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

Membership statistics update

As of 10 January 2015, the Institute's membership statistics were as follows:
Students: 3,188
Graduates: 483
Associates: 4,996
Fellows: 522

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Contents

Cover Stories

Preparing for the Competition Ordinance 10

Hong Kong's new Competition Ordinance, scheduled to be implemented later this year, will have significant compliance implications for companies in Hong Kong. *CSj* takes advice on the best way for compliance professionals to prepare for the new law.

Antitrust compliance comes of age 16

Frank Fine, Head of International Antitrust at DeHeng Law Offices and Executive Director of the China Institute of International Antitrust and Investment, gives an introduction to managing antitrust risk in the current global regulatory environment.

Dawn raids in Hong Kong 22

Mark Jephcott, Partner, Head of Competition Asia, and Grace Aylward, Associate, Herbert Smith Freehills LLP, offer a practical guide to preparing for an unannounced inspection by the Hong Kong Competition Commission.

In Profile

Talking strategy 26

Dr Maurice Ngai, CEO of SW Corporate Services Group Ltd, discusses his aspirations as the newly elected president of the HKICS.

Sponsor's Feature

Attaining the truly paperless boardroom 32

Al Percival, Managing Director, Asia Pacific, Diligent APAC Board Services, identifies seven best practices that will help ensure that your board portal will deliver on its paperless promise.

Case Note

When is it reasonable to suspect money laundering? 36

A recent decision of the Court of Final Appeal clarifies the law relating to suspected anti-money laundering cases in Hong Kong.

HKICS News

President's Message 04

Institute News 38

Student News 46

Bulletin Board 48

Ask the Expert 07

Rising to the challenge

Ensuring compliance with the Competition Ordinance, currently scheduled for implementation in the latter half of this year, will be one of a number of challenges facing our members in 2015. This edition of our journal covers the new requirements of the competition law and offers a suggested 'action plan' to help companies with their compliance programmes.

As our three cover stories this month demonstrate (see pages10–25), compliance with the Competition Ordinance will potentially involve us in a number of technical and complex issues. The law's key conduct rules seek to prohibit conduct that 'has as its object or effect the prevention, restriction or distortion of competition in Hong Kong'. That might sound reasonably clear, but the devil, as ever, will be in the interpretation of these rules in practice. Determining whether an existing or proposed business practice will prevent, restrict or distort competition in Hong Kong will not always be obvious and may require specialist advice for a reliable interpretation.

The Competition Commission, which has just issued guidelines on the new competition law, emphasises that its interpretation will depend on the facts of each case and the analysis of the economic effects in the market. Does that sound familiar? Many aspects of the new Companies Ordinance, implemented in March last year, and the Securities and Futures (Amendment) Ordinance, implemented in January 2013, presented our members with a very similar challenge. The definition of 'inside information' in the latter Ordinance, for example, is often a difficult question of judgement.

Adapting to this new legislative trend will be one of the key tests for our profession in the years ahead. There has been some concern about the absence of 'legal clarity' in these latest additions to Hong Kong's rulebook, but I believe that we should look at these new developments in a positive light. Legislation needs to strike a balance between principles and prescriptive rules. It would clearly not be possible to prescribe exactly how companies should behave in every conceivable situation, nor would it be desirable – an overly prescriptive approach runs the risk of encouraging a box-ticking approach to compliance.

Secondly, this legislative trend has opened up opportunities for us as governance professionals. In the current regulatory environment, directors increasingly rely on the services of company secretaries to help them ensure that their companies meet the high expectations of regulators, as well as those of other stakeholders. Compliance is not simply a matter of a company fulfilling its legal obligations but of 'doing the right thing'. Determining what is the right thing to do will often take a broad perspective which takes in many different areas of professional and corporate practice, and members of our profession are therefore ideally placed as the board's gatekeepers.

There can be little doubt that the new Competition Ordinance will require us to use all of our skills in advising the board, getting expert advice where needed and ensuring that company policy is adhered to throughout the organisation. Rising to this challenge, however, will provide another reminder of the value of a qualified company secretary to the key stakeholders of our profession.

In order to keep our members up to date with regulatory changes in Hong Kong and elsewhere in the world, our Institute participated in the International Financial Week following the Asian Financial Forum 2015 organised by the Hong Kong Trade Development Council by holding a seminar on 'Risk management reform for Hong Kong listed companies – trendsetting for Asia?' on 20 January 2015. We also held a successful Annual Dinner on 14 January 2015 with Professor KC Chan, Secretary for Financial Services and the Treasury, as the guest of honour and with a record high attendance.

May the Year of the Goat bring you health, happiness and prosperity!

Gong Xi Fa Cai!

Maurice Ngai FCIS FCS(PE)

迎接挑战

《竞争条例》现拟于今年下半年实施，而确保遵守《竞争条例》将是公会会员在2015年所面对的众多挑战之一。本刊今期介绍竞争法的新规定，并提出建议的「行动计划」，协助公司推行相关的合规工作。

正如今期三个封面故事（第10至25页）所展示，要符合《竞争条例》的规定可能涉及技术性和复杂问题。竞争法的主要行为守则旨在禁止「其目的或效果是妨碍、限制或扭曲在香港的竞争」的行为。这看似合理地清晰，但困局往往在于实际执行时如何解读这些守则。要决定某项现行或建议中的业务行为会否妨碍、限制或扭曲在香港的竞争殊非易事，有可能需要寻求专业意见，方能取得可靠的诠释。

竞争委员会刚就新竞争法发出指引，强调法例的诠释会视乎个别个案的事实，以及对市场的经济影响之分析结果而定。这说法好像似曾相识？去年3月实施的新《公司条例》和2013年1月实施的《证券及期货（修订）条例》，亦为公会会员带来类似的挑战。例如《证券及期货（修订）条例》中「内幕消息」的定义，往往难以判断。

适应这个新的立法趋势，是专业特许秘书将要面对的重要考验之一。对于这些最新的香港法例「在法律上有欠清晰」，业界存在一些关注，但我相信我们应正面看待这些新发展。法律需在原则和规范性规则之间取得平衡。法例也显然不可能确切规定公司在每种特定情况下的具体行为，这做法也不理想；法例过度规范可能导致合规工作流于公式化。

其次，此立法趋势为我们这群管治专业人员提供了机遇。在现行的规管环境中，董事日益倚赖公司秘书去协助他们确保公司符合监管机构和其他利益相关者的高期望。公司进行的合规工作不仅为履行法律责任，也在「做正确的事」。要决定哪些才是正确的事需要广阔的观点，将不同的专业和企业实务范畴纳入考虑；特许秘书因而是董事会最理想的守护者。

毫无疑问，新《竞争条例》将要求我们运用一切技能，向董事会提供建议，有需要时寻求专家意见，确保机构上下均奉行一致的公司政策。我们若能迎接这项挑战，会让业界更重视合资格公司秘书为主要利益相关者带来的价值。

为协助公会会员知悉香港和世界各地的最新法规，公会参与了香港贸易发展局举办的2015亚洲金融论坛后的国际金融周，于2015年1月20日举行了「香港上市公司的风险管理改革－为亚洲开创潮流？」研讨会。 我们亦于2015年1月14日举行周年晚宴，邀得财经事务及库务局局长陈家强教授为主礼嘉宾。晚宴相当成功，参加人数创历史新高。

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Symposium on the New Companies Ordinance – First Anniversary Review 9 March 2015 (Monday)

ECPD/CPD point(s) :	
The HKICS	: 3
The HKICPA	: 3
The Law Society of Hong Kong	: TBC

As the Companies Ordinance (Cap 622) celebrates its first anniversary of implementation it is timely to take stock of the issues that have arisen. This symposium draws on the collective expertise of a distinguished group of senior practitioners and academics to highlight and discuss the 'pluses and minuses' of the first year as well as to put forth suggestions to fine tune the operations of the Ordinance.

Programme Rundown

2.00 pm – 2.30 pm	**Registration**
2.30 pm – 2.45 pm	**Welcoming Speech by Dr Maurice NGAI FCIS FCS(PE)**, President, HKICS **Opening Remarks by Symposium Chair** **Mr Gordon JONES FCIS FCS**, Former Registrar of Companies, Companies Registry
2.45 pm – 4.00 pm	***A Practitioner's Perspective of the Companies Ordinance: What Works and What Needs More Work?*** **Mrs April CHAN FCIS FCS(PE)**, Past President, HKICS; Company Secretary, CLP Holdings Limited **Mrs Natalia SENG FCIS FCS(PE)**, Past President, HKICS; Chief Executive Officer - China & Hong Kong, Tricor Group/ Tricor Services Limited **Ms Edith SHIH FCIS FCS(PE)**, Immediate Past President, HKICS, Head Group General Counsel & Company Secretary, Hutchison Whampoa Limited **Mr Ernest LEE FCIS FCS**, Partner, Assurance, Professional Practice, Ernst & Young
4.00 pm – 4.15 pm	**Coffee Break**
4.15 pm – 4.45 pm	***Implementing the Companies Ordinance: Some Reflections*** **Professor David DONALD**, Faculty of Law, The Chinese University of Hong Kong **Professor John LOWRY**, Chair of Commercial Law, Faculty of Law, The University of Hong Kong
4.45 pm – 5.45 pm	**Panel Discussion**

Date : Monday, 9 March 2015
Time : 2.30 pm – 5.45 pm (Registration at 2.00 pm)
Language : English
Venue : Theatre 2, Hong Kong Convention and Exhibition Centre, Wanchai, Hong Kong
Fee : HK$450 for members of the HKICS, HKICPA or Law Society of Hong Kong
HK$750 for non-members

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Ask the Expert

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

The identity and contact details of questioners will be kept confidential.

Q: *We are considering introducing an online proxy voting channel – what are the legal and corporate governance aspects we should consider?*

A: The Hong Kong Companies Ordinance which became effective in March 2014 has introduced a number of changes for companies incorporated in Hong Kong, including one which enables electronic delivery of shareholder services, as detailed in Section 599 'Sending documents relating to proxies in electronic form':

(1) If a company has given an electronic address in –

a. An instrument of proxy issued by the company in relation to a general meeting; or

b. An invitation to appoint a proxy issued by the company in relation to the meeting;

it is to be regarded as having agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the instrument or invitation).

This includes proxies appointed for a general meeting and the documents needed to either appoint or terminate such an appointment.

As the listing rules do not prescribe the method by which shareholders must return the proxy form/instrument (or other documents or information relating to proxies) to a company, this can therefore be decided by the issuers and shareholders themselves.

As many Hong Kong listed companies are incorporated in various jurisdictions such as the Cayman and British Virgin Islands, Bermuda and the PRC, issuers should check the specific rules relating the handling of proxy forms for their jurisdiction.

Computershare

However, if the option is available to issuers, with the increasing adoption of the internet across the world, offering an electronic proxy (eproxy) channel as well as a traditional paper route is highly recommended.

Four Computershare Hong Kong clients (who are listed in the UK) already provide an online eproxy service to their shareholders, allowing them to nominate or terminate a proxy eletronically. This includes HSBC and Standard Chartered Bank – and communications can of course be multilingual. More than 90% of Computershare's UK-listed clients already offer eproxy services to their shareholders.

For companies looking to empower their shareholders to vote without having to attend the AGM in person, eproxy is an ideal solution. In addition, it is environmentally friendly, quick and can be done at a time to suit shareholders – and means that votes can be cast effectively even if an event like Occupy Central makes it more difficult for shareholders to physically attend AGMs.

Stephanie Cheung, Vice-President of Client Services
Computershare Hong Kong Investor Services Ltd
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Ask the Expert

Q: *Can a private company limited by shares and incorporated under the Companies Ordinance (Cap 622) appoint any corporate directors if it belongs to a group of companies, of which a member company incorporated overseas is listed on the Hong Kong stock exchange?*

BoardRoom
Smart Business Solutions

A: Under Section 457 of the Companies Ordinance, every private company (other than a private company which is a member of a group of companies, of which a listed company is a member) is required to have at least one natural person as director. This provision has been made on the basis that the accountability and transparency of directors can be strengthened as the interposing of a corporate director between individuals and the subject company can mean that the individuals can escape personal responsibility for compliance with the directors' legal obligations. There have also been concerns that corporate directorships might be abused to facilitate money laundering as the identity of the individuals controlling the company can be concealed.

According to Section 458 of the Companies Ordinance, the Registrar of Companies may direct a company to appoint a natural person as director in compliance with the new requirement. If it fails to do so within the time period specified by the Registrar, the company and every 'responsible person' (this includes a director, manager and company secretary) will commit an offence and each of them is liable to a fine of HK$100,000 and a further fine of HK$2,000 for each day the offence continues. If the responsible person is a corporation, the liability would extend to its officers.

Relevant provisions of the Companies Ordinance

In addition to the above, Section 456(2) of the Companies Ordinance provides that:

- a public company
- a private company that is a member of a group of companies, of which a listed company is a member, and
- a company limited by guarantee

cannot appoint a body corporate as a director of the company.

Hence, to ascertain whether this restriction applies to any member of a group of companies, of which a member company incorporated overseas is listed on the Hong Kong stock exchange (overseas company), which is incorporated in Hong Kong as a private company, it is significant to assess whether the overseas company is a 'listed company' for the purpose of the Companies Ordinance.

A 'listed company' is defined under Section 2(1) of the Companies Ordinance as 'a company that has any of its shares listed on a recognised stock exchange'. The terms stated below are also defined by the same section of the Companies Ordinance as follows:

(1) A 'body corporate' is defined to:
   (a) include (i) a company; and (ii) a company incorporated outside Hong Kong; and
   (b) exclude a corporate sole.

(2) A 'company' is defined as:
   (a) a company formed and registered under the Companies Ordinance; or
   (b) an existing company (that is, a company formed and registered under the former Companies Ordinance (Cap 32) as in force prior to the commencement date of the new Companies Ordinance).

(3) A 'recognised stock market' has the meaning given by Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571) (SFO), which means a stock market operated by a company recognised as an exchange company by the Securities and Futures Commission [of Hong Kong] according to Section 19(2) of the SFO. The Hong Kong stock exchange is considered as a recognised stock exchange under Section 19(1)(a)(i) of the SFO.

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The identity and contact details of questioners will be kept confidential.

Although there is a separate definition of 'company' which includes a non-Hong Kong company in some parts of the Companies Ordinance, no identical or similar definition can be found in Part 10 of the Companies Ordinance (in which Section 456 is located). It may be inferred that the definition of 'company' in Section 2(1) of the Companies Ordinance can be applied to the definition of 'listed company'.

Analysis

The overseas company is a company incorporated outside Hong Kong and its issued shares are presently listed and traded on the Hong Kong stock exchange, whether the Main Board or the Growth Enterprise Market.

To be listed on the Hong Kong stock exchange, the overseas company with a principal place of business in Hong Kong must be registered as a non-Hong Kong company under Part 16 of the Companies Ordinance (or Part XI of the former Companies Ordinance). Therefore, it is a company not formed but registered under the Companies Ordinance.

Under Section 2(1) of the Companies Ordinance, a company must be both formed and registered under the Companies Ordinance. Since the overseas company was incorporated outside Hong Kong, it is not formed under the Companies Ordinance (or the former Companies Ordinance). The overseas company is only a company registered under the Companies Ordinance as a non-Hong Kong company. Therefore, it is not a 'company' within the meaning of Section 2(1) of the Companies Ordinance.

A 'listed company' should not be construed to include a body corporate that has any of its shares listed on a recognised stock exchange as the term 'body corporate' has been used in a number of other places in the Companies Ordinance in order to include companies incorporated outside Hong Kong.

If it had been intended to catch non-Hong Kong incorporated listed companies by the Companies Ordinance, the legislation would have explicitly used the phrase 'formed or registered under the Companies Ordinance' in the definition for 'company' under Section 2(1) of the Companies Ordinance or defined the term 'listed company' to mean 'a company or a body corporate that has any of its shares listed on a recognised stock exchange'.

Conclusion

From the analysis above made, it is reasonable and logical to assert that the overseas company is not regarded as a 'listed company' for the purposes of the Companies Ordinance. While a private company which is a member in a group with an overseas incorporated company listed in Hong Kong must have at least one natural person as a director, such a private company can have corporate director(s).

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Your chance to ask the expert...

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

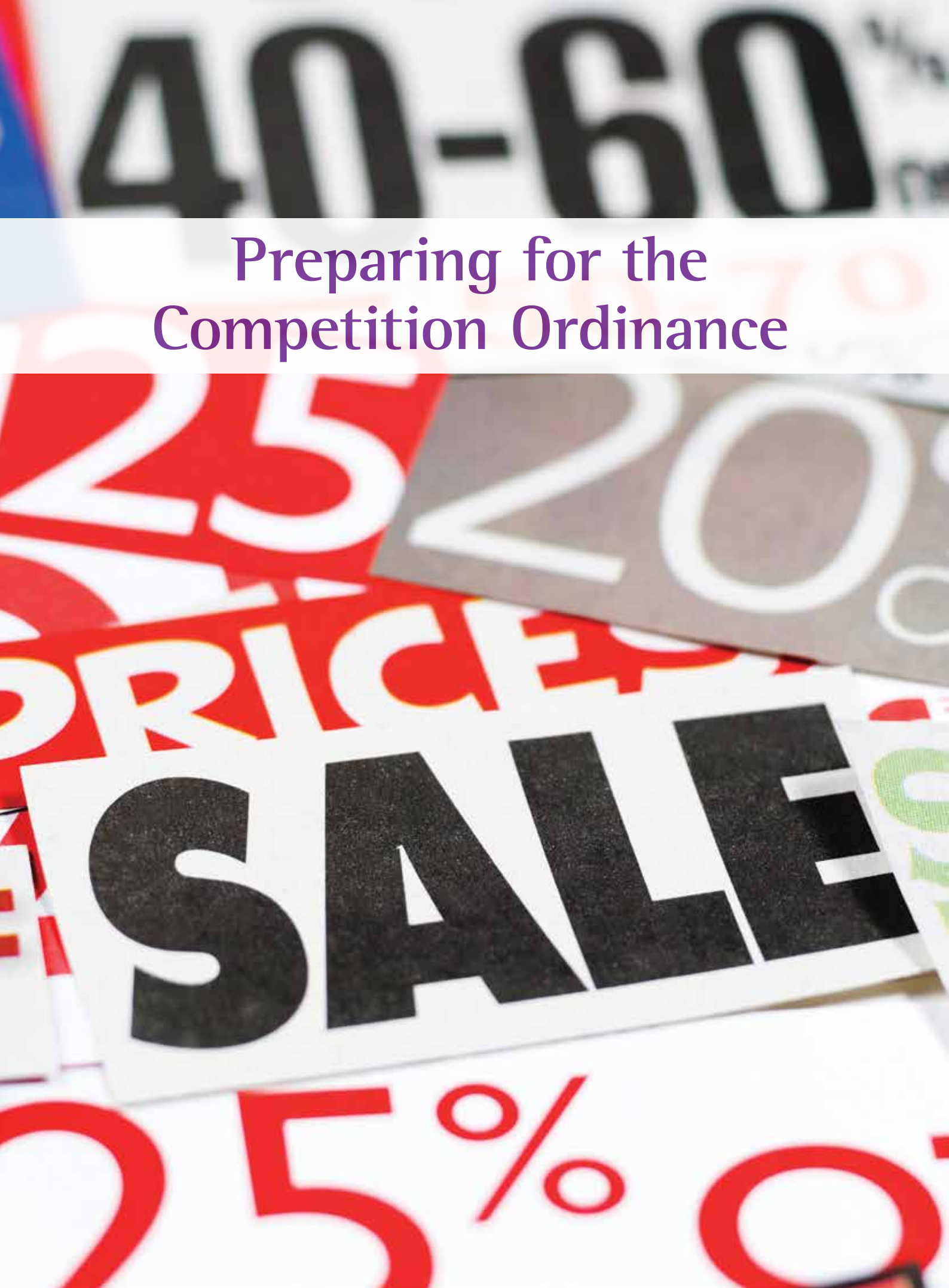
CSj's 'Ask the expert' column is designed with this in mind, providing you with the opportunity to ask our experts questions specific to the challenges you are facing.

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

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

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

Preparing for the Competition Ordinance



Hong Kong's new Competition Ordinance, scheduled to be implemented later this year, will have significant compliance implications for companies in Hong Kong. *CSj* takes advice on the best way for compliance professionals to prepare for the new law.

In most developed jurisdictions, competition compliance is already a well-established part of companies' compliance programmes. This topic will be a regular item on boards' agendas and directors will usually be aware of the risks of non-compliance with antitrust legislation. Indeed these risks have been highlighted by the size of the payouts companies have been paying for breaches of antitrust legislation globally.

In mid-December 2014, for example, corporate giants L'Oreal and Unilever – along with nine other companies – were fined US$1.2 billion over allegations of price rigging. The fine was the largest ever delivered by France's antitrust arm. In the same month, the Competition Commission of Singapore (CCS) handed out US$5.4 million in fines to 10 freight forwarders for fixing fees and surcharges on Japan–Singapore routes between 2002 and 2007.

Toh Han Li, CCS Chief Executive, was direct in his indictment of the activities: 'Price fixing among competitors, thus forming a cartel, is considered one of the most harmful types of anti-competitive conduct. As an open economy, Singapore businesses are vulnerable to such international cartels,' he said.

Currently in the US, Apple is appealing a federal judgment that it collaborated in a horizontal price-fixing scheme to raise the price of e-books prior to Apple's launch of the iPad. In Mainland China, regulators confirmed market monopolies on several leading auto brands and, in late 2014, delivered fines for price fixing, interfering with downstream operators' pricing, and restricting competition in the car and auto-part markets.

Hong Kong's new Competition Ordinance

In Hong Kong this area of regulatory compliance has not been a major concern for local companies outside of the telecom and broadcasting sectors in the absence of a cross-sector competition law – but that is about to change. In June 2012, Hong Kong's first comprehensive competition law – the Competition Ordinance (Cap 619) – was enacted. Initially, only those provisions setting up the authority tasked with enforcing the law (the Competition Commission) and the tribunal with primary jurisdiction to hear and adjudicate competition-related cases (the Competition Tribunal), have been implemented. However, full implementation of the law, bringing into force its anti-competitive rules, is scheduled for later this year.

Respondents to this article emphasise that action is urgently needed to prepare for the full implementation of the Competition Ordinance. The law will prohibit conduct that prevents, restricts or distorts competition in Hong Kong and mergers that substantially lessen competition in Hong Kong. It will prohibit:

1. anti-competitive agreements under the first conduct rule (including anti-competitive agreements that originated outside Hong Kong but have economic effects in the Hong Kong market), and

2. abuse of substantial market power under the second conduct rule (also including conduct originating outside Hong Kong that constitutes an abuse of substantial market power in the Hong Kong market).

Apart from the reputational damage that companies may face for breaches of the new law, they may also be subject to hefty financial penalties. The Competition Tribunal may impose fines based on a company's turnover (up to 10% of its

Highlights

- established practices that have been widely accepted as normal business practices in Hong Kong may be considered anti-competitive conduct under the law
- company secretaries need to get compliance with the Competition Ordinance onto the agenda of their boards
- companies need to prepare for the new law well in advance of its implementation – in particular undertaking a competition audit and setting up a staff training programme

Hong Kong turnover for up to three years in which the contravention occurred that saw the highest, second highest and third highest turnover). The Tribunal can also impose director disqualifications (for a period of up to three years), and other behavioural and structural remedies.

Further, criminal sanctions are available to the courts, though they are limited to situations where an undertaking (which includes both businesses and individuals) has not complied with an investigation, or has obstructed an investigation through evidence tampering. Failure to comply with a Competition Commission investigation may result in a fine of HK$200,000 or imprisonment for one year, for an indictable offence. More serious obstruction, such as the destruction or falsification of evidence, providing misleading evidence, or the obstruction of a dawn raid, may result in a fine of HK$1 million or imprisonment for two years, for an indictable offence.

What does this mean for Hong Kong businesses?

At first glance, the Competition Ordinance's conduct rules may appear fairly straightforward, but understanding their implications for business operations is not always so obvious. For example, David Samy, a Partner in Advisory Services with Ernst & Young, points out that global companies need to recognise that the law will apply to them even if their presence on the ground in Hong Kong is minimal.

'They may not have large factories or distribution centres here, but they might have a marketing presence or sales company in Hong Kong. In the eyes of the law they will still be seen as significant multinationals. They will therefore be seen as influential by the government and will be in a position to trigger the Ordinance if they are not fully in step with its provisions,' Samy says.

He adds that compliance professionals, including company secretaries, will be well advised to seek legal help in interpreting the new competition law. 'As this Ordinance is more technical than others, a company secretary may need support from a legal adviser. Bear in mind that this does not just affect the company; it affects the counterparties with whom it is engaged.'

1. The first conduct rule

Initially, the enforcement focus of the Competition Commission is expected to be on serious cartel activity amongst competitors. These 'horizontal agreements', prohibited by the first conduct rule, include:

- price-fixing – agreeing on customer prices or price-elements such as discounts or price ranges
- market-sharing – allocating segments of the market amongst competitors
- bid-rigging – subverting tender processes by agreeing with competitors what bids will be made, and
- output restriction – agreeing with competitors to limit production or sales output to drive up prices or otherwise maximise market positions.

Rose Webb, Senior Executive Director of the Hong Kong Competition Commission, cites a recent example of price-fixing in Mainland China. In September 2014, the Price Bureau of Jilin Province imposed fines of RMB114 million (US$18.3 million) on three cement companies that had been price-fixing since April 2011. The executives of the companies had held frequent meetings to set factory prices

for cement in several Chinese cities and provinces, and had developed and established price tables between them.

In Hong Kong, the prohibition of any agreements or practices having as their object or effect the restriction of competition under the first conduct rule has led to concern that participation in trade associations may be problematic. Can Trade Associations make recommendations relating to prices and fees? Another concern is the discussion and information exchange among competitors in informal meetings or social events.

2. The second conduct rule

The second conduct rule prohibits undertakings with substantial market power from abusing that power by engaging in conduct that has the object or effect of preventing competition in Hong Kong. The Competition Commission has indicated that the second conduct rule will only apply to a single entity with substantial market power, but not collective dominance. The Competition Ordinance provides that an undertaking's market power may be measured through its market share, its decision-making power relating to pricing and other decisions, and barriers to entry in a market.

The Competition Ordinance does not thoroughly list the conduct that would constitute abusive behaviour, but it provides a partial list including: predatory behaviour and limiting production, markets or technical development to the prejudice of consumers.

3. Exclusions to the conduct rules

The intention of the Competition Ordinance is not to make life harder for Hong Kong SMEs. Agreements between smaller companies (those with a turnover of less than HK$200 million) that do not represent serious anti-competitive conduct, are therefore excluded from the first conduct rule.

The Competition Ordinance also includes various other exclusions and exemptions. For example, immunity from the conduct rules can be granted to an agreement or conduct that enhances economic efficiency, is performed by an undertaking entrusted with the operation of services of general economic interest, or is made in compliance with a legal requirement.

Businesses with a turnover of less than HK$40 million, may be excluded from the provisions of the second conduct rule entirely. Finally, conduct that is necessary for compliance with legal requirements under Hong Kong law, and the performance of services of 'general economic interest', are not included.

An action plan for compliance professionals

1. Know and understand the law

Mark Williams, Executive Director, Asian Competition Forum, and Professor of Law, University of Melbourne Law School, says that company secretaries, 'should ensure that they understand the nature of the first and second conduct rules and how they might apply to their particular business. If they do not understand them, they should seek advice from properly qualified lawyers or consultants.'

David Samy of Ernst & Young agrees that the first step towards successful compliance is for companies to understand the law in detail and to understand its implications for their operations. He points out that the Competition Commission has already provided substantial guidance on the new law.

In May 2014, the Competition Commission published guidelines (*Getting Prepared for the Full Implementation of the Competition Ordinance*) highlighting the key provisions of the Competition Ordinance. The key point the Commission wants the market to understand is that established practices that have been widely accepted as normal business practices in Hong Kong may be considered anti-competitive conduct under the law. As a result, Hong Kong companies need to make certain that their practices do not fall foul of the Competition Ordinance.

Mr Samy believes that company secretaries and the boards of larger businesses are already taking steps in the right direction. 'I think the level of urgency might not be there yet,' he says, 'but some company secretaries are quite advanced in their preparations and I see many company secretaries (and boards) who are way ahead. They are already engaging with legal counsel, for example, as there are technical requirements in the ordinance that need to be understood.'

2. Get competition compliance onto your board's agenda

Once compliance professionals have the necessary understanding of the law, they should bring this to the attention of the board with recommendations for action to be taken to ensure compliance.

'Company secretaries need to get the Competition Ordinance onto the agenda of boards and start the education process. This will enable the board to trigger initial action and decide if their business practices will need to change or not,' says Samy.

3. Undertake a compliance audit

A compliance audit is the best way for companies to assess the implications

of the new competition law for their operations. 'A lot of this is really about business practices,' says Samy. 'Things might have to change. I have clients who speak of how they operate with their counterparties (such as their distributors) and the contracts that they set up with them will have to change because of the Competition Ordinance. I think there has been quite a bit of preparatory activity already. People are aware of what is happening, but there is still quite a lot of work that has to be done,' he says.

> "systems that review formal and informal links with [competitors, suppliers and customers] would make sense"
>
> Rose Webb, Senior Executive Director of the Hong Kong Competition Commission

Compliance tips from the Competition Commission

Rose Webb, Senior Executive Director, Competition Commission, recommends the following steps to prepare for the implementation of the Competition Ordinance.

1. Inform yourself about the Competition Ordinance.
2. Educate your employees on core principles – consider a compliance programme/ compliance audit.
3. If you are concerned about arrangements that you currently have in place, consider whether you should change them to ensure compliance – seek external legal advice if necessary.
4. Encourage your trade association to adopt a culture of compliance and to keep members informed about the Competition Ordinance.
5. Keep an eye on the Competition Commission's website for more information and risk assessment tools.

It is also critical that boards set a timetable, ask tough questions and hold senior management accountable for the results. A higher degree of scrutiny will reduce the risk of Competition Ordinance compliance activities being delegated too far down the chain of command to be effective.

4. Set up a compliance training programme

The next step in your compliance programme should be to set up a training programme for relevant staff. 'This will provide evidence that the company is in earnest with regard to compliance and educate staff that some previously adopted business behaviour is no longer acceptable or lawful,' says Mark Williams. 'On completion of the audit, action should be taken to ensure that relevant employees and operational staff are aware of the conducts that could be in breach of the first and second conduct rules, that the company policy is that they should not to engage in such conduct on pain of disciplinary action, given the reputational and/or pecuniary harm the company could suffer if enforcement action is successfully pursued against them by the Competition Commission or by suppliers, customers or competitors in subsequent actions for damages.'

5. Maintain ongoing monitoring

Compliance with Hong Kong's new Competition Ordinance will not be a one-off assignment for compliance professionals. Rose Webb of the Competition Commission points out that companies will need to ensure that they monitor their compliance with the new law on an ongoing basis. This will require carefully monitoring high-risk areas such as their dealings with competitors, suppliers and customers.

'Systems that review formal and informal links with those entities, such as checking whether you are imposing potentially anti-competitive requirements in distribution contracts, or checking what information is being shared with competitors, would make sense,' she says.

Why the urgency?

There is, as yet, no fixed date for the implementation of the new Competition Ordinance's conduct rules, but the law is expected to go live later this year. Compliance and antitrust professionals, however, have been warning that, to ensure compliance, action needs to be taken well in advance of the law's implementation.

In a recent update, Deacons Hong Kong urged companies to take immediate action to review the established business arrangements and seek legal advice on those practices that could be caught by the law.

'Every company should be aware of the leniency policy provided in the Ordinance so that any possible breach of the Ordinance is promptly reported to management before making an application to the Commission. One should bear in mind that the first applicant to the Commission will receive full immunity in terms of the financial penalty and other punitive orders. In any event, the best way to avoid a breach of the Ordinance is to have an effective compliance system in place,' the update explained.

'Companies with extensive business interests in Hong Kong would be well advised to commence their preparations for the Competition Ordinance now, including reviewing contracts and conduct for infringements that may fall into the "serious" category under the first conduct rule,' warns the *Asia-Pacific Antitrust Review 2013*.

David Samy points out that changing well-established business practices is not something that can be achieved overnight. 'This is about understanding the Ordinance, and looking at business practices and asking "do we need to change these practices and, if we do, how do we monitor change?" Many industries may see quite a few changes,' he says.

Gina Miller
Journalist

> ***The guidelines issued by the Competition Commission on the new competition law are available on the Commission's website: www.compcomm.hk.***

Antitrust compliance comes of age

Frank Fine, Head of International Antitrust at DeHeng Law Offices and Executive Director of the China Institute of International Antitrust and Investment, gives an introduction to managing antitrust risk in the current global regulatory environment.

On 30 September 2014, in an article entitled 'Antitrust police proliferate around the globe,' the *Wall Street Journal* lamented that 'more than 100 international jurisdictions now claim antitrust authority' to vet mergers and acquisitions. Omitted from this article was the fact that most jurisdictions having merger control rules also have the power to investigate and penalise companies found liable for involvement in cartels and abuses of dominant position.

This is what I fondly refer to as the tail wagging the proverbial dog. In the last few years, the Belgian competition authority has pursued global companies such as Dow and Mitsubishi for restrictive practices. So, why suffer indigestion about the prospect of

Indonesia or Namibia having a piece of the global action? Not to spoil the party, let's throw in Hong Kong's new regime, which will probably go live in the middle of 2015.

The cynical view is that smaller (particularly less developed) countries want antitrust enforcement so that they can raise revenues from fines, or perhaps because they believe that having such a system is a symbol of economic or political advancement. A less jaundiced view is that small countries have antitrust issues of their own. They are no less likely than first-tier economies were, before they had antitrust regulation, to have cartel-riddled cultures and entrenched monopolies. Indeed, these smaller countries, particularly when they are poor, are more likely to have been victimised by large multinational firms.

But this misses the point – whether one supports or condemns such antitrust proliferation, it is now a fact of life for companies doing business around the world and it is not going away anytime soon. It is highly unlikely that national governments will agree to give up their sovereignty to a global antitrust authority. The most that one can hope for is convergence of the law, but even if this goal is achieved, it will not shrink

Highlights

- a company can be held liable for conduct taking place outside a jurisdiction but which has an anti-competitive effect within that jurisdiction
- the most effective means for a company to reduce its antitrust risk is to adopt an antitrust compliance programme covering all markets in which the firm's antitrust risk exists
- a bespoke antitrust compliance programme, adapted to the specific company, is much more effective than an 'off the shelf' product

the patchwork of jurisdictions with investigative and fining powers.

This modern antitrust environment poses a number of serious issues for companies wishing to manage their antitrust risk.

1. Is a company potentially liable only where it has a physical presence?

It would be hugely remiss for a company to believe that it suffers no antitrust exposure where it has no 'boots on the ground'. Most, if not all, jurisdictions rely upon the 'effects' doctrine in some variant of its international law origin. In other words, a company could be held liable for conduct taking place outside the jurisdiction in question, which has an anti-competitive effect within said jurisdiction. For example, in the landmark EU *Wood Pulp* case, a group of US exporters who formed a legally constituted export association, were found liable by the European Commission for participating in a cartel even where they had no physical presence in the European Community.

Once an antitrust authority has determined liability (and likely imposed a fine), the follow-on step is usually for the victims of the illegal practice to sue the perpetrators in the local civil court for damages suffered. The facts are already established; all that remains is proof of injury and the quantum of damage.

But if the perpetrator has no physical presence in the country in question, it may be difficult for the jurisdiction concerned to collect the fine. Nevertheless, a stigma would attach – major companies don't care to be lumped into the same category as tax evaders and bail jumpers. It is not good for the corporate image and board members and shareholders are likely to take notice, which is probably why antitrust authorities such as the European Commission have no difficulty obtaining recovery of fines imposed.

As for damage awards, that is a different story. The judicial recognition of foreign judgments is possible based on comity between the jurisdictions concerned, particularly when the defendant has assets in the country in which the foreign judgment is being enforced and the original litigation is not flawed by due process concerns. So, perhaps there is more to worry about, after all, than one's corporate image.

2. How does a company determine whether it has antitrust risk?

Generally speaking, as regards potential cartel liability, there are three principal factors to consider.

First, a cartel is capable of coming into being only when it is possible to obtain industry conformity to the cartel's objectives. This means that the larger the relevant industry is, the harder it will be to corral and monitor all of the players. Conversely, if the industry is concentrated, it will be easier to obtain a consensus and to ensure that no one goes astray. This being said, there have been instances of large-scale cartels involving many players, such as the current auto-parts investigations by the US Department of Justice (DoJ); but often in such investigations the cartels involve individual products comprising part of a larger industry. In the ongoing DoJ auto-parts investigation, various products from seat-belts to wire harnesses are under investigation, with overlap in manufacturers for some but certainly not all products. One must therefore look to the specific products that are subject to the cartel agreement and how many firms are manufacturing those products.

Second, a cartel is easier to organise when manufacturing costs are rather transparent and common to most manufacturers. This means that mass-manufactured products are more susceptible to being cartelised. One must be careful here: a mass-manufactured product does not imply that it lacks technology or complexity. A smartphone chip is a highly-complex, technological product requiring the integration of many standard patents. Yet, a few months ago, the EU fined Philips, Samsung and Infineon for a cartel involving such chips, and this is probably because they have been largely commoditised. Could smartphones themselves be the subject of a cartel? Arguably yes, and for the same reason.

Third, if the industry/products previously have been the target of a cartel investigation, this may be an indicator that they are susceptible to subsequent investigation. The converse proposition does not hold water, that is, if the industry/products have never been the subject of a cartel investigation, this does not imply that the sector is unlikely to be investigated in the future. Every industry was once a 'virgin' for these purposes.

It should also be kept in mind that antitrust risk may exist with regard to vertical agreements, that is, agreements between companies at different levels of trade. Here, the dynamics are quite different. Only two parties are necessary to create an anti-competitive distribution agreement, so antitrust risk could be lurking simply on the basis that a manufacturer uses independent

> "the decision of a company to adopt an antitrust compliance programme is one of corporate governance, that is, the following of universal best practices"

distributors. It is not even necessary that they have exclusive territories. If a manufacturer imposes mandatory resale prices, this is known as vertical price-fixing, which is a quite serious offence in most jurisdictions. Likewise, no exclusive territories are necessary if a manufacturer imposes minimum resale prices, which is known in the antitrust world as resale price maintenance or RPM.

Finally, if a company has a market share of 50% or more, the antitrust risks take a different turn. Many jurisdictions now penalise abuses of dominant position. If a firm is found to be dominant in such jurisdictions, it may not act so as to unfairly jeopardise what remains of competition. For example, dominant firms may be deemed to abuse their position when they engage in predatory, discriminatory or excessive pricing, or when they refuse to supply a potential customer. So, when approaching companies facing this kind of risk, the issue is not so much what they are doing/agreeing with competitors or distributors, but rather, the actions that they take unilaterally as regards their actual or potential customers, and how this may affect the structure of competition in the relevant market.

3. How does a company manage its antitrust risk?

It is now commonly accepted that the most effective means for a company to reduce its antitrust risk is to adopt an antitrust compliance programme (ACP) covering all markets in which the firm's antitrust risk exists. The usual approach recommended by competition authorities is that the companies concerned:

i. adopt a written antitrust policy or compliance manual, which is given to all executives and other employees who may be in a position to expose the company to antitrust risk

ii. provide training to the above individuals so that they understand the antitrust rules and what they must do to avoid creating antitrust risk (or to minimise it if such events have already occurred), and

iii. conduct an internal audit of existing agreements and practices which may be antitrust sensitive.

The ACP should not be an 'off the shelf' product; a bespoke programme adapted to the specific company is much more effective. After all, the guts of the programme are essentially a form of communication between the company (via its external antitrust counsel) and its employees involving very sensitive subject matter. It is completely the wrong message to indicate to these individuals that the ACP is not being taken seriously enough to take into account the company's specific circumstances and needs. In a similar vein, symbolic gestures of compliance, such as simply posting a few paragraphs of company policy on its website, will not dissuade illegal behaviour by employees or convince antitrust regulators that the firm has seriously intended to prevent such behaviour.

The critical part of the ACP is the training of antitrust-sensitive employees. They must be directly confronted with company policy, including the penalties for non-compliance, with the result that they both understand – and accept – the rules applicable to them and that their failure to comply with them could affect their employment.

In my view, the training should be personal and face-to-face. This provides the company with the most reliable picture of how antitrust risks are being dealt with by the relevant employees,

> whether one supports or condemns such antitrust proliferation, it is now a fact of life for companies doing business around the world and it is not going away anytime soon

and it enables the trainer and employees to openly discuss the issues that arise in the course of business without fear of retribution. Additionally, in these workshops the trainer may find that certain employees present risks to the company by showing an open disdain for the antitrust rules. It is best to identify these employees during the programme, not months (or even years) later after the damage has been done.

Some companies think that online training or DVD-ROMs are sufficient to achieve the above objectives. Certainly, a large multinational firm may achieve a higher degree of saturation within the company by such means than can be derived from face-to-face training. But these measures are all about saving money, and it could be at the expense of achieving the objectives of the ACP. Usually, it is possible for the targetted employee to shoehorn an underling or personal assistant to do the training in his stead. Also, even if the electronic training is interactive in some way, it is all pre-programmed. There is no scope for frank discussion of issues that could be highly nuanced for the company concerned. It is also difficult for such training to reveal who the high-risk individuals are.

Before a company decides upon electronic training, it should determine whether it is intended to substitute for, or supplant, face-to-face training. If it is to the exclusion of face-to-face training, the company should seriously assess whether it has safeguards to ensure its maximum (though limited) effectiveness. To repeat the earlier suggestion, it should not be an 'off the shelf' product. It should also ensure that the designated target employee is taking the training and that it is designed to test the employee's knowledge of both the antitrust rules and how to deal with specific circumstances that may arise.

4. Risk-benefit assessment

In the final analysis, the decision of a company to adopt an ACP is one of corporate governance, that is, the following of universal best practices. It is human (or corporate) nature that in these situations in which the decision involves discretion rather than necessity (as would be in the case of defending against a cartel investigation), the company feels compelled, justifiably, to determine whether an ACP is worth the price attached to it.

It is very difficult for empirical research to tackle the issue of how effective ACPs are in practice. All it takes is one rogue executive to land a company in a world of trouble, despite the most bulletproof ACP. Consequently, one must approach the issue a bit differently. No reasonable person would consciously decide not to download anti-virus software onto his computer on the basis that no software is totally immune to hacking. Similarly, the ACP's value should be appraised in terms of the estimated reduction in overall antitrust risk. The better the ACP's construction and delivery, the more effective it is likely to be. It is really that simple.

Frank Fine

Head of International Antitrust at DeHeng Law Offices, and Executive Director of the China Institute of International Antitrust and Investment

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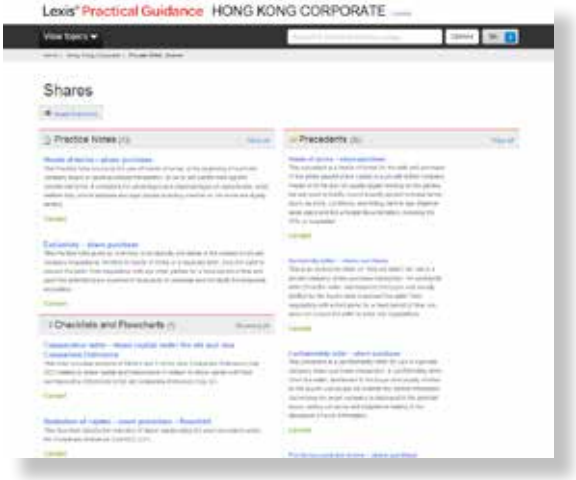

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Dawn raids in Hong Kong

Mark Jephcott, Partner, Head of Competition Asia, and Grace Aylward, Associate, Herbert Smith Freehills LLP, offer a practical guide to preparing for an unannounced inspection by the Hong Kong Competition Commission.

It is anticipated that the Hong Kong Competition Ordinance (the Ordinance) will finally come into force in the second half of 2015, having been approved by the Legislative Council nearly three years ago in June 2012. To date, public focus has centered on the substantive provisions of the Ordinance. The procedural aspects of the Ordinance, and in particular, the powers of investigation of the Competition Commission, have received far less attention. However, with the enforcement of competition law in Hong Kong just around the corner, now is the time for businesses to consider whether they have adequate procedures in place to deal with potential dawn raids.

This guide highlights some simple and practical processes (based on experiences of competition dawn raids in other countries) that can be put in place to ensure that if your business is raided, you know what to expect, what to do and what not to do.

What is a dawn raid?

A competition dawn raid is a surprise inspection at a company's premises (or in certain circumstances at the homes of officers/employees) by the Hong Kong Competition Commission (the Commission). Authorities in other jurisdictions typically start their raids first thing in the morning, and we would anticipate that the practice in Hong Kong will be similar. As the Commission will not have the power to conduct raids until the Ordinance comes into force, the guidance below is based on best practice in other jurisdictions, particularly in Europe, on responding to a competition dawn raid.

What would trigger a dawn raid?

The Commission may apply to court to obtain a warrant to conduct a dawn raid when it has reasonable cause to suspect a contravention of the competition rules. The Commission would likely apply for such a warrant in circumstances where it believes that the suspected breach of the conduct rules is being carried out in secret, or there is a risk that documents or other evidence relevant to the Commission's investigation would be destroyed or interfered with if the Commission did not carry out the raid.

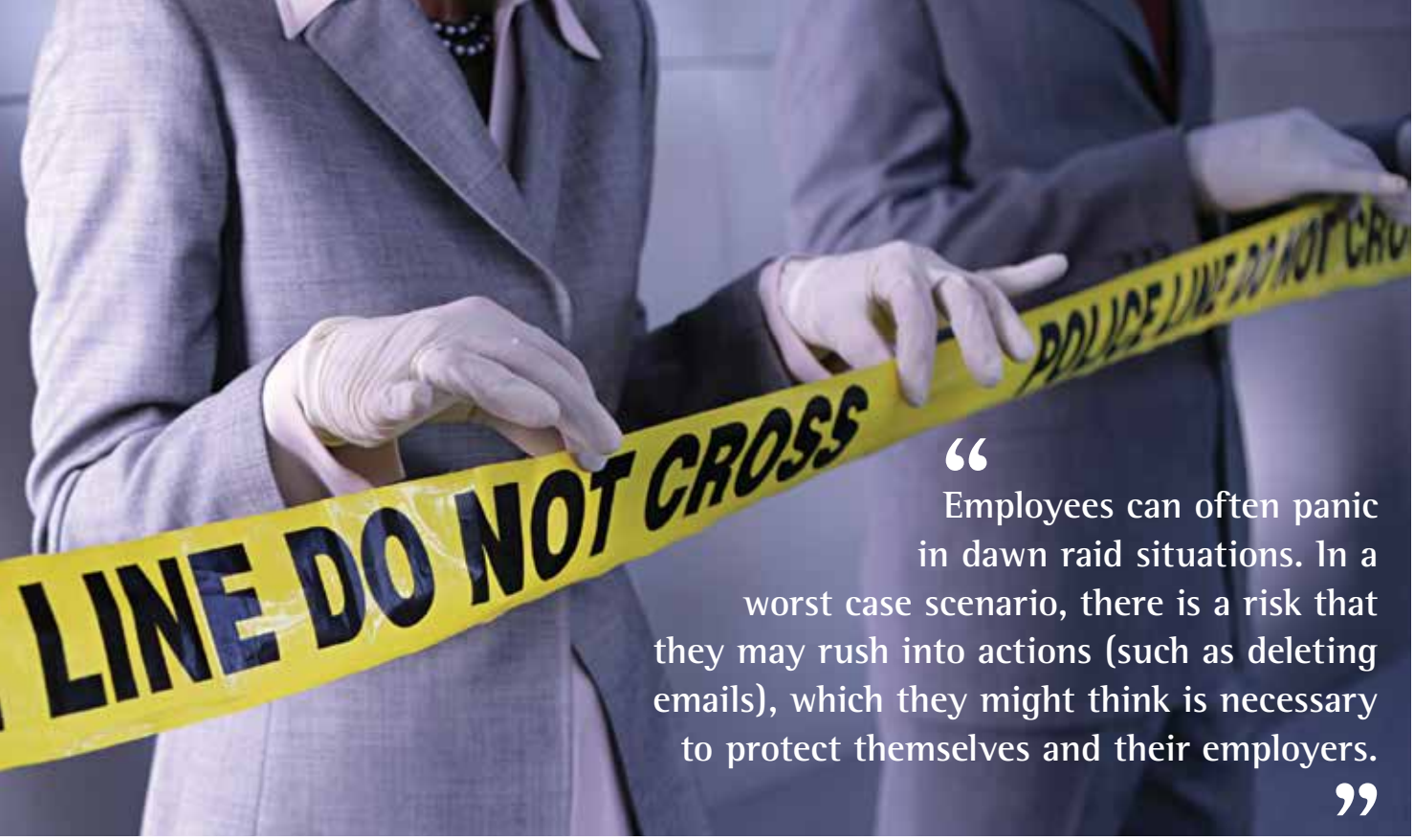
The focus of a dawn raid is typically on accessing, searching and copying documents including electronic documents such as emails, instant messages and phone recordings. The inspectors may also ask questions of individuals at the premises.

Why do I need to be ready for a dawn raid?

Obstructing any aspect of an inspection including deleting, destroying or tampering with documents, can lead to penalties for both the company and individual officers/employees, including significant fines of up to HK$1 million and imprisonment for two years.

Employees can often panic in dawn raid situations. In a worst case scenario, there is a risk that they may rush into actions (such as deleting emails), which they might think is necessary to protect themselves and their employers.

Notable examples of the consequences of a failure to co-operate with a dawn raid include heavy fines imposed in Europe for failure to co-operate such as: a €38 million fine imposed on UK energy giant E.ON for breaking a seal in 2008; a €2.5 million fine imposed on two Czech companies in 2012 for failing to block access to email



> "Employees can often panic in dawn raid situations. In a worst case scenario, there is a risk that they may rush into actions (such as deleting emails), which they might think is necessary to protect themselves and their employers."

accounts and diverting incoming emails during a raid; and a 30% increase in Sony's fine for anticompetitive practices due to an employee's refusal to answer questions and documents having been shredded during the raid.

Preparation for a dawn raid is therefore advisable both in terms of increasing the prospects that a company will be able to protect its legal rights in a raid, while also ensuring compliance with its legal obligations.

This includes having procedures and training in place for key staff such as receptionists, security and the IT team (whose assistance during a raid is essential).

What can we do to prepare?

The best way for a business to prepare is to have a set of dawn raid procedures in place to ensure an efficient and appropriate response in a raid scenario. Some businesses may already have similar processes in place in the event of a raid by other authorities (for example the Securities and Futures Commission), which can be adapted to the competition law scenario. If not, the tips below can be used to form the basis of an internal dawn raids guide.

The Commission arrives at 9am

A group of inspectors arrive at reception. They state that they are from the Hong Kong Competition Commission and that they have a warrant authorising them to enter and search the premises. They may ask to see a particular individual (by name or job title). The inspectors may have other people with them, such as forensic IT experts.

Reception should have a simple one-page document explaining what steps to take in this scenario. This should specify a number of individuals who have agreed to act as key contacts in the event of a raid (for example, a member of the company's legal team, the company secretary or other individuals nominated to lead the dawn raid response).

1. Reception should call the key contacts:
    - informing them that inspectors from the Commission have arrived
    - informing them whether the inspectors have asked to see any individual(s)
    - asking them to attend reception immediately, and

Highlights

- companies should have procedures in place to ensure an efficient and appropriate response in a raid scenario
- these procedures should include training for key staff such as receptionists, security and the IT team whose assistance during a raid is essential
- do not panic – staff should remain calm, polite and professional at all times

- if the key contacts are unavailable, leave messages, then call the company's external lawyers.

2. Reception (or a key contact if already present) should ask the inspectors to provide their identity papers and the warrant:
    - take two copies of the identity papers and the warrant
    - note down the inspectors' names and where the inspectors are from, and
    - write down the time they arrived.
3. The inspectors should be asked to wait until the company's lawyers arrive:
    - if they refuse to wait, do not prevent them from entering the premises (they are unlikely to wait if an in-house lawyer is present)
    - make sure someone accompanies the inspectors at all times, and
    - if the inspectors agree to wait, show them to a meeting room and make sure someone stays with them at all times.
4. If the inspectors ask to speak to the company's IT team, call the relevant contacts in IT.

The company's key contacts arrive

1. Once reception has informed the key contacts of the raid, a senior team member should immediately go to reception and collect the inspectors. (S)he should:
    - check the inspectors' identity papers and the warrant
    - ask whether the inspectors would like to speak to any particular individuals, and
    - note down the time (s)he arrived.
2. At the same time, another team member should contact the company's external lawyers immediately to explain what is happening, sending a copy of the warrant.
3. Contact the IT team immediately and instruct them to be on stand-by.
4. Ask the inspectors to wait a short time until the external lawyers arrive. If they refuse to wait:
    - do not prevent them from starting the raid (but ask to delay the substantive questioning of any individuals until external lawyers arrive)
    - make sure the inspectors are accompanied at all times, and
    - the inspectors may insist on protective measures being put in place as a condition for waiting until the external lawyers arrive, for example blocking access to email accounts and/or locking offices.

During the raid

1. Arrange a large meeting room for the inspectors for the duration of the raid, away from staff.
2. Hold a meeting with the inspectors and try to get as much information as possible about the background to, and scope of, the investigation.
    - If requested, provide information on company structure and organisation, methods of communication, and the company's IT systems.
    - Agree processes and a procedure for the raid (for example, what is the procedure for resolving a dispute on legal privilege).
    - Seek as much information from the inspectors as possible about the reasons for the investigation.
    - Emphasise the company's commitment to co-operation (but do not volunteer information or documents not requested).
3. Each inspector should be accompanied by a company representative or the company's lawyers at all times.
4. Detailed records should be taken of: any documents taken, copied or reviewed; any questions asked; searches applied electronically; disputes; and the timings of requests, responses and other events during the raid.
5. A record and duplicate copies of all documents copied and/or seized should be made for the company. For electronic documents, the inspectors may provide this on CD/DVD.

What can the Commission take?

The Commission can take any document, computer or other thing that the inspector has reasonable grounds for believing will, on examination, provide evidence of a competition law infringement.

A document is defined to mean any information recorded in any form. This definition is sufficiently broad to include all hard copy and electronic documents (such as diaries, emails, e-documents, instant messages, phone recordings, voicemails, SMSs, electronic calendars and so on).

The concept of another 'thing' that may provide evidence of a competition law infringement would include mobile phones and tablets. The Commission may seek to seize personal as well as company devices if they believe that these may contain evidence of the infringement.

IT issues

The Commission is as likely to be focused on electronic searches as reviewing hard copy documents. The inspectors may want to access the company's IT network to search and take copies of large volume of electronic documents. The company's IT team will therefore need to be involved from the outset.

The IT team should:

- having first checked with the inspectors, halt any routine data management processes that result in data being deleted or overwritten
- accompany the inspectors and their IT specialists at all times
- assist the inspectors to carry out their tasks and answer any technical questions

> "obstructing any aspect of an inspection including deleting, destroying or tampering with documents, can lead to penalties for both the company and individual officers/ employees, including significant fines of up to HK$1 million and imprisonment for two years"

- take notes of exactly what processes the inspectors carry out
- ensure that the company has a duplicate copy of all electronic documents copied or taken by the inspectors, and
- at the end of the raid, liaise with the inspectors and their IT specialists to ensure that all the inspectors' forensic IT tools that contain copies of company data are cleansed.

The end of a raid

If the raid takes more than one day:

- if the inspectors seal rooms or cabinets, make sure the seals are not broken or tampered with in any way
- if the inspectors impose restrictions to preserve electronic documents (for example preventing access to email accounts), make sure these are complied with
- everyone relevant must be made aware of such measures, including cleaners and maintenance staff coming to the premises out-of-hours, or IT personnel not involved in the raid, who will not necessarily be aware of the day's events
- if questions have been left outstanding, try to agree that the inspectors will express exactly what they want in writing, and
- make sure the inspectors have provided an inventory of all documents seized or copied (which may be in electronic form).

What happens next?

The end of the dawn raid may just be the start of a long investigation. The company should now begin its own process of evaluating whether an infringement of the competition laws has occurred, and if it has, what the best method of responding might be.

Mark Jephcott, Partner, Head of Competition Asia, and Grace Aylward, Associate

Herbert Smith Freehills LLP

Talking strategy

Dr Maurice Ngai, CEO of SW Corporate Services Group Ltd, discusses his aspirations as the newly elected president of the HKICS.

Congratulations on your election as HKICS President – can we start by discussing what you would like to achieve in this role?

'I would like to keep up the momentum that we have seen in recent years. Last year we had a surplus of HK$7 million and, hopefully, we can keep it at that level. That is very important because our financial resources enable us to execute our initiatives, to expand our services and activities, and to retain good staff.

We need to build a strong secretariat. We have Samantha, our past president, as our chief executive. So we have a passionate chief executive, fully devoted to the work. Samantha will work with me to make sure we have a good foundation for the future by developing a strong and stable secretariat.

I would also like to give our Beijing Representative Office (BRO) the ability to take more initiative in our Mainland China work. The BRO reports to the Hong Kong office, of course, but I think it can be more proactive – that way it can react more quickly as things evolve in the Mainland and it will have more control over its work.

I think we will see more PRC nationals becoming our members in the future. We are the China division of the ICSA and we need to build up the profession in China, but the benefits of this will be seen by our Hong Kong members too. Mainland China is a much bigger market than Hong Kong and it makes sense for our members not to restrict themselves to Hong Kong opportunities. Many multinationals and foreign enterprises have established their place of business in China and it is expected that more will enter the Mainland market. They definitely need professional services and professionals with international qualifications are probably the ones they would look for.

So we need to help our members build up their knowledge of the Mainland. They need information not only about the changing regulatory requirements, but also the changing job market and the changing business environment. The BRO helps greatly with this task. It helps to broaden the horizons of our membership, in particular getting them to think about what's happening in the Mainland and how they need to prepare themselves to be able to seize the opportunities as they arise. This is very important.

We have been increasing the China content of our professional development programme in recent years, but I think that we also need to arrange for more Mainland visits. In the past we have arranged visits, which are open to members and students, to help them to have more direct interaction with Mainland enterprises. These visits have helped our members to build up their network of connections in the Mainland and have also helped them to get a better understanding of the culture, operations and management of modern Chinese enterprises and the fast-changing macro environment there.'

The Hong Kong and Mainland China markets are still very far apart in many ways – do you think we will see greater convergence between the two markets in the years ahead?

'Recently we saw the launch of Shanghai-Hong Kong Stock Connect. This type of co-operation between stock exchanges facilitates cross-border investments. The next step will be a similar link with Shenzhen. These links will probably highlight for investors the discrepancies in the listing rules and compliance and corporate goverance practices between these two markets. Regulators from the two markets need to co-ordinate their efforts to faciliate investors' understanding of the rules, regulations and practices of the respective markets. There are very apparent drastic differences in the way corporate actions, for example rights issues, are carried out by listed companies in Hong Kong and A-share companies in China.

While these developments will facilitate more interaction between the two markets, they will also open up opportunities for our members to help our counterparts in the Mainland to meet higher international standards and practices following the trend towards tougher regulatory standards in Hong Kong and Asia in recent years. For example, if you are a director in Hong Kong or in the Asia market, you will no doubt be aware of the

Highlights

The Institute's strategy going forward will include:

- reaching out to employers and regulators to get a better recognition and understanding of the company secretarial role
- strengthening the secretariat in Hong Kong
- giving the Beijing Representative Office the ability to take more initiative in Mainland China work, and
- broadening the knowledge of the Institute's membership about developments in Mainland China.

greater burden on directors. Company secretaries are in demand to assist directors, particularly with regulatory compliance.

But, as you say, there are a lot of structural differences between the two markets and it is not hard to see why the two markets will not be able to merge in the foreseeable future. But I think we will see more interaction and more co-operation, rather than a merger. China has its own ownership structures and even the professional institutes are different. For example, the China Institute of Certified Public Accountants (CICPA) is part of, and under the supervision of, the Ministry of Finance (MOF). The same goes for the China Association for Public Companies (CAPCO), which is supervised by the China Securities Regulatory Commission (CSRC).'

Do you think we will see the establishment of a professional body for board secretaries in Mainland China? There has been speculation that the establishment of CAPCO may represent China's first step towards the professionalisation of the board secretary position in China?

'CAPCO is involved in many different issues relevant to listed companies, it was not set up solely for building up the board secretarial profession, but certainly one of its agendas is to try to build up a more structured approach to training board secretaries. Relying on the training delegated by the CSRC to the Shanghai and Shenzhen stock exchanges is not enough. At the moment board secretaries only have to complete the three- or four-day training course organised by these stock exchanges, which, as you can imagine, can't really prepare them for the board secretary role.

I don't think professionalising the board secretary role is a high priority for China right now, but it is certainly on the agenda and I think the infrastructure is already there. As you mentioned, the establishment of CAPCO was a step forward but bear in mind that it took many years to set up CAPCO. China is changing gradually. It appears to be moving quickly but often the big changes are actually the result of gradual changes going on unseen. So we need to be alert and understand what will be next.

I think we should not only focus on CAPCO, we need to consider working with industry associations. CAPCO, as the national listed company association, is important of course, but in recent years, due to the deregulation of the ministries, we have seen the establishment of some industry associations, such as those in the insurance and automobile sectors. They come together to share information and look after the interests of those sectors of the economy and to regulate themselves. We will see this trend in years to come.

I think the BRO should monitor these developments, looking in particular at the implications for compliance, governance and our profession. This is an interesting new area for us.'

What role is Hong Kong and the HKICS playing in all of this?

'At the moment we can only share experience. We cannot require our counterparts in China to do anything, but we are able to share our experience. As China develops, it is playing a bigger role in the international arena and it has been learning from Hong Kong and other parts of the world.

An example of this is the way that China is changing its approach to regulation. Regulators are moving away from intervening too much in the market. Companies are expected to be responsible for their own governance like in Hong Kong – they need to have integrity and an effective system to ensure compliance with the requirements. At the same time, China is building up a better infrastructure of laws and regulations and is imposing more stringent enforcement. This is an area where Hong Kong has experience to share. Regulators no longer monitor everything in the market, but they have given out a clear message that "if you do wrong, we will penalise you severely". Companies, in particular listed companies, have to rely on more robust internal control systems with the right professionals to ensure proper compliance. The professionalisation of board secretaries is only a matter of time.'

Going forward, what will be the strategy of the HKICS in the key areas of its work – education, member services and professional development?

'As you know we are fortunate to have growing numbers of students and members, and we need to take good care of them – in particular giving them sufficient support in their studies and their careers.

Of course, we provide assistance to the students taking our examinations – all professional bodies have this duty – but we also organise a lot of activities. We have the Student Ambassadors Programme and we have the 'collaborative courses' set up in association with local universities.

The Institute is also responsible for an increasing number of students in Mainland China. At the moment we only have one

> "I was attracted to the corporate secretarial profession because it is so multifaceted"

venue for IQS examinations in China – in Beijing. This means that many students have to fly to Beijing to do the exams, so we are looking into establishing an examination centre in Shanghai.

Of course, once students finish their examinations they become graduates and then migrate to membership. We will be looking at how to enhance the help we give members with their careers. This is a very important area for us. Our members can become company secretaries in listed companies, but our qualification is not just for the listed company sector. It is also relevant in the management and administration sectors, for example, so I think we need to be more proactive in reaching out to employers and regulators to get better recognition and understanding of our role.'

The Australian and New Zealand divisions of ICSA have changed their names recently, becoming 'governance institutes' – do you think a similar name change would be appropriate for the HKICS?

'There has been some pressure for a name change. There is a Chinese saying: 名不正言不顺 ("you need the right name before you do the right job"). But the term "company secretary" has been used for a long time so people within our industry understand that term.

On the other hand, there has been a trend for members of our profession to be seen as "governance professionals". This does not only apply to company secretaries, the Hong Kong Institute of Certified Public Accountants, for example, describes itself as a governance body. Accountants can be described as governance professionals in term of corporate reporting and internal controls, and company secretaries can be described as governance professionals because we are responsible for helping companies with regulatory compliance and corporate governance best practices.

Any change of name would have to be preceded by a lot of planning. We are in a different situation from Australia since the HKICS, along with other professional bodies, is named in our listing rules and I don't think that was the case in Australia. So we may not be able to follow the same path as Australia.'

Would you like to comment on the new relationship between the HKICS and the Institute of Chartered Secretaries and Administrators (ICSA) since the recent reforms to the ICSA's governance structure?

'I think we are now in a better position to work with the ICSA. Edith Shih, our immediate past president, has been appointed a Vice-President and an executive committee member of the ICSA. We are part of an international family and that is very important to us. Of course, our members enjoy the benefit of having dual memberships – the ICSA as well as the Hong Kong membership – but the new relationship also means that we are in a better position to leverage on the international nature of the profession.

The ICSA, which offers an international qualification, was previously rather low profile in the area of international development, but it is working towards its new mission: to be the leading global professional institute in governance. The Corporate Secretaries International Association (CSIA), which came into the picture in 2010, is working on a number of

practical projects to help promote the corporate secretarial and governance profession internationally. This will mean that we can be more influential and more active in the international arena in terms of corporate governance.

Until now, the ICSA has been more focused on qualifications and qualification assurance. The ICSA Professional Standards Committee, for example, is an important part of maintaining the quality of professional standards around the world.'

Going forward, what will the Institute's strategy be in the three areas of Hong Kong, Mainland China and internationally?

'In Hong Kong, we are growing in terms of the numbers of students and members and we are highly regarded by regulators. In the Mainland, we established our Affiliated Persons programme, which is unique and successful in establishing our presence and providing a foundation for future development. Internationally, we, together with other ICSA divisions, successfully pushed through the recent reforms of the ICSA – it is now poised to take a new and much more globally-oriented course. The establishment of the CSIA enables us to join forces with ICSA divisions, as well as other non-ICSA countries, to carry out practical initiatives affecting the company secretarial and corporate governace profession in a global dimension. My view is that we are not working in isolation, or in a mutually exclusive manner, and we can leverage on what we have done. We intend to build our strategic relationships in these three areas and identify our strategies going forward. The Council and secretariat are going to have a strategy meeting to look into our initiatives for this year.'

Readers of this column often give us feedback that they like hearing about the personal and professional backgrounds of our interviewees. Could we talk about your own background?

'I took the ICSA examinations and qualified in 1990. I started my career as a company secretary with a CPA firm and then joined a legal firm and studied for my law qualification. I then moved into the corporate world as a company secretary, but I remained interested in the law, so I completed my LLB programme.

After helping the company I worked for to become a listed company, I moved on to doing company secretarial work as an executive director in another listed company. Then I spent nearly 15 years in many other listed companies, during which I decided I needed to get more knowledge in management and corporate finance because I was doing a lot of work in mergers and acquisitions, so I took an MBA and subsequently a master in corporate finance. I also studied with ACCA and became a member of the Hong Kong Institute of Certified Public Accountants.

I had been working with companies from Mainland China for some time, giving advice on IPO listings in Hong Kong. So I wanted to pursue a higher academic qualification in this area, both for my own benefit and to do a better job for clients. Therefore, I pursued my highest degree, my PhD. Actually, having higher educational qualifications helps a lot when you are dealing with Mainland clients, they are more likely to listen and follow your advice.

Taking a PhD programme in Corporate Finance at Shanghai University of Finance and Economics helped me understand the mentality of the people in China and also helped with my written simplified Chinese.'

One final question, what's your advice to new recruits to the profession?

'The younger generation often don't have a clear picture of what they want to do once they have finished their tertiary education and my advice to them would be to study for our qualification. They will need to have at least a bachelor's degree, but, if they take one of our collaborative post-graduate courses, they can get subject exemptions from the IQS. They can then become a graduate and, subject to their experience, get membership as well.

I have seen a lot of young people jump into a particular career and then change their minds. That results in a lot of wasted time. Often, you need to get some experience before you can make a good choice and studying for our programme would help them understand the business world and corporate culture better.

I was attracted to the corporate secretarial profession because it is so multifaceted. To be a good company secretary you need to understand governance, the law, management and you also need to understand finance. That's why the Chartered Secretarial curriculum is so broad – it involves tax, corporate secretarial, company law, finance and corporate governance. The great advantage for Chartered Secretaries is that, once you get this qualification, you can choose which way you want to go – you have more options. So it's a good place to start, and, of course, it is also a good place to stay on.' CSj

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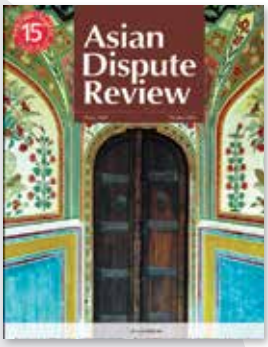

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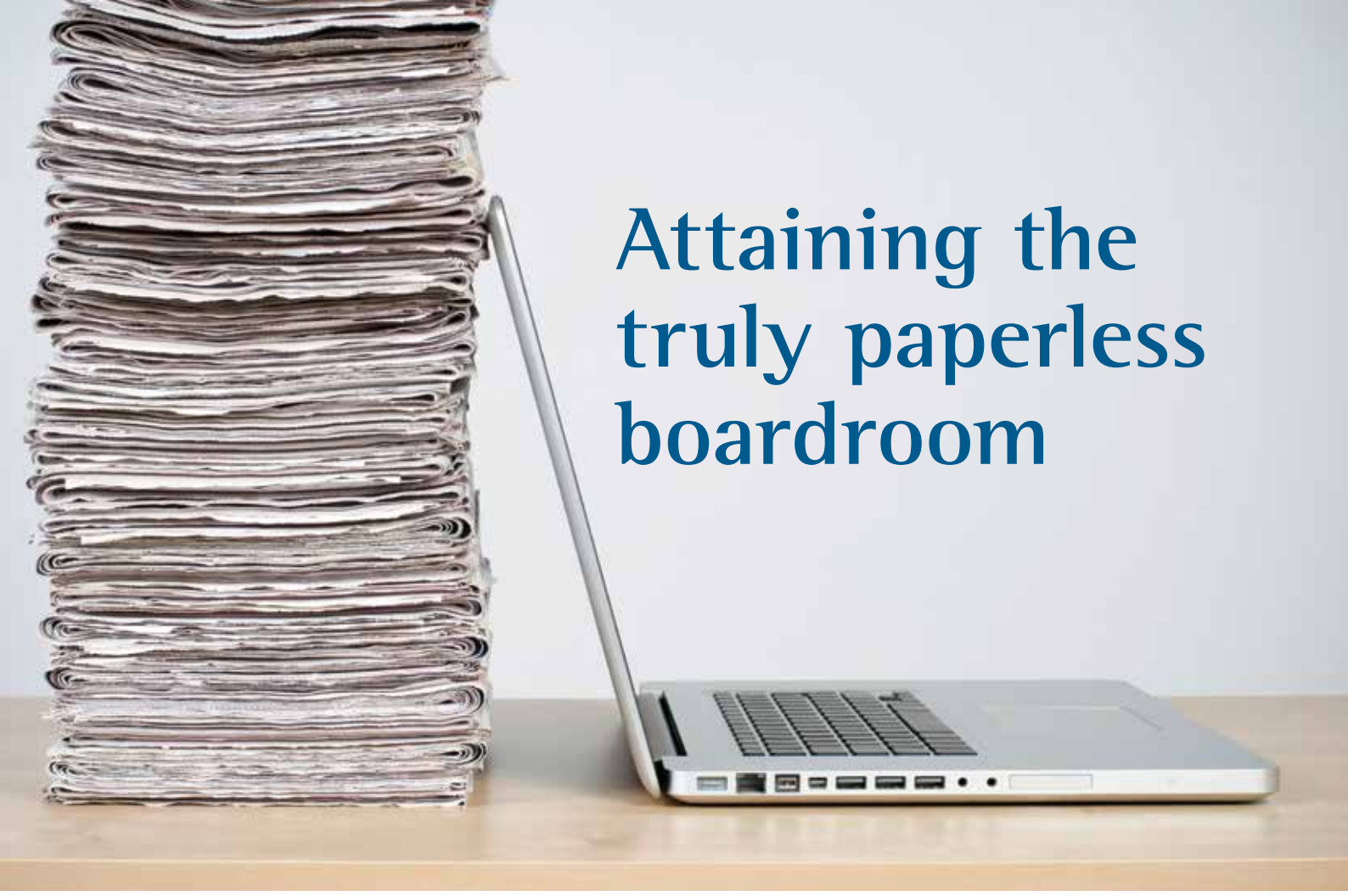


Attaining the truly paperless boardroom

Al Percival, Managing Director, Asia Pacific, Diligent APAC Board Services, identifies seven best practices that will help ensure that your board portal will deliver on its paperless promise.

Given the amount of information that is distributed to board members before each board or committee meeting, many boards have attempted to 'go paperless'. However, without taking into account how people actually use information and interact with technology, well-meaning efforts can easily backfire – preserving many of the inconveniences of traditional paper documents while failing to deliver on the full benefits of going digital. Thorough planning and a user-centred approach, however, can make the paperless boardroom a reality.

Getting rid of paper vs getting rid of problems

Any attempt to reduce paper in the boardroom needs to begin with the understanding that going paperless actually occurs along a spectrum. On one end is the traditional, 100% paper environment, in which paper packs and all other information is distributed to board members in hard copy form, either at the time of the board meeting or in advance by courier. At the other end of the spectrum, the board relies on a board portal – a secure third-party app through which board members sync their tablets or PCs to access a digital version of the board pack, which they can then annotate, discuss and vote upon using digital tools.

In between these two ends of the spectrum are intermediate points like emailing documents or using a file-sharing system. These half-way solutions are not as paperless as they may seem, considering how people really use them. Often, even if board materials are distributed digitally, many problems of traditional distribution persist. PDF files and desktop documents, for all their convenience, are not very reader friendly, leaving some board members to use consumer-grade annotation tools and insecure storage methods while others may resort to printing out files. When updates are sent, board members must keep track of the latest version of each file as well. To read more on this topic, visit: www.boardbooks.com

Seven best practices in transitioning to the paperless boardroom

Board portals can provide a solution to this 'paperless paradox', but they aren't a silver bullet. They require well thought-out transitions based on a clear understanding of how information is distributed to and used by the board, and a focus on the human elements of the change. Based on the several thousand implementations that Diligent has conducted for boards of all types and sizes around the world, we

have identified best practices that help ensure that the board portal delivers on its paperless promise.

1. Be committed

Commitment from the chairman, CEO and company secretary to going paperless is essential. The success of a paperless transition is not a matter of technology but rather one of changing habits. And asking a group to change the way it gets its board information requires a clear signal of support from the top, as well as champions who will lead by example in their own use of the portal.

One example of this was the way Businesslink – the Australian NSW government specialist provider of outsourced business services – transitioned to a board portal. Its chairman and Executive Officer, Angela Leonello, realised that working with hard copy board packs, which could weigh as much as 2.5 kilograms, was an inconvenience.

'On a Thursday afternoon it was a frantic rush to ensure papers were approved and ready for packaging so the courier could collect them and distribute to the relevant committee/board members by Friday. I was tasked with seeking a solution that would ease the way committee/board papers were distributed and also made available as soon as the agenda items were completed.' The board portal was a solution that helped her board become far more fast, efficient and reliable.

2. Map your information flow

A good paperless implementation starts with a solid understanding of how and when your board packs are compiled, distributed and updated. After mapping out each step, the new paperless platform is then designed to replicate the current process as closely as possible. That might seem ironic, but one way paperless systems can fail is by trying to be revolutionary from the start rather than evolutionary. Once everyone gets comfortable with the board portal and what it can do, people will naturally begin to discover improvements to the workflow in a way that makes sense for their organisation.

> "without taking into account how people actually use information and interact with technology, well-meaning efforts can easily backfire"

Mapping the information flow will also help ensure that the paperless platform is right-sized. A traditional main board that meets four or six times a year will have one set of needs; an organisation like FirstRand, a financial services firm with operations across Southern Africa that manages an advisory board, a management board, subsidiary boards and committees that generate more than 8,700 board packs a year, will have another. It was a central requirement that their board portal be able to reliably handle that level of throughput.

3. Don't skimp on training

A major determinant of whether or not a paperless portal takes hold is the quality and thoroughness of training given to the portal's administrators and users. Training for end users – the directors and board members – typically is straightforward and often is conducted over the phone.

Despite the outdated stereotype of limited digital literacy on the part of directors, the overwhelming majority today will embrace technology if it is intuitive to use and comes with a proper level of training. Indeed, an Age UK (a UK charity dedicated to the elderly – www.ageuk.org.uk) report on digital inclusion of older adults in the UK found that the number of people aged 65-plus

Highlights

- the development of board portals combined with powerful, easy-to-use tablets has finally made paperlessness and the efficiency it brings possible in the boardroom
- the transition to a board portal needs to focus on the human elements of the change
- commitment from the chairman, CEO and company secretary to going paperless is essential

who have used the internet has overtaken those in that age group who have never used it for the first time. Of the 42 million adults online in the UK, 4.7 million are aged 65-plus. Seventy-nine percent of those feel they can communicate confidently via email but this drops to just 20% for social networking, Skype and similar systems, suggesting that education and learning still play an important role.

At the same time, directors will differ in their level of technical experience and savviness, and personalised training allows each to get comfortable with the portal at their own speed. No matter how busy directors are, they will appreciate the option to test the system in private, get all their questions answered and go into the first paperless meeting fully prepared.

Conduct all training for directors shortly before their first paperless board meeting. This can be a challenge, particularly with the harried schedules of non-executive directors, but it ensures that everyone gets up to speed at the same time, is able to access the materials prior to the meeting, and is confident in their skills in using the portal when the meeting takes place.

Training and consulting with the administrators of the portal – usually the executive assistants in the CEO's office or the secretariat team charged with managing the current system – is essential for a smooth implementation. It is the administrators, after all, who upload the raw documents and then insert the various functions that make the digital documents so easy for the directors to use, such as the virtual section dividers and the links between documents. They are also the ones who enable the additional capabilities the portal might have, such as the ability to vote on resolutions or a central repository for secondary documents like by-laws, committee charters and meeting minutes.

While a well-designed portal makes the transition for the administrative team simple, well-trained and committed administrators are essential for getting the most out of a portal. Remember that administrators have seen initiatives come and go; a certain amount of healthy skepticism is to be expected. Spend the extra time up front to ensure their enthusiasm and buy-in.

4. Insist on white-glove support

Most portal systems are highly reliable, but questions do arise, and often at inopportune moments such as when a director is having connectivity problems while trying to sync documents before boarding a plane. For such situations, it's important that the portal provider includes 24/7/365 support from a team of 'always on' live experts.

Similarly, no matter how smoothly the implementation goes, follow-up training should be scheduled. This is particularly true for the administrators who will be able to utilise the full investment in the portal only when they become 100% familiar with all its capabilities.

Sydney Airport Company Secretary, Jamie Motum, has been very pleased with the performance of their board portal introduced in February 2013. 'I expected that we would have a number of teething problems with this technology, but it was eagerly accepted by all of our directors, and has worked consistently well. The board portal solution has saved countless hours of board-pack printing and collation time for my team, and the responsiveness of the help desk to any minor issues has been first class,' he says.

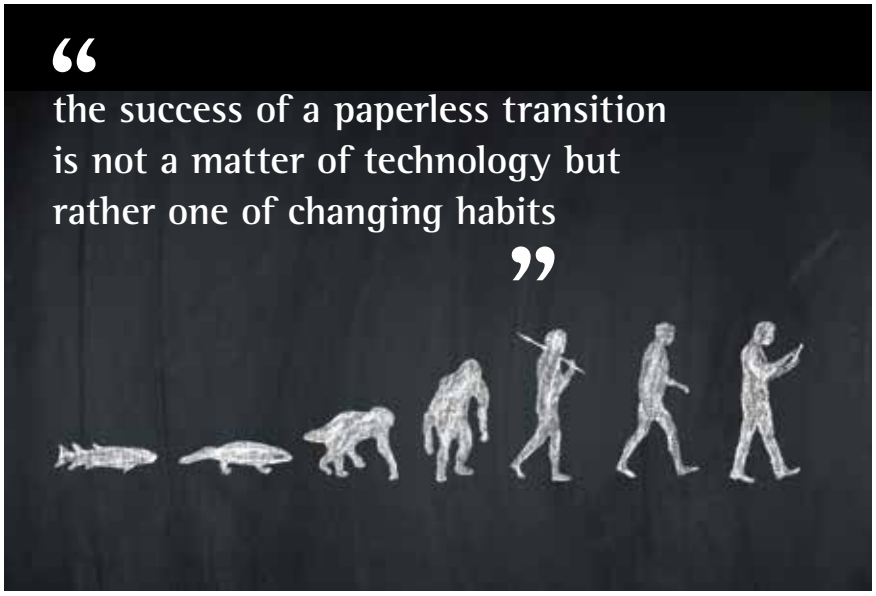
5. Don't treat all information the same

The vast majority of documents in a board pack are on standard size paper, with dimensions that transition easily to being read via an app on a tablet. But a board pack might need to include larger-format documents that don't lend themselves as well to tablet viewing.

One city council in Australia that adopted a board portal took a two-pronged approach to the detailed financial statements, drawings and architectural plans their packs needed to include. The council continued to distribute these documents in hard copy while also including them in the digital copy. They then brought in large flat-screen monitors for the council meeting and used them to display the larger documents at the appropriate points in the agenda. In this way, they continued to reinforce the overall migration to paperless working without forcing paperlessness where it could have compromised readability.

Remember that the remaining issues involving ease of viewing will resolve themselves as devices continue to evolve and as boardrooms become more explicitly designed to handle different forms of digital media. In the meantime, even the most digitally committed boards will benefit from flexibility.

The administrators compiling the board packs will find that moving to a paperless format will highlight any inconsistencies regarding typeface, font size, line spacing and other layout variables, even more than distributing the board pack as a single bound document did. Transitioning



to a board portal is a good time to make sure that there is a standard corporate style for board documents and that it is followed when the papers are assembled.

6. Don't go cold turkey

It is natural to think that there will not be any paper at the first paperless board meeting, but the transition needs to be less abrupt to maximise the chances for success. It's a good idea to either distribute the hard copy packs before the meeting as usual, or have copies in the boardroom to which directors can refer. Remember that they have been able to access the paperless portal prior to the meeting.

After the meeting, poll the directors individually about whether or not they still want to receive hard copy packs. If training has gone well, most directors will find they have little use for paper packs after the first paperless meeting. When a leading UK energy supplier implemented a board portal system, they found the transition so natural that they went from using paper one week to being paperless the next.

Prior to the first board meeting using a portal, some of the directors of Lonmin, a UK-based mining company, requested paper copies, as they were unsure whether the solution would meet their needs. Rob Bellhouse, Lonmin's Company Secretary found, however, that those requests faded after the first meeting. 'After they got to use the solution and experience for themselves how easy it was, the take-up was very fast. Switching from paper to iPad does require a culture change, but for us this did not present a significant problem,' he says.

7. Peer pressure is stronger than decree

Even if all goes well, it isn't unusual to have a director or two who want to continue to have hard copy packs delivered after the first paperless meeting. Those directors can continue to use paper packs, which can be easily generated from the portal, either by the company secretary or by the individual director. As the rest of the board becomes more comfortable with the portal the holdouts will find that it takes them longer than their digital counterparts to navigate between sections and find the comments they want to share during the discussion. As board meetings begin to run more quickly and efficiently, the holdouts will not want to be responsible for slowing things down.

When a leading insurance company in the Netherlands switched to a digital board portal, a few board members insisted on using hard copy. But after a few months of watching everyone else using a board portal, on their iPads, they abandoned paper without looking back. The boardroom is a collegial place, and peer pressure can be a powerful force. Furthermore, the fact that directors won't get their hard copy updates as quickly as everyone else will be a subtle disincentive to stick to paper.

Making the paperless boardroom a reality

The paperless workplace has been a much-pursued goal for almost as long as there have been computers in the office. For decades, partial solutions that demanded too much compromise from the user kept that goal easily imaginable but ultimately unachievable. The development of board portals combined with powerful, easy-to-use tablets has finally made paperlessness and the efficiency it brings possible in the boardroom. Those who make the transition – and keep the user at the centre of the change – are likely to find that it delivers on its long-held promise.

Al Percival, Managing Director, Asia Pacific
Diligent APAC Board Services

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When is it reasonable to suspect money laundering?

A recent decision of the Court of Final Appeal clarifies the law relating to suspected anti-money laundering cases in Hong Kong.

In November 2014 the Court of Final Appeal (CFA) quashed a conviction by the Court of Appeal in a money laundering case. The CFA reinterpreted the money laundering offence under the second limb of Section 25(1) of the Organised and Serious Crimes Ordinance (OSCO) where the accused has no actual knowledge of the underlying crime.

In *HKSAR v Pang Hung Fai*, it was accepted that the appellant, Mr Pang, had no actual knowledge that he was laundering the proceeds of an indictable offence. Nevertheless, the lower court convicted him on the alternative basis of liability, namely, that he had 'reasonable grounds to believe' that he was dealing with the proceeds of an indictable offence.

In quashing his conviction, the CFA considered the facts and matters put forward by Mr Pang and, more importantly, Mr Pang's own perception and evaluation of those facts and matters. In contrast, the lower court had failed to take into account Mr Pang's perception and evaluation of the facts, instead preferring an overly complicated

> “Mr Pang’s case was fundamentally that, on entirely reasonable grounds, he had trusted Mr Kwok implicitly and had no reason to suspect that the money remitted to his account had anything to do with any criminal offence”

'subjective/objective' test involving an abstract 'reasonable person', as previously adopted by the Court of Appeal.

The CFA also observed that, as a serious criminal offence, the *mens rea* (guilty mind) element is significant and the standard applied by the Court of Appeal was inappropriately low given the context of an indictable offence. The lower court had adopted a 'could believe' test, whereas a 'would believe' test was more appropriate. The CFA suggested an alternative formulation of the two mental elements of the offence under Section 25(1) to be understood as 'knew or ought to have known'.

Highlights

- the Court of Appeal convicted Mr Pang on the grounds that he had 'reasonable grounds to believe' that he was dealing with the proceeds of an indictable offence
- this conviction was quashed by the Court of Final Appeal on the grounds that the lower court had adopted a 'could believe' test, whereas a 'would believe' test was more appropriate
- the Court of Final Appeal suggested an alternative formulation of the two mental elements of the offence under Section 25(1) of the Organised and Serious Crimes Ordinance to be understood as 'knew or ought to have known'

Background

Mr Pang, the appellant, assisted his friend and business associate, Mr Kwok, by allowing around HK$14 million to be transferred from two Mainland individuals into Mr Pang's company accounts and then remitted to a company controlled by Mr Kwok, at Mr Kwok's request. Unknown to Mr Pang, the HK$14 million represented the proceeds of a fraud committed by Mr Kwok, who subsequently disappeared.

Mr Pang and Mr Kwok had been close friends and business associates for 30 years. Mr Pang was the owner of a successful garment business of reasonable size, whereas Mr Kwok was the chairman and major shareholder of a listed company with large-scale operations in several countries. They had, in the past, helped each other with unsecured, interest-free loans on occasion when cash flow difficulties arose. When asked by Mr Kwok to help out with the HK$14 million at issue, Mr Pang did not ask for any reason.

The prosecution asserted that Mr Pang had reasonable grounds to believe that the property represented the proceeds of an indictable offence on account of the factual circumstances and substantial sum of money involved.

Mr Pang's case was fundamentally that, on entirely reasonable grounds, he had trusted Mr Kwok implicitly and had no reason to suspect that the money remitted to his account had anything to do with any criminal offence.

Comment

The CFA stated that the words having 'reasonable grounds to believe' are not complicated and are readily understandable. It noted that in the context of a serious offence, as an alternative mental state to actual knowledge, this should set the bar high for conviction, and should focus on the actual rather than a probable state of affairs.

This judgment provides a welcome sense of proportion and clarification of the statutory offence.

Allan Leung, Partner, and Danny Leung, Consultant
Hogan Lovells Hong Kong

HKICS Prize Winner 2014

HKICS Prize Winner 2014 – Neil McNamara FCIS FCS

The annual HKICS Prize celebrates the achievements of leaders of the Chartered Secretarial profession. The 2014 prize was awarded to HKICS Past President Neil McNamara FCIS FCS, who was one of the architects of the Institute's professional development framework and helped set up its continuing professional development programme (CPD) in 1994. He was also the founding chairman of the Company Secretaries Panel and remains a Panel member.

Mr McNamara was a member of the Institute's Council between 1989 and 1996 and has served as Vice-President of the Institute, Chairman of the Professional Development Committee and member of the Technical and Publications Committees. He was re-elected to the Council in December 2003 and held office until 2008. He served as the President of the Institute, Chairman of the Executive Committee, member of the Membership Committee, Professional Development Committee and ICSA International Council. He was the Chairman of the Nomination Committee between 2009 and 2014.

Many key milestones of the Institute's development were achieved during Mr McNamara's presidency of the Institute 2003 to 2005, including:

- The launch of the Enhanced Continuing Professional Development (ECPD) programme and the Practitioners' Endorsement. Mr McNamara also started the process which led to the adoption of mandatory CPD requirements for Chartered Secretaries by the HKICS, the ICSA and Hong Kong Exchanges & Clearing Ltd.

- The launch of the Affiliated Persons programme which has been effective in promoting the Chartered Secretarial profession in Mainland China and has extended the Institute's network in the Mainland.

- The launch of the graduate entry only examination scheme, the International Qualifying Scheme.

In addition, Mr McNamara directed and worked with a core team of past presidents and then Council members to negotiate, and finally sign the Delegation Agreement with the ICSA in 2005 and 2006 that recognised the HKICS as the ICSA China Division.

He also oversaw the rebranding of HKICS with a new logo and tagline designed to promote the role of our members as the key gatekeepers for governance matters in their organisations.

An interview with Neil McNamara will appear in next month's edition of CSj.

Annual Dinner

Annual Dinner 2015

The Institute held its Annual Dinner on 14 January 2015 at the Conrad Hong Kong and achieved a record breaking attendance of over 540. It provided an excellent opportunity for members, practitioners, fellow professionals, government representatives and regulators to meet and communicate in a relaxed social environment.

We were honoured to have Professor KC Chan, GBS, JP, the Secretary for Financial Services and the Treasury, as our guest of honour. In his Annual Dinner speech, he said that good corporate governance is one of the core competencies of Hong Kong as a global financial centre and company secretaries have helped ensure that companies comply with relevant company legislation while upholding high governance standards in corporate decision-making processes.

The Institute and its members also actively participated in the rewrite exercise of the new Companies Ordinance. Professor Chan also pointed out that 'a sound corporate regulatory framework is the cornerstone of Hong Kong's status as an international financial centre.' The Institute will be pleased to continue collaborating with the authorities in the professional development of Chartered Secretaries and governance related topics such as corporate rescue and minority protections.

Annual Dinner photo gallery

Clockwise from left: Professor KC Chan, Secretary for Financial Services and the Treasury, HKICS Council members and Chief Executive Samantha Suen FCIS FCS(PE) toasting with guests; President Dr Maurice Ngai FCIS FCS(PE) and Immediate Past President Edith Shih FCIS FCS(PE); Professor KC Chan; Dr Maurice Ngai; Samantha Suen; guests taking their selfie photos for the night's table game; Professor KC Chan giving his speech as Guest of Honour to the 540 guests at the event; and the Institute's Affiliated Persons entertaining guests with a lively vocal performance.

Annual Dinner (continued)

Guests (in alphabetical order)

Ashley Alder JP, Chief Executive Officer, Securities and Futures Commission

Esther Blythe, Deputy Head of Mission, Foreign & Commonwealth Office of the UK

Alfred Chan BBS, Chairman, The Hong Kong Management Association

Charles Chan, Chairman and Chief Executive Officer, Crowe Horwath (HK) CPA Ltd

Derek Chan, Associate Professor, School of Business, The University of Hong Kong

Professor Chan Koon Hung Academic Dean (Business Studies), Lingnan University

Donald Chau, President, The Society of Chinese Accountants & Auditors

Kenneth Chen, Divisional President – Greater China 2015, CPA Australia – Hong Kong Division

Rita Cheung, Chief Executive Officer, The Hong Kong Institute of Architects

Rosalind Cheung, Principal Assistant Secretary for Security, Narcotics Division, Security Bureau

Professor Andy Chiu, Head, Department of Law and Business, Hong Kong Shue Yan University

Sammy Choi, Deputy President, The Association of Hong Kong Accountants

Paul Chow GBS, SBS, JP, FCIS FCS

Buston Chu, Chairman, Hong Kong Institute of Marketing

Chua Siew Chuan FCIS, President, Malaysian Institute of Chartered Secretaries and Administrators

Peter Dongas, National Director, Operations, Governance Institute of Australia

Michael Duignan, Senior Director, Corporate Finance, Securities and Futures Commission

Vickie Fan, Partner, Fan, Chan & Co

David Graham, Chief Regulatory Officer and Head of Listing, Hong Kong Exchanges and Clearing Ltd

Dennis Ho, President, Hong Kong Institute of Certified Public Accountants

Grace Hui, Managing Director and Chief Operating Officer, Listing Department, Hong Kong Exchanges and Clearing Ltd

Professor Jeong Bon Kim FCIS FCS, Department Head and Chair Professor, Department of Accountancy, City University of Hong Kong

Gordon Jones BBS, FCIS FCS

Amy Lam, Chairperson, Chartered Institute of Management Accountants, Hong Kong Division

Dr Peter Lau, Associate Professor, Department of Accountancy & Law, Hong Kong Baptist University

Odetta Lee, President, CMA, Canada – Hong Kong Branch

The Hon Kenneth Leung, Legislative Councillor (Accountancy), Hong Kong Special Administrative Region Legislative Council

Professional Development

Seminars: December 2014 to January 2015

15 December

The new Companies Ordinance – application issues about financial reporting that company secretaries need to know (re-run)

Chair: *Dr Maurice Ngai FCIS FCS(PE), Director and CEO, SW Corporate Services Group Ltd*

Speaker: *Ernest Lee FCIS FCS, Member, Professional Development Committee, HKICS; and Partner, Assurance, Professional Practice, Ernst & Young*

16 December

No-par regime and transactions under the new Companies Ordinance

Chair: *Edmond Chiu ACIS ACS, Member, Professional Services Panel, HKICS; and Director, Corporate Services, VISTRA Hong Kong*

Speaker: *Susan Lo FCIS FCS(PE), Member, Professional Development Committee, HKICS; and Executive Director, Director of Corporate Services and Head of Learning & Development, Tricor Services Ltd*

Dr Sigmund Leung JP, President, Hong Kong Dental Association Ltd

Carrie Leung, Chief Executive Officer, The Hong Kong Institute of Bankers

Leung Kong Yui, Acting Head of College of Business and Finance, HKU SPACE

David Li, President, Hong Kong Institute of Human Resource Management

Craig Lindsay, Chairman, Hong Kong Securities and Investment Institute

Professor CK Low FCIS FCS, Associate Professor in Corporate Law, School of Accountancy, The Chinese University of Hong Kong

Dr Arthur McInnis, Professional Consultant, Faculty of Law, The Chinese University of Hong Kong

Frank Mullens FCIS FCS, Past Chairman, the Association of the Institute of Chartered Secretaries and Administrators in Hong Kong

Anthony Rogers FCIS FCS

Richard Stoneman FCIS FCS, Past Chairman, the Association of the Institute of Chartered Secretaries and Administrators in Hong Kong

Carlson Tong SBS, JP, Chairman, Securities and Futures Commission

Professor Philips Wang ACIS ACS, Acting Dean, School of Business and Hospitality Management, Caritas Institute of Higher Education

Wong Kuen-fai JP, Commissioner, Inland Revenue Department

Tak Wong, President, The Hong Kong Institute of Landscape Architects

Fergus Wong, Chairman, Association of Chartered Certified Accountants Hong Kong

Professor Allen Wong, Founding President and Chief Executive - Greater China, The Institute of Certified Management Accountants, Hong Kong Office

Ban Wong, Vice-Chairman, SME Global Alliance Ltd

Dr Brossa Wong, Associate Dean, School of Business, Hang Seng Management College

Salina Yan JP, Deputy Secretary for Financial Services and the Treasury (Financial Services)

Joseph Yau, President, The Taxation Institute of Hong Kong

Carrie Yau GPS, JP, Executive Director, Vocational Training Council

AK Yeow

Monica Yu, Executive Director, Independent Commission Against Corruption

张强, 中央政府驻港联络办协调部副部长

罗智中, 中央政府驻港联络办主任科员

The Institute would like to thank all the sponsors and helpers for participating in this year's Annual Dinner.

6 January

New reporting exemption for non-public companies and other financial reporting impacts

Chair: *Ernest Lee FCIS FCS, Member, Professional Development Committee, HKICS; and Partner, Assurance, Professional Practice, Ernst & Young*

Speaker: *Sylvene Fong, KPMG Audit Partner*

13 January

Tax investigation in Hong Kong

Chair: *Dr Davy Lee FCIS FCS(PE), Membership Committee, HKICS; and Group Company Secretary, Lippo Group*

Speaker: *Joe Chan, Partner, Tax Policy and Controversy, Ernst & Young Tax Services Ltd*

Professional Development (continued)

公会内地讲座关注年度财务审计

为配合境内外上市公司年度财务审计及业绩报告的需要，香港特许秘书公会（公会）于2014年12月10-12日在北京举办了“香港特许秘书公会第三十六期联席成员强化持续专业发展讲座”（讲座），来自监管部门和行业自律组织的代表针对近期规则的变化和如何规避风险等话题进行了详细解读。

值得关注的是，2014年恰逢公会“三重周年”，一是特许秘书踏足香港65周年，二是公会在香港成为一家本地独立专业团体20周年，三是联席成员计划实施10周年。目前，董秘个人、以及整个行业正面临新的机遇和挑战，董秘对于公司自律与治理的成败具有关键作用，而如何提升董秘的专业化水准正是公会一直以来致力研究的课题。

并购重组规则生变

来自中国证监会上市公司监管部代表专门介绍了内地《重组办法》、《收购办法》的修订情况，该代表指出，中国已经成为全球第二大并购市场，资本市场则是企业并购重组的主渠道，产业整合成为国内上市公司并购的主流，并购重组涉及的行业广泛，绩效显著，但与此同时，需要证监会审核的比例下降、数量上升。在这一背景下，修改前述办法的总体思路是取消盈利预测、完善定价机制和取消审批。监管方面以信息披露监管为核心，加强事中、事后监管，强化中介机构责任，同时为保护投资者设计了单独计票机制、赔偿机制和即期回报填补措施。

具体来看，此次修订涉及简政放权、放松管制、加强监管和投资者保护四大方面。具体措施包括：取消除借壳上市外的重大资产重组行政审批，增加四类要约收购自动豁免情形；完善发行股份购买资产的市场定价机制，增加支付方式，取消向非关联第三方购买资产的业绩补偿要求，尊重市场化博弈的取向，取消发行股份的比例和金额要求，丰富要约收购人履约的保证方式，不再强制要求上市公司提供盈利预测报告，明确可以市值或估值方式定价；加强分道制审核制度，完善借壳上市的标准，加强信息披露要求，明确涉嫌违法违规正在被立案稽查公司发行条件，加强中介机构监管，强化事中事后监管等。

中国上市公司协会研究部、公司治理部张辉重点解读了《上市公司独立董事履职指引》，他介绍，2004年4月至2014年5月，证监会共颁发涉及独立董事的处罚决定72例，累计处罚212人。处罚案例主要集中在以下几个方面：未按照规定履职，上市公司违规担保、关联交易和财务造假等虚假信息披露，其他重大事项披露违规以及自身进行内幕交易等。

他表示，规避履职风险的关键是能拿出勤勉尽责的证据。同时要正确定位监督角色，充分了解自己的职责、事项，参加该参加的会议，了解该了解的信息；同时谨慎对待董事会决议签字，对重大事项进行审议，多问为什么；特别要认真对待公司年报、半年报的审议，特别注意同审计机构和审计委员会的沟通、交流；要求公司聘选的独立董事专业背景互补，发挥各自专业优势；尽可能详尽地做好工作笔录并妥善保存；只为靠谱、规范、公司治理水平高的公司服务。

英国史密夫斐尔律师事务所合伙人兼北京代表处首席代表邹兆麟律师则介绍了香港上市法规概览及最新修订更新情况，他介绍，香港联交所在2014年将“在切实可行的情况下尽快披露重大不利消息及内幕消息”作为监管重点，并列举了多个案例重点说明。

庆祝联席成员计划十周年

在讲座期间所举办的香港特许秘书公会三重周年庆典晚宴上，公会总裁孙佩仪指出：公会于2004年底开始实施联席成员计划，目前拥有146位联席成员。十年来共举办联席成员讲座36期，受众逾3000人次，涉及H股、红筹股及A股等公司。公会近年来发展迅速，目前会员人数约6,000人，与1994年相比增长了约一倍，而内地学员与会员人数的增长也不容忽视，越来越多的年轻人开始了解并认识到该专业的价值与前景。相信随着内地与世界经济的日趋融合，董秘专业与国际接轨指日可待，最先获取国际专业资格的人将是领先者。

Seminar review: analysing the audit

The article above reviews the Institute's 36th Affiliated Persons (AP) ECPD seminars in Beijing held on 10 and 12 December 2014. The seminars attracted over 110 participants, including 40 from H-share companies, 30 from A+H share companies, 30 from red-chips, six from A-share companies and four from private companies. The speakers shared their insights on a wide range of topics, including annual financial audits, annual reports preparation, notifiable transactions, connected transactions and inside information disclosure. In addition, Liu Lianqi, Division Head of the Listed Companies Supervision and Administration Department of the China Securities Regulatory Commission, briefed the participants on the latest regulatory amendments in relation to material asset restructuring and merger and acquisition activities.

ECPD and MCPD

What you should know about the MCPD requirements

All members who qualified between 1 January 2000 and 31 July 2014 need to acquire 15 CPD points, of which three points need to be enhanced CPD (ECPD) points, to comply with the Institute's mandatory CPD (MCPD) requirements. Members are reminded to maintain their training records for at least five years for random audit checking of compliance. For details of the Institute's MCPD policy, please refer to the Institute's website: www.hkics.org.hk.

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

New MCPD requirement extended to Graduates

Effective from 1 August 2015, all Graduates are required to comply with the Institute's MCPD requirements. For details, please refer to the MCPD policy on the Institute's website at www.hkics.org.hk.

Waiver of Practitioner's Endorsement fee

The application fee and the annual renewal fee for the Institute's Practitioner's Endorsement have been waived for the financial year 2014/2015. Please refer to the Institute's website: www.hkics.org.hk for the 2014/2015 application/renewal.

Policy on seminar enrolment

No cancellation is permitted once a seminar enrolment has been confirmed. Substitution of an enrollee is eligible with a HK$100 administration fee together with the 'Transfer of Enrolment Form' received by the Institute at least two clear working days prior to the event date. Please refer to the terms and conditions of the Institute's ECPD seminars for details.

New ECPD programme package

The new individual and corporate ECPD programme packages for 2014/2015 CPD year, enabling members/students to attend regular seminars at a discounted rate, are now available. Please refer to the Institute's website: www.hkics.org.hk for details.

Forthcoming seminars

Date	Time	Topic	ECPD points
26 Feb 2015	12.30pm – 2pm	Whose brand is it anyway? Strategies for dealing with brand hijacking in greater China	1.5
4 Mar 2015	6.45pm – 8.15pm	Court-free amalgamation – opportunities and challenges	1.5
9 Mar 2015	2.30pm – 5.45pm	Symposium on the new Companies Ordinance: first anniversary review	3
11 Mar 2015	7.00pm - 9.00pm	Part XIII and XIV of SFO: market misconduct - its coverage and must know recent developments	2
13 Mar 2015	7.00pm - 9.00pm	如何利用珠海橫琴的优惠政策	2
16 Mar 2015	6.45pm – 8.15pm	An effective solution for solving business conflicts: mediation and arbitration	1.5
18 Mar 2015	2.30pm - 5.40pm	Corporate governance and compliance with competition law – Hong Kong, China and EU	2.5
19 Mar 2015	6.45pm - 8.15pm	Proposal on changes to the Corporate Governance Code and Corporate Governance Report	1.5

Membership

New Graduates

Congratulations to our new Graduates listed below.

Chan Chun Kit
Chan Ho Ying, Maggie
Chan Ka Ching, Marina
Chan Ka Yan
Chan Shing Tak
Cheng Ka Wing
Chia Kar Hin, Eric John
Chong Wan Kai
Chu Hop Ping
Ho Ka Yan
Ho Wing Chi
Hon Wan Sin, Olivia
Ko Wing Chiu
Kwong Man Chi, Cassy
Lai Ka Yu
Lau Siu Ying, Michelle
Lee Wing Yee
Li Mindi
Li On Ki
Lo Ka Hei
Ngai Sin Yee
Tsang Kwai Yu
Tsang Oi Kwan
Tsang Tsz Ying
Wong Hiu Yan
Wong Hoi Ting
Wong Lei Yi
Wong Tak Chun
Yim Ming Chung
Yu Hok Sum
Yu Ka Yan, Michelle

New Associates

Congratulations to our new Associates listed below.

Au Man Yi
Chan Cheuk Man, Charmaine
Chan Chui Wan
Chan Pui Wai
Chan Shuk Kam
Chang Li Kwan, Frances
Cheung Chi Ming
Cheung Chun Pun
Chin Chun Yue
Chiu Oi Tai, Betty
Fung Kam Ying
Ho Hoi Yee
Hon Yuet Yee
Jiao Yingchen
Ko Man Kit
Lam Cheuk Man
Lam Ka Sze
Lau Ying Kee, Yvette
Law Ka Man
Lee Wing Yan
Lee Yiu Bong, Legend
Leung Shing Hei
Leung Siu Hung, Joel
Leung Wing Nga
Li Chun Kit
Li Jin
Lo, Maggie Waiki
Luk Pok Yin
Mo Shun Chi
Mok Cee Kee, Alexandra
Or Ching Han
Poon Yuk Ching, Ada
Shen Yang
Sheung Yin
Sze Nga Ting
Tong Kam Chun
Tong Man Chi
Tsang Man Ying
Tsang Yiu Man
Tse Hoi Pik, Olivia
Tse Lan Sang, Spencer
Wat Ka Wai
Wong Kwok Keung
Wong Kwong Ling
Wong Man Wai
Wong Ngar Lai
Wong Yik Huen

Fellows-only benefits

Fellows are leaders of the Chartered Secretarial profession. These highly qualified and respected role models are crucial in maintaining the growth of the Institute and the profession. Act now and enjoy a special rate for the Fellowship election fee of HK$1,000 and exclusive Fellowship benefits.

Please visit the 'Membership' section of the Institute's website: www.hkics.org.hk for details, and contact the Membership section at: 2881 6177, or email: member@hkics.org.hk for enquiries.

New Fellows

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

Lee Kin, Arthur FCIS FCS

Mr Lee is currently Assistant President and Director of Investor Relations with CGN Meiya Power Holdings Co Ltd. He is a Fellow of the Association of Chartered Certified Accountants and the Hong Kong Institute of Certified Public Accountants; and a member of the Chartered Institute of Management Accountants and CPA Australia. He is also a CFA. Mr Lee holds a Bachelor of Engineering degree from The Chinese University of Hong Kong, an MBA degree from the University of Warwick and a Master of Corporate Governance degree from The Hong Kong Polytechnic University.

Bill Wang FCIS FCS

Mr Wang is Standard Chartered Group's Listing Head for Asia and Head of Subsidiary Governance for the Greater China Region. He is responsible for post-listing obligations of Standard Chartered PLC (02888), which is listed in the UK, Hong Kong and India, and serves as Company Secretary for Standard Chartered Bank (Hong Kong) Ltd. As a senior legal and governance executive, Mr Wang manages complex corporate governance issues and Group-subsidiary relations. He is actively involved in regulatory reform in relation to the listing rules, the corporate governance code, securities regulations and company law in various Asia jurisdictions. He is a frequent speaker, panellist and author on corporate governance and corporate social responsibility matters. Prior to joining Standard Chartered in 2006, he practiced for 10 years with major international law firms in financial centres – New York, London, Hong Kong, Beijing and Shanghai – and specialised in international capital markets and cross-border M&A areas. He holds law degrees from both the US and the PRC and qualified in New York.

Additional new Fellow:

Lo Yeuk Ki, Alice FCIS FCS, Company Secretarial Director, Apex Corporate Services Ltd

Membership activities

Forthcoming members' event

The Institute will organise a series of interesting membership activities for 2015, kicked off with a social gathering – 'Happy Friday for Chartered Secretaries – investment wisdom for busy professionals' to be held on Friday 27 March 2015, between 6.30pm and 8.15pm at Club Lusitano, Central. Agnes Wu Mang Ching, a veteran market commentator will be the speaker.

Save the date for this event and more information will soon be available at the 'Events' section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Membership section at: 2881 6177, or email: member@hkics.org.hk.

Appointments

- Institute Council Member Dr Eva Chan FCIS FCS(PE) was appointed by the Vocational Training Council as a member of its Accountancy Training Board from 1 April 2015 to 31 March 2017.

- Institute Member Nelson YC Chiu ACIS ACS was appointed by Caritas Institute of Higher Education as an External Examiner for its Bachelor of Business Administration (Honours) in Corporate Management between February 2015 and January 2017.

- Institute Member Dr Ben Wong Kin Fai ACIS ACS was appointed by the Board of Review (Inland Revenue Ordinance) (the Board) as a member of the Board for a term of three years with effect from 1 January 2015.

Congratulations to the above members!

HKICS appoints senior director

The Institute appointed Mohan Datwani FCIS FCS(PE) to the new position of Senior Director & Head of Technical and Research with effect from 1 February 2015. Mr Datwani who joined HKICS on 1 February 2012, was the Director, Technical and Research prior to this promotion.

International Qualifying Scheme (IQS) examinations

December 2014 examination

Candidates will receive an email and SMS notification before mid-February 2015 that the December 2014 examination results are ready to be released. Examination result slips will be posted to candidates and will not be disclosed by phone or email.

June 2015 diet reminders

Examination timetable

	Tuesday 2 June 2015	Wednesday 3 June 2015	Thursday 4 June 2015	Friday 5 June 2015
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 2015.

Syllabus and reading list updates

Please note that the syllabus and reading list for the following subjects will be updated in accordance with the requirements of the new Companies Ordinance effective from June 2015 examination diet:

- Hong Kong Corporate Law
- Corporate Governance
- Corporate Secretaryship

Students may refer to the 'Studentship' section of the Institute's website: www.hkics.org.hk for details.

IQS examination arrangement

From the June 2015 examination diet onwards, the syllabus of the IQS examinations will be based on the new Companies Ordinance (Cap 622). The old Companies Ordinance (Cap 32) has been retitled the 'Companies (Winding Up and Miscellaneous Provisions) Ordinance', containing provisions relating to prospectuses, winding-up, insolvency of companies and disqualification of directors.

IQS study pack

Students may order the new study packs on Corporate Administration and Corporate Governance. The study pack on Corporate Secretaryship and Hong Kong Corporate Law (2nd edition) will be published later. Purchase of the study pack is mandatory with the enrolment of each subject examination. The order form can be downloaded from the Institute's website: www.hkics.org.hk.

IQS information session

The Institute held an IQS information session on 21 January 2015 for members of the general public interested in pursuing the Chartered Secretarial profession. Julian Leung ACIS ACS, Group Financial Controller and Company Secretary of Yongsheng Advanced Materials Company Ltd, shared with the attendees his professional working experience and his experience of studying the Master of Corporate Governance programme.

Julian Leung sharing his experience

Student Update

HKICS Examinations Preparatory Programme

HKICS Examinations Preparatory Programme conducted by HKU SPACE will commence on Monday 23 February 2015. Please refer to the timetable and enrolment form on the Institute's website: www.hkics.org.hk. For enquiries, please contact HKU SPACE at: 2867 8478 or email: hkics@hkuspace.hku.hk.

Hong Kong Postgraduate Education Expo, Shanghai

Joanna Lau ACIS ACS, General Manager – Technical Support of Offshore Incorporations Group, delivered a talk at the Hong Kong Postgraduate Education Expo (香港硕士教育联展) in Shanghai on 21 December 2014. She introduced the Institute and the Chartered Secretarial profession to the attendees.

Joanna Lau sharing at the Expo

Student Ambassadors Programme – Summer Internship Programme 2015

Launched in 2005, the Institute's Summer Internship Programme for undergraduates aims to promote the Chartered Secretarial profession to local university students. The internship period will be from June to August 2015 for a maximum period of eight weeks.

Members interested in offering summer internship positions this year, please contact Carmen Wong at: 2830 6019, or email: student@hkics.org.hk.

Payment reminders

Studentship renewal

Students whose studentship expired in December 2014 are reminded to settle the renewal payment by Monday 23 February 2015.

Exemption fees

Students with exemptions approved via confirmation letter in early December 2014 are reminded to settle the exemption fee by Monday 2 March 2015.

New amendment to Hong Kong's anti-money laundering law

Schedule 2 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) is to be amended to enable financial institutions to continue to carry out relevant customer due diligence measures by means of specified intermediaries. Schedule 2 of the AMLO stipulates a set of customer due diligence (CDD) and record-keeping measures to be undertaken by financial institutions, in line with the recommendations of the Financial Action Task Force, the standard-setting body for the global efforts in anti-money laundering and counter-terrorist financing. The Schedule contains an interim provision to enable a financial institution to carry out CDD measures by means of intermediaries (including solicitors, certified public accountants and a current member of the Hong Kong Institute of Chartered Secretaries practising in Hong Kong, as well as a registered trust company carrying on trust business in Hong Kong), on the condition that these intermediaries have adequate procedures in place to prevent money laundering and terrorist financing. This interim provision was due to expire after 31 March 2015, but the new amendment will permit financial institutions to continue to carry out the CDD measures through the relevant intermediaries for three additional years until 31 March 2018.

More information is available on the Financial Services and Treasury website: www.fstb.gov.hk.

Execution of documents and deeds without a common seal

The Companies Registry has issued a reminder that the new Companies Ordinance (Cap 622) has abolished the mandatory requirement for a company to have a common seal and has made the keeping and use of a common seal optional. This applies to any company incorporated in Hong Kong under the new Companies Ordinance or any former Companies Ordinances. A company may execute a document under its common seal or, alternatively, without using its common seal. The alternative modes of execution without the common seal are provided for under Section 127(3) and Section 128(1).

More information is available on the Companies Registry website (www.cr.gov.hk).

Revised Code on Unit Trusts and Mutual Funds

New amendments to the Code on Unit Trusts and Mutual Funds are now in effect. The amendments were made to implement proposals to give public funds greater flexibility in determining the means for making public their offer and redemption prices, net asset values and notices of dealing suspension. The proposals were set out in the SFC's consultation conclusions published on 11 December 2014.

More information (including updated frequently asked questions) is now available on the SFC website (www.sfc.hk).

New mobile search functions at the Companies Registry

The Companies Registry has launched new search functions for its Company Search Mobile Service (CSMS). The CSMS service, launched in June 2012, allows users to conduct searches on company information anytime and anywhere using their smartphones and mobile devices. This service has been well received and on average more than 3,400 searches are now conducted daily via the CSMS. Two new search functions of the CSMS are now available for users to obtain the latest information relating to company directors (Directors Index Search) and disqualified persons (Disqualification Orders Index Search).

More information is available on the Companies Registry website (www.cr.gov.hk). The Company Search Mobile Service website is: www.mobile-cr.gov.hk. Enquiries concerning the new search functions should be directed to Miss Ida Lee, Assistant Registry Manager (Public Search), at (852) 2867 2567, or by email at: idalee@cr.gov.hk.

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