

# CSj

December 2015

Chartered Secretaries.  
More than meets the eye.  
特許秘書. 潛能. 超越所見.

The journal of The Hong Kong  
Institute of Chartered Secretaries  
香港特許秘書公會會刊



## Competition Ordinance

### A wake-up call

Resolution regime  
Climate change risks  
BEA case note



CHARTERED  
SECRETARIES  
特許秘書

# Worried about your board documents being leaked?

**BoardPad safeguards and controls distribution**

Your problem...



Our solution!



**Contact us today for a demonstration**

+852 3975 2767 [info@boardpad.com](mailto:info@boardpad.com) [boardpad.hk](http://boardpad.hk)

**Official Supplier of Digital Meeting Solutions to the  
Hong Kong Rugby Union and HKICS**

© 2015 ICSA Boardroom Apps Limited.



A software company of the  
Institute of Chartered Secretaries  
and Administrators

BoardPad is a registered trademark of ICSA Boardroom Apps Limited.



Securely delivering digital papers across many devices

You're known by the  
company you keep.

And by the company  
that keeps you.

**We enable you to focus on growing your business**

You're in good hands with Tricor looking after your non-core business support functions.

Tricor Group (Tricor), a member of The Bank of East Asia Group, is a global provider of integrated Business, Corporate and Investor Services. As a business enabler, Tricor provides outsourced expertise that allows you to concentrate on what you do best – Building Business.

**[www.tricorglobal.com](http://www.tricorglobal.com)**

*Member of BEA Group*

Our Services Include:

- Business Advisory
- Entity Formation, Corporate Governance, Corporate Administration & Secretarial
- Accounting & Financial Reporting
- Payroll and Payment Administration
- Treasury & Trust Administration
- Tax Services
- Services for New Issues / Initial Public Offerings & Registry Management
- China Entry & Consulting
- Executive Search & Human Resource Solutions
- Management Consulting
- Fund Administration

### Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

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

#### Council 2014/2015

**Dr Maurice Ngai** FCIS FCS(PE) – President  
**Ivan Tam** FCIS FCS – Vice-President  
**Dr Gao Wei** FCIS FCS(PE) – Vice-President  
**Bernard Wu** FCIS FCS – Treasurer  
**Dr Eva Chan** FCIS FCS(PE)  
**Susie Cheung** FCIS FCS(PE)  
**Jack Chow** FCIS FCS  
**David Fu** FCIS FCS(PE)  
**Paul Moyes** FCIS FCS  
**Douglas Oxley** FCIS FCS  
**Paul Stafford** FCIS FCS  
**Polly Wong** FCIS FCS(PE)  
**Edith Shih** FCIS FCS(PE) – Ex Officio

#### Membership statistics update

As of 31 October 2015, the Institute's membership statistics were as follows:

**Students:** 3,194  
**Graduates:** 504  
**Associates:** 5,047  
**Fellows:** 535

#### The Hong Kong Institute of Chartered Secretaries

(Incorporated in Hong Kong with limited liability by guarantee)  
 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong  
 Tel: (852) 2881 6177 Fax: (852) 2881 5050  
 Email: ask@hkics.org.hk (general) ecpd@hkics.org.hk (professional development)  
 member@hkics.org.hk (member) student@hkics.org.hk (student)  
 Website: www.hkics.org.hk

#### Beijing Representative Office

Rm 15A04, 15A/F, Dacheng Tower, No 127 Xuanwumen West Street  
 Xicheng District, Beijing, 100031, China  
 Tel: (86) 10 6641 9368 Fax: (86) 10 6641 9078 Email: bro@hkics.org.hk

#### Institute of Chartered Secretaries and Administrators

##### Governance Institute of Australia

Level 10, 5 Hunter Street  
 Sydney, NSW 2000  
 Australia  
 Tel: (61) 2 9223 5744  
 Fax: (61) 2 9232 7174

##### Chartered Secretaries Canada

202-300 March Road  
 Ottawa, ON, Canada K2K 2E2  
 Tel: (1) 613 595 1151  
 Fax: (1) 613 595 1155

##### The Malaysian Institute of Chartered Secretaries and Administrators

No. 57 The Boulevard  
 Mid Valley City  
 Lingkaran Syed Putra  
 59200 Kuala Lumpur  
 Malaysia  
 Tel: (60) 3 2282 9276  
 Fax: (60) 3 2282 9281

##### Governance New Zealand

PO Box 444  
 Shortland Street  
 Auckland 1015  
 New Zealand  
 Tel: (64) 9 377 0130  
 Fax: (64) 9 366 3979

#### Committee chairmen

**Audit Committee:**  
**Paul Moyes** FCIS FCS  
**Education Committee:**  
**Polly Wong** FCIS FCS(PE)  
**Human Resources Committee:**  
**Edith Shih** FCIS FCS(PE) (Past President)  
**Membership Committee:**  
**Susie Cheung** FCIS FCS(PE)  
**Professional Development Committee:**  
**Jack Chow** FCIS FCS  
**Nomination Committee:**  
**Edith Shih** FCIS FCS(PE) (Past President)

#### Secretariat

**Samantha Suen** FCIS FCS(PE) Chief Executive  
**Louisa Lau** FCIS FCS(PE) Registrar and  
 Company Secretary  
**Candy Wong** Director, Education and Examinations  
**Mohan Datwani** FCIS FCS(PE) Senior Director & Head  
 of Technical and Research  
**Lydia Kan** ACIS ACS(PE) Director, Professional Development  
**Kenneth Jiang** FCIS FCS(PE), BRO Chief Representative  
**Karen Ho** Senior Manager, Finance and Accounting

## December 2015

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

Views expressed are not necessarily the views of The Hong Kong Institute of Chartered Secretaries or Ninehills Media. Any views or comments are for reference only and do not constitute investment or legal advice. No part of this magazine may be reproduced without the permission of the publisher or The Hong Kong Institute of Chartered Secretaries.

Circulation: 8,200

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

To subscribe call: (852) 3796 3060 or  
 email: enquiries@ninehillsmedia.com

#### Editorial Committee

<b>Kieran Colvert</b>	<b>Low Chee Keong</b>
<b>Mohan Datwani</b>	<b>Philip Miller</b>
<b>Paul Davis</b>	<b>Samantha Suen</b>
<b>Lydia Kan</b>	<b>Xie Bing</b>
<b>Ernest Lee</b>	

#### Credits

<b>Kieran Colvert</b>	<b>Harry Harrison</b>
Editor	Illustrator (cover)
<b>Ester Wensing</b>	<b>Images</b>
Art Director	iStockphoto

#### Contributors to this edition

**Stephen Crosswell, Tom Jenkins**  
 Baker & McKenzie  
**Jimmy Chow**  
 Journalist  
**Jurgita Balaisyte**  
 CSR Asia  
**Mark West, Rudy Chung,**  
**Kevin Yam, Bertha Ng**  
 Kennedys

#### Advertising sales enquiries

Ninehills Media Ltd  
 Tel: (852) 3796 3060  
**Jennifer Luk**  
 Email: jennifer@ninehillsmedia.com

#### Ninehills Media Ltd

12/F, Infinitus Plaza  
 199 Des Voeux Road  
 Sheung Wan  
 Hong Kong  
 Tel: (852) 3796 3060  
 Fax: (852) 3020 7442  
 Internet: www.ninehillsmedia.com  
 Email: enquiries@ninehillsmedia.com  
 © Copyright reserved  
 ISSN 1023-4128

# Contents

## Cover Story

### Getting ready for the Competition Ordinance 06

Hong Kong's competition law goes live this month, Stephen Crosswell, Partner, and Tom Jenkins, Senior Associate, Baker & McKenzie, ask – are you ready?

## In Profile

### Connected transaction rules in plain language 12

Daniel Wan, the co-author of the new HKICS guidance note on Hong Kong's connected transaction rules, discusses the important role company secretaries can play in helping directors and managers understand Hong Kong's complex connected transactions regime.

## In Focus

### Addressing climate change in Hong Kong 18

Jurgita Balaisyte, Project Manager, CSR Asia, discusses the measures outlined in the *Hong Kong Climate Change 2015* report to reduce Hong Kong's carbon intensity in the areas of energy, transport and waste.

### Too big to fail 22

*CSJ* highlights the key elements of the government's proposed 'resolution regime' designed to ensure that regulatory authorities in Hong Kong have the tools necessary to intervene if a major, systemically important financial institution gets into financial difficulties.

## Corporate Governance

### Risk management and corporate governance 26

The winning paper in this year's Corporate Governance Paper Competition argues that risk management is an essential part of a healthy corporate governance framework. In this first part of their article, the authors focus on a comparison of the US and UK approaches to risk management.

## Case Note

### Inspection of documents by shareholders 32

A recent decision by the Court of First Instance confirms the ability of minority shareholders to obtain an order for inspection of documents under Section 740 of the Companies Ordinance (Cap 622) to investigate into potential corporate mismanagement.

## HKICS News

### President's Message 04

### Institute News 36

### Student News 43

### Bulletin Board 47



## Merry Christmas!

The Council would like to thank members and students for their support over the year and wish you all a merry Christmas and a healthy and prosperous 2016!



## The Competition Ordinance – Chapter 619

This month a new chapter in the laws of Hong Kong – Chapter 619, the Competition Ordinance – goes live. Like Chapter 571 (the Securities and Futures Ordinance) and Chapter 622 (the Companies Ordinance) preceding it, this single ordinance will make a significant difference to the regulatory landscape in Hong Kong and to the work of members of our profession. In fact, our journal this month serves as a wake-up call for anyone still under the delusion that this law can be safely ignored.

Firstly, the law has a very broad scope and application. The ordinance has been specifically designed as a general and cross-sector law – this is what distinguishes it from the sector-based legislation which preceded it. It applies to 'undertakings' which are defined in Section 2 of the ordinance as 'any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity'. In other words, if you are 'engaged in economic activity' in Hong Kong, whether you are listed or unlisted and irrespective of which sector of the economy you are engaged in, the Competition Ordinance has implications for you.

Secondly, the penalties for breaches of the law are potentially severe. They include fines of up to 10% of Hong Kong turnover for up to three years of any

infringement; director disqualification for up to five years; and further fines and imprisonment for up to two years for individuals – including employees, directors and company secretaries – convicted of obstructing the Competition Commission's investigations. In addition to these penalties, companies also need to consider the possible consequences regarding damages awarded in private follow-on actions brought under the ordinance.

These factors should certainly be sufficient to give competition compliance the respect it deserves in boardrooms across Hong Kong. If directors need further evidence of the compliance risks involved, a discussion of the enforcement policies and powers of the Competition Commission might be needed. As the authors of this month's cover story point out, the Competition Commission is 'a dedicated and highly experienced regulator... which has the expertise, willingness and mandate to be an active enforcer from day one'.

On a more positive note, the Competition Ordinance has been in the pipeline for many years, and the three-year hiatus since its enactment has provided substantial opportunities for companies to get their compliance programmes up and running. Moreover, the Competition Commission and Communications Authority have provided guidance on their interpretation of the conduct rules of the ordinance. Companies will still need to make a considered judgement based on their own particular circumstances as to whether any particular conduct is caught by these conduct rules. As our Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE) pointed

out in a recent technical briefing on the Competition Ordinance, there will not be a single definition of what constitutes an 'agreement, decision or concerted practice' for the purposes of the First Conduct Rule under the Competition Ordinance, any more than there is a single definition of what constitutes 'inside information' under the Securities and Futures Ordinance. In both cases the regulators' guidelines may give a useful indication of their approach to enforcement, but the hypothetical examples discussed are 'non-exhaustive and purely indicative'. There is also a need for an economic analysis especially with the Second Conduct Rule, employing matters like the hypothetical monopolist to define the market.

In addition to the guidance issued by the regulators, our Institute will continue to provide guidance on the compliance challenges brought in by Chapter 619. The Competition Ordinance has been, and will continue to be, a focus of our ECPD programme and our monthly journal.

Finally, I would like to urge all members to attend the Annual General Meeting of our Institute on Tuesday 15 December 2015 at 6.30pm. You can find our latest annual report, together with the Annual General Meeting notice and related documents in the News section of our website: [www.hkics.org.hk](http://www.hkics.org.hk).

A handwritten signature in black ink, appearing to read 'Maurice Ngai'. The signature is fluid and cursive, written over a white background.

Dr Maurice Ngai FCIS FCS(PE)

# 竞争条例 — 香港法例第619章

**香**港法例新的一章 — 第619章：《竞争条例》，于本月份开始生效。就像早前的第571章（《证券及期货条例》）和第622章（《公司条例》）一样，这法例会为香港的监管环境和特许秘书的工作带来重大改变。本刊今期提醒大家，这法例不容忽视。

首先，新法例的涵盖和应用范围很广。跟以往以特定界别为基础的法例不同，《竞争条例》是广泛适用的跨界别法例，适用于「业务实体」；这在法例第2条界定为「任何从事经济活动的实体（不论其法定地位或获取资金的方式）」。换句话说，只要在香港「从事经济活动」，则不论上市与否，也不论所涉的经济活动范畴，也会受《竞争条例》影响。

其次，若违反《竞争条例》，罚则可能很重，包括多达相当于三个违规年度的营业额的10%的罚款，及取消董事资格达五年；另外，一些个人（包括雇员、董事及公司秘书）若妨碍竞争委员会的调查，一经定罪，可判处罚款及监禁达两年。除以上罚则外，公司还须考虑其他可能后果，包括根据条例提出的后续私人诉讼所判处的损害赔偿。

以上因素，足以促使香港公司的董事会适度关注《竞争条例》的合规工作。若董事希望进一步了解合规风险有多大，可看看竞争委员会的执法政策和权力。正如今期封面故事的作者所指出，竞争委员会是「全力投入，经验丰富的监管机构……具备所需专门知识、强烈的意愿和充份的授权，要从一开始就担当积极的执法者的角色」。

从较正面的角度看，《竞争条例》已酝酿多年，而条例制定后的三年间，已让公司有机会设置合规计划。此外，竞争委员会和通讯事务管理局亦已就其对条例中行为守则的诠释提供指引。公司仍须按其个别情况考虑，以断定某些行为是否受行为守则所规限。正如公会的专业技术及研究高级总监暨主管高朗在近期一场有关《竞争条例》的技术简介会中所指出，条例下第一行为守则中的「协议、决定或协调做法」所指为何，并无单一的定义，就像《证券及期货条例》中何谓「内幕消息」并无单一定义一样。在这两个例子中，监管机构的指引可就其执法方式提供有用说明，但所提出的假设例子「不能详尽无遗地涵盖所有情况，而且纯属指示性质」。此外，公司还需要作经济分析，特别是有关第二行为守则方面，须运用假设的垄断者等概念界定市场。

除了监管机构发出的指引外，公会将继续提供指引，协助各界应付第619章带来的合规挑战。《竞争条例》一直是公会强化持续专业进修计划及本刊的重点，将来仍会如是。

最后，公会的周年会员大会，订于2015年12月15日（星期二）下午6.30举行，请各位会员出席。公会最新的年报，以及周年会员大会的开会通知和相关文件，可于公会网站[www.hkics.org.hk](http://www.hkics.org.hk)「最新消息」一栏浏览。



魏伟峰博士 FCIS FCS(PE)

# Getting ready for the Competition Ordinance





## Hong Kong's competition law goes live this month, Stephen Crosswell, Partner, and Tom Jenkins, Senior Associate, Baker & McKenzie, ask – are you ready?

It has been over three years since the enactment of the Competition Ordinance (Ordinance), passed with the support of a bare majority of the votes in Hong Kong's Legislative Council in June 2012. Now that the Ordinance has come into effect, businesses in Hong Kong need to ensure that their agreements and practices are in compliance with the Ordinance.

In this article we provide a brief overview of the Ordinance, as well as highlighting some practical issues and uncertainties.

### Overview of the Ordinance and guidelines

The key substantive prohibitions are laid down in the Ordinance, which has the force of law, and is binding on both the Competition Commission and the Hong Kong Courts. The key prohibitions are on agreements between businesses ('undertakings' in competition law speak) which prevent, restrict or distort competition (First Conduct Rule) and on the abuse of substantial market power in a manner which prevents, restricts or distorts competition (Second Conduct Rule). The Ordinance includes a prohibition on mergers which are likely to prevent or restrict competition, but this rule currently only applies where at least one party holds a telecommunications carrier licence.

### The importance of compliance

Amidst a general trend towards increased regulation across a large number of industries and sectors, businesses in Hong Kong could be forgiven for suffering from 'regulatory fatigue'. In this context, you

may be left wondering what, if anything, is special about competition law.

Put simply, the risks of non-compliance with the Ordinance mean that ignoring it is not a viable option for those doing business in Hong Kong. Businesses may be fined up to 10% of their Hong Kong turnover for each year of the infringement. They may also be sued by their customers in so-called 'follow-on' actions. These sanctions aside, companies caught up in an investigation face losing many hours of management time and money in legal fees. There is also in Hong Kong a dedicated and highly experienced regulator – the Hong Kong Competition Commission (Commission). With a specialist staff of around 50, drawn from established and well-respected antitrust regulators, for example in Europe and Australia, the Commission clearly has the expertise, willingness and mandate to be an active enforcer from day one. The Commission's day-to-day work is overseen by 14 Commissioners drawn from a broad spectrum of business, consumer, academic

and political backgrounds. It has said publicly and repeatedly that it will enforce the law with no grace period.

### The position of directors and employees

The Commission plainly expects companies' management and directors to take ultimate responsibility to ensure compliance. As Anna Wu, the Commission's Chairperson, commented at a Hong Kong Institute of Directors' function earlier this year: 'Directors – both executives and independent directors – are the drivers of commercial strategy in a business. With that, you bear the responsibility for the actions of your company at all levels' ([www.compcomm.hk/en/pdf/speeches/HKIoD\\_20150325.pdf](http://www.compcomm.hk/en/pdf/speeches/HKIoD_20150325.pdf)).

The Ordinance empowers the Commission to seek a disqualification order against directors of companies that have infringed the Ordinance, if:

- the director's conduct contributed to the infringement, or

### Highlights

- businesses operating in Hong Kong should, as a matter of urgency, review their agreements, policies and practices to ensure compliance with the Competition Ordinance
- the sanctions for breaches are severe, including fines of up to 10% of Hong Kong turnover for up to three years of any infringement, director disqualification for up to five years and follow on damages actions
- the Competition Commission has the experience, personnel and political mandate to be an active and interventionist regulator, and it has said it will actively enforce the law from day one with no grace period

- the director should have been aware of the infringement.

Such orders may be for up to a five-year period. The law makes no distinction between the duties of non-executive and executive directors.

In addition, individual employees (including directors and company secretaries) can be prosecuted for obstructing the Commission's exercise of its investigatory powers, with a maximum sentence of two years' imprisonment. Examples of obstruction include:

- knowingly providing false or misleading documents
- obstructing Commission officials during a search, or
- knowingly or recklessly destroying documents which the Commission has requested the company provide.

The Ordinance prevents indemnities being offered to employees, officers and agents for a contravention – meaning that directors and company secretaries cannot be insured or shielded from the financial pain of a penalty.

### Key risk areas

When most people think about competition law, the image that comes to mind is that of competitors sitting in a smoke-filled room, agreeing to fix prices, allocate customers or markets, limit output or to rig bids as part of a tender process. It is no surprise that all of these types of conduct are strictly prohibited under the Ordinance.

However, the Ordinance is more far reaching than this. Like many competition

regimes (for example the EU), the prohibitions, as drafted in the Ordinance, are broad. They apply to agreements between non-competitors (such as distribution, retail and franchising agreements). The definition of 'agreement and/or concerted practice' is broad, and may even catch one-off, unilateral disclosures of certain types of sensitive information. We examine some important practical risk areas below.

### 1. Information exchange

As the guidance prepared by the Commission for SMEs helpfully points out, 'businesses often share information. This is normal commercial behaviour that rarely has anti-competitive impacts'. However, there remains significant scope for information exchange to be sanctioned under the Ordinance.

- The Commission has said it will treat the exchange of information as to competitors' future pricing intentions as presumptively unlawful. At clear risk here is the casual conversation on the shop floor (or in the bar) as to future pricing intentions. Whilst one of the world's largest economies, Hong Kong is in many ways a 'small town', with competitors frequently socialising and moving around between different firms in the same market. Whereas up until now such connections were simply a normal way in which to do business and gather intelligence, such conversations will become presumptively unlawful as of the 14 December.
- Similarly, exchanging future pricing intentions via a third party also raises equally serious issues under the Ordinance. Examples of

such behaviour include a supplier mediating pricing disputes between distributors or retailers. In a recent UK case, a leading German auto manufacturer was fined for facilitating collusion amongst its dealerships, whereby the dealerships agreed to charge a 'reasonable margin' and not to sell into each other's allocated areas.

- Other types of information sharing will be subject to an effects-based test. Generally, the exchange of current information about prices and volumes is likely to still be problematic, although safeguards can be put in place here. A typical example is aggregation, where a third party collects information about prices and volumes from all competitors in the market, and presents these in aggregated form. But, given the risks involved, such programmes should now be vetted for compliance.

### 2. Trade associations

According to the Directory of Hong Kong Trade and Industrial Organisations, published by the Trade & Industry Department, there are nearly 400 registered associations in Hong Kong. The total number will greatly exceed this. As the Commission has said, 'Trade associations serve an important function in furthering their members' interests. They have a vital role to play in educating their members on the Competition Ordinance and promoting a pro-competitive compliance culture.'

Trade associations frequently involve competitors participating in discussions related to their respective markets, and therefore can raise information exchange/collusion concerns.

“  
 put simply, the risks of non-compliance  
 with the Ordinance mean that ignoring  
 it is not a viable option for those doing  
 business in Hong Kong  
 ”



Associations should actively review their practices and policies, and put in place compliance safeguards (including operating protocols, guidelines, training for their members). For businesses participating in trade associations, it will be increasingly important to ensure that:

- their participation serves a legitimate purpose
- appropriate records/minutes are kept, and
- problematic discussions are avoided.

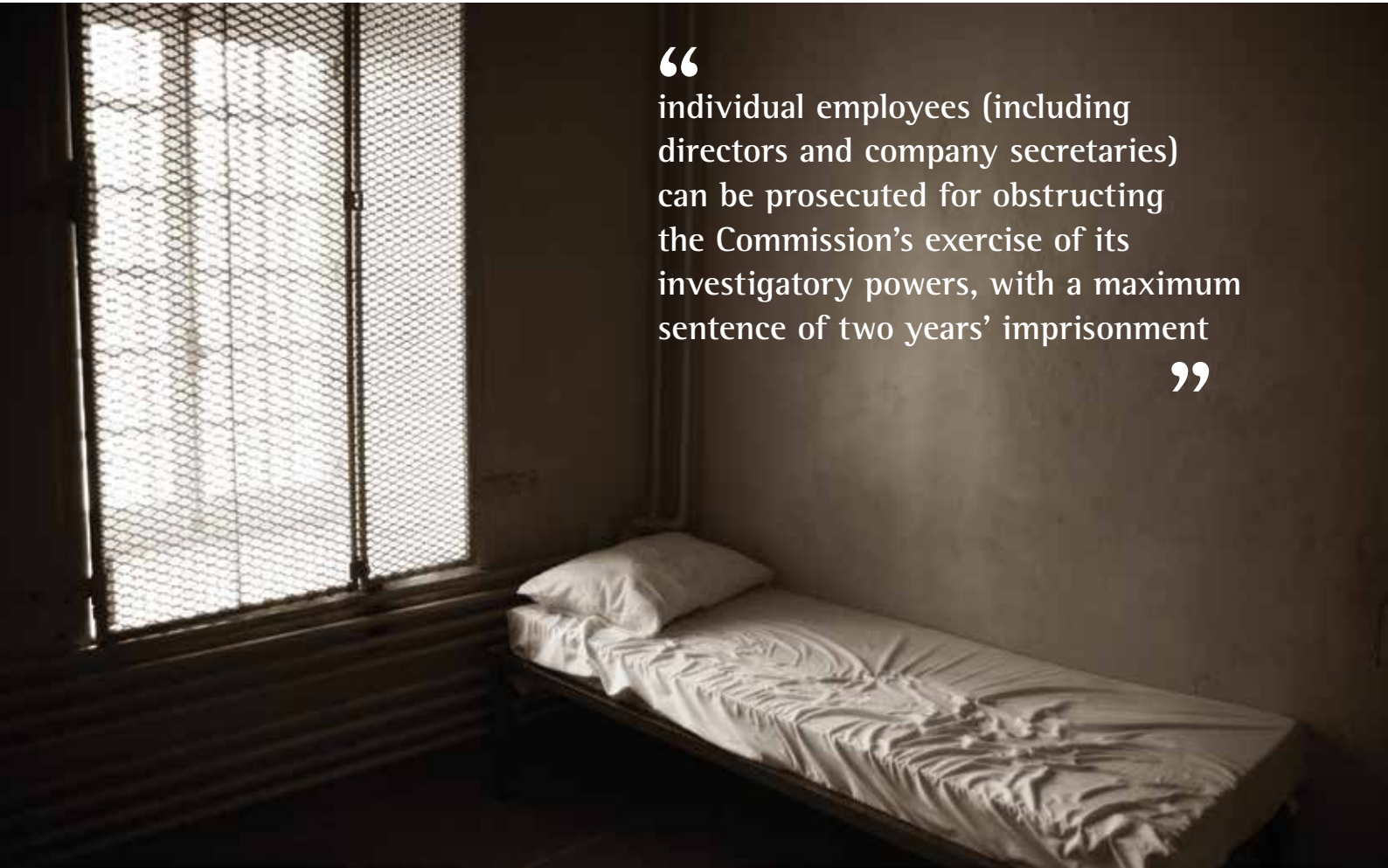
A particular challenge is that, as in other jurisdictions, the Commission is

likely to follow a 'guilt-by-association' approach – if you are in the room when problematic discussions occur, and you do not demonstrably distance yourself from these discussions, you may be found liable for infringing the Ordinance, even if you never participate or act upon what you hear.

### 3. Resale price maintenance (RPM)

RPM occurs when a supplier requires a distributor or retailer to resell its goods or services at a fixed or minimum resale price. RPM prevents distributors or retailers from competing aggressively on price which can ultimately harm consumers who may have to pay higher prices for products and services.

The Commission has stated that it will generally regard RPM as unlawful under the Ordinance (meaning that it will be presumed to be anti-competitive in most circumstances). In practice, this has led many suppliers to review and amend their distribution agreements. Recommended resale prices (RRPs) and maximum resale prices will generally still be lawful. But suppliers need to be careful. Any attempt to pressurise distributors/retailers to observe RRP is likely to be treated as unlawful and may be treated by the Commission in some cases as hard core price-fixing (serious anti-competitive conduct). Evidence of such behaviour (for example in the form of emails, letters, records of telephone



“ individual employees (including directors and company secretaries) can be prosecuted for obstructing the Commission’s exercise of its investigatory powers, with a maximum sentence of two years’ imprisonment ”

calls) has led to many successful investigations and prosecutions in other jurisdictions, and the same will likely be true in Hong Kong.

#### 4. SMEs and market power

The Second Conduct Rule contains additional prohibitions on certain categories of behaviour which might be considered as 'abusive'. The Ordinance makes clear that having market power in itself is not unlawful.

Examples of potential abuses include:

- engaging in predatory/below cost pricing

- tying or bundling separate products, or
- refusing to supply an essential input where this hinders or excludes competition in a downstream market.

Assessment under the Second Conduct Rule will likely turn on complicated economic facts and require a detailed assessment.

But there is far from perfect clarity about when a business will be deemed to have substantial market power. Other jurisdictions have provided guidance based on market shares (in the EU, dominance

is only presumed above 50% market share; in Singapore it is only presumed over 60%; China uses a more complicated threshold, based on the number of players in the market). However, the Commission expressly declined to provide such guidance in Hong Kong, citing the need to take a case-by-case assessment. Its recent statements that it will not treat SMEs as having market power, whilst helpful, leave plenty of scope for uncertainty as to how it will define an SME and how it will determine market power in other cases.

**Stephen Crosswell, Partner; and  
Tom Jenkins, Senior Associate**  
*Baker & McKenzie*

# Listco PRO<sup>TM</sup>

LISTCO PROFESSIONAL DEVELOPMENT PROGRAMME

# 2016

## Membership Scheme **ANNUAL PASS**

BECOME OUR MEMBER  
TO ENJOY **EXCLUSIVE  
SPECIAL OFFER** AND  
**FIRST HAND** COURSE  
INFORMATION.

CONTACT US FOR DETAILS:

 **3628 5722**



SCAN TO DOWNLOAD  
THE REGISTRATION FORM

\* TO ENJOY **EARLY BIRD DISCOUNT**, APPLY BEFORE **23 DEC 2015**  
\* **FURTHER DISCOUNT!** ON **MULTIPLE APPLICATIONS**

## UPCOMING EVENTS in FIRST QUARTER **2016**

▶ **Fraud Risk Management**  
– How to comply with the new CG Code requirements

Speaker(s) : **Professional(s) from PwC Hong Kong**

Date : January 2016

▶ **Corporate Governance Code**  
– A powerful tool for Investors Relation professionals

Speaker(s) : **Mr. Alvan Kwok, Managing Director, Listco Professional Services Limited**

Date : March 2015

▶ **HKFRS 9 (2014) - Classification and Measurement of Financial Assets and Financial Liabilities**

Speaker(s) : **Mr. Joel Chan, Quality Assurance Partner, ZHONGHUI ANDA CPA Limited**

Date : May 2015

## We Promote **PROFESSIONAL** LISTCO Practices

Specialized CPD training programme for Listed Companies

ListcoPRO is a services provider of professional services to listed companies in Hong Kong. We are a leader in the area of professional Listco CPD training with specialized focus in listed companies' practices, particularly in Listing Rules Compliance, Financial Reporting Standards, Taxation and Company Secretarial practices, Investor Relations, Legal and Transaction Support. Our cooperating partners are mostly international accounting firms, leading legal firms and professional bodies.



# Connected transaction rules in plain language

Daniel Wan, the co-author of the new HKICS guidance note on Hong Kong's connected transaction rules, discusses the important role company secretaries can play in helping directors and managers understand Hong Kong's complex connected transactions regime.

## *Can you give us an overview of how connected transactions and connected persons are defined under the Hong Kong listing rules?*

'Chapter 14A of the Main Board Rules (or Chapter 20 of the GEM Rules) defines what constitutes a connected transaction and who qualifies as connected persons. The rules seek to ensure that a listed issuer discloses connected transactions to the public and takes into account the interests of the listed issuer and its shareholders as a whole when the listed issuer's group enters into a connected transaction.

Connected transactions take place when a person who is able to control or influence a listed issuer (that is owners and senior management of the listed issuer and their respective associates or nominees), enters into a transaction with or involving the listed issuer's group. The rules safeguard against such persons taking advantage of their position.

Accordingly, defining who qualifies as connected persons under Chapter 14A is the first key to determining whether connected transactions take place (see 'Defining a connected person' below).

Generally, connected transactions include transactions between a listed issuer's group and its connected persons. On the other hand, independent third parties' transactions with the listed issuer's group that may confer benefits to connected persons may also be regarded as connected transactions. Connected transactions include both capital and revenue nature transactions. They may be one-off transactions or continuing transactions.

Continuing connected transactions are connected transactions involving provision of goods or services or financial assistance, which are carried out on a continuing or recurring basis and are expected to extend over a period of time. They are usually

transactions in the listed issuer's group's ordinary and usual course of business.'

## *What are the requirements for connected transactions?*

'As general requirements, a connected transaction must be in the form of a written agreement, disclosed in an announcement to the public, circulars to the shareholders and annual report, and conditional on shareholders' approval. Any shareholder who has a material interest in the transaction cannot vote on the resolution approving the transaction. Continuing connected transactions also require annual reviews by independent non-executive directors and auditors of the listed issuer.

There are certain exemptions to the general requirements, including *de minimis* transactions; financial assistance; issue of new securities by the listed issuer or its subsidiary; dealings in securities on a stock exchange; repurchases of securities by the listed issuer or its subsidiary; directors' service contracts and insurance; buying

## Highlights

- the revised Chapter 14A has been written in plain language with the help of various diagrams and examples
- the Exchange is not against connected transactions as long as the issuer meets the relevant requirements, such as shareholders' approval, annual review and all disclosure requirements
- company secretaries can play an important role helping directors and managers understand Hong Kong's complex connected transactions regime

or selling of consumer goods or services; sharing of administrative services; transactions with associates of passive investors; and transactions with connected persons at the subsidiary level.

The exemptions are broadly divided into two categories: fully exempt from shareholders' approval, annual review (by INEDs and auditors for continuing connected transactions) and all disclosure requirements; and exempt from the shareholders' approval requirement only.

#### *What are the consequences of failing to meet the requirements for connected transactions?*

'First of all, it must be clarified that the Exchange is not against connected transactions as long as the issuer meets the relevant requirements. As with some other listing rules, the Exchange adopts a name-and-shame approach to violations of Chapter 14A. Typically, in the case where the Exchange finds that a listed issuer fails to comply with the connected transaction rules, the Exchange would censure or criticise the listed issuer and the relevant directors who are held responsible. The Exchange would also direct the listed issuer to retain an independent professional adviser to conduct a thorough review of, and make recommendations to improve, the listed issuer's internal controls and an independent compliance adviser for consultation regarding compliance with the listing rules. The relevant directors would also be required to undergo training on listing rules compliance, director's duties, notifiable and connected transactions, provided by course providers approved by the Exchange's Listing Department, which includes The HKICS.

While a listed issuer who has conducted connected transactions without complying with the listing rules is not subject to criminal prosecution, the connected transaction itself might be considered as inside information, in the sense that failure to disclose a connected transaction may be regarded as failure to disclose inside information, which is now a civil infraction attracting a fine of up to HK\$ 8 million under the Securities and Futures Ordinance (SFO). Hence it is important for listed issuers to maintain a rigorous internal control mechanism to ensure directors, senior management and general staff comply with the listing rules.

#### *Hong Kong's connected transaction rules were last updated in July 2014 – what changes were made?*

'A number of changes were made to improve the clarity and practicality of the connected transaction rules after a consultation was concluded in March 2014. One major breakthrough is that

“

**I hope that company secretaries can share knowledge with directors and management during induction and ongoing training in order to raise their awareness of connected transaction compliance matters**

”

the Exchange has rewritten the previous Chapter 14A in plainer language, including making modifications to various definitions, rearranging rule numbers, etc. That's really good news for market participants as listed companies, company secretaries and other legal professionals find it easier to comprehend and comply with the rewritten rules.

Another remarkable improvement is that Chapter 14A can now be read independently of other chapters. Prior to the amendments, various defined terms, such as "listed issuer" and "associate", made reference to other chapters.

Frequently used terms are better defined in the new Chapter 14A. For example, in the old version of Chapter 14A, the "listed issuer" actually referred to the same term used in Chapter 14, which means the listed issuer and its subsidiaries. Now it has been redefined more explicitly as "the listed issuer's group" in the new Chapter 14A. Likewise, "connected persons" previously referred to "directors, chief executives, substantial shareholders and their respective associates", which definition was contained in Chapter 1, but now they are all defined in the new Chapter 14A for easier reference.

With regard to what constitutes a "transaction" and a "connected transaction", various fine-tuning and simplifying amendments were made. For example, the scope of the "transaction" definition includes the granting of an indemnity, or the giving or receiving of financial assistance. Under the new rules, the term "financial assistance" has been defined to include granting credit, lending money, or providing an indemnity against obligations under a





loan, or guaranteeing or providing security for a loan. Note that "an indemnity against obligations under a loan" is added under the new listing rule 14A.24(4).

Under the old rules, there were 11 types of connected transactions:

1. any transaction between a listed issuer's group and a connected person
2. acquisition or disposal of interest in a company where a substantial shareholder of that company is or becomes a controller or an associate of a controller of the listed issuer or its subsidiaries
3. acquisition or disposal of interest in a company, where a controller or an associate of a controller of the listed issuer or its subsidiaries is, or will become, a shareholder of that company
4. subscription on favourable terms
5. subscription of different classes of shares
6. financial assistance to or from commonly held entity
7. financial assistance – indemnity, guarantee, etc
8. financial assistance – security over the assets of the listed group

9. options
10. joint ventures, and
11. continuing connected transactions.

There was some confusion under the old rules, in particular type (7), (8), (9) and (10) which are supposed to be covered by type (1) because "transaction" as defined shall have included granting or receiving financial assistance or options to or from connected persons, and setting up joint ventures with connected persons. Under the new rules, types (1), (6) and (11) are retained, type (2) is retained with some simplification, and all other types (types (3), (4), (5), (7), (8), (9) and (10)) have been repealed for simplification and the avoidance of doubt.

On the other hand, key changes made to the exemption rules include: increasing the monetary limit for *de minimis* transaction exemption to HK\$3 million from HK\$1 million; removing the 1% cap for the exemption on provision of consumer goods or services; and introducing new exemptions for indemnity or insurance against directors' liabilities incurred in the course of performing their duties.

The new Chapter 14A has also relaxed the rules with regard to transactions with persons connected at the subsidiary level. Under the old rules, transactions between a listed issuer's group and persons connected at the subsidiary level are all connected transactions, thereby subject to shareholders' approval, annual review and all disclosure requirements unless exemption applies.

Under the new rules, persons connected with an "insignificant subsidiary" (which means a subsidiary whose total assets, profits and revenue tests are less than 10% for each of the latest three financial years or 5% for the latest financial year) is no longer considered as a connected person, thereby transactions between a listed issuer's group and persons connected with an insignificant subsidiary are no longer connected transactions.

The new rules also relaxed the requirements for transactions with persons connected with an "ordinary subsidiary" (which means a subsidiary which does not qualify as an insignificant subsidiary). Under the new rules, transactions between a listed issuer's group and persons connected with an ordinary

## Defining a connected person

Recognising who qualifies as connected persons is a key part of complying with Hong Kong's connected transactions rules. The definition of a connected person includes: a director, chief executive or substantial shareholder (that is, someone holding 10% or more of the voting power at any general meeting of the company) of the issuer or any of its subsidiaries, a person who was a director of the issuer or any of its subsidiaries in the past 12 months, a supervisor of a PRC issuer or any of its subsidiaries, an associate of any of the above persons, a connected subsidiary and a deemed connected person.

Note that an associate is regarded as a connected person. While directors, chief executives and supervisors as connected persons must be individuals, substantial shareholders can either be individuals or corporate shareholders. For individuals, as a rule of thumb, the rules make it clear that their immediate family members, other family members and certain extended relatives are considered to be associates or deemed connected persons.

Note that companies controlled by immediate family members, other family members and certain extended relatives are also regarded as associates. The trustee of a trust where the individual or his immediate family members is a beneficiary is also regarded as associate. For immediate family members, companies in which they, individually or collectively, have 30% or more of the voting power at general meetings or control the composition of a majority of the board of directors, as well as subsidiaries of these companies, are regarded as associates.

For other family members and extended relatives, the companies in which they have more than 50% of voting power at general meetings or control the composition of a majority of the board of directors, as well as subsidiaries of these companies, are regarded as associates or deemed connected persons.

For corporate shareholders, their subsidiaries, holding companies and subsidiaries of the holding companies are all regarded as associates. The trustee of a trust where the corporate shareholder is a beneficiary is also regarded as

associate. Further down the ladder, companies in which the above companies and/or trustees, individually or collectively, have 30% or more of the voting power at general meetings or control the composition of a majority of the board of directors, as well as subsidiaries of these companies, are also regarded as associates.

A subsidiary of a listed issuer is not by default a connected person. Hence transactions between a listed issuer and its subsidiary and transactions between a subsidiary and another subsidiary within a listed group are not connected transactions. However, where any connected person(s) at the issuer level can exercise or control the exercise of 10% or more of the voting power at a subsidiary's general meeting, such subsidiary, together with any of its further subsidiaries, would become connected subsidiaries. Transactions between any member of the listed group with a connected subsidiary constitutes a connected transaction.

Any person who has entered, or proposes to enter, into (a) a transaction with the listed issuer's group; and (b) an agreement, arrangement, understanding or undertaking (whether formal or informal and whether express or implied) with a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries, would be regarded as deemed connected person.

Many changes were made to the definitions of connected persons and their associates in response to the feedback to the Exchange's consultation paper in March 2014. Some were made more specific, and some relaxed. For example, under the new rules, the supervisor of the subsidiaries of a PRC issuer are now included as connected persons, while they were not covered previously.

A person connected with an insignificant subsidiary, whose total assets, profits and revenue tests are less than 10% for each of the latest three financial years or 5% for the latest financial year, is no longer a connected person. With the exclusion, transactions between a listed issuer's group and persons connected with insignificant subsidiaries would fall outside the connected transaction regime.



subsidiary no longer require circular, independent financial advice and shareholders' requirements and all that is needed is a mere announcement, provided that the listed issuer's board of directors have approved the transactions; and the independent non-executive directors have confirmed that the terms of the transaction are fair and reasonable, the transaction is on normal commercial terms or better, and in the interests of the listed issuer and its shareholders as a whole.

Another notable breakthrough under the new rules is that various diagrams and examples have been inserted for easier understanding.'

*What is the purpose of the new HKICS guidance note on Hong Kong's connected transaction rules? How is it different from, or how does it complement, the Exchange's guidance on connected transactions?*

'The guidance note published by HKICS is intended to illustrate the connected transaction requirements in even plainer language and guide readers in a more practical way. One major difference of the HKICS guidance note is that we have brought all the individual diagrams into one place in order to give the full picture, showing all the relationship connections among different individuals and entities on one single A3 page.

This is especially handy for directors or senior managers who may be less familiar with the listing rules, enabling them to gain a quick, and better understanding of the relational complexity in connected transactions. In other words, the HKICS guidance note takes a practical approach and is meant to facilitate compliance by demonstrating all the relationship connections among different connected individuals and entities in one place.'

“  
the HKICS guidance note takes a practical approach and is meant to facilitate compliance by demonstrating all the relationship connections among different connected individuals and entities in one place  
”

*Given the complexity of connected transactions, what more can company secretaries do to help companies comply with Chapter 14A?*

'Although the new Chapter 14A and the HKICS guidance note are very much self-explanatory, I recommend them to sit the CPD courses or seminars organised by HKICS on connected transactions. Through the new Chapter 14A, the HKICS guidance note and seminars, I hope that company secretaries can share knowledge with directors and management during induction and ongoing training in order to raise their awareness of connected transaction compliance matters.'

*What's your expertise? Who are your clients?*

'I focus on Hong Kong corporate finance and in particular Hong Kong IPOs, pre-IPO investments and restructurings, post-IPO regulatory and compliance matters, and secondary equity fundraisings. My clients include investment banks, investment funds, private and listed companies. Four IPOs I advised on have successfully been listed on the Hong Kong stock exchange in the last few months.'

**Jimmy Chow**

*Journalist*

*Daniel Wan is a qualified solicitor in Hong Kong. He co-authored the HKICS 'Guidance Note on Connected Transactions' with Mohan Datwani, HKICS Senior Director and Head of Technical & Research.*

*This guidance will be available in the Publications section of the Institute's website (www.hkics.org.hk) from mid-January 2016.*



# Addressing climate change in Hong Kong

On 6 November this year, in preparation for the 2015 Paris climate change conference, the Environment Bureau released the *Hong Kong Climate Change Report 2015*. Jurgita Balaisyte, Project Manager, CSR Asia, discusses the measures outlined in the report to reduce Hong Kong's carbon intensity in the areas of energy, transport and waste.

The intention of the *Hong Kong Climate Change Report 2015*, released last month by the Environment Bureau, is to provide directions and promote opportunities for how companies, organisations and individuals can contribute to reducing carbon emissions and address climate change impacts. It supports Hong Kong's ambitious target to reduce its carbon intensity by 50–60% from the 2005 level by 2020.

The report acknowledges that climate change is a multiplier of risks and offers communities a chance to embark on a low-carbon path, which brings many societal benefits such as saving money, creating new jobs, smarter utilisation of limited resources, and healthier biodiversity and ecosystems. The report refers to a number of earlier public studies and consultations, including: *Public Consultation on the Future Development of the Electricity Market* (March 2015); *Energy Saving Plan for Hong Kong's Built Environment 2015–2025*; *Blueprint for Sustainable Use of Resources 2013–2022*, and *Food Waste and Yard Waste Plan for Hong Kong 2014–2022*. It outlines that the major opportunity for carbon emissions reduction lies with energy-saving measures in the areas of: revising the fuel mix for local electricity generation, implementing energy-saving measures for buildings, greening transportation and turning waste into resources. Each of the key areas are briefly summarised below.

### The key areas

#### Energy

The *Public Consultation on the Future Development of the Electricity Market* (March 2015) concluded that less greenhouse gas (GHG) emissions-intense electricity generation can be achieved through reduced coal usage in the fuel

mix by using more natural gas, nuclear electricity and renewable energy. The report also suggests that about 90% of Hong Kong's electricity consumption is related to buildings and highlights how the Hong Kong community can drive energy saving through various means. New buildings can be better designed, while existing buildings re-commissioned, audited, better managed and retrofitted.

A number of programmes, regulatory measures and certifications to support these efforts are offered such as the Building Energy Efficiency Ordinance (BEEO), Energy Efficiency Labelling of Products Ordinance (EELPO), and Building Environmental Assessment Method (BEAM). The government is leading the way by incorporating these tools across its 8,000-plus buildings, and also encouraging real estate developers to implement them in their new developments.

A more detailed description of energy-saving measures can be found in the *Energy Saving Plan for Hong Kong's Built Environment 2015–2025*. While these efforts are promising, the report also acknowledges that there is a gap on the private sector side where there are more than 42,000 buildings. It offers rather

limited views on the solutions for the older buildings and financing mechanisms for the buildings owned by the private sector, where owners may have few incentives to adopt any of the measures listed above.

#### Transport

Transport is another area that can permit significant carbon emissions reductions and accounts for 17% of total GHG emissions in Hong Kong. The key measures include making public transport the primary choice for mobility. The strategy is to continue expanding rail services and improving operations energy efficiency and vehicle fuel efficiency in order to achieve significant gains. In addition, more climate change-neutral modes of transport, such as electric vehicles (EVs), will be promoted. The number of EVs has been rising progressively and now accounts for about 3% of private cars. The government is also testing options for low-carbon and zero emissions by exploring opportunities for franchised bus technologies. However, at the moment the wider EV use is restricted to various limitations and challenges such as charging stations and opportunities to scale. At a recent event, a handful of leading Hong Kong companies suggested that perhaps industry-wide collaborations

## Highlights

- Hong Kong seeks to reduce its carbon intensity by 50–60% from the 2005 level by 2020
- the government promotes revising the fuel mix for local electricity generation, implementing energy-saving measures for buildings, greening transportation and turning waste into resources
- more comprehensive management of climate change risks will profoundly depend on individuals and small businesses being more active participants



“  
the report also suggests that about  
90% of Hong Kong’s electricity  
consumption is related to buildings  
”

can be a way forward for making the business case for scaling EVs opportunities.

#### Waste

Waste is an enormous problem for Hong Kong with major landfills approaching capacity limitations. The report indicates that at the moment waste treatment accounts only for about 5% of Hong Kong's carbon emissions. A new approach to waste management is to recover and use landfill gas, recover energy from sludge treatment, develop waste-to-energy solutions and treatment for organic and yard waste and municipal solid waste.

The primary objective is to reduce waste at source by achieving 40% municipal sewage waste disposal rate (per day) by 2020. A more detailed strategy is outlined in *Blueprint for Sustainable Use of Resources 2013-2022*, and *Food*

*Waste and Yard Waste Plan for Hong Kong 2014-2022*. This is an ambitious target and presents a number of challenges at the implementation level, such as how to ensure waste separation at source and further on recycling to close the loop.

#### Behavioural change

While the report provides a comprehensive summary of opportunities, especially for the public and to some extent for the private sector and outlines the potential risks of climate change, it offers somewhat limited solutions for individual behaviour change. Some of the solutions require a radical shift in perspective for even the most advanced businesses. For example, at the moment 30% of electricity consumption is generated by air conditioning. Therefore, if change is to happen, there is a need for critical business action. For those businesses that are already embracing

climate change risks, the benefits are evident and organisations like the Hong Kong Airport Authority have been on the path to reduce their impact on climate change through greener buildings, adoption of EVs and energy reductions. However, more comprehensive management of climate change risks will profoundly depend on individuals and small businesses being more active participants.

#### Jurgita Balaisyte

*Project Manager, CSR Asia*

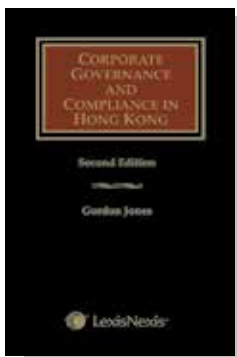
*Copyright: CSR Asia, 2015*

*The ‘Hong Kong Climate Change Report 2015’ is available on the websites of the Environment Bureau ([www.enb.gov.hk](http://www.enb.gov.hk)) and the Environmental Protection Department ([www.epd.gov.hk](http://www.epd.gov.hk)).*



## Corporate Governance and Compliance in Hong Kong - Second Edition by Gordon Jones

The definitive text on corporate governance for Hong Kong's legal and business professionals



Author: Gordon Jones  
ISBN: 9789888300754  
Price: HK\$2,200  
Format: Hardcover book

### About the book

While there is no universally agreed definition of 'corporate governance' this book provides an excellent foundation for the reader to explore and form their views on the important aspects of corporate governance and compliance.

***Corporate Governance and Compliance in Hong Kong - Second Edition*** is the definitive work for legal advisors, compliance officers, judges, regulators, government officials, company directors, business people, managers, stakeholders, academics and all other professionals who wish to know and understand the intricacies of Hong Kong's law relating to corporate governance.

Visit [www.lexisnexis.com.hk/CGCHK2F\\_CSJ](http://www.lexisnexis.com.hk/CGCHK2F_CSJ) to purchase via the LexisNexis eStore, or call Customer Services on +852 2179 7888 today.



eBook is also available, please contact your account manager for details



# Too big to fail

CSj highlights the key elements of the government's proposed 'resolution regime' designed to ensure that regulatory authorities in Hong Kong have the tools necessary to intervene if a major, systemically important financial institution gets into financial difficulties.





As was demonstrated by the collapse of Lehman Brothers in 2008, the consequences of a major, systemically important financial institution going into bankruptcy can be catastrophic on a global scale, but what can or should regulators in Hong Kong do to manage such a scenario? During the global financial crisis that followed the collapse of Lehman, we were given an object lesson in what not to do – governments around the world used vast sums of public money to rescue financial institutions.

'The rescue of these financial institutions resulted in taxpayers being called upon to subsidise their shareholders and creditors; something which is undesirable, including because it weakens market discipline making future failures and crises more likely,' the Financial Services and the Treasury Bureau (FSTB) has pointed out ([www.fstb.gov.hk/fsb/ppr/consult/resolution\\_faq\\_e.pdf](http://www.fstb.gov.hk/fsb/ppr/consult/resolution_faq_e.pdf)).

One good thing to come from this debacle, however, has been a renewed political will to establish the regulatory infrastructure needed to avoid financial instability while protecting taxpayers should a systemically important financial institution fail in the future. This led to the Financial Stability Board (FSB) publishing its *Key Attributes of Effective Resolution Regimes for Financial Institutions* in 2011.

Currently, as Dr Martin Sprenger, Head of Policy Research and Development at the HKMA, pointed out at the Institute's ACRU seminar earlier this year, financial regulators in Hong Kong have very few of the powers identified by the FSB as being a necessary part of an effective resolution regime. As an FSB member jurisdiction, Hong Kong is expected to take the steps necessary to meet the standards set out

in the *Key Attributes*, and the government has been working to make the necessary legislative changes to establish an effective resolution regime for financial institutions in Hong Kong before the end-2015 deadline set by the FSB.

The key elements of that resolution regime, which has been under consultation since 2014, are now fairly clear. In October this year, the FSTB, in conjunction with the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA) (together – the resolution authorities), published their conclusions to their second consultation on this issue. In this article, CSj highlights some of the key elements of the proposed regime.

#### What is the purpose of the proposed resolution regime?

Insolvency is a critically important market discipline, but, in the case of a large-scale, systemically important financial institution, this discipline is effectively unavailable. The major banks operating in Hong Kong, for example, provide critical financial services for large numbers of people, businesses and other financial institutions. The sudden termination of those services under an ordinary

liquidation procedure would be likely to cause general financial instability. Moreover, it could set in motion a 'domino effect', as the liquidity and capital positions of other financial institutions come under pressure.

The proposed resolution regime is therefore designed to provide the resolution authorities with additional supervisory intervention powers, as an alternative to ordinary liquidation procedures, should any systemically important financial institution become non-viable. The resolution would have three main objectives, namely:

1. to secure continuity of critical financial services, and payment, clearing and settlement functions, as well as the stability and effective functioning of the financial system
2. afford an appropriate degree of protection to depositors, investors with client assets and insurance policyholders, and
3. subject to pursuing these first two objectives, to contain the costs of resolution and, in so doing, protect public funds.

### Highlights

- the proposed resolution regime creates an alternative to ordinary liquidation procedures should a systemically important financial institution become non-viable
- insolvency is a critically important market discipline, but, in the case of a large-scale, systemically important financial institution, this discipline is effectively unavailable
- the proposed regime includes the possibility of taking the failing institution into temporary public ownership, but this is included as a last resort

With regard to the second objective above, the proposed regime includes a series of safeguards relevant to all creditors. The resolution authorities would be obliged to impose losses in a manner that broadly respects the creditor hierarchy that would apply in liquidation. Moreover, they would be obliged to seek to provide outcomes for depositors, investors and insurance policyholders that are at least equal to those that would have been afforded to them if the financial institution had entered ordinary liquidation proceedings.

With regard to the third objective, the proposed resolution regime does include the possibility of taking the failing institution into temporary public ownership, but this is included as a last resort where the threat to financial stability is severe and where it is assessed that the other resolution options cannot be used to safely resolve matters.

#### Which institutions will it apply to?

The proposed regime will apply to a wide range of financial institutions including those authorised by the HKMA, the SFC and the IA, licensed corporations, insurers and companies that operate systemically important stock markets or future markets. Moreover, the Financial Secretary will have the power to bring further entities, including unregulated entities, within the scope of regime.

The proposed regime also gives the resolution authorities the ability to cooperate internationally. Some 29 out of the 30 global systemically important banks, and eight out of the nine global systemically important insurers are present in Hong Kong. If one of these institutions went down, Hong Kong would need to work with other

jurisdictions to deal with the fallout. The *Key Attributes* issued by the FSB seeks to foster coordination and cooperation of resolution efforts where a cross-border institution becomes non-viable. This might involve a group-wide resolution carried out by the home jurisdiction and supported by key host jurisdictions.

#### How would a resolution work in practice?

If a systemically important financial institution gets into difficulties and all potential recovery options have been exhausted, the regime gives the resolution authorities the power to intervene ahead of the triggers normally set for insolvency. Where the failing institution is regulated by one of the three resolution authorities included in the proposed scheme, that authority

would be responsible for intervening. Where the institution operates across multiple sectors, a lead resolution authority will be designated to co-ordinate the resolution.

The resolution authorities will be able to make use of five options:

1. transfer to a commercial purchaser
2. transfer to a bridge institution
3. transfer to an asset management vehicle
4. bail-in (an officially-mandated creditor-financed recapitalisation), and
5. temporary public ownership.





“ during the global financial crisis that followed the collapse of Lehman, we were given an object lesson in what not to do – governments around the world used vast sums of public money to rescue financial institutions ”

The 'bridge institution' referred to in option two, would most likely be a company limited by shares under the Companies Ordinance, with the Hong Kong government as the initial shareholder and staff of the resolution authority as directors. The bridge institution could then be transferred to a third-party commercial purchaser or, if appropriate, to bailed-in creditors at a later date.

The exact mechanism for a statutory bail-in have not yet been finalised. 'Respondents made a number of constructive comments on various issues (including valuation) with respect to the bail-in mechanism', the consultation conclusions state, adding that the authorities will take note of these in developing processes and procedures for the practical execution of bail-in. The authorities expect to issue guidance

or a code of practice setting out their approach to carrying out a bail-in once the legislation establishing the resolution regime comes into effect.

#### What powers would the resolution authorities have?

Under the proposed regime, the resolution authorities will be given powers to ensure an orderly resolution, including powers to gather information from financial institutions, issue directives to institutions, and remove directors and senior managers. The authorities would also have powers to claw back remuneration from individuals whose acts or omissions have materially contributed to the institution becoming non viable.

#### What are the next steps?

As mentioned above, Hong Kong is

expected to take the steps necessary to meet the standards set out in the FSB's *Key Attributes* by the end of this year. While this deadline is no longer achievable, the government is hoping at least to introduce its Bill establishing a resolution regime into LegCo by the end of the year. Meanwhile, the resolution authorities are working on preparing codes of practice and guidance for stakeholders on the implementation of the proposed resolution regime.

*More information is available on the websites of the Financial Services and the Treasury Bureau ([www.fstb.gov.hk](http://www.fstb.gov.hk)), the Hong Kong Monetary Authority ([www.hkma.gov.hk](http://www.hkma.gov.hk)), the Securities and Futures Commission ([www.sfc.hk](http://www.sfc.hk)) and the Insurance Authority ([www.oci.gov.hk](http://www.oci.gov.hk)).*

# Risk management and corporate governance

The winning paper in the Institute's latest Corporate Governance Paper Competition argues that risk management is an essential part of a healthy corporate governance framework. In this first part of their article, the authors focus on a comparison of the US and UK approaches to risk management.

Before the 2008 financial crisis, risk management was perceived as a voluntary function and it was often assumed that only large-scale companies would perform it due to the high cost involved. However, reality tells us that every company needs risk management. Moreover, in Hong Kong the issue of risk management has been given added importance since the recent amendments to the Corporate Governance Code (the Code) relating to risk management and internal control. In the consultation paper proposing the amendments to the Code, Hong Kong Exchanges and Clearing Ltd made it clear that the board should oversee the design, implementation and monitoring of the risk management and internal control systems.

The objectives of both corporate governance and risk management are to protect shareholders' long-term interests. Effective corporate governance should be able to help the company present a better performance and mitigate negative impacts from crises. Risk management, as an element of corporate governance, can build a better defence against potential risks. Risk management therefore enhances the accountability of the board and plays an important role in developing a healthy corporate governance framework.

## What is corporate governance?

The OECD *Principles of Corporate Governance* ([www.oecd.org/corporate/principles-corporate-governance.htm](http://www.oecd.org/corporate/principles-corporate-governance.htm)) define corporate governance as a system by which organisations are directed and controlled. Usually the board is responsible for establishing some rules and structures for the company and regularly reviews and evaluates the existing rules and policies. Nowadays, the requirement for good corporate governance is highly emphasised, especially when considering stakeholders' interests.

In *Corporate Governance: Origin and Evolution*, Vdo and Alexander highlight the differences between the stakeholder and shareholder approaches to corporate governance. 'Continental European and Asian countries focus on the need to satisfy social expectations. Therefore they are concerned not only with shareholders' interests, but also the employees, government and other stakeholders. But some countries, like Anglo-Saxon countries, focus on returning a profit to shareholders over the long term.'

## What is risk management?

Risk management is the establishment of institutional policies, procedures or systems designed to analyse, assess,

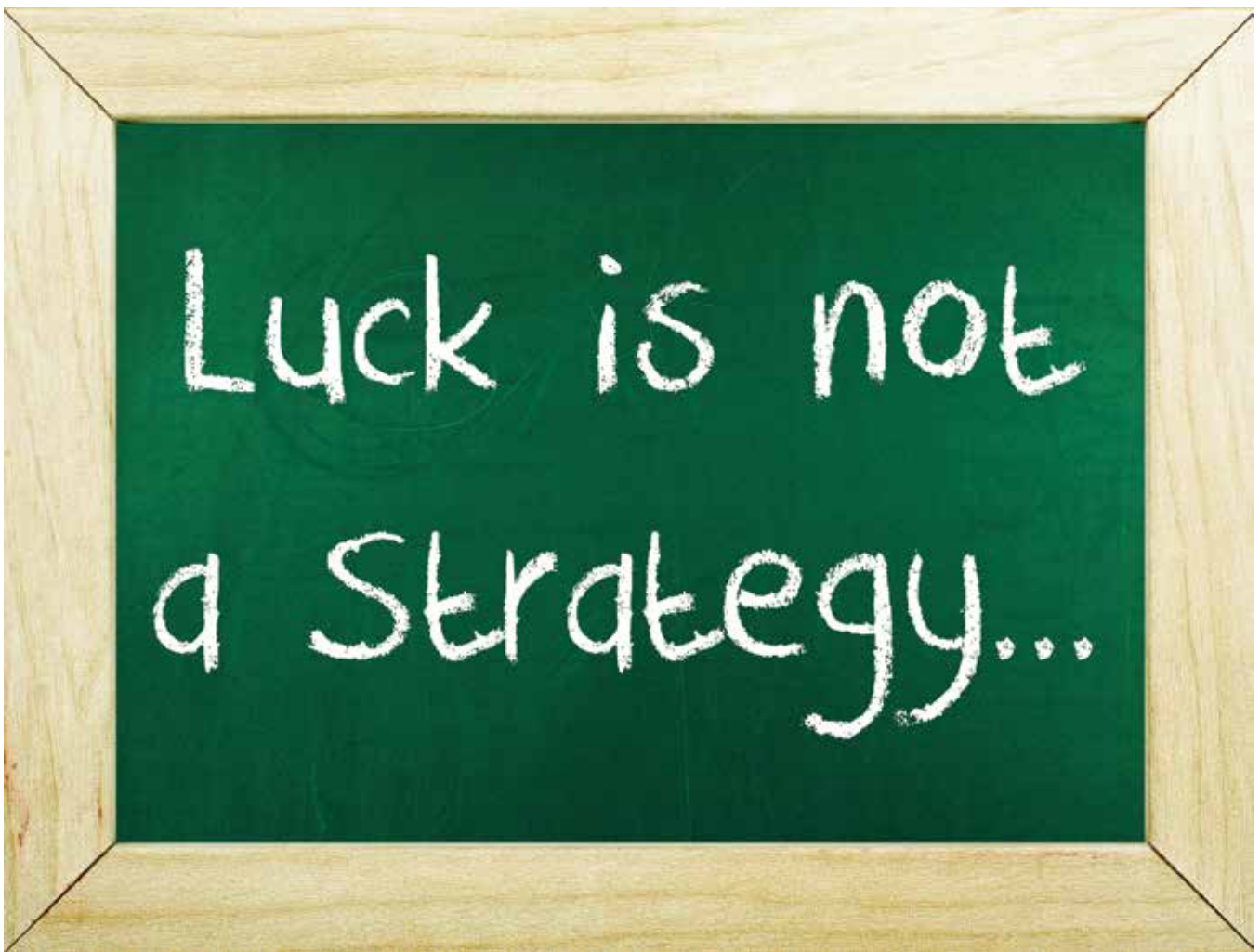
control and avoid, minimise or eliminate unacceptable risks. An organisation may use risk assumption, risk avoidance, risk retention, risk transfer or any other strategy (or combination of strategies) to manage risks. Although many people treat assurance as equivalent to risk management, assurance cannot calculate the non-monetary loss and compensate for losses to intangible assets.

The major objectives of risk management are to:

- identify risks and trace their root causes
- measure and evaluate risk
- mitigate risk, and
- monitor risk.

## A comparison of the risk management approaches in the UK and US

After scandals in the financial services sector and the global financial crisis, both the UK and US have reinforced the requirements for risk management in their own systems, but with completely different approaches, so that corporate governance could further be enhanced with better risk management.



### The UK

The UK Corporate Governance Code (the UK Code) was initially issued by the Cadbury Committee in 1992. Today, the UK Code is maintained and updated on a regular basis by the Financial Reporting Council. The UK Code is a guide that lists the principles and code provisions of good corporate governance and effective board practice. It applies to all companies with a listing of equity shares, regardless of where they are incorporated.

In 2010, following the global financial crisis, the section of the UK Code dealing with risk management was updated to improve risk management and internal control systems and ensure better protection for investors. Following that upgrade, the Financial Reporting Council published its *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* (the Guidance) in 2014. This guidance

promotes risk management best practice and is applied in the same way as the UK Code.

### The US

Unlike the UK, the US adopts a rules-based approach to risk management. The Sarbanes-Oxley Act of 2002 was enacted following the corporate governance scandals at Enron and WorldCom so as to better protect investors. It was enacted by the Senate and House of Representatives

in Congress and takes effect as public law. It requires the Securities and Exchange Commission (SEC) to set rules and regulations in order to ensure that listed companies comply with the Act.

Section 404 of the Act regulates the internal control and risk management practices in business. It focuses on companies which have to file an annual report with the SEC under Section 13(a) or 15(d) of the Securities Exchange Act

## Highlights

- the objectives of both corporate governance and risk management are to protect shareholders' long-term interests
- recent changes to Hong Kong's Corporate Governance Code emphasise the role of the board in overseeing the design, implementation and monitoring of risk management and internal control systems
- Unlike the UK, the US adopts a rules-based approach to risk management

of 1934 – these are listed companies. In addition, some rules tackling risk management are set by the SEC.

A comparison of the different approaches to risk management adopted by the UK and the US is given below.

### General approach

The UK Code operates on a principles-based approach, namely a 'comply or explain' approach. It states that 'companies should report whether they have followed the recommendations or, if not, explain why they have not done so' (Financial Reporting Council). Hence, when a company adopts an alternative to achieve risk management instead of fully complying with the Code provisions, it has to provide a clear explanation to shareholders. In other words, the company does not need to strictly follow the provisions. Therefore, the board can retain flexibility in how to exercise its risk management

responsibilities while ensuring proper risk management for the company.

Under the mandatory rule-based approach in the US, companies must comply with every detail of the Sarbanes-Oxley Act; otherwise, they breach the law. The treatment for violating Section 404 of the Sarbanes-Oxley Act is the same as violating the Securities Exchange Act of 1934, that is, penalties under Section 3 of the Sarbanes-Oxley Act, which include hefty fines and imprisonment. As a result, the companies have no choice but to comply with the regulations.

**Responsibilities for risk management Board level.** As stated in the main principle (C.2) of the UK Code, the board is responsible for determining the risk appetite and maintaining sound risk management and internal controls. The UK Code also requires the board to get involved with implementing risk

management. This is supplemented by the Guidance which gives more detail on how the board can fulfill its responsibilities. In addition to the points discussed above, the board has to ensure the design and implementation of systems that can manage the company's risks properly.

In addition, the Guidance suggests that changes should be carried out internally and externally in order to maximise the benefits of risk management at the company level – for instance, nurturing an appropriate culture and better external communication on risk management and internal control. Hence, boards in the UK take an active role in risk management and give detailed recommendations to be performed at the organisational level.

In the US, risk oversight is a responsibility and clear goal for the board of directors in the broader perspective of the company. According to the Proxy Disclosure

## Comparison of the US and UK approaches to risk management

UK	US
Principles-based <ul style="list-style-type: none"> <li>The UK Corporate Governance Code</li> </ul>	Rules-based <ul style="list-style-type: none"> <li>Sarbanes-Oxley Act                             <ul style="list-style-type: none"> <li>o Section 404</li> </ul> </li> </ul>
Flexible <ul style="list-style-type: none"> <li>'one size does not fit all' approach</li> </ul>	Standardised <ul style="list-style-type: none"> <li>'one size fits all' approach</li> </ul>
Comprehensive risk management performed by the board	Board concentrates on fulfilling risk management requirements
Primary responsibility rests with the board	Primary responsibility rests with management
No report or attestation need to be performed	Report and attestation need to be performed
Responsive to changing risk environment	Not responsive to changing risk environment
Presence of buffer time	Absence of buffer time
Absence of exemption	Presence of exemption
Focus on risk identification and control	Focus on risk management framework

“  
**risk management therefore enhances the accountability of the board and plays an important role in developing a healthy corporate governance framework**  
 ”

Enhancement, enacted by the SEC in 2010, the board's responsibility is to oversee the company's risks in different ways, such as through the whole board or by a separate committee responsible for handling the risks. Item 407(h) of Regulation S-K enacted by the SEC states that companies are required to disclose the extent of the board's role in the risk oversight. Therefore, the board oversees the material risks faced by the company, including credit risk, liquidity risk and operational risk, though the extent is decided by each individual board.

The board's responsibility is focused on reviewing the company's risk oversight framework, such as the policies or procedures to manage risk, and identifying the material risks with management so as to mitigate those risks.

The board's responsibilities in the UK are to manage risks in a more comprehensive way that does not only focus on the risk management itself, but also to recommend ways to facilitate the promotion of risk management. For example, the Guidance recommends external communication on risk management and internal cultivation of risk management or internal controls.

Such suggestions do not directly help manage the risk but help facilitate risk management and create a healthier business environment or culture. The UK route ultimately optimises the benefits brought by all-round risk management to the company.

To summarise, the approach by which boards in the UK fulfill their responsibilities in respect of risk management are more comprehensive, whereas those in the US are more focused and concentrated on risk management tasks.

**Management level.** The UK Code, which is the major document regulating risk management, focuses on the responsibilities of the board, not on those of management or employees. The roles and responsibilities of management are described in the Guidance, as mentioned above. Management is responsible for daily operation or actual implementation of the policies or strategies on risk management or internal control which have been designed by the board.

In contrast, the Sarbanes-Oxley Act of 2002 in the US prescribes management's responsibility specifically in Section 404

(a)(1). Moreover, the responsibilities of management took effect in 2002, far earlier than the requirements for the board in the UK which were implemented in 2010. Hence, we can see the US imposes the primary responsibility on senior management to carry out risk management, but not on the board, as is the case in the UK.

**Requirements for attestation and reporting.** In the UK, according to the UK Code, the audit committee is responsible for reviewing internal control and risk management systems, as well as the effectiveness of the internal audit function, so that the company can better manage its relevant risks. No attestation or report is required by the audit committee or the external auditors on risk management under the UK Code.

In contrast, in the US, management is required to make an assessment on internal control under Section 404 (a)(1) of the Sarbanes-Oxley Act. Under Section 404 (b) of the Act, the internal control assessment must be further attested and reported by a registered public accounting firm. Accordingly, the Public Company Accounting Oversight Board enacted Audit Standard No.5 to set out the standard for assessing internal controls. In other words, any public accounting firm would be legally liable for performing the attestation for the assessment, and there will be legal consequences if it fails to perform this.

**Responsiveness to changes in the risk environment.** The UK Code has been updated to react to the ever-changing business environment on a regular basis. For example, when there are risks arising from new products or technological advancements, the updated Code provides

accurate and reliable guidance for companies to carry out risk management in response to the changing environment.

In contrast, the US Sarbanes-Oxley Act does not provide such a timely response to the changing environment. If the situation requires changes to the risk management system in order to better cope with the changing risk factors, there will always be a time lag due to the long legal and administrative procedures. Thus, the response could be too late when the relevant amendments are made to the law.

Comparing the responsiveness to changing risk factors, the UK would appear to perform better than the US.

**Buffers and exemptions.** The UK Code requires companies to indicate how long it will take them to come into compliance with the Code provisions if they deviate from its provisions. Companies therefore have a buffer time to fully comply with the principles and provisions. However, no exemption from the Code provisions is allowed for any company. An externally managed investment company follows another guidance or code (The Association of Investment Companies' Corporate Governance Code and Guide) to fulfill its responsibilities in risk management and corporate governance.

In contrast, in the US any departures from the duties stated in the Sarbanes-Oxley Act are not allowed once the law takes effect. Even if listed companies are small in scale and new, they have to fulfill the requirements described in the Act. In other words, no buffer time is allowed. Nevertheless, there is a provision for some investment companies to be exempted from Section 404 of the Act.



**Assessments.** As required by the UK Code and Guidance, the board has to assess the principal risks of the company. It should monitor and assess any risk factors threatening the company's business performance, such as the business model, solvency and liquidity. Furthermore, the board is also required to evaluate the effectiveness of the risk management and internal control systems, including the controls in relation to finance, operation and compliance. Hence, the monitoring of risk, as well as its control, is emphasised in the UK.

However, the assessment in the US focuses on the effectiveness of the risk management structure and the financial reporting procedures according to Section 404 (a)(1) of the Sarbanes-Oxley Act, but not the risks themselves. The risks should be reviewed by the board as a part of the board's responsibilities. Therefore, ensuring a good risk management framework is the main focus in the US.

#### Summary

There are some common responsibilities or requirements for managing risk in the UK and the US. These include performing risk assessments, identifying and mitigating the risks as well as evaluating the effectiveness of the systems in place to manage risk. The common purpose or goal for the work

done on risk management is to protect investors ultimately by correcting any misconduct in the past and improving business behaviour with a focus on risk. The two countries require their companies to perform risk management in different ways. It is hard to tell which one is better, but it is best for a company to undertake risk management in accordance with the local characteristics of each country.

**Kingston Suen King Ho, Grace Gu Run and Ray Ho Wai Yan**

*Lee Shau Kee School of Business and Administration, The Open University of Hong Kong*

*In the second and final part of this article, to be published in next month's journal, the authors look at examples of best practice in risk management in the Hong Kong market.*

*The Institute's Corporate Governance Paper Competition is designed to promote awareness of corporate governance among local undergraduates. Authors of the competing papers also enter a presentation competition. Further details of the winners of both the paper and presentation competitions can be found in this month's Institute News section.*



## 行政人員文憑/證書《中國企業管理》 Executive Diploma / Executive Certificate in PRC Corporate Administration

行政人員文憑《中國企業管理》有四個單元，學員只要成功完成單元一至單元四，並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國企業管理》。學生如成功完成單元一（中國公司行政）及其他任何一個單元，並在持續評估中的個案分析取得合格成績，將獲發行政人員證書《中國企業管理》。具體如下：

單元一 中國公司行政 Corporate Administration in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元三 中國稅務 Taxation in PRC

單元四 中國公司法律 Corporate Law in PRC

**\*學生亦可報讀個別學科單元**

## 行政人員文憑《中國公司治理》 Executive Diploma in PRC Corporate Governance

學生如成功完成核心單元一至三及任何一個非核心單元（即四或五），並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國公司治理》。具體如下：

**核心單元：**（必須全部修讀）

單元一 中國董事會秘書實務 Corporate Secretaryship in PRC

單元二 中國公司治理 Corporate Governance in PRC

單元三 中國公司行政 Corporate Administration in PRC

**非核心單元：**（可選單元四或五）

單元四 中國稅務 Taxation in PRC

單元五 中國公司法律 Corporate Law in PRC

**\*學生亦可報讀個別學科單元**

最新  
單元

### 中國公司治理

講者簡介

李源博士

- 廣東省社會科學院企業研究所副所長、研究員
- 廣東省社會科學院研究生部教授
- 畢業於暨南大學管理學院 - 管理學博士
- 廣東省人事廳研究員

上課時間及地點

每單元課程為期兩週

授課時間：4堂，每堂6小時，共24小時

上課時間：週六14:00 – 17:00及18:00 – 21:00；週日10:00 – 13:00及14:00 – 17:00

授課地點：港島區其中一所教學中心

授課日期

2016年1月16日、1月17日、1月23日及1月24日（校方保留更改及調動課堂時間之權利）

每單元課程學費

港幣3,850元

\* 學生如報讀個別單元，成功完成該學科單元，並在持續評估中的個案分析取得合格成績，出席率達75%或以上，可獲發修讀證明書。

## 課程查詢

電話：2867 8317 (林小姐) / 2867 8481 (黃小姐) 電郵：prcprogramme@hkuspace.hku.hk

每個單元課程出席率達75%或以上之香港特許秘書公會會員，可以獲得18個ECPD學分，但有關實際可帶往下一年之ECPD學分詳情，請個別與公會聯絡。

電話：28816177 電郵：ecpd@hkics.org.hk

香港大學專業進修學院乃非牟利機構。

# Inspection of documents by shareholders



## A recent decision by the Court of First Instance confirms the ability of minority shareholders to obtain an order for inspection of documents under Section 740 of the Companies Ordinance (Cap 622) to investigate into potential corporate mismanagement.

The recent case *Re Bank of East Asia Ltd HCMP 125/2015* (Court of First Instance, 5 June 2015, before Judge Harris) demonstrates how five minority shareholders (the plaintiffs) of Bank of East Asia Ltd (BEA) successfully obtained an order against BEA for inspection of documents under Section 740 of the Companies Ordinance (Cap 622) to investigate into suspicions of corporate mismanagement by BEA's board.

### Background

BEA issued a public announcement on 5 September 2014 stating that it had entered into a non-binding memorandum of understanding with Sumitomo Mitsui Banking Corporation (SMBC) to subscribe for shares representing approximately 9.53% of BEA's issued share capital (the subscription). The plaintiffs corresponded with BEA to express their concern that the proposed subscription did not appear to have any genuine economic need and caused BEA's board to engage Goldman Sachs to evaluate the proposed subscription. BEA's board subsequently passed a resolution on 12 February 2015 approving the original decision to enter into the subscription and the subscription was completed on 27 March 2015.

The plaintiffs remained sceptical as to whether the subscription was in the best interest of BEA. Thus, the plaintiffs proceeded with the originating summons, which was issued on 16 January 2015, for an order from the court for disclosure and inspection of documents relating to the subscription under Section 740 of the Companies Ordinance and Section 41 of

the High Court Ordinance. That said, in practice the plaintiffs' application was framed and presented to the court as an application under Section 740 of the Companies Ordinance only.

The key issues considered were

- whether the plaintiffs' application for inspection was for a 'proper purpose' pursuant to Section 740 of the Companies Ordinance, and
- the effect, if any, of the confidential nature of the documents sought.

### Proper purpose

Under Section 740 of the Companies Ordinance, the court has the discretion on the application of five or more shareholders, or shareholders representing 2.5% in value of the voting rights, to order inspection of a company's records or documents if it satisfied that:

- the application is made in good faith, and

- the inspection is for a proper purpose.

The 'good faith' and 'proper purpose' criteria are two separate and independent tests. The plaintiffs were required to first show that they were acting in good faith. The court must then believe the circumstances are such that the inspection sought was for a proper purpose.

In order to establish that the inspection of BEA's documents was for a 'proper purpose', the plaintiffs were required to demonstrate:

- a 'purpose' relevant to a shareholder's economic interest in BEA, and
- a sufficiently reasonable case for investigation as regards past or future wrongful or undesirable conduct.

The subscription was a major decision involving the dilution of the voting rights

### Highlights

- this case confirms the usefulness of Section 740 of the Companies Ordinance for minority shareholders investigating into potential corporate mismanagement
- the court takes a liberal view when determining what constitutes 'proper purpose' under Section 740 of the Companies Ordinance
- the court's decision to allow the inspection of documents gives effect to the Companies Ordinance's underlying legislative intent of protecting shareholder rights and maintaining appropriate standards of corporate governance

“  
**The subscription was a major decision involving the dilution of the voting rights of existing shareholders**  
 ”



of existing shareholders. The court held that BEA's board did not consider the subscription adequately, as BEA did not hold a board meeting to discuss the subscription until five months after its original decision and BEA's board did not consider the impact of the dilution effect on shareholders' interests in BEA. The plaintiffs' investigation into the potential breach of fiduciary duty by BEA's board was a 'proper purpose' for granting the inspection of BEA's documents.

#### Confidentiality

BEA argued that the confidential nature of the documents was a sufficiently strong consideration for rejecting the plaintiffs' inspection of BEA's documents. Although the court accepted confidentiality was an important consideration, it did not accept BEA's argument in this case and explained that any concern about confidentiality could be addressed by the plaintiffs' undertakings on the use of documents.

#### Obiter

Under Section 41 of the High Court Ordinance, the court has the discretion to order disclosure of documents against

parties likely to be a party to subsequent proceedings before the commencement of those proceedings.

In this case, the court commented that Section 740 of the Companies Ordinance had a broader scope than Section 41 of the High Court Ordinance and that most (if not all) applications under Section 41 of the High Court Ordinance, if successful, would satisfy the requirements under Section 740 of the Companies Ordinance. The reverse, however, was not true – applications within the ambit of Section 740 of the Companies Ordinance would not necessarily fall within the scope of Section 41 of the High Court Ordinance. The key difference between the two provisions is that minority shareholders can rely on Section 740 of the Companies Ordinance to require disclosure of a company's documents without having to demonstrate proceedings are likely to be commenced or commenced against the person whom inspection would be sought.

#### Implications

This case reveals Section 740 of the Companies Ordinance as a practical tool for minority shareholders to investigate

into potential corporate mismanagement and safeguard their economic interests in the company without having to demonstrate the prospect of litigation being pursued. It is clear that the court takes a liberal view on determining what constitutes 'proper purpose' under Section 740 of the Companies Ordinance and is prepared to allow applications for inspection of documents in order to give effect to the Companies Ordinance's underlying legislative intent of protecting shareholder rights and maintaining appropriate standards of corporate governance. Nevertheless, the principles under Section 740 of the Companies Ordinance are limited to their own special sphere and do not alter the requirements or scope for general litigants in obtaining pre-action discovery under Section 41 of the High Court Ordinance.

**Mark West, Partner; Rudy Chung, Partner; Kevin Yam, Partner; and Bertha Ng, Solicitor**

*Kennedys*

*Copyright: Kennedys. All rights reserved.*



**CHARTERED  
SECRETARIES**  
特許秘書

## Shareholder engagement trends and practices – What role does the company secretary play?

With the recent trend for regulators to introduce requirements on shareholder engagement and effective communications with shareholders, the board is responsible for maintaining an ongoing dialogue with shareholders and to encourage investor participation. This forum will feature the trend of shareholder engagement development with the significant role the company secretary plays in communications between investors and corporations. With the sharing of our experts, we hope this forum may help bring you the related governance insights.

This seminar organised by The Hong Kong Institute of Chartered Secretaries (HKICS), in partnership with the Hong Kong Trade Development Council, is part of the International Financial Week of the Asian Financial Forum 2016 (AFF). Participants of AFF 2016 will enjoy HKICS member's rate in attending this seminar.

Target audience: directors, INEDs, company secretaries and senior management from listed companies.

Date: Monday, 18 January 2016  
Time: 4.00 pm - 6.00 pm  
(cocktail reception 6.00 pm - 6.30 pm)  
Language: English  
Venue: 1 Jackson Road, Central, Hong Kong  
Fee: HK\$400 for HKICS members/AFF participants  
HK\$500 for non-members  
Accreditations: HKICS (2 ECPD points)  
The Law Society (TBC)

For enquiries, please contact Ms Rachel Yue at 2830 6058 or email to [ecpd@hkics.org.hk](mailto:ecpd@hkics.org.hk).

### Speakers & Panellists:



**Mrs April Chan FCIS FCS(PE)**  
Past President, HKICS  
Company Secretary  
CLP Holdings Limited



**Ms Pru Bennett**  
Director  
Blackrock Asset Management  
North Asia Limited



**Mr Fang Chun Fa**  
Board Secretary  
and General Manager  
Investor Relations Department  
CGN Power

### Panel Chair:



**Ms Edith Shih FCIS FCS(PE)**  
Immediate Past President, HKICS  
Head Group General Counsel  
and Company Secretary  
CK Hutchison Holdings Limited

[Register now](#)

## Professional Development

### Seminars: October and November 2015

**12 October**  
Addressing IT compliance needs for SFC regulated firms and improving cybersecurity



*Chair: Richard Law FCIS FCS, Principal Consultant, Robinson's Legal Training Ltd*  
*Speaker: Jenius Shieh, Principal, TS IT Advisory Services Ltd*

**13 October**  
Corporate Governance Code update and environmental social and governance factors for listed companies in Hong Kong



*Chair: Sally Chan FCIS FCS, Assistant Company Secretary, CLP Holdings Ltd*  
*Speaker: Roy Lo, Managing Partner, Shinewing (HK) CPA Ltd*

**15 October**  
Joint seminar with the Security Bureau – anti-money laundering seminar for designated non-financial businesses and professions



*Speakers: Kevin Lai, Assistant Secretary for Security, Narcotics Division, Security Bureau; Dorothy Yu, Senior Inspector of Police, Joint Financial Intelligence Unit; Natalia Seng FCIS FCS(PE), Institute Past President, and Chief Executive Officer - China & Hong Kong, Tricor Group/Tricor Services Ltd; and Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, HKICS*

**19 October**  
Employee share plan – trends and analysis for Hong Kong/China



*Chair: Susan Lo FCIS FCS(PE), Institute Professional Development Committee Member, and Executive Director, Director of Corporate Services and Head of Learning & Development, Tricor Services Ltd*  
*Speaker: Jonathan Lee, Vice-President, Computershare Plan Managers Asia*

**20 October**  
The listing rules – recent reforms on connected transactions



*Chair: Eric Mok FCIS FCS, Company Secretary, Lenovo Group Ltd*  
*Speaker: Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, HKICS*

**3 November**  
Cultivating a culture of privacy compliance



*Chair: Susie Cheung FCIS FCS(PE), Institute Membership Committee Chairman, and General Counsel and Company Secretary, The Hong Kong Mortgage Corporation Ltd*  
*Speaker: Elaine Chong FCIS FCS, General Counsel-Hong Kong, CLP Power Hong Kong Ltd*

**5 November**  
**The impact on employers  
of immigration policy  
changes**



*Chair: Edmond Chiu FCIS FCS, Institute Membership Committee Member, and Director, Corporate Services, VISTRA Hong Kong*

*Speakers: Bruce Lee, Director and Paulina Au, Senior Manager, International Assignment Services, PwC Hong Kong*

**10 November**  
**Competition law – a  
technical review (part 1)**  
*See below for a review of  
this seminar*



*Chair: Lydia Kan ACIS ACS(PE), Director, Professional Development, HKICS*

*Speakers: Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, HKICS*

**Seminar review: competition  
law – a technical briefing**

The intense interest among professional practitioners in Hong Kong's new Competition Ordinance (Cap 619) was evident from the turnout for the technical briefing on the new law delivered by Mohan Datwani FCIS FCS(PE), the Institute's Senior Director and Head of Technical & Research, last month. This two-hour ECPD seminar, 'Competition law – a technical review (part 1) – preliminaries and First Conduct Rule guideline' – was fully booked.

The seminar sought to provide a practical assessment of the compliance challenges presented by the new law from the point of view of practitioners. Mr Datwani's main message was that compliance with the Competition Ordinance will be anything but straightforward. Following the trend of recent legislation in Hong Kong, compliance with the ordinance will be 'subject to a lot of discretion,' as he put it. Companies will need to make judgement calls regarding the spirit as well as the letter of the law.



Mr Datwani focused his seminar on the compliance challenges posed by the First Conduct Rule. He explained that the Competition Commission is likely to prioritise enforcement of cartel agreements under the First Conduct Rule as these conducts of price fixing, market sharing, output restriction and bid-rigging are regarded as 'cardinal sins' and recognised as 'preventing, restricting

or distorting' competition in Hong Kong. Further, there is no requirement to meet the turnover test of HK\$200 million or more from engaging in 'agreements, decisions and concerted practices' in respect of the cartel agreements, as against other breaches of the First Conduct Rule which he went on to discuss in the seminar with 25 hypothetical examples from the Competition Commission.

## Professional Development (continued)

The Competition Commission issued its Enforcement Policy and Cartel Leniency Policy on 19 November 2015. It explained that investigations will be conducted in accordance with six core principles with the Competition Commission being 'professional, confidential, engaged, timely, proportionate and transparent'. It will not investigate all cases but direct its resources to investigations and enforcement of matters that provide 'the greatest benefit to competition and consumers in Hong Kong'. The key issues for the Competition Commission are promotion of a compliance focus, severity factors of the conduct and effective and appropriate remedies.

Under its Enforcement Policy, the Competition Commission further explained that, during the initial years of the Competition Ordinance, it will target anti-competitive conducts that are clearly harmful to competition and seek judicial interpretations of the Competition Ordinance at the Competition Tribunal. It should be remembered that only the Competition Commission can bring cases to the Competition Tribunal for definitive interpretations of competition law. As explained in the seminar, the Competition Commission will focus on cartel conducts. The Competition Commission further explained that it will also consider other agreements that cause significant harm to competition, and exclusionary behaviour of incumbents under the Second Conduct Rule.

Determining where to draw the line between legitimate dialogue between businesses and anti-competitive 'agreements, decisions and concerted practices' may be a difficult judgement

call. Agreements which contribute to improving production or distribution, or promote technical or economic progress while allowing consumers a fair share of the resulting benefit, are specifically exempted under the ordinance. 'Compliance with legal requirements' are also exempted and 'services of general economic interest'. However, as pointed out in this month's cover story, the Competition Commission has said it will treat the exchange of information as to competitors' future pricing intentions as presumptively unlawful.

In the absence of any case law, Mr Datwani urged seminar attendees to rely on the guidelines issued by the Competition Commission and the Communications Authority (available on the Commission's website: [www.compcomm.hk](http://www.compcomm.hk)) as an indication of how regulatory and enforcement bodies will interpret the wording of the Competition Ordinance. These guidelines are not legally binding, but 'from a risk management perspective, they should be regarded as highly persuasive of the law,' he said.

The guidelines include a discussion of the Commission's interpretation of hypothetical case scenarios and Mr Datwani focused the latter part of his seminar on a discussion of these examples. While they help to elucidate the regulators' approach to the Competition Ordinance, they also confirm his original point about the degree of discretion that will be needed by practitioners in their compliance work.

For example, one case scenario concerns a Hi-Fi manufacturer which sells its

products to Hong Kong consumers through its website and retail stores owned by independent third parties under an agency agreement. You might expect that an agency agreement between the manufacturer and the stores to set a base price for the products would not be subject to the First Conduct Rule. The Commission takes the view, however, that the fact that the risks and costs of advertising, delivery, installation services, product warranties and unsold stocks, passes to the retailers, indicates that they are in business on their own account and therefore the resale pricing agreement would be subject to the First Conduct Rule.

Mr Datwani stressed that the complexity of the compliance challenge posed by the Competition Ordinance should not be underestimated. There will be significant uncertainties, particularly in the initial phase of its implementation, for practitioners in terms of how the law will be interpreted. Caution is advised.

*The guidelines on the Competition Ordinance issued by the Competition Commission and the Communications Authority are available in the 'Legislation and Policies' section of the Competition Commission's website: [www.compcomm.hk](http://www.compcomm.hk).*



## ECPD

### Forthcoming seminars

Date	Time	Topic	ECPD points
16 Dec 2015	6.45pm – 8.45pm	The listing rules – recent reforms on connected transactions (re-run)	2
5 Jan 2015	6.45pm – 8.15pm	Company secretarial practical skills training series: regular financial reporting preparation	1.5
7 Jan 2015	6.45pm – 8.45pm	The new Companies Ordinance – directors' liabilities and responsibility – selected themes (re-run)	2
20 Jan 2015	6.45pm – 8.15pm	New reporting exemption for non-public companies and other impacts of the new Companies Ordinance on financial reporting for the non-accountant (re-run)	1.5

For details of forthcoming seminars, please visit the ECPD section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

## MCPD requirements

Members are reminded to observe the MCPD deadlines set out below. Failing to comply with the MCPD policy may constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's Memorandum of Articles.

CPD year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Declaration deadline
2015/2016	1 January 1995 - 31 July 2015	15 (at least 3 ECPD points)	31 July 2016	31 August 2016
2016/2017	1 January 1995 - 31 July 2016	15 (at least 3 ECPD points)	31 July 2017	31 August 2017

## MCPD requirement extends to graduates

Effective from 1 August 2015, all graduates who acquired graduate status before 1 August 2015 are required to comply with the Institute's MCPD requirements.

## Advocacy

### Institute attends event by British Consulate General

Institute President Dr Maurice Ngai FCIS FCS(PE), Chief Executive Samantha Suen FCIS FCS(PE) and Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE) attended a seminar themed 'Magna Carta for the 21st Century: business and the rule of law', which was organised by the British Consulate General on 13 November 2015 as part of a series of events to mark the 800th anniversary of the Magna Carta.

### The 5th Golden Bauhinia 'One Belt One Road' Hong Kong Summit

The Institute participated in the 5th Golden Bauhinia 'One Belt One Road' Hong Kong Summit and the China Securities Golden Bauhinia Awards organised by Ta Kung Pao on 13 November 2015 as one of the joint organisers. President Dr Maurice Ngai FCIS FCS(PE) was one of the officiating guests at the award presentation ceremony.

Congratulations to the following Institute Affiliated Persons who received the 'Best Board Secretaries of Listed Companies' awards:

Jin Shaoliang, Ping An Insurance (Group) Company of China Ltd  
 Xu Shiqing, China Merchants Bank Co Ltd  
 Fang Chunfa, CGN Power Co Ltd  
 Xie Jilong, CRRC Corporation Ltd  
 Huang Wensheng, China Petroleum & Chemical Corporation  
 Yu Xingxi, China Railway Construction Corporation Ltd  
 Kang Jian, Beijing Jingneng Clean Energy Power Corporation Ltd  
 Huang Qing, China Shenhua Energy Co Ltd



*Dr Maurice Ngai FCIS FCS(PE) at the China Securities Golden Bauhinia Awards ceremony*

### Institute attends 2016 Policy Address and 2016/2017 Budget Consultation

Institute President Dr Maurice Ngai FCIS FCS(PE) attended the 2016 Policy Address and 2016/2017 Budget Consultation Session and the same consultation session for the financial services sector organised by the Financial Secretary's Office of the Hong Kong SAR Government on 11 and 30 November 2015 respectively.

### Renewal of Collaborative Course Agreements with three local universities

HKICS is pleased to renew the Collaborative Course Agreements with three universities in Hong Kong, namely the City University of Hong Kong (CityU), The Hong Kong Polytechnic University (PolyU) and The Open University of Hong Kong (OUHK) for a period of five years. Under the agreements, the three universities continue to operate their Master of Corporate Governance programmes to enable students, on satisfactory completion, to be awarded 'graduate' status by the HKICS and The Institute of Chartered Secretaries and Administrators of UK.

Institute Education Committee Chairman, Polly Wong FCIS FCS(PE), signed the agreements with Professor Albert Au, Dean, Lee Shau Kee School of Business and Administration of OUHK; Professor Agnes Cheng, Chair Professor and Head, School of Accounting and Finance, PolyU; and Professor Yi Cheong Heon, Acting Head and Professor, Department of Accountancy, Faculty of Business, CityU, at the signing ceremony held on 16 November 2015.



*(From left, front row) Professor Yi, Professor Au, Institute President Dr Maurice Ngai, Polly Wong, and Professor Cheng; joined by Institute Council members (from left, back row) Vice-President Ivan Tam, Doug Oxley, Susie Cheung, Immediate Past President Edith Shih, David Fu and Paul Moyes*

## Membership

### New graduates

Congratulations to our new graduates listed below.

Au Sin Ying	Choi Ka Ho	Lam Siu Na	Mok Wai Ching, Amy	Tsang Wing Sze
Chan Oi Yuk	Chow Ho Yin	Law Wai Ip, Vincent	Ng Ching Tung	Tso Mei Yi
Chan Sze Man	Fan Cheuk Lun	Lee Ming Fat	Ng Shuk Yi	Tso Wai Yin
Chan Wai Kam, Caroline	Ho Chi Wang	Lee Pui Shan	Ng Uen Chi	Wang Yu
Chan Zenaida Teh	Ho Sum Yi	Lee Wing Yan, Gloria	Shum Kit Han	Wong Wai Leung
Cheng Kee See	Ho Sze Nga	Leung Ho Yee	Sin Cho Ying	Woo Tin Yan, Tina
Cheung Hoi Sze, Joyce	Hui Tung Ching	Leung Hok Yin	Suen Mung Lam	Yeung Shun Hong
Cheung Yuk Tim, Venice	Kwong Chi Ho, Joseph	Li Lok Yi	Tang Tin Shing	Yu Kwok Keung
Cho Lai Shan	Lai On Ki	Liang Jing	To Chiu Wai	

### The HKICS 2015 Annual General Meeting

The 2015 Annual General Meeting (AGM) of the Institute will be held on Tuesday 15 December 2015 at 6.30pm at Theatre A, 22/F, United Centre, 95 Queensway, Hong Kong. The HKICS 2015 Annual Report/Annual General Meeting Notice and related documents are available at the News section of the Institute website: [www.hkics.org.hk](http://www.hkics.org.hk)

### Members' benefits and services

A number of merchants have agreed to provide privileged benefits and services for members, graduates and students. For details, please take a look at the 'Benefits and Services' details in the Membership section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

### Membership activities

#### Chartered Secretary Mentorship Programme – enhancing interpersonal effectiveness

Mentors and mentees of the Chartered Secretary Mentorship Programme attended a training session on 23 October 2015 for insights and practical tips on interpersonal skills at work. The essential principles of 'Enneagram' were explained to help mentors and mentees understand more about different personality types. This awareness helps build better relationships with colleagues at work.



*Mentors and mentees discussing the characteristics of different personality types*



*Members sharing workplace experiences*

## Membership (continued)

### Training workshop – influence others through interpersonal competence

Chartered Secretaries often find themselves in scenarios where interpersonal rapport is essential to achieve higher common goals at the workplace. An interactive workshop was organised on 7 November 2015 to equip members with skills to influence others. Participants found the discussions and roleplay on building trust and support in work relationships both insightful and interesting.



Members participating in the workshop



Catherine Robinson Chai, speaker of the workshop, facilitating discussions among members

### Young Group series – holiday gathering: getting to know each other

With the aim to connect members in the festive season, the Young Group, a sub-group of our membership services, organised a holiday gathering on 20 November 2015. The members spent a relaxing evening getting to know one another while enjoying the refreshments and drinks.



(From left) Louisa Lau FCIS FCS(PE), Institute Registrar; Bill Wang FCIS FCS, Institute Membership Committee Member; Sebastian Ko, Young Solicitors' Group Member, The Law Society of Hong Kong; Susie Cheung FCIS FCS(PE), Institute Membership Committee Chairman; Serina Chan, Young Solicitors' Group Member, The Law Society of Hong Kong; Stella Lo FCIS FCS, Institute Membership Committee Member; Jerry Tong FCIS FCS, Institute Membership Committee Member; Edmond Chiu FCIS FCS, Institute Membership Committee Member

### Forthcoming membership activities

Date	Time	Topic
4 December 2015	6.30pm – 8.30pm	Members' Networking – what the future holds: a brief on China's regulatory environment in 2016 and beyond
10 December 2015	6.30pm – 8.30pm	Chartered Secretary Mentorship Programme – recognition gathering (by invitation only)

For details of forthcoming membership activities, please visit the Events section of the Institute website: [www.hkics.org.hk](http://www.hkics.org.hk).

## International Qualifying Scheme (IQS) examinations

### December 2015 diet

#### A. Examination postponement applications

Candidates who are absent from a scheduled IQS examination due to illness must submit a satisfactory medical certificate to apply for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the December examination diet, that is, on or before Monday 28 December 2015.

#### B. Amendment to 'Instructions to Candidates'

(i) Citation of rule numbers in examination answers  
*'Section, Code and Rule numbers are to be quoted if this is indicated in the question.'*

(ii) Amendment to 'Clause P'  
*'Digital diaries and any other electronic devices including but not limited to mobile phones, tablets, PDAs, pagers, MP3 players, electronic dictionaries, databank watches and smart watches with mobile applications installed or wireless technologies supported are not permitted.'*

#### C. Recommended reading list updates

Please note that the recommended reading list for the subject 'Hong Kong Taxation' has been updated. Students may refer to the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk) for details.

#### D. Examination timetable (June 2016 diet)

	Tuesday 31 May 2016	Wednesday 1 June 2016	Thursday 2 June 2016	Friday 3 June 2016
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

Please enrol between 1 and 31 March 2016.

### IQS information session

At the recent IQS information session held on 2 November 2015, May Lam ACIS ACS shared her professional working experience with the attendees interested in pursuing a career in the Chartered Secretarial profession. Information on the IQS examination and career prospects for Chartered Secretaries was also provided.



May Lam sharing her experience

## Studentship

### Corporate Governance Paper Competition and Presentation Award 2015

The Institute has been running its 'Corporate Governance Paper Competition and Presentation Award' since 2006 with the aim to promote good corporate governance awareness among local undergraduates. This year, six finalist teams entered the presentation competition on 31 October 2015 to present their views on risk management and corporate governance. The Institute congratulates the winners.

The winning paper in this year's Corporate Governance Paper Competition can be found on pages 26–30 of this month's journal.

The Institute also thanks the following individuals and organisations for their contribution and support (surnames in alphabetical order).

#### Reviewers

- Dr Derek Chan, Associate Professor in Accounting, School of Business, Faculty of Business & Economics, The University of Hong Kong
- David Lai, Lecturer, Department of Accounting, Hong Kong University of Science and Technology
- Dr Lu Haitian, Associate Professor, School of Accounting and Finance, The Hong Kong Polytechnic University
- Dr Arthur McInnis, Professional Consultant, Faculty of Law, Chinese University of Hong Kong

Paper competition	Paper Presentation competition
<p><b>Champion</b> Kingston Suen King Ho, Grace Gu Run and Ray Ho Wai Yan Lee Shau Kee School of Business and Administration The Open University of Hong Kong</p>	<p><b>Best Presenter Award</b> Vennie Kang Jingwen, Cindy Li Yingshu, CUHK Business School, and Vickie Zou Siyu, Faculty of Law  The Chinese University of Hong Kong</p>
<p><b>1st Runner-up</b> Daniel Cheung Hok Shing and Alan Wong Cho Lun Department of Business Administration Hong Kong Shue Yan University</p>	<p><b>1st Runner-up</b> Daniel Cheung Hok Shing and Alan Wong Cho Lun Department of Business Administration Hong Kong Shue Yan University</p>
<p><b>2nd Runner-up</b> Joyce Choi Man Yi, Lau Kyle Chung Him and Pishun Tantivangphaisal School of Business and Management The Hong Kong University of Science and Technology</p>	<p><b>2nd Runner-up</b> Joyce Choi Man Yi, Kyle Lau Chung Him and Pishun Tantivangphaisal School of Business and Management The Hong Kong University of Science and Technology</p>

- Dr Mark Ng, Assistant Professor, Department of Business Administration, Hong Kong Shue Yan University
- Professor Richard Simmons, Associate Professor, Department of Accountancy, Lingnan University
- Dr Davy Wu, Senior Lecturer, Department of Accounting & Law, Hong Kong Baptist University
- Dr Susana Yuen, Associate Professor, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong
- Dr Zheng Liu, Associate Professor, Department of Accountancy, City University of Hong Kong

#### Paper Panel Judges

- Dr Brian Lo FCIS FCS(PE), Vice President & Company Secretary, APT Satellite Holdings Ltd
- Joseph Mau FCIS FCS(PE), Managing Director – Listing & Regulatory Affairs & Company Secretary, Hong Kong Exchanges and Clearing Ltd
- Grace Wong FCIS FCS(PE), Company Secretary and Deputy General Manager, Investor Relations, China Mobile Ltd

#### Paper Presentation Judges

- Dr Davy Lee FCIS FCS(PE), Group Company Secretary, Lippo Group

- Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd
- Louisa Yuen FCIS FCS(PE), Joint Company Secretary of a leading global luxury fashion group

**Sponsors**

- Ernst & Young
- Noble Group
- Sino Group
- Tricor Services Ltd
- The Chartered Secretaries Foundation Ltd



*(From left, front row) Benjamin Ho, Anna Sum, Dr Susana Yuen, David Fu, Douglas Oxley, Polly Wong, Louisa Yuen, Dr Davy Lee, Dr Mark Ng and Dr Lawrence Lei; (from left, back row) Louisa Lau, Candy Wong and the presentation competition participants*

**HKICS professional seminars**

Three professional seminars for university students were organised in November.

Date	Institution	Speaker	Topic
5 November 2015	The Open University of Hong Kong	Winnie Li ACIS ACS	The company secretarial profession
11 November 2015	The Hong Kong University of Science and Technology	Richard Law FCIS FCS	Introduction to company secretarial practices and corporate governance
12 November 2015	Hang Seng Management College	Rachel Ng ACIS ACS	The company secretarial profession and HKICS



*Winnie Li at the seminar*



*Richard Law at the seminar*



*Rachel Ng at the seminar*

## Studentship (continued)

### Student Ambassadors Programme (SAP) – visits

Three visits were organised for the HKICS student ambassadors, who are university undergraduates, to familiarise them with the Chartered Secretarial profession.

- Securities and Futures Commission (SFC) on 15 October 2015
- Hong Kong Business Ethics Development Centre, ICAC, on 13 November 2015
- Intertrust Hong Kong on 17 November 2015

*The Institute would like to thank the above organisations for their generous support.*



*At the SFC*



*At the Hong Kong Business Ethics Development Centre, ICAC*



*At Intertrust Hong Kong*

### HKICS/HKU SPACE programme series: Corporate Governance in the PRC (new module)

The HKICS/HKU SPACE programme series in PRC corporate practices now offers a new module – 'Corporate Governance in the PRC'. Up to 18 HKICS ECPD points will be awarded to participants who attain 75% or more attendance.

<b>Dates:</b>	16, 17, 23 and 24 January 2016 (Saturdays and Sundays)
<b>Time:</b>	Saturdays: 2pm–5pm; 6pm–9pm Sundays: 10am–1pm; 2pm–5pm
<b>Venue:</b>	HKU SPACE Learning Centre on Hong Kong Island
<b>Speaker:</b>	Dr Li Yuan Research Fellow and Deputy Director, Enterprise Research Institute, Guangdong Academy of Social Sciences

*For more information, please contact HKU SPACE at: 2867 8481, or email: [prcprogramme@hkuspace.hku.hk](mailto:prcprogramme@hkuspace.hku.hk).*

### Payment reminders

#### Studentship renewal

Students whose studentship expired in October 2015 are reminded to settle the renewal payment by Tuesday 22 December 2015.

#### Exemption fees

Students whose exemption approved via confirmation letter on 10 September 2015 are reminded to settle the exemption fee by Thursday 10 December 2015.



## Code compliance – an update

Last month, Hong Kong Exchanges and Clearing Ltd published the findings of its latest review of listed issuers' compliance with Hong Kong's Corporate Governance Code. The review involved analysing the disclosures made by 1,237 issuers in their 2014 annual reports, covering the financial period from 1 January to 31 December 2014. Findings of the review included the following:

- 35% of issuers complied with all the Code Provisions (CPs)
- 98% of issuers complied with 70 or more CPs (out of 75), and
- issuers with a larger market capitalisation achieved a higher overall compliance rate than those with a smaller market capitalisation.

The review also included the Exchange's comments on the quality of the explanations in relation to the five CPs with the lowest compliance rates.

'The issuers have continued to achieve a high rate of compliance on the CPs. The substantive revision of the Code in 2012 and the introduction of the board diversity CP in 2013 have been widely adopted by the issuers. However, there is room for improvement on the overall quality of explanations on why the issuers chose to deviate from the CPs,' said David Graham, the Exchange's Chief Regulatory Officer and Head of Listing.

*The report, entitled 'Analysis of Corporate Governance Practice Disclosure in 2014 Annual Reports', is available under the Issuer-Related Information section of the HKExnews website: [www.hkexnews.hk](http://www.hkexnews.hk).*

## Launch of electronic cheques in Hong Kong

The Hong Kong Monetary Authority (HKMA) and the Hong Kong Association of Banks (HKAB) have announced the launch of the new electronic cheque (e-cheque) services in Hong Kong. The e-cheque is an electronic counterpart of the paper cheque and turns the cheque writing and deposit processes completely online. Similar to paper cheque, e-cheque is governed by the Bills of Exchange Ordinance for legal protection; also it does not require the payee to disclose sensitive personal information such as the bank account number to the payer.

In the initial stage, nine banks will offer e-cheque issuance services to their customers through the internet banking platform and/or mobile banking platform. Also, all banks are able to accept their customers to deposit e-cheques through the Internet banking platform, mobile banking platform and/or the e-cheque 'Drop Box' service provided by the Hong Kong Interbank Clearing Ltd. It is expected that the number of banks offering e-cheque issuance services will increase gradually.

*More information is available on the HKMA website: [www.hkma.gov.hk](http://www.hkma.gov.hk).*

## Promoting women to leadership roles

The Securities and Futures Commission (SFC) announced last month the launch of its 'Women's Network' to enhance professional development and inspire women for leadership roles in the SFC. The Women's Network provides a platform for staff, both female and male, to interact and to participate in events, training and other activities which promote interest in and knowledge of women's leadership.

'The Women's Network is a forum for dealing with the specific hurdles which are often faced by women when moving up the career ladder and fulfilling their potential,' said Ashley Alder, the SFC's Chief Executive Officer. 'In addition, it will help ensure the SFC remains a preferred employer for professionals regardless of gender.'

In a separate but related development, Hong Kong Exchanges and Clearing Ltd announced the rollout of its 2016 'Back to Work' programme. The programme is designed to help women resume their careers after leaving the workforce for a few years. The Exchange has also been running its 'Women's Exchange', or WEx. At the WEx annual reception, held last month, David Graham, the Exchange's Chief Regulatory Officer and Head of Listing, noted its important contribution to the Exchange's corporate social responsibility programme.

*More information is available on the Exchange's website: [www.hkex.com.hk](http://www.hkex.com.hk), and the SFC website: [www.sfc.hk](http://www.sfc.hk).*



To cope with our continuous growth, we are looking for energetic candidate(s) to join us as:

## Senior Company Secretarial Manager (Ref: MCH-SCSM)

- Qualified professional with ICSA / HKICS membership
- At least 12 years' relevant experience, some of which gained from listed companies at senior / managerial level
- Affluent with listed and compliance rules and regulations, with in-depth knowledge of the Listing Rules, the Companies Ordinance and relevant provisions of the Securities and Futures Ordinance respecting disclosure of interests
- Sound leadership, excellent interpersonal skills and abilities to take challenges
- Excellent command of both written and spoken English and Chinese

We will offer attractive compensation package to the right candidate. Please send application enclosing resume stating career and salary history, expected salary and date of availability to The Senior Manager, Human Resources Department, Cheung Kong Property Holdings Limited, 7/F Cheung Kong Center, 2 Queen's Road Central, Hong Kong or by email to [hr@ckph.com.hk](mailto:hr@ckph.com.hk) (in Word format). Please quote the reference of the position you apply for in all correspondence.

*We are an equal opportunity employer and welcome applications from all qualified candidates. Personal data collected will be treated in strictest confidence and handled confidentially by authorized personnel for recruitment-related purposes within the Group. Applicants not hearing from us within six weeks from the date of advertisement may consider their applications unsuccessful.*



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

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

CSj is the most effective way to source your future **Corporate Secretarial** colleagues.

To advertise your vacancy in the Careers section, please contact Paul Davis: [paul@ninehillsmedia.com](mailto:paul@ninehillsmedia.com)

**ninehills**  
media



CHARTERED  
SECRETARIES  
特許秘書

# Celebrating Our Heritage

## HKICS Annual Dinner 2016

Ballroom, JW Marriott Hong Kong

Thursday, 14 January 2016

6.30pm Cocktail reception

7.30pm Dinner



Guest of Honour

**Ms Ada Chung FCIS FCS JP**

Registrar of Companies  
The Companies Registry  
The Government of HKSAR

Fees:     HK\$600 per student  
           HK\$890 per member/graduate  
           HK\$980 per non-member  
           HK\$10,800 per table (12 seats)

Attire:    Lounge suits

For enquiries and registration, please contact Vincy Wong  
at 2830 6048 or [event@hkics.org.hk](mailto:event@hkics.org.hk).

More than meets the eye.  
潛能. 超越所見.

## About Us

Boardroom is one of Asia-Pacific's leading providers of Corporate Secretarial, Share Registry, Business and Advisory services, to over 5,500 publicly-listed and privately-owned companies over the globe.

Headquartered and unrivalled in Singapore, we are listed on the Main Board of the Singapore Exchange. With almost 50 years of track record and an established network of offices and regional partners in Asia-Pacific and Europe, we have been a trusted business partner of choice for many Fortune 500 multinational and Asian enterprises.

### Always Exceeding Your Expectations as We Care about Your Corporate Secretarial, Share Registry & Other Needs

- We have a pool of dedicated and experienced Chartered Secretaries and other professionals to ensure that with our practicable advice, you achieve the highest standard of reporting, disclosure and compliance.
- We have the expertise, technology and capabilities to support your pre and post-IPO process as a Share Registrar.
- We take care of your non-core business support functions while you can focus on your business development.
- We adopt a cost-effective and value-added approach by tailoring client-oriented services and solutions.

### Our Suite of Services include:

- Company Formation, Corporate Secretarial and Corporate Restructuring
- Regulatory Compliance & Corporate Governance Advisory
- Initial Public Offerings & Share Registry
- Accounting & Financial Reporting
- Payroll Processing & Human Resources
- Business & Tax Advisory
- Directors / Management Training

### For Enquires, please contact:

E: [marketing.hk@boardroomlimited.com](mailto:marketing.hk@boardroomlimited.com)

T: (852) 2598 5234

A: 31/F, 148 Electric Road, North Point, Hong Kong

[www.boardroomlimited.com](http://www.boardroomlimited.com)