACS
Ho Tak Wing GradICSA
Queenie Ho ACIS ACS
Eddy Ko ACIS ACS
Wellman Kwan FCIS FCS
Wendy Kwok FCIS FCS
Ricky Lai FCIS FCS
Timothy Lam ACIS ACS
Katrina Lam ACIS ACS
Louisa Lau FCIS FCS(PE)
Alan Lee ACIS ACS
Simon Lee ACIS ACS
Anna Leung ACIS ACS
Bruce Li FCIS FCS(PE)
Eddie Liou FCIS FCS
Kitty Liu FCIS FCS
Patrick Sung FCIS FCS
Wilson Toe ACIS ACS
Jerry Tong FCIS FCS
Marius Wong ACIS ACS
Lindsay Wong ACIS ACS
Michael Wong ACIS ACS
Bernard Wu FCIS FCS
Sandy Yan ACIS ACS
Rebecca Yu FCIS FCS(PE)

The Institute would also like to welcome Ruby Lau ACIS ACS, Allan Lee FCIS FCS and Carmen Tong ACIS ACS, who are new mentors for 2014/2015.

Group photo of mentees

Group photo of mentors

At the tea reception

Sharing by Katelyn Ma (left) and Cheryl Yip (right)

Professional seminar – The Hong Kong University of Science and Technology

Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller of Dynamic Holdings Ltd, delivered a talk on 'The company secretarial profession in Hong Kong' on 24 September 2014. She also shared her work experience in the profession with the attending 80 students.

At the seminar

IQS examination (June 2015 diet)

Syllabus update

Please note that updates for the following subjects will be effective from the June 2015 examination onwards:

- Hong Kong Corporate Law
- Corporate Governance
- Corporate Secretaryship

Students should visit the 'studentship' section of the Institute's website (www.hkics.org.hk) for details.

IQS examination arrangement

From the June 2015 examination diet onwards, the IQS examinations will be based on the new Companies Ordinance.

IQS information session

The upcoming IQS information session will include information on the International Qualifying Scheme (IQS) and an Institute member will share his valuable experience and advise attendees on the career prospects for Chartered Secretaries.

Members and students are encouraged to recommend friends or colleagues interested in the Chartered Secretarial profession to attend the IQS information session. For details, please contact Annis Wong at: 2830 6010 or Carmen Wong at: 2830 6019, or email: student@hkics.org.hk

Date	Monday 17 November 2014
Time	7pm–8.30pm
Venue	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central
Speaker	Arthur Lee ACIS ACS Assistant President and Director of Investors Relations CGN Meiya Power Holdings Co Ltd

Competition guidelines

The Competition Commission published its much-anticipated draft guidelines on competition last month. The guidelines, which are required by the Competition Ordinance (Cap 619), outline how the Commission expects to interpret and give effect to the three competition rules in the Ordinance (the first and second conduct rules and the merger rule), as well as the procedures for handling complaints, conducting investigations and considering applications for exclusions and exemptions.

The deadline for submissions to the draft guidelines is 10 November 2014 for the guidelines on complaints, investigations and applications; and 10 December 2014 for the guidelines on the first and second conduct rules and the merger rule. Once submissions have been received and considered, the Commission will refine and produce final draft guidelines for consultation with the Legislative Council and other persons the Commission considers appropriate pursuant to the Ordinance.

Once adopted, the guidelines will provide guidance to businesses about how the Commission will enforce the Ordinance and pave the way for full implementation of the Ordinance – this is expected to be achieved in 2015.

To coincide with the release of the guidelines, the Commission has launched an advocacy and promotion campaign involving a mix of new and conventional media channels (including newspapers, bus, TV, radio, MTR, online and social media platforms) to inform the general public and businesses about the Competition Ordinance. The Commission also plans to publish brochures and self-assessment tools designed to help small businesses comply with the Competition Ordinance, and a number of other publications such as a leniency policy and a statement of its enforcement priorities.

The Draft Guidelines are available on the Competition Commission's website: www.compcomm.hk, and the Communications Authority's website: www.coms-auth.hk. The Competition Commission has concurrent jurisdiction with the Communications Authority in relation to the conduct of certain undertakings operating in the broadcasting and telecommunications sectors.

MOU signed on cross-boundary regulation

The Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) have entered into a Memorandum of Understanding (MoU) on strengthening cross-boundary regulatory and enforcement cooperation under the proposed Shanghai-Hong Kong Stock Connect pilot programme.

Stock Connect is a pilot programme for establishing mutual stock market access between Hong Kong and the Mainland. Under the MoU, the SFC and the CSRC have agreed to:

- provide for the sharing of information and data of risks and alerts about potential or suspected wrongdoing in either the Hong Kong or Shanghai stock markets under Stock Connect
- establish a commitment and a process for joint investigations
- ensure complementary enforcement action can be taken where there is wrongdoing in both jurisdictions, and
- make sure enforcement actions in both jurisdictions operate to protect the investing public of both the Mainland and Hong Kong, including actions that may be necessary to provide financial redress or compensation to affected investors.

The MoU, available on the SFC website: www.sfc.hk, will be activated upon the launch of the Stock Connect pilot programme.

Careers

P&P
Accounting, Tax & Corporate Services

People & Projects Ltd. ("P&P") is a Corporate Services and Accounting Firm operating in the Hong Kong since 2005.
P&P provides Accounting and Corporate services, including company set up, company secretary and management advisory to many International clients operating in Hong Kong, China and South-East Asia, ranging from luxury, fashion brands, multinationals to small and medium enterprises.

Company Secretarial Department Manager – Full Time

Job Description:

- Managing and supervising Company Secretarial Team
- Manage company set up procedures
- Monitor and ensure compliance of the Company Secretarial Department clients with all applicable laws, codes and regulatory requirements in Hong Kong
- Managing statutory deadlines and filings
- Managing and preparing documentation for special transactions such as debt equity swaps, issuance of shares at premium, issuing different class of shares, etc.
- Prepare minutes and written resolutions of the Board meetings, AGM / EGM, circulars to shareholders, annual / interim reports and announcements
- Organize meetings and arrange for notices thereof of the Board of Directors, Board Committees and AGM / EGM and prepare meeting schedules and necessary for these meetings
- Ensure the best practices of corporate governance

Requirements:

- Degree holder in Business Administration, Accountancy or related discipline
- Minimum 6 years' solid experience in same capacity, preferably in an accounting or law firm
- Familiar with com sec software, e.g CSA
- Chartered member of HKICS/ICSA
- Independent, self-motivated, meticulous and flexible
- Team management skills
- Possess strong communication & interpersonal skills and high degree of integrity
- Excellent command of both spoken and written English and Chinese

Salary: negotiable based on the actual skills
Job Location: Sai Wan
Job Type: Full time
Please send your CV to: hrdept@pndp.net
Contact Person : Ms Sarah Wong

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