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March 2015

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The journal of The Hong Kong  
Institute of Chartered Secretaries

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# The new Companies Ordinance: one year on

Hong Kong's regulatory environment changed significantly on 3 March 2014 with the implementation of the new Companies Ordinance (NCO). It is not hyperbole to suggest that Cap 622 launched a new era in companies law in Hong Kong. This was no 'amendment' ordinance, but a complete rewriting of Hong Kong's companies law, and, judging by the high attendance at our ECPD seminars on the NCO, our members take compliance with the new legislation very seriously.

One year on from its implementation, the new law is very far from being old news. In fact, the first year of a new law's implementation is the most critical time. Despite the two decades of preparation that went into rewrite exercise, and the lengthy drafting process and scrutiny of the law by the LegCo Bills Committee, it is impossible to tell exactly how a new piece of legislation will be received by the market. In our second cover story this month (see pages 12–16), the Companies Registry outlines some of the teething difficulties that have been encountered in the first year of the NCO's operation. I would like to take this opportunity to express my high regard for the work done by the Companies Registry led by Ada Chung, the Registrar of Companies, in effectively preparing the public for the debut of the NCO and in making the transition smooth. The Institute is privileged to have Ada Chung and her

senior team members joining the first Company Secretaries Panel lunch meeting on 3 March 2015, the anniversary of the launching of the NCO, to share views.

Perhaps the most obvious reason why the NCO is still at the top of the compliance agenda in Hong Kong is that compliance with Section 388 and Schedule 5 of the NCO – which requires companies, unless exempted, to prepare a business review as part of their directors' reports – falls due this year. Depending on the dates of companies' year-ends, the deadline for companies to prepare their first business review could fall anywhere between this month and the end of the year.

Many larger companies may already have been making the new disclosures required by the NCO. For companies new to environmental, social and governance (ESG) reporting, however, the new disclosure requirements may be a compliance challenge. In particular, among other things, it will require companies to quantify non-financial factors using key performance indicators (KPIs), provide context for their corporate reports and report forward-looking information.

Fortunately, there is help at hand. Firstly, I recommend you read the cover stories in this edition of *CSj*. In our first cover story this month (see pages 6–11), Ernest Lee, Partner, Professional Practice, EY Hong Kong, and a member of our Professional Development Committee, highlights the disclosures required under Schedule 5 to the NCO and discusses the criteria for exemption from preparing a business review. Under the revised Main Board

Rules and GEM Rules relating to financial disclosure, a listed issuer must, nevertheless, strictly observe the disclosures in their directors' report.

Further guidance is available in our ECPD programme which has, over the last two years, given a central focus to the NCO. We ran 28 ECPD events on this topic up to end of January 2015 – attended by over 7,300 members, practitioners, as well as directors and senior management personnel – and our seminars on the NCO continue to draw capacity audiences. This month, on 9 March 2015, we have organised jointly with the Hong Kong Institute of Certified Public Accountants and The Law Society of Hong Kong a symposium on the new law at the Hong Kong Convention and Exhibition Centre. More details on this event, entitled 'Symposium on the New Companies Ordinance – First Anniversary Review', can be found on our website. Don't miss this golden opportunity to have your questions relating to the NCO answered by our expert panel of speakers, which includes practitioners, regulators and academics.

I will be giving the welcoming address at the symposium so I look forward to seeing many of you there.

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

Maurice Ngai FCIS FCS(PE)

# 新《公司条例》实施一周年

2014年3月3日，新《公司条例》（香港法例第622章）实施，大大改变了香港的规管环境。说新《公司条例》带领香港的公司法进入新纪元，一点也没有夸大。新条例并非修订原有《公司条例》而成，而是完全重写了香港的公司法。公会所举办有关新《公司条例》的加强持续专业发展讲座，参与者之踊跃，足见公会会员非常认真遵守新法例。

新例实施至今一周年，还是炙手可热的课题。事实上，新法例实施首年是最为关键的时刻。尽管经历二十年的重写筹备工作、漫长的草拟过程、立法会法案委员会的仔细审议，但市场如何回应新法例，实在未能说得准。今期的第二个封面故事里（见第12至16页），公司注册处阐明新《公司条例》实施首年内遇到的前期困难。在公司注册处处长鍾丽玲带领下，公司注册处有效地协助公众为新《公司条例》的实施作好准备，过渡过程顺利；我谨藉此机会向他们表达敬意。新《公司条例》实施一周年之际，我们很荣幸邀得鍾女士和公司注册处的资深官员出席2015年3月3日举行的公司秘书专责小组首次午餐会议，与我们交流意见。

也许，新《公司条例》仍然是香港公司合规工作日程的重中之重，最明显的原因，可能是今年须开始遵守新例第388条和附表5，即除非获得豁免，

否则公司须拟备业务审视，作为董事会报告的一部分。拟备首份业务回顾的期限由本月至年底不等，视乎公司的年结日而定。

许多大公司可能以往一直都发表相关资料，符合新《公司条例》的披露要求；但对于未熟识撰写环境、社会与管治报告的公司来说，要符合新的披露规定，或许会是一项挑战，尤其是当中要求公司以关键表现指标量化非财务因素、提供公司报告的背景，以及报告前瞻性的资料等范畴。

幸好，从事合规工作的人仕能够获得即时的协助。我建议先参阅本刊今期的封面故事。在首个封面故事里（见第6至11页），香港安永会计师事务所专业实务合伙人兼本会专业发展委员会成员李俊豪，重点介绍了新《公司条例》附表5的披露规定，并说明豁免拟备业务审视的条件。然而，根据经修订的主板和创业板上市规则有关财务披露的规定，上市公司编写董事会报告时，必须严格遵守有关披露规定。

本会的加强持续专业进修计划，可提供进一步协助。过去两年，新《公司条例》一直是加强持续专业进修计划的主要重点；截至2015年1月底，有28项加强持续专业进修活动涉及这课题，参与的会员、从业人员、公司董事及高层管理人员超过7,300人次。

本会有关新《公司条例》的讲座，会持续吸引大量参加者。2015年3月9日，我们与香港会计师公会和香港律师会合办有关新《公司条例》的研讨会，假香港会议展览中心举行，题为「新《公司条例》研讨会－实施首年回顾」；详情可浏览本网站，届时更可向与会的专家讲者，包括从业人员、监管机构和学者，讨论有关新《公司条例》的疑问。万勿错过这个黄金机会。

我将在研讨会上致欢迎辞，期望到时见到大家。



魏伟峰博士

# Business review disclosure under the new Companies Ordinance





The new Companies Ordinance (Cap 622) requires certain public companies and companies not qualified for simplified reporting to prepare a more comprehensive directors' report which includes a business review. This article aims to highlight the disclosures required under Schedule 5 to the new Ordinance, and to discuss the criteria for exemption from preparing a business review.

The commencement of operation of the new Companies Ordinance (NCO) on 3 March last year signifies a new era for company law in Hong Kong. In respect of the disclosure of corporate information, the NCO introduces a new requirement for a company to present a business review in the directors' report, unless exempted. Section 388 of the NCO states the directors' duty to prepare a directors' report that, amongst other matters, complies with Schedule 5 to the NCO.

As further explained below, Schedule 5 to the NCO sets out the minimum contents of the business review. The business review is an analytical and forward-looking review of the company or group that provides information about the development, performance and position of the business of the company or group. Section 388 and the requirement to prepare a business review apply to financial years beginning on or after 3 March 2014.

It should be noted that Section 388(6) states that a director of a company who fails to take all reasonable steps to secure compliance with the requirement to prepare a business review commits an offence and is liable to a fine of HK\$150,000. In addition, Section 388(7) states that if a director wilfully fails to take such reasonable steps to secure the compliance, the director is liable to a fine of HK\$150,000 and to imprisonment for six months. Therefore, it is imperative that directors plan in advance and take

action to ensure full compliance with this requirement.

On 6 February 2015, the Stock Exchange of Hong Kong Ltd published its conclusions to its consultation 'Review of Listing Rules on Disclosure of Financial Information with Reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/Housekeeping Rule Amendments'. In respect of the disclosure of financial information, the amendments to the Listing Rules associated with the consultation conclusions align the requirements in Main Board Rules Appendix 16 and the GEM Rules equivalent with the disclosure provisions in the NCO. Accordingly, the business review disclosure requirement under the NCO will also be applicable to all listed issuers (that is, whether or not they are incorporated in Hong Kong). The amendments to the Listing Rules will be applicable for annual

reports with accounting periods ending on or after 31 December 2015. Early adoption is permitted but issuers should not adopt the revised Rules prior to the effective date of Part 9 'Accounts and Audit' of the NCO (that is, the first financial year beginning on or after 3 March 2014).

#### Contents of a business review

Schedule 5 to the NCO sets out the minimum contents of a business review. Paragraph 1 of Schedule 5 states that a directors' report for a financial year must contain a business review that consists of:

- a. a fair review of the company's business
- b. a description of the principal risks and uncertainties facing the company
- c. particulars of important events affecting the company that have

### Highlights

- the business review requirement will oblige directors to disclose the company's environmental and social policies and performance, and their assessment of the future developments affecting the business
- directors who fail to take all reasonable steps to secure compliance with the new business review requirement are liable to a fine of HK\$150,000 and, potentially, to imprisonment for six months
- the Listing Rules have been updated to extend the reach of the new business review requirement to overseas incorporated companies listed on the Hong Kong Stock Exchange

occurred since the end of the financial year, and

- d. an indication of likely future development in the company's business.

Paragraph 2 of Schedule 5 states that, to the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include:

- a. an analysis using financial key performance indicators (KPIs)
- b. a discussion on:
  - i. the company's environmental policies and performance, and

- ii. the company's compliance with the relevant laws and regulations that have a significant impact on the company, and

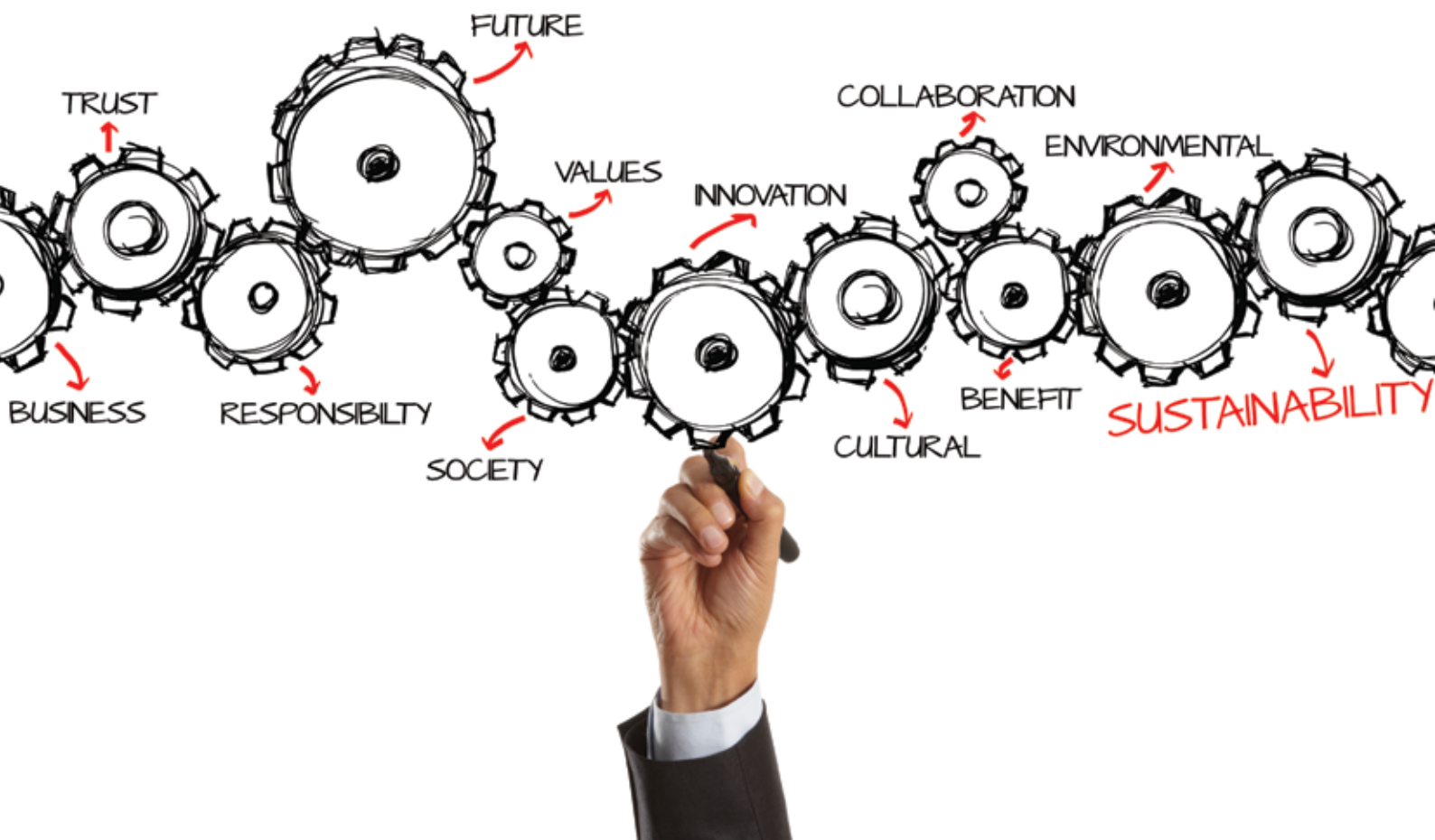
- c. an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends.

Paragraph 3 of Schedule 5 states that disclosure is not required for information about impending developments or matters in the course of negotiation if the disclosure would, in the directors' opinion, be seriously prejudicial to the company's or group's interests. However, 'seriously

prejudicial' is not defined in the NCO and is therefore subject to judgement.

In accordance with Section 388(2) of the NCO, if the company is a holding company in a financial year and the directors prepare annual consolidated financial statements for the financial year, the directors' report should be a consolidated report. In terms of the business review, this means that the directors' report would need to cover the business review of both the company and all of its subsidiaries included in the consolidated financial statements.

A business review under the NCO is not only a historical fair review of the business of a company or group (as the case may be), it also covers important events that have occurred from the



end of the financial year to the date of the directors' report. In addition, it is a forward-looking review that indicates the 'likely future development' of the business. But what do all these mean?

### What are the guiding principles?

In July 2014, the Hong Kong Institute of Certified Public Accountants (HKICPA) issued *Accounting Bulletin 5: Guidance for the Preparation and Presentation of a Business Review under the Hong Kong Companies Ordinance Cap 622*, at the invitation of the Companies Registry. *Accounting Bulletin 5* sets out guiding principles for business reviews prepared and presented for the purposes of compliance with Schedule 5. These guiding principles include the following:

- the review should set out an analysis of the business through the eyes of the board of directors
- the scope of the review should be consistent with the scope of the financial statements

“  
it is imperative that  
directors plan in  
advance and take  
action to ensure  
full compliance with  
this requirement  
”

- the review should complement as well as supplement the financial statements, in order to enhance the overall corporate disclosure
- the review should be understandable, and
- the review should be balanced and neutral, dealing even-handedly with both good and bad aspects.

As the business review forms part of the directors' report to be approved by the directors, the review should reflect the directors' view of the business and be consistent with information which the directors use in managing the reporting entity. These may include the strategic priorities of the reporting entity, the management of capital, the financial risk management strategies of the reporting entity, and any KPIs monitored by the directors in managing and allocating resources, and in assessing performance.

Directors should consider which matters should be included in the business review in order to provide members with relevant and material information that is necessary for an understanding of the development, performance and position of the reporting entity. In considering materiality, directors should consider both qualitative and quantitative aspects in the particular circumstances. As explained in *Accounting Bulletin 5*, where the nature and circumstances of a matter are of sufficient importance, it could be the qualitative aspect rather than the quantitative aspect alone that determines whether there should be separate disclosure.

Other factors to be considered include the legality, sensitivity and potential consequences of a transaction or event

and the parties involved. For example, the monetary amount at which an item becomes material may be significantly lower for items such as unlawful transactions, fines and penalties than for items under the company's normal operations. Given the fact that annual reports get thicker under the ever-increasing disclosure requirements, the inclusion of too much information in the business review may obscure judgements and will not promote understanding.

### An indication of likely future development

While stakeholders are interested in the historical analysis of the company's performance for the financial year, they will probably be even more interested in the future development of the company. Schedule 5 requires the business review to include an indication of the likely future development in the company's business. Accordingly, the business review should analyse the main trends and factors that directors consider likely to impact future prospects. These trends and factors will vary according to the nature of the business and the external environment in which the business operates, but could include the development of known new products and services or the benefits expected from capital investment. Significant assumptions underlying the main trends and factors should be disclosed.

Given the uncertain nature of some forward-looking information, in particular elements that cannot be objectively verified but have been disclosed in good faith, directors may want to include a statement in the review to treat such elements with caution, explaining the uncertainties underpinning such information.

“  
**judgement is required  
to determine what  
information should  
be included in the  
business review**  
”



**Exemption from preparing a business review**

A frequently asked question is under what criteria can a company claim exemption from preparing a business review for the directors' report under the NCO? Section 388(3) sets out three criteria:

1. the company falls within the reporting exemption to qualify for a simplified directors' report and simplified financial statements for the financial year (as governed by Sections 359 to 366 of, and Schedule 3 to, the NCO) (the Reporting Exemption); or
2. the company is a wholly owned subsidiary of another body corporate in the financial year; or
3. the company is a private company that does not fall within the Reporting Exemption for the financial year, and a special

resolution (as defined in Section 564) is passed by the members to the effect that the company is not to prepare a business review required by Schedule 5 for the financial year.

For the purposes of claiming exemption from preparing a business review, a company needs only to satisfy any one of the three exemption criteria set out above. Therefore, if a company satisfies either criterion (2) (it is a wholly owned subsidiary) or criterion (3) (it is a private company and its members have passed a special resolution), it is not necessary to consider whether the company would also have been able to claim exemption under criterion (1) (to consider whether it would also have fallen within the Reporting Exemption under the NCO). This means that in practice, if the intention is only to claim exemption from preparing a business review (but not to claim exemption to qualify for simplified financial reporting), given the

complexity of the size tests and stringent shareholder approval requirements (if applicable) for the Reporting Exemption, it will generally be more straightforward for a private company to ask its members to pass a special resolution in accordance with Section 388(3)(c) (see criterion (3) above). In this situation, there is no need to seek to test whether the company is eligible for the Reporting Exemption under the NCO. However, if the intention is to claim exemption from preparing a business review and exemption to qualify for simplified financial reporting at the same time, the relevant size tests and shareholder approval requirements (if applicable) for the Reporting Exemption must be met.

Another question frequently asked is if a company is eligible for the Reporting Exemption under the NCO but voluntarily chooses to prepare its financial statements in compliance with full Hong Kong Financial Reporting



Standards instead of the SME Financial Reporting Framework and Financial Reporting Standard (Revised 2014) (SME-FRF & SME-FRS) issued by HKICPA, can it still claim exemption from preparing a business review under criterion (1)?

Yes, in this situation, the company can still claim exemption from preparing a business review under Section 388(3)(a). This exemption from preparing a business review does not depend on whether or not the financial statements are prepared in accordance with the SME-FRF & SME-FRS.

Some further facts regarding the above three exemption criteria

- Unlike criteria (1) and (3), criterion (2) is not limited to just private companies. Accordingly, a public company (as defined in Section 12 of the NCO) that is a wholly owned subsidiary of another body corporate can obtain the exemption from preparing a business review.

- 'Body corporate' under criterion (2) means a company formed and registered under the NCO or an existing company formed and registered under the predecessor Companies Ordinance, and a company incorporated outside Hong Kong (but excludes a corporation sole). Accordingly, a company which is a wholly owned subsidiary of an overseas incorporated company will satisfy criterion (2).
- Under Section 388(4)(b), the special resolution for opting out of the business review requirement in accordance with criterion (3) must be passed at least six months before the end of the financial year to which the directors' report relates. As an example, for private companies with a December year-end, the business review requirement under Section 388 will first come into effect for financial statements for the year ending 31 December 2015. Should these private companies wish to opt out of the preparation of a business review in accordance with criterion (3) for that financial year, the special resolution would need to be passed by the end of June 2015.
- The 'special resolution' under criterion (3) may be passed in relation to a financial year, or a financial year and every subsequent financial year. Therefore in practice, a company fulfilling the requirements under criterion (3) may want to pass one special resolution covering the current year and every subsequent year, and the resolution will remain in force until it is revoked in a subsequent

year. In addition, according to FAQ (Accounts and Audit) Q17 issued by the Companies Registry, Section 622 states that a copy of the special resolution is required to be delivered to the Registrar of Companies for registration within 15 days after it is passed.

### Conclusion

Although the requirements set out in Schedule 5 are not lengthy and may initially sound simple to some companies, they may be difficult to apply in practice. Judgement is required to determine what information should be included in the business review. For a holding company with subsidiaries, preparing a balanced and understandable consolidated review may take some time. Accordingly, planning ahead is a key success factor. Directors should consider seeking professional advice if in doubt as to their obligations regarding the preparation and presentation of the business review.

### Ernest Lee

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*The views reflected in this article  
are the views of the author and do  
not necessarily reflect the views of  
the global EY organisation or its  
member firms.*

*The HKICPA 'Accounting Bulletin  
5', which gives guidance on  
preparing a business review, is  
available on the HKICPA website:  
[www.hkicpa.org.hk](http://www.hkicpa.org.hk).*

The new  
Companies  
Ordinance:  
one year on



It has been a year since the new Companies Ordinance, Chapter 622 of the laws of Hong Kong, came into operation. In this article, the Companies Registry describes the transition to the new regime and highlights some of the more commonly raised issues arising from the implementation of the new law.

The new Companies Ordinance, which commenced operation on 3 March last year, provides a modernised legal framework for the incorporation and operation of companies in Hong Kong and reinforces Hong Kong's role as an international financial and commercial centre.

The main objectives of the new Ordinance are to enhance corporate governance, facilitate business, ensure better regulation and modernise Hong Kong's company law. Key initiatives for achieving these objectives include:

- clarifying the standard of director's duty of care, skill and diligence with a view to providing guidance to directors on their duties under the law
- fostering shareholder protection, such as introducing more effective rules to deal with directors' conflicts of interests and requiring disinterested shareholders' approval in the case where shareholder approval is required for transactions of public companies and their subsidiaries
- allowing companies that meet specified size criteria to prepare simplified financial statements and directors' reports, and
- abolishing the memorandum of association, the company seal and the par value of shares.

#### Transition to the new regime

Migration to the new regime has been smooth. This is best exemplified by the high usage rates of the newly specified forms. In the first week of implementation, over 99% of companies used new forms for submitting incorporation applications. For other forms, a three-month transitional period had been provided from March 2014 for the filing of new forms. However, by May 2014, over 80% of the statutory forms received by the Registry were in the new format. Upon the expiry of the transitional period in early June, the usage rate of new forms, out of a pool of over 10,000 documents received daily, was close to 100%.

Internally, the revamped information system of the Registry has also been running smoothly, fully supporting the Registry's new roles and functions under the new Ordinance.

#### Achievement of the objectives

One of the main objectives of the new Ordinance is to facilitate business operation and cater for the needs of SMEs. The achievement of this objective

may best be exemplified by the following statistics (for the period from 3 March to end December 2014):

- around 55% of the new companies incorporated electronically adopted the sample articles of association provided at the e-Registry ([www.eregistry.gov.hk](http://www.eregistry.gov.hk))
- 127 applications for restoration of companies to the Companies Register using the administrative restoration procedure were received, which represented about 44.4% of the total number of applications for company restoration.
- 92 out of 102 companies which reduced their capital made use of the alternative court-free procedure; this also represented a six-fold increase in the total number of companies which have reduced their capital, from 14 in 2013, and
- 10 groups of companies have undergone amalgamation through the new court-free procedure.

### Highlights

- the new court-free procedures for amalgamation and to reduce capital have been enthusiastically received by the market
- the new Companies Ordinance has enabled the Companies Registry to step up its enforcement efforts for non-filing offences
- looking ahead, the government's proposed new scripless share regime will require further amendments to the Companies Ordinance

Given the new powers of the Registrar of Companies under the new Ordinance, the Registry has set up a new Inspection Unit in its Enforcement Section to conduct checks and site visits of registered office addresses of companies. We have been able to devote more resources to step up our enforcement efforts for non-filing offences. Recently, we have issued 83 summonses against 11 related companies and their directors for failing to hold AGMs and lay accounts before AGMs.

Promoting good corporate governance has always been a priority for the HKSAR government. In the World Bank's *Doing*

*Business 2015* report, Hong Kong is ranked the world's number three in terms of the ease of doing business. Most notably, our ranking in protecting minority investors has risen from third to second this year. The World Bank commends Hong Kong for strengthened minority investor protections by introducing requirements for directors to provide more detailed disclosure of conflicts of interest to other board members under the new Ordinance.

#### Implementation issues

We have received enquiries from stakeholders on issues relating to the implementation of the new Ordinance.

The more common ones which call for clarification are highlighted below.

#### Company Seal

As an initiative to facilitate business operations, the new Ordinance 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. A company may now, without using a seal, execute a document by having it signed by its officers (namely, by two directors or by a director and the company secretary or, in the case of a company with only one director, by the sole director) and, in the

## Implementing the new Companies Ordinance: Companies Registry initiatives

Since the enactment of the new Companies Ordinance, the Companies Registry has undertaken preparatory work on various fronts with a view to achieving a smooth transition for all concerned. This includes:

- issuing 16 external circulars and four guidelines to elaborate on specific aspects of the new Ordinance
- specifying 83 forms for use under the new Ordinance and nine forms for use under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)
- revising all information pamphlets and guidance notes on application procedures to reflect new statutory requirements, and

- organising internal briefings and compiling internal guidelines and procedural notes to ensure that all Registry staff are fully equipped to carry out their new duties and handle enquiries under the new Ordinance.

In addition, a comprehensive publicity campaign was launched to enhance public awareness of the implementation of the new Ordinance and the major changes brought about by the new law. This includes:

- setting up a dedicated thematic section on the Registry's website to provide briefing materials on all 21 parts of the new Ordinance and the 12 pieces of subsidiary legislation – other information provided includes

highlights of key changes, answers to frequently asked questions, reference tables, transitional arrangements and new forms

- sending circular letters and information pamphlets to over one million companies registered on the Companies Register
- answering over 60,000 public enquiries on matters relating to the new Ordinance with the addition of a dedicated hotline, and
- organising and participating in over 70 briefings and seminars to brief relevant stakeholders, including members of professional bodies, business organisations, tertiary institutions, other government departments and the general public, on the major changes.





“  
**92 out of 102  
 companies which  
 reduced their capital  
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 alternative court-  
 free procedure**  
 ”

case of a deed, by having it so signed and expressed to be executed by the company as a deed and delivering it as a deed. It follows that the requirement under the Conveyancing and Property Ordinance (Cap 219) of executing a deed for the creation, extinguishment and disposal of any legal estate in land may be satisfied by the company executing the relevant assignment, mortgage, charge, lease etc, as a deed in accordance with the new provisions without using a seal. Likewise, other documents which are required to be executed as a deed (such as a deed for the grant of a power of attorney) may now be executed by a company as a deed without using its common seal.

#### Business review

The new Ordinance requires public companies and companies not falling within the reporting exemption to prepare, as part of the directors' report, a more analytical and forward looking business review.

A private company that does not fall within the reporting exemption need not prepare a business review if it has members' approval of a special resolution passed by 75% of its members. The special

resolution must be passed at least six months before the end of the financial year to which the directors' report relates.

#### Accounting reference period and first financial year

Although the new Ordinance commenced operation on 3 March 2014, many of the requirements in the new Ordinance (for example in relation to accounting records, simplified reporting and financial statements) apply to a financial year that begins on or after commencement of the new Ordinance. Companies have to pay particular attention to the provisions on the determination of the first financial year.

A company's first financial year after the commencement of the new Ordinance begins on the first day of its first accounting reference period and ends on the last day of that period. For an existing company, the first accounting reference period begins on the day immediately following its primary accounting reference date and ends on the first anniversary of that date.

In determining the first financial year, the previous set of accounts of an existing

company is relevant. If the accounts for the relevant financial year have not been prepared, nor provided to the members, there is a default provision under which the primary accounting reference date is determined.

#### Delivery of annual returns

Under the new Ordinance, an annual return of a public company or a guarantee company is required to be delivered, together with certified true copies of the relevant financial statements, directors' report and auditor's report, within 42 days after the company's return date, that is, six months (for a public company) or nine months (for a guarantee company) after the end of the company's accounting reference period.

For a public company or a guarantee company registered under a former Companies Ordinance, the new requirements apply to the first financial year of the company that begins on or after the commencement date of the new Ordinance and all subsequent financial years. For example, if a guarantee company prepares its financial statements up to 31 March every year, its first annual return to be delivered under the new

“  
it is sufficient for a company  
with bilingual names to display  
or state either the English  
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”



Ordinance shall be within 42 days from 31 December 2015. For a public company or a guarantee company incorporated and registered under the new Ordinance, the new requirements apply in respect of the filing of the first and subsequent annual returns of the company.

The directors of guarantee companies have to pay particular attention to the requirements under the new Ordinance as guarantee companies now form a separate category of companies and they are generally treated in the same way as public companies. In particular, the late delivery of annual returns will be subject to an escalating scale of annual registration fees.

#### Disclosure of company names

The Companies (Disclosure of Company Name and Liability Status) Regulation (Cap 622B) sets out the requirements for disclosure of company name and liability status to provide protection for persons dealing with a company. We have issued an External Circular (No13/2014) to clarify that

it is sufficient for a company with bilingual names to display or state either the English name or the Chinese name in the manner described in the provisions. The disclosure requirements will also be complied with if such a company displays or states both the English name and the Chinese name.

#### Way Forward

The next legislative amendment that affects the new Companies Ordinance relates to the Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014 which was introduced into the Legislative Council in June 2014. A Bills Committee has been formed to scrutinise the Bill. The Bill seeks to amend the Securities and Futures Ordinance (Cap 571), the new Companies Ordinance and other enactments to facilitate the establishment and implementation of an uncertificated securities market regime in Hong Kong.

Under the Bill, new provisions, including provisions relating to the register of members, registration of allotment of

shares, the issue of share certificates and the delivery of instruments of transfer, will be introduced to facilitate the implementation of the proposed regime. The effect is that the proposed regime, upon its implementation will allow legal ownership in prescribed securities that are listed (or to be listed) on a recognised stock market to be held and transferred without paper documents. The new regime would co-exist with the existing paper-based securities market regime.

The government has also conducted a public consultation on a regime for open-ended fund companies in Hong Kong. The next step is to formulate the legal framework to introduce open-ended fund companies to facilitate the setting up of investment funds.

Meanwhile, we will continue to monitor any issues arising from the implementation of the new Companies Ordinance. ☑

**Companies Registry**  
*HKSAR Government*

# LISTCO CPD TRAINING in **2015**

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Speaker(s) : **Professional(s) from PwC Hong Kong**  
Date : 22 April 2015

## Earnings per Share "EPS" calculation

Speaker(s) : **Mr. Joel Chan, ZHONGHUI ANDA CPA Limited**  
Date : 20 May 2015

## Making sense of ESG Reporting

Speaker(s) : **Professional(s) from PwC Hong Kong**  
Date : 10 June 2015

## Practical Tips on handling Inside Information under the Listing Rules' requirement / Notifiable Transactions update

Speaker(s) : **Professional(s) from Deloitte Touche Tohmatsu**  
Date : 8 July 2015

## Practical tips for setting up & monitoring Internal Audit function

Speaker(s) : **Professional(s) from PwC Hong Kong**  
Date : 14 Oct 2015

## ESG report preparation

Speaker(s) : **Professional(s) from Deloitte Touche Tohmatsu**  
Date : 28 Oct 2015

## Do's and Don'ts of Listing Rules from accounting perspective

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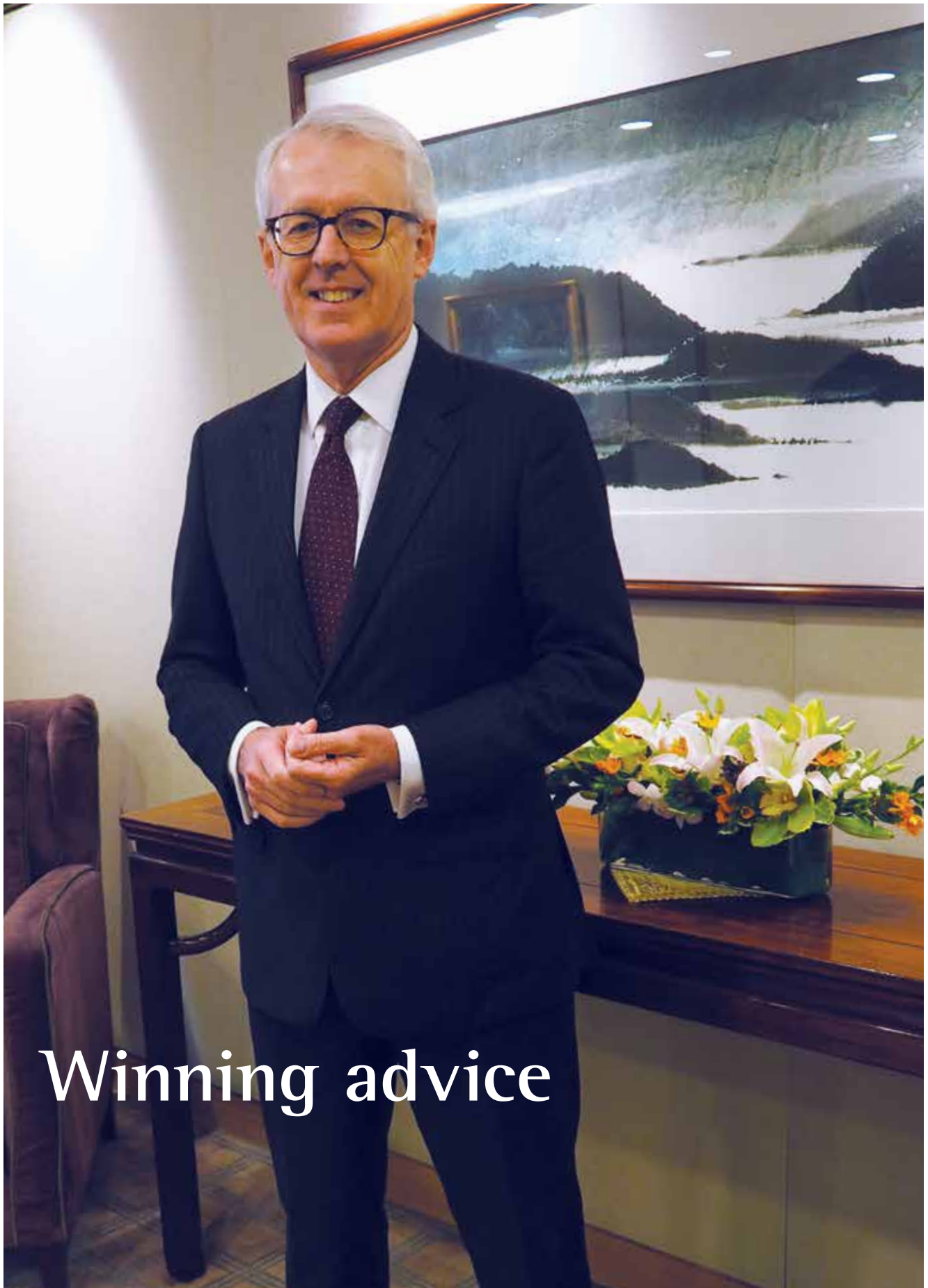
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# Winning advice

The HKICS Prize is awarded annually to celebrate the achievements of leaders of the Chartered Secretarial profession. This month, the winner of this year's HKICS Prize, former President of the Institute Neil McNamara FCIS FCS, talks about his role in building the reputation of the profession in Hong Kong and gives advice on how to make a success of a company secretarial career.

*Congratulations on winning the HKICS Prize. Could you tell us about your professional background?*

'I did a business studies course in the UK and then joined a firm of Chartered Accountants for three years in the company secretarial area. That's when I did my ICSA exams. Then I started working for listed companies, initially in London and then for Jardines here in Hong Kong in 1989. I started as assistant company secretary, and in 1995 I became the Group Corporate Secretary, with the named company secretary being based in Bermuda. I look after five listed companies here – Hongkong Land, Dairy Farm, Mandarin Oriental, Jardine Matheson and Jardine Strategic.'

*Do you have any advice for young recruits to the profession?*

'One piece of advice I always give is to broaden your skill set. Many members feel that taking additional qualifications will help them progress in their careers, but I think taking a course in areas such as public speaking might be a better way to do that. We do tend to be a little too technically oriented and forget that having the ability to persuade others and to have your voice heard is a big part of succeeding, both personally and professionally.'

In our early CPD courses we used to have sessions in public speaking but they would attract maybe six people whereas courses on the Companies Ordinance would attract over 500 people. I like to think that the six people who did the public speaking course did a lot better in their careers. To be the silent person at the end of the table doesn't necessarily enhance your career. Getting an extra law degree or an MBA might not enhance your career if nobody knows you've got it or knows your skills – if you don't say anything it won't help you very much.'

*You were closely involved in the signing of the Delegation Agreement with the Institute of Chartered Secretaries and Administrators (ICSA) in 2005. What are your views of the reforms to the ICSA's governance structure which were brought in last year? Do you think the new structure and strategic direction of the ICSA bodes well for the future?*

'It was time for the ICSA to move forward and become more international in its approach, while remaining a UK-based profession. I think that is of value because it now has the best of both worlds – the international scope that people want to see from the profession while still being based on the values of the UK Institute.'

*Do you think that there will be more convergence in the profession in the future? There are still big differences, for example, between the job of a corporate secretary in the US and a Chartered Secretary in the UK.*

'Yes, I think the UK is the better model – it is more of a lawyer's job in the US and there is a broader remit in the UK.'

*Given that diversity, do you think the ICSA can deliver on its new mission to become the leading global professional institute in governance internationally?*

'I think the ICSA has the scope to become one of the leading governance bodies. At the moment the US is very different from Europe and Europe is very different from Asia, so it is going to be very hard to get total convergence, but I think it will be one of the more powerful voices in the governance arena worldwide.'

## Highlights

- having the ability to persuade others and to have your voice heard is a big part of succeeding, both personally and professionally
- the role of the company secretary has a very broad remit and tends to align with the skill set and experience of the individuals taking up the role
- calling company secretaries 'governance professionals' would limit practitioners to one part of what they are capable of doing

*Another key area of the Institute's work which originated during your presidency was the creation of the Affiliated Persons programme. The Institute currently has over 150 affiliates in the PRC – that seems a relatively low number given that the programme was launched a decade ago.*

'Well the Affiliated Persons programme was designed to attract the company secretaries of leading Mainland companies, preferably those with a Hong Kong listing who we wanted to have involved with the Institute. Many of those are in senior positions and wouldn't have wanted to take the exams and work their way up from the bottom. So this was a way of getting senior company secretaries involved with the Institute without handing out memberships. To be a member of the Institute you have to take exams and work your way up, it was never meant to be a route to membership. Having senior involvement in China, we believed, would set the right tone for the profession.'

## Career notes

Neil McNamara FCIS FCS served as HKICS President from 2004 to 2005. He was the founding Chair of the Institute's Company Secretaries Panel. He has also served as the Institute's Vice-President; Chair of the Professional Development and Nomination Committees; a member of the Technical Publications and Membership Committees; and a member of both HKICS Council and ICSA International Council.

He has played a key role in building the reputation of the Chartered Secretarial profession in Hong Kong, including:

- launching the Institute's CPD programme and promoting mandatory CPD requirements for Chartered Secretaries
- launching the Institute's Affiliated Persons programme to promote the Chartered Secretarial profession in Mainland China, and
- negotiating the Delegation Agreement with the ICSA in 2005 which recognised the HKICS as the ICSA China Division.

*The Institute currently has over 150 students in the Mainland – do you think that we are going to see much greater numbers of PRC nationals becoming members of the Institute?*

'I think we will see greater numbers, but we will have to decide how that is going to evolve. This is a Hong Kong Institute which acts as the China Division of the ICSA, but where does the balance of the membership rest? At the moment it clearly rests in Hong Kong, although if we attract a lot more Mainland China members it may come to rest on the Mainland. That would create a lot of questions about how the Institute is run and how the membership is looked after. There would also be a question about whether we should remain an international body requiring everybody to speak English and adhere to international-based examinations or whether we should become more local.

We are not just an examination body, we are a professional body, so it's not just a question of getting 10,000 students to take the exams, it's to create a profession with standards and values. That's not the easiest thing to do in a country the size of China, particularly as the Hong Kong Institute is currently having to pay for it all.

Goals may change, but the goal was always to take an international Institute to China, and attract people who value the international nature of the qualification. Which is why, as I mentioned, we decided to start with the leading company secretaries at the top of their businesses.'

*Do you expect China at some point, maybe sooner rather than later, to set up their own professional body and have their own qualification exams?*

'Yes but there's room for both in the market. We position ourselves as providing an international qualification for those who have a broader remit.'

*You have mentioned the values of the profession – what would you say are the core values of the profession?*

'Broadly, company secretaries need to have professional integrity, they are the keepers of the conscience of the company. You have to ensure that the board acts within the law and within the broader remit of stakeholder requirements these days. Being the conscience of the board is still an integral part of the way the company secretary needs to behave, which can create a lot of challenges in some jurisdictions where the directors' commercial objectives do not necessarily sit well with the regulatory requirements.'



“ many members feel that taking additional qualifications will help them progress in their careers, but I think taking a course in areas such as public speaking might be a better way to do that ”

*In an interview with CSj back in 2004, you discussed the way the role of the company secretary was changing. You mentioned that the expectations of the role were greater and that members of the profession needed to rise to the challenge. Is that still true today?*

'I think so. The regulators in Hong Kong in particular are very supportive of the role that the Institute has been playing in the corporate world and beyond. The Institute has done well in getting recognition in the areas it needs to look after, whether it's corporates or anti-money laundering or the governance of charitable bodies. Across the whole spectrum, its profile is much more robust than it was 10 years ago.'

*Do you think we'll see company secretaries becoming more aligned with the corporate governance aspects of their role?*

'Governance is just one aspect. It is getting more onerous, but it is still only one aspect of the company secretary role. Company secretaries tend to take on responsibilities which align with the skill set and experience of the individual. So you'll find in Hong Kong some company secretaries look after property, some look after HR, in addition to their other duties – it very much depends on their competencies. I think that just saying that we are "governance professionals" would be limiting us to one part of what we are capable of doing.'

*The Australian and New Zealand divisions of ICSA recently changed the names of their institutes to become 'governance institutes' in a bid to be more inclusive of the*

*other professionals included in their memberships – such as lawyers, accountants, risk professionals, etc – would this be something the HKICS should consider?*

'I don't think the current name has prohibited other professionals from joining the HKICS, so I wouldn't say that is relevant. I think if you start calling yourself a "governance institute" people will think of you as an audit and compliance department and that is not what you want.'

*Some have suggested that being seen as governance professionals would help counter the misunderstanding that the company secretary is only an administrative position?*

'Well, this has been a constant debate for that last 20 years but I still don't think it's worth chucking it all in and calling ourselves governance professionals, because that does limit the possibilities. I think it is a little naïve to think that we can convince people simply by changing our name – the people we want to convince already know to a certain degree what we do. I think calling yourself a governance professional starts making you sound like internal audit; it puts you in a little slot to one side and caps you at the same time. I think if we went down that route we'd probably find ourselves changing the name back again five years later.'

*Can we talk about another area of the Institute's work where you have played a key role – continuing professional development?*

'We introduced CPD in the early 1990s and then, when I was President, we introduced the Practitioner's Endorsement scheme



which requires holders to do at least 15 hours of CPD per year, demonstrating that they are up to speed.

At that time we recommended to the ICSA to make CPD mandatory, but it didn't go down too well. We felt that if anyone was going to take us seriously we should take ourselves seriously first. Part of that process is keeping the Institute's members up to speed and being seen to be up to speed. But we weren't allowed to bring it in because, at that time, different ICSA institutes couldn't do different things. We were told that international Council would have to approve it across the board.'

*Mandatory CPD was eventually launched in 2011, are you pleased with the way things have evolved?*


'I am glad that it is up and running, it shows that we take ourselves seriously. If we lose a few people because they don't want to do it, well they are probably not people we want as our members. The reality is that to maintain credibility with regulators we have to have members who are seen to be up to date with regulatory requirements, so it's the right thing to do.'

*You were the founding Chair of the Company Secretaries Panel – could we talk about the aims of the Panel?*

'We set up the Company Secretaries Panel in the mid-1990s partly because we noted that a lot of the company secretaries in listed companies in Hong Kong were not in fact HKICS members. The panel was to get a significant proportion of the top Hang Seng companies formally together to discuss matters of interest. That meant that when we made submissions to the stock exchange we represented 80% of the Hang Seng Index.

So it was to draw in senior company secretaries who may not have been our members and to be a useful tool for the Institute. The panel still exists, it still invites regulators for lunch and makes submissions on behalf of company secretaries.'

*One last question – do you think the HKICS prize is a good way for the Institute to get its message out there?*

'It is a good way for the Institute to raise its profile and these initiatives are certainly needed. Regulators change and things move on, so you've got to create an environment to attract the right levels of membership and inspire the right people within the membership to achieve what they can achieve.' 



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# Risk management and internal controls

## The view from Mainland China

What is the relationship between risk management and corporate governance? What are the respective duties of management and the board in this area? The latest HKICS Regional Board Secretaries Panel meeting, held on 14 January 2015, sought answers to these and other critical questions regarding risk management and internal controls.

Organised by the HKICS, the latest Regional Board Secretaries Panel meeting was held on 14 January at the Admiralty Centre, Hong Kong. Attended by senior managers and company secretaries representing various companies listed on the Mainland and Hong Kong bourses, the discussion shed light on the recent changes to Hong Kong's Corporate Governance Code, especially the revised rules on risk management and internal control. Michael Ma, a partner at Ernst & Young, and Yang Haijiang, the Board Secretary for China Oilfield Services Ltd (COSL), were the invited guest speakers.

In her welcoming address, Edith Shih FCIS FCS(PE), former HKICS President, thanked Mr Ma and Mr Yang for their presentations. She also gave a brief introduction to the Institute's Enhanced Continuing Professional Development (ECPD) programme, which has been running since 2004. The ECPD programme keeps members' and practitioners' knowledge and skills up to date and keeps them abreast of all the latest regulatory and technical developments.

'As Mainland China continues to push for the rule of law, the internationalisation of the renminbi and the liberalisation of its capital markets – especially since the launch of the Shanghai-Hong Kong Stock Connect scheme – China presents us with unprecedented opportunities and challenges. Corporate China is in need of more professionals with a global vision and strong leadership to surmount these challenges. The continuing professional development of company secretaries will surely help lift the corporate governance standards of Mainland Chinese companies, enabling them to integrate with the rest of the world,' she said.

### Good risk management is an essential part of good corporate governance

Drawing on over two decades of consulting experience in audit, internal control and risk management, Ernst & Young's Michael Ma shared with the audience the latest developments in corporate governance practice in both Mainland China and Hong Kong. In particular he focused on what makes good corporate governance, the updated rules of Hong Kong's Corporate Governance Code and what companies can do to handle risks more effectively.

As an introduction, Mr Ma used General Electric as a prime example of the benefits of good corporate governance. General Electric is the only company listed in the Dow Jones Industrial Index today that was also included in the original index in 1896. 'If a company exercises good corporate governance and persists with it, investors will never turn their backs on it. Even if it endures short-term losses, investors still believe the company is contributing to society and that it's worthwhile to wait for its turnaround,' he said.

He revisited the major milestones in the development of corporate governance in Mainland China, including the Corporate Governance Guidelines issued in 2002; the promulgation of the *Basic Norms of Internal Control and the Implementation*

*Guidelines for Enterprise Internal Control No.1 – Organisational Structure*, between May 2008 and April 2010.

In December 2010, the *China Listed Company Corporate Governance Development Report* set up certain provisions to incorporate corporate governance principles. In 2006, State-owned Assets Supervision and Administration Commission of the State Council (SASAC) enacted and introduced the *Comprehensive Risk Management Guidance for State-Owned Enterprises*, requiring state-owned enterprises (SOEs) to establish a sound corporate governance structure while introducing the concept of the three lines of defence for the first time, Mr Ma added.

The three lines of defence are:

1. business operations – risk and control in the business
2. the oversight functions, and
3. independent assurance providers – internal audit and other independent assurance providers.

Turning to Hong Kong, Mr Ma explained that Hong Kong Exchanges and Clearing (HKEx) issued the then Code of Corporate

## Highlights

- good risk management is essential for the long-term and sustainable growth of a business
- to be effective, risk management should be integrated into a company's strategic goals
- some degree of risk in exchange for potential higher returns is sensible as long as a sound risk management process and procedures are in place

Governance Practices (now the Corporate Governance Code) in November 2004, requiring issuers to include a 'Corporate Governance Report' as part of their annual reports.

When it came into effect, the Corporate Governance Code had some 30 rules and that number did not change until last year, said Mr Ma. After an industry-wide consultation, HKEx recently made a number of amendments to the Code and the Corporate Governance Report in order to strengthen its risk management perspective.

'There are many factors that contribute to good corporate governance. Put simply, good governance means that: the company is transparent and that the responsibilities of the board are well defined; it has a sustainable business model; stakeholders can understand what problems it is facing and how it is going to deal with them; employees are happy and the company is trusted by suppliers and regulators; and the public recognises that the company is committed to social responsibility. With these qualities, I'm sure that such a company would win the hearts of investors,' he said.

He suggested that issuers communicate with stakeholders through multiple channels, such as annual reports, websites, adverts and CSR activities, to constantly keep them updated of what the company is doing – such as the roles and responsibilities of the board and the management, the industry landscape, the company's strategies and goals, risks, financial results, major transactions and CSR initiatives, etc.

'Good corporate governance goes beyond regulatory requirements, it is a long-term

and dynamic process. Business strategies, risk management and internal control are inseparable and interdependent. Furthermore, good corporate governance practices should extend to the commitment of individual employees, not just limited to the board and the management,' he said.

#### The new requirements in Hong Kong

On the updates to the Corporate Governance Code and the Corporate Governance Report, Mr Ma explained that HKEx completed its consultation in November 2014 before releasing the updates in December 2014. The consultation paper pointed out certain issues that needed to be addressed. For example, company boards often have a low awareness of risk, they often do not pay enough attention to risk management and lack the motivation to improve their internal control systems. Also, information disclosure quality varies from one issuer to another, and issuers often fail to disclose enough information about their annual reviews.

After receiving feedback, the *Consultation Paper on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report* made the following suggestions:

- emphasise that internal controls are an integrated part of risk management
- enhance accountability of the board, board committees and management by clearly defining their roles and responsibilities in risk management and internal controls
- improve transparency of the

issuer's risk management and internal controls by upgrading the recommendation for issuers to disclose their policies, process, and details of the annual review carried out in respect of the effectiveness of the risk management and internal control systems, and

- strengthen oversight of the risk management and internal control systems by upgrading the recommendation for issuers to have an internal audit function.

Specifically, HKEx has added 'risk management' to the title of Section C.2 of the Code and throughout Sections C.2 and C.3 of the Code where appropriate in order to place greater emphasis on the integration of risk management and internal control. It has also included 'risk management' as part of the principles of the audit committee (Section C.3) and code provision C3.3.3 to ensure that the internal control measures of the Code and that of the audit committee are consistent. However, whether or not an issuer should establish a separate risk committee is at its discretion.

In addition, HKEx has redefined the roles of the board and the management in order to strengthen accountability. The board is now responsible for evaluating and determining the nature and extent of the risks it is willing to take in achieving the issuer's strategic objectives, and ensuring that the issuer establishes and maintains appropriate and effective risk management and internal controls systems. The board should also oversee management in the design, implementation and monitoring of the risk management and internal control systems, and management should



From left: Michael Ma, Dr Gao Wei and Yang Haijiang

“  
Corporate governance is a corporate culture, the DNA of a company. It’s a catalyst for the long-term and sustainable growth of a business, enabling it to earn public trust and investor confidence over time.  
”

Michael Ma, Partner, Ernst & Young

provide a confirmation to the board on the effectiveness of these systems.

With regard to transparency, HKEx has stepped up the requirements on risk disclosures by making them code provisions and even mandatory rules, including:

- disclosure of the matters that the board's annual review should consider (Code Provision C2.3)
- particular disclosures that issuers should make in their Corporate Governance Reports following the annual review (Code Provision C2.4) – this aims to encourage disclosure of risk management and internal control systems as well as facilitate comparability across issuers' Corporate Governance Reports, and
- amending the wording of Code Provision C2.4 to streamline the requirements, remove ambiguous language, and clarify that the risk management and internal control system is designed to manage rather than eliminate risks.

In addition, HKEx has simplified and upgraded a number of recommended disclosures relating to internal controls to mandatory disclosure requirements.

To fulfil the new disclosure requirements of Code Provisions C2.3 and C2.4, Mr Ma suggested that issuers prepare the following reports in a timely manner: significant risk checklist, risk assessment report, internal control assessment report and risk monitoring report. They are also advised to implement the relevant risk assessment and management procedures.

He added that the internal audit function of a firm plays an important role in supporting the board and the management, as well as the risk management and internal control system (through systematic analysis and independent assessment). The internal audit function is often called the 'third line of defence'.

'Risk management doesn't mean blindly complying with rules and procedures. To be effective, it should be integrated into the company's strategic goals. If risk management turns out to be nothing

more than trying to close the loop with all the rules, efficiency will inevitably be compromised. Corporate governance is a corporate culture, the DNA of a company. It's a catalyst for the long-term and sustainable growth of a business, enabling it to earn public trust and investor confidence over time, Mr Ma said wrapping up his presentation.

#### Case scenario:

##### COSL's risk management system

In 2010, the BP oil spill that followed the explosion of the Deepwater Horizon oil rig was a wake-up call to the entire petroleum industry. The Institute's latest RBSP meeting was therefore fortunate to have Yang Haijiang, the Board Secretary for China Oilfield Services Ltd (COSL), to discuss his company's approach to risk management and internal controls.

After walking the audience through COSL's background, financial results, ownership structure and major assets, Mr Yang shared his company's experience in risk management. 'Risk management is not standardised,' he pointed out. 'The approach to it varies from one company to another. Every company has its own style and, especially, its own

“  
**Risk management is not standardised – the approach to it varies from one company to another. Every company has its own style and, especially, its own risk-tolerance levels.**  
 ”

Yang Haijiang, Board Secretary, China Oilfield Services Ltd (COSL)

risk-tolerance levels. As long as a sound risk management process and procedures are in place, it's sensible to take risks in exchange for potential higher returns.'

COSL is an interesting case scenario in risk management and internal controls. The COSL board began to be concerned about risk management in 2009. At a major board meeting, the board discussed whether it should establish a risk management committee under the board. After discussion, it was concluded that the board should not be held responsible for managing risks specific to particular projects, such as the risks associated with making investment decisions. It is the management's job to handle those risks.

According to Mr Yang, the risk management measures of COSL have three objectives: to establish and constantly improve the internal control and risk assessment system; to implement a top-down and companywide risk management system that covers every aspect of the business; and to keep baseline risks within the generally acceptable range.

In the absence of a risk management committee, the management team are duty bound to identify, evaluate and

mitigate risks, which are primarily handled by the risk management office under the internal audit department.

While risks exist anywhere and everywhere, businesses should take a proactive approach to risk management, which Mr Yang described as a 'value-creating process'. As long as the right risk management is in place to limit risks to a tolerable level, businesses will be able to reap the rewards for the risks taken, he stressed.

To demonstrate how risks are being assessed and managed at COSL, Mr Yang shared two real-world cases that had put COSL to the test. As mentioned, in 2010 the BP oil spill was a wake-up call to the entire industry. This prompted the COSL board to assess its safety measures and the risk of large marine oil spills. The management was therefore asked to submit a risk assessment report to address the concerns of the board.

At a subsequent board meeting, the report on COSL's existing safety measures as well as the latest developments and the likely impact of the BP incident was presented to the board. The directors made a number inquiries into the technologies and equipment in use, and whether they

could implement strong safety measures for oil drilling.

As a pre-emptive measure, the management was asked to learn from the BP incident and clear the conditions that contribute to oil spill risks. Follow-up actions were taken to inspect and fix leaks and decay found in all equipment in collaboration with oil companies.

The second test of COSL's risk management structure Mr Yang discussed was its plan to acquire Norwegian rival Awilco Offshore in its entirety for about US\$2.5 billion in 2008. The deal would give it access to drilling technology and expand its international operations. Including the debts amounting to about US\$1.3 billion, the actual acquisition cost was estimated at US\$3.8 billion, excluding time costs.

Amid the oil price rally in 2008, oil soared to about US\$100 a barrel at the time of the acquisition. At one point analysts speculated that oil prices could reach US\$200 a barrel.

'Against this scenario, the valuation of the target firm was considered overpriced. The scale of our company was relatively smaller at that time, the purchase of Awilco Offshore was a huge and risky step for the company,' he said. 'Over the course of discussion, the board weighed different views of stakeholders, including the views expressed by two independent directors that the target firm was overvalued. In the end, the board gave it a go, believing that the acquisition could produce a strong cash flow and greatly enhance the company's EPS.'

**Jimmy Chow**  
*Journalist*



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單元四 中國公司法律 Corporate Law in PRC

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### 中國公司行政

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授課日期

2015年(逢週六) 3月21日，3月28日，4月11日，4月18日

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港幣3,850元

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香港大學專業進修學院乃非牟利機構。

# 风险管理及内部控制

## 内企经验分享

风险管理和企业管治之间有何关系？管理层和董事会如何各司其职？在今年1月14日召开的公司秘书／董事会秘书圆桌会议上，两位演讲嘉宾就以上问题耐心解答。

由香港特许秘书公会主办的公司秘书／董事会秘书圆桌会议顺利在今年1月14日于金钟海富中心召开，获多家内地和香港上市公司的高管和董秘应邀出席。会议的主题为《企业管治守则》的最新动向－风险管理及内部监控，讲者依次为安永会计师事务所安永咨询服务合伙人马斌，以及中海油田服务股份有限公司（「中海油服」）董事会秘书杨海江。

香港特许秘书公会前会长、公司秘书专责小组主席施熙德律师在开幕辞中，特别鸣谢两位出席会议的演讲嘉宾，然后提到公会自2004年起已持续举办强化持续专业发展（ECPD）计划，并于2006起定期在港举行讲座，借此加强会员之间的沟通，促进专业化发展。

「在国家依法治国的基础下，再加上人民币国际化、资本市场自由化和创新，特别是沪港通开通，种种变化正为中国经济带来前所未有的机遇和挑战。我国的企业正需要有国际视野的人才，去推行高标准的企业管治，以应对各项挑战。董秘专业化，将有助于提升上市公司的治理水平，与世界接轨。」她说。

### 良好的风险管理是良好公司治理的重要组成部分

凭借其超过20年的审计、内部控制与

风险管理的咨询工作经验，安永马斌先生详细介绍了企业管治实务于内地和香港的发展，以及剖析何谓良好的企业管治。此外，他还对《企业管治守则》（《守则》）及《企业管治报告》（《报告》）的更新要求作了详尽介绍，以及就全面风险管理的一些问题进行总结和探讨。

在演讲开始时，马先生以通用电气（GE）作为良好企业管治的榜样，而通用电气也是唯一一家自1896年道琼斯指数成立以来仍留在指数中的成分股。「如果某一家公司的内部管治良好，便可以留住投资者。企业有好的管治，尽管出现短期亏损，投资者始终觉得公司对社会有贡献，不会轻易离去。」他说道。

然后，他跟大家回顾了企业管治在中国大陆的主要发展里程，包括于2002年发布的《上市公司治理准则》；于2008年5月至2010年4月期间，五部委共同发布了《企业内部控制基本规范》及《企业内部控制应用指引第1号－组织架构》。

2010年12月，《中国上市公司治理发展报告》正式发布《公司治理原则》的相应条文，梳理了中国企业的相关制度和实践。他补充，国资委于2006年制定并推出《中央企业全面风险管



理指引》，其中指出企业应建立健全规范的公司法人治理结构，并提出风险管理三道防线的概念。

风险管理的三道防线是指：

1. 业务运作上的风险与控制
2. 监督职能
3. 独立内部审计及其他独立监管单位

在香港方面，2004年11月，香港联交所发布了《企业管治常规守则》（现为《守则》），并要求上市公司在年报中发表《企业管治报告》。

马先生指出，《守则》自2004年生效以来，对上市公司董事约有三十条守则要求，多年来一直没变，但到了去年，香港联交所在经过业界咨询后，修订了《守则》和《企业管治报





告》的相关条文，加入了强化风险管理责任。

「构成良好企业管治有多项要素，简单说，良好企业管治就是企业公开透明，问责清晰，业务具可持续性，投资者可了解公司正面对什么问题，以及有什么方法应对。公司不论有什么文化，里面的员工都感到满足，而且获得供应商的信任，监管机构觉得有诚信，政府觉得公司有社会责任，老百姓觉得企业可靠，投资者自然增添信心。」他说。

马先生建议，上市公司应不时从各种途径，如年报、网站、广告营销、公益和社会活动等，清晰地让公众及投资者持续了解公司正在做什么。公司信息应以简单易懂的方式表达出来，包括组织架构、董事会和管理层的职能职责；行业状况；发展战略及愿景；经营风险、挑战和困难；财务数据；重大决策和交易；以及社企责任等。

「近来企业管治发展趋势表明，企业管治超越简单的合规遵循要求，是一个长期持续的动态过程。战略目标的实现与风险管理和内部控制无法分割，而这三者相互影响、相互关联。再者，良好的企业管治实务源于高层基调、董事会和高级管理层，对风险管理和内部控制的责任越来越明确清晰。」他续说。

### 港交所对风险控制与内部控制的新要求

接着，马先生集中讨论了《守则》和《企业管治报告》的更新内容。他指出，香港联交所刚于去年11月完成业界谘询，继而颁布了更新的《守则》和《企业管治报告》，谘询文件总结了业界留意到过往企业管治实务中的情况，包括：董事会未意识到面临风险；未对风险及风险管理给予足够的重视，缺乏动力来改善内部监控系统；上市公司信息披露的质量不一，

缺乏可比性；以及发行人披露其年度检讨的详情不足。

根据收到的反馈意见，香港联交所于去年6月发布《谘询总结－检讨企业管治守则及企业管治报告：风险管理及内部监控》，有以下总结：

- 强调内部监控是风险管理的重要元素；
- 清晰界定董事会、董事委员会及管理层在风险管理和内部监控中的角色和职责，以强化问责；
- 提升发行人风险管理和内部监控系统的披露责任及相关的政策、程序以及每年成效检讨的详情，以提高发行人在风险管理和内部监控方面的透明度；以及
- 提升发行人内部审计的责任，以加强发行人风险管理和内部监控体系的监察。

有见及此，当局遂于两份文件整合内部监控的相关规范，作为风险管理的重要元素：

- 在C.2标题中以及C.2和C.3全文合适的地方，添加「风险管理」

## 摘要

- 良好的风险管理是业务长远和可持续发展的关键所在
- 风险管理应纳入公司的战略目标，才能有效实施
- 企业只要有一套完善的风险管理制度和程序，即使冒一定风险以换取合理的潜在回报，也值得去做



左起：马斌、高伟博士及杨海江。

“  
**企业管治是一种文化，是企业  
 的DNA，是实现企业可持  
 续长远发展的催化剂，最终  
 为企业赢得投资者和公众的  
 信任及企业声誉。**  
 ”

安永会计师事务所合伙人马斌

- 将「风险管理」纳入审核委员会原则（原则C.3）和守则条文C3.3.3，确保《守则》内有关内部监控及审核委员会的各节均保持一致
- 是否单独设立风险委员会由发行人自行决定

此外，联交所还界定了董事会和管理层的角色，以强化问责：

- 守则条文—确保公司愿意承担的风险程度
- 守则条文—确保公司具备有效的风险管理和内部监控系统
- 建议最佳常规—企业管治报告中可以披露：董事会已取得管理层对于风险管理和内部监控系统有效性的确认
- 守则条文—设计、实施及监察风险管理和内部监控系统
- 守则条文—向董事会提供有关系统有效性的确认

在透明度方面，监管当局要求有意义的披露，从以往的最佳常规，升格为守则条文：

- 守则条文C2.3—列明董事会年度成效检讨应考虑的事项
- 守则条文C2.4—披露发行人如何遵守风险管理和内部监控的守则条文，以实现可比性
- 守则条文C2.4—风险管理和内部监控系统旨在管理而非消除风险
- 强制披露—大多数现有的与内部监控有关的建议披露被升级为强制披露

就C2.3及C2.4守则条文的披露要求，马先生建议公司应定时拟备重大风险清单；风险评估报告；内控评估报告；风险监控报告；风险监控报告；以及实施相关的风险评估和管理工作报告。

他强调，公司内部审核功能发挥着支援董事会、管理层以及风险管理及内部监控系统（通过对系统进行分析及

独立评估）的作用。因此，内部审核功能常被称为「第三道防线」。

最后，他总结道：「我们提到的风险管理，不是一个盲目的风险管理，我们必须结合企业的战略目标，因为每家企业的发展都有一个方向，控制得太紧太死，会失去效率。企业管治是一种文化，是企业的DNA，是实现企业可持续长远发展的催化剂，最终为企业赢得投资者和公众的信任及企业声誉。」

#### 案例分析：中海油服的风险管理制度

2010年，BP墨西哥原油泄漏事件，引起了国际社会与石油开采行业的高度关注。公会有幸邀得中海油服董秘杨海江先生，跟与会者分享事件对该公司的启示，以及公司在风险管理和内部控制的目标和实践。

在介绍过中海油服的业务背景、财务数据、股权结构和主要装备后，杨先生坦言：「风险管理没有一套客观标准，不同行业的管理方式不尽相同，每家企业也有自己的风格和风险承受程度。只要有套健全的风险管理制度，该做的便去做，该冒的险就去冒，这样企业才会壮大起来。」

中海油服本身便经历过一些重大风险，其在风险管理和内控的经验丰富，很值得其他企业参考。据他透露，中海油服董事会自2009年开始便关注风险管理问题，2009年董事会年度上曾就是否设立董事会风险管理委员会进行了讨论，关于董事会风险管理工作责任，讨论后认为董事会不适宜管理具体事项（如具体投资项目）的风险，而具体事项的风险管控是管理层的职责。

据杨先生所述，中海油服风险管理目标主要有三：一、建立和不断完善有效地内控体系和风险评估机制；二、实现全员、全方位、全过程的管理；三、风险始终控制在一般、可接受的范围内。

公司虽不设风险管理委员会，其责任则落于管理层的常规职责范围以内，即确保公司设立及维持合适及有效的风险管理系统；及定期评估公司风险管理系统的有效性。风险管理办公室设于公司的审计监察部下，主要职责是落实和监督各单位的风险管理和控制。

他再三强调，由于风险无处不在，企业更应积极面对和控制风险，视之为一种价值创造的活动，融入到公司企

业文化，从战略的高度并采取系统地方法主动去认识风险、管理风险。当风险发生时应有充分的准备，能将风险控制于企业能承担的水平。

杨先生还与大家分享一些中海油服在风险管理的实际案例，包括BP墨西哥原油泄漏事件给予中海油服的启示，以及油价涨跌引发收购海外钻井公司的相关风险。

2010年，发生了震惊世界的BP墨西哥原油泄漏事件。鉴于这属于行业内的重大事故，中海油服的董事会非常关注，引发进一步关注公司的安全生产形势和相关的风险，遂要求管理层就公司的相关风险管控工作给董事会做一个专项汇报。

管理层于是在董事会年度例会上，就安全管理体系情况及针对BP墨西哥湾事故的应对措施作了汇报。会上，董事询问了有关问题，主要是公司在技术、装备方面有何进一步的应对措施。董事会并要求公司管理层认真分析研究BP的事故并从中吸取教训，重点是及早发现并清除那些可能导致事故的各种安全隐患，对比查找管理和技术方面的薄弱环节，使公司更有效地防范此类种大风险。

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风险管理没有一套客观标准，不同行业的管理方式不尽相同，每家企业也有自己的风格和风险承受程度。  
”

中海油田服务股份有限公司董事会秘书杨海江

最终，管理层按照董事会的要求进行了具体落实，包括同油公司协商对一些设备做了整改，提高可靠性。

2008年，中海油服宣布收购于奥斯陆证券交易所上市的挪威海上钻井公司Awilco Offshore ASA(AWO)，现金收购100%股权，收购价为每股85挪威克朗，即总价约127亿挪威克朗（约25亿美元）。若按照25亿美元的收购价，加上13亿的债务，估计实际收购价格达38亿美元，还没有考虑时间成本。

他忆述，2008年国际油价暴涨暴跌、急剧波动，在确认收购时油价每桶涨到100美元左右，更一度有分析师预期油价有可能升至每桶200美元。

「当时油价高企，所以被收购公司的估值非常高，再加上那时公司规模比现在小，这几十亿美元的收购价对我们来说是很大的风险。在商议过程中，我们有两位独董认为收购价偏高。不过，由于董事会最终判断，收购将能直接为公司带来现金流，不久后将能大大提升公司的EPS水平，最终还是做了这项重大决定。」他说。

Jimmy Chow  
Journalist



圆桌会议现场

# The compliance trap

Is the regulatory process that started in the aftermath of the last financial crisis sowing the seeds of the next one? Gilles Hilary, Professor of Accounting and Control, INSEAD, warns against the dangers of overregulation.

For years, financial innovation and international diversification were seen as the golden path towards an optimal allocation of risk in the economy. Then came the financial crisis of 2007 and 2008. Fear and uncertainty sent shockwaves through a complex and connected world. Regulators, under the pressure of public opinion, had to react. Their response to the misdeeds of financial institutions has been unprecedented, the fines so large that even advocates of tougher regulation have wondered whether the response was proportionate to the crimes.

The enforcement action against banks deemed to be laundering money, no matter how thin the association, is a notable example. Rafts of new rules have also been unveiled. In banking, higher capital requirements, bans on proprietary trading, caps on leverage ratios and new conditions attached to pay and bonuses are forcing the financial industry to hunker down for a more staid future.

## Devil in the details

But what started as sound regulatory principles degenerated quickly into a blizzard of detailed regulations. One simple example is the number of pages in the Basel banking regulations. Basel I had 30 pages, Basel II had 347 pages and the latest iteration, Basel III is a staggering

616 pages. The Volcker rule, which broadly prohibits banks from making speculative investments, started as an 11-page memorandum but is already 1,000 pages long now. With more rules to comply with and the increasing complexity of those rules, compliance is becoming a much harder task.

To make matters worse, regulators are not working in a globally integrated framework, leading to many different national rules for companies to comply with, many which stretch across borders, some of which are inconsistent with each other. This is having detrimental effects on companies that may just have an association with the host country's regulations and creates additional systemic risk. BNP Paribas, one of the biggest European banks, was destabilised when its Swiss subsidiary failed to comply with a piece of US legislation that was triggered by the mere fact it transacted in US dollars.

Firms have responded to this onslaught of legislation by dedicating an increasing amount of resources to compliance. Last autumn, HSBC said it was hiring 3,000 more compliance officers. JPMorgan is hiring a similar number to try to stop the flood of fines coming its way. Some two thirds of compliance practitioners expect their team's budget to grow this

year, according to a survey by Thomson Reuters Accelus. But no matter how much they try, firms seem to lose the compliance challenge. General Motors, one of the biggest industrial corporations in the world, admitted in its annual report lacking 'expertise' to ensure compliance with pronouncements on accounting for derivatives.

## Confusion all round

Even regulators are getting confused. Take the private equity industry as an example. While investment banks are regulated as broker-dealers by the Securities and Exchange Commission (SEC) for their role in buyouts, the private equity industry in the US doesn't know where it stands on the same issue. Marlon Paz, a partner at Locke Lord, a law firm and a former SEC official was quoted as saying, 'There appears to be growing confusion even among SEC staff as to conduct by private equity firms and their consultants and employees that subjects them to broker-dealer registration requirements'.

Unable to comply, or too happy to exploit loopholes, the financial system has adapted with more financial innovation. Securitisation, for example, is bouncing back, with asset-backed securities finding a strong footing in the US auto market. Firms are also finding more creative ways meet equity requirements. Contingent




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convertible (CoCo) bonds are now being issued by banks to meet both increased investor appetite for risk and regulatory urges for banks to have more equity. This innovation, like the previous ones that contributed to the crisis, is not fully understood. A recent survey by Royal Bank of Scotland found that 90 percent of investors thought their understanding of CoCos was better than average. Some large firms are reducing their exposure to complexity. Citigroup, for example, has recently announced that it would refocus its strategy. But shadow banking is taking off as regulators scramble to catch up, pushing risk into more opaque corners. Risk hungry investors are salivating as regulators grow increasingly worried.

Ironically, the regulatory process that started in the aftermath of the last financial crisis may be sowing the seeds of the next one. Volumes of regulation, critically analysed by legal and financial

experts and supervised by over-extended regulators are unlikely to be sufficient to maintain the integrity of the financial system. The development of compliance-centric procedures is not conducive of good risk management. It gives an illusion of control over an increasingly complex and integrated system. Ironically, it perhaps reinforces the root causes of the previous crisis. The starting point of the next financial crisis is still unknown, but it is

highly likely that when it comes, fear and uncertainty will send shockwaves through a more complex and connected world. 

*Gilles Hilary is an INSEAD Professor of Accounting and Control and the Mubadala Chaired Professor in Corporate Governance and Strategy. He is also a contributing faculty member to the INSEAD Corporate Governance Initiative.*

## Highlights

- tightening regulatory requirements is unlikely to be sufficient to maintain the integrity of the financial system
- regulators are not working in a globally integrated framework leading to many different, and sometimes inconsistent, national rules for companies to comply with
- the financial system has adapted with more financial innovation – securitisation, for example, is bouncing back

# The compliance trap – a response

In the preceding article of this month's Viewpoint column, Gilles Hilary, Professor of Accounting and Control, INSEAD, warns against the dangers of overregulation. CSj invited Michael Duignan, Senior Director, Corporate Finance at the Securities and Futures Commission, to share his views on the issues raised in Professor Hilary's article.



*Professor Hilary's article warns against the dangers of overregulation globally – do you think this is a problem in Hong Kong?*

'When people are talking about overregulation, it is important to ask what areas they are thinking of. If you are a bank, then clearly you will worry about the outcome of Basel III, but as a trading company making auto parts, quite frankly, that might be interesting to read about in the financial papers but it won't really impact your working life.

In terms of listed companies, there has been a shift in our approach to regulation towards behavioural concerns – we have been looking at how companies should behave and how individuals in those companies should behave. This has been partly in response to the fact that a lot of people, particularly in financial services, have been thinking of compliance solely in terms of their legal obligations. They spend a lot of time talking with their lawyers about what they are legally obliged to do, rather than thinking about what is the right thing to do in the circumstances.

So, for example, they might ask whether or not they are legally obliged to make a disclosure about a particular activity or transaction when maybe they should be thinking more in terms of what their investors would expect to be told.'

*Do you think greater reliance on principles-based regulation in Hong Kong would help change this mentality?*

'One has to get the appropriate balance between trying to write the rules in a way that results in desirable behaviour, while avoiding something so high level

that companies don't know whether they have complied. This is not an easy balance to achieve.

I think the listing rules and the Takeovers Code are good examples of rules that deal with a wide variety of circumstances but not necessarily in a prescriptive way. In the majority of circumstances the rules indicate the right thing to do and if companies encounter a different scenario they can talk to us or the stock exchange. In circumstances where a rule will not achieve what it sets out to do, then a waiver might be appropriate.

To give you an example, there was a European case a few years ago where a company involved in animal experiments started having problems obtaining finance. One of the major shareholders was prepared to lend the company money in order for it to survive as the bank had withdrawn funding and no other bank was prepared to take the company on as a client. Under normal circumstances, as a connected-party transaction, this would have been subject to a shareholder vote and full disclosure, but the shareholder didn't want their name to be disclosed. The loan was to be on ordinary commercial terms but they wanted the transaction to remain anonymous.

The regulator therefore had a decision to make. The connected-party transaction rule was designed to protect investors but, if the rule was applied rigidly, the company would have lost its financing and would have gone bust. In many respects, the decision was a no brainer – applying the rule would have led to the liquidation of the company and the investors would have got nothing. On the other hand, a strict regulator might take the view that there should be no deviation from a rule designed to protect investors. One thing that always concerns regulators when you turn a rule off for a particular set of circumstances is how do you ring-fence that decision?'

*What's your personal view?*

'I think you need to look at what the rules are designed to do rather than viewing them as a set of commandments that have to be followed in all circumstances, whatever the cost. This goes back to the focus on behaviour I mentioned earlier. If a rule is designed to achieve something but a company can achieve that outcome in a slightly different way which technically might not be in compliance with the rule – then you can have a conversation. The question is whether or not the reasons for not applying the rule are sufficiently

## Highlights

- regulators need to find the right balance between rules-based and principles-based regulation
- if you try to set out rules for every conceivable set of circumstances that might occur, you are going to have a very large rule book and people will still find ways around it
- compliance is about more than simply fulfilling legal obligations

“ [companies] spend a lot of time talking with their lawyers about what they are legally obliged to do, rather than thinking about what is the right thing to do in the circumstances ”

good and whether the overall objective will still be achieved.

Principles-based regulation was the mantra used by the Financial Services Authority (FSA) in the UK, and now of course many people are saying that it has been a total failure and a flaw in the regulatory architecture. I'd like to make a couple of points on that. Firstly, if you actually printed out the FSA handbook, you probably wouldn't be able to get it on an average-sized table. So, for principles-based regulation, there still seems to be an awful lot of rules. Secondly, the US has a much more rules-based approach and did those rules actually stop corporate failures? Clearly not, partly because people were gaming the rules. If you try to set out rules for every conceivable set of circumstances that might occur, you are going to have a very large rule book and people will still find ways around it. I've been told that Enron was setting up companies three years in advance of using them solely

in order to get around one of the SEC's accounting rules. They were planning that far ahead.'

*Do you think Hong Kong is ready for the principles-based approach, or do you think companies here are still very much in a prescriptive rules-based mentality?*

'I think that people tend to involve their lawyers extremely readily now, partly because of the risks, and therefore there is a greater desire than ever to have a rules-based approach. But I am not sure I buy the big distinction that tends to be made between rules-based and principles-based regulation. In reality, it's always a balance between the two. You can have principles that underlie, or overarch, a rules-based approach.'

*Do you get feedback from companies that indicates that there is an appetite for a less prescriptive approach?*

'I think companies are still getting used to the changed regulatory framework within which they are now operating and I think that the better run companies are aware of what else is going on. But one of the things that I don't think has really been achieved here is enlightened self-interest. A lot of companies still regard disclosure rules as a regulatory burden, whereas there are surely a lot of reasons why you should want to be engaged with investors – that way investors will be prepared to invest in you because they won't be subject to nasty surprises. As a result, the market might apply a slightly lower discount in relation to your valuation than they do in relation to other companies.'

As I have said publicly before, one message passed to me from a number of fund managers I have had discussions

with, is that the discount they apply to Hong Kong listed stocks can be as much as 50%. I find that astonishing. What they are saying is that, on a purely fundamentals-based valuation, the company would be worth twice as much. The discount is due to the risk of not getting the right information at the right time and not understanding fully what the company is doing.'

*Professor Hilary warns that the regulatory process that started in the aftermath of the last financial crisis may be sowing the seeds of the next one. Do you think there is truth in that?*

'It's not really my area, but we don't operate a zero-failure regime in terms of supervising firms. People will cheat. They will lose money and you will get rogue traders. What you have to do is try to put in place controls that prevent this as much as possible and identify those problems as early as possible.'

*On the other hand, there is the opposite view – that it was the 'light touch' regulation that led to the crisis in the first place.*

'Yes, I thought that one of the best points the article makes is that "the development of compliance-centric procedures is not conducive of good risk management". This is not a box-ticking exercise. If you don't understand what you are actually doing it doesn't matter if you tick all of the boxes or not – the chances are you will eventually go down. Any company that unthinkingly says "we make sure we comply with everything", is probably abdicating responsibility because that in effect says "we'll leave it up to the regulators to decide what we need to do in order to keep ourselves safe".'



“  
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*Another issue raised in Professor Hilary's article is the fact that regulators are not working in a globally integrated framework – would you like to see better integration of the regulatory framework globally?*

'Yes. The SEC is doing its thing and the EU is doing its thing, and both of them are doing so in an increasingly extra-territorial way. In effect there are times when they have said: "whatever the circumstances in your home jurisdiction, if you are engaged in our market at all you have to comply with our rules". The Asia Pacific countries are now starting to work together on this and the SFC is one of the leaders in this space. We are kicking back and saying: "We have something that works just as well, it just doesn't do it in exactly the same way, but there should be an acknowledgement that it works".

Now, the interesting thing is that Europe has developed the concept of "equivalence" – this means accepting

that another jurisdiction has standards equivalent to your own. Most jurisdictions don't have that hard wired into their legislation. In fact there has been a shift to a more domestic outlook because, when international companies go bust, they become a problem in their home states so politicians are seeking tougher controls domestically.'

*Do you think the equivalence principle is the solution to this?*


'In the absence of a global regulator, I think equivalence or regulatory deference is the only way you can achieve better integration of the global regulatory architecture.'

*Do you think there will ever be a global regulator?*

'No – partly because markets are at different stages of evolution. There are huge differences across jurisdictions. For example, at one time warrants were immensely popular in Italy but virtually unknown in France, as they are

neighbouring countries. So when you have that kind of difference in mentality, you can't possibly have a single set of rules that applies to everybody across the globe – it just wouldn't work.'

*Is the SFC promoting the equivalence approach?*

'Yes. Ashley Alder [Chief Executive of the SFC] is the Chairman of the IOSCO Task Force on Cross-Border Regulation which is looking at cross-border regulatory cooperation. One of the biggest barriers to that is the fact that national legislative regimes are domestic in outlook and do not have a concept of equivalence. It is also the case that there are few universal principles that guide the way regulators coordinate on cross-border regulation and resolve disputes arising from potential or apparent conflicts of interest and laws among jurisdictions. That makes it harder for regulators to deal with the challenges posed by an increasingly connected and interdependent world.' 

## Professional Development

### Seminars: January to February 2015

#### 16 January Reverse takeovers



*Chair:* Dr David Ng FCIS FCS, Technical Consultation Panel Member, HKICS, and Director, Lippo Asia Ltd  
*Speaker:* Daniel Wan, Technical Consultation Panel Member, HKICS, and Partner, Francis & Co in association with Addleshaw Goddard (Hong Kong) LLP

#### 21 January Decoding the consultation on risk management and internal control



*Chair:* Grace Wong FCIS FCS(PE), Professional Development Committee Member, HKICS, and Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd  
*Speakers:* Melissa Fung, Partner, and Bonnie Chan, Associate Director, Enterprise Risk Services, Deloitte

#### 26 January Directors' and officers' series session three: this life cycle of D&O claims and regulatory investigations



*Chair:* Richard Law FCIS FCS, Principal Consultant, Robinson's Legal Training Ltd  
*Speakers:* Philip Chiu, Head of Financial Lines, Greater China/ Directors and Officers, Asia, Zurich Insurance Company Ltd; and Mun Yeow, Partner, and Andre Hui, Senior Associate, Clyde & Co Hong Kong

#### 28 January HK-incorporated NGOs – public governance standards/business review as limited or guarantee companies under the NCO



*Chair:* Lydia Kan ACIS ACS, Director, Professional Development, HKICS  
*Speaker:* Mohan Datwani FCIS FCS(PE), Senior Director & Head of Technical and Research, HKICS

#### 2 February 2015年度驻中国代表处升 级转型



*Chair:* Alberta Sie FCIS FCS(PE), Education Committee Vice-Chairman, HKICS, and Company Secretary, EFA Secretarial Ltd  
*Speaker:* Michael Ma, Partner, Reanda Certified Public Accountants

## ECPD and MCPD

### Forthcoming seminars

Date	Time	Topic	ECPD points
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	Proposed changes to the Corporate Governance Code and Corporate Governance Report	1.5
23 Mar 2015	6.45pm – 8.15pm	Corporate governance and developments related to risk management and internal control	1.5
10 Apr 2015	2.30pm – 5.45pm	Disclosure of inside information, disclosure of interest (DI form) and model code for securities transactions by directors of listed issuers	3

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

### Annual Corporate Regulatory Update (ACRU) 2015

The Institute once again brings you leading regulators from the Companies Registry, Hong Kong Exchanges and Clearing Ltd, Hong Kong Monetary Authority and Securities and Futures Commission at its 16th ACRU to be held on Wednesday 3 June 2015. Attendees will receive up to 7 CPD points. Please mark the event in your diary.

### What you should know about the MCPD requirements

All members who qualified between 1 January 2000 and 31 July 2015 are required to fulfil 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.

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

## Professional Development (continued)

### ECPD and MCPD(continued)

#### New MCPD requirement to extend to Graduates

Effective from 1 August 2015, all Graduates are required to comply with the Institute's MCPD requirements.

#### New ECPD programme package

The new individual and corporate ECPD programme packages for the 2014/2015 CPD year, enabling members/students to attend regular seminars at a discounted rate, are now available.

*For more information on ECPD and MCPD matters, please refer to the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*

#### Abolition of Practitioner's Endorsement fee

From the 2014/2015 year onwards new applicants for the Practitioner's Endorsement (PE), or existing PE holders, are not required to pay the annual renewal fee or application fee.

#### 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.

### Seminar discussing risk management reform

On 20 January 2015, the Institute held a seminar themed the 'Risk management reform for Hong Kong listed companies – trendsetting for Asia' with speakers: Edith Shih FCIS FCS(PE), Immediate Past President, HKICS, and Head Group General Counsel & Company Secretary, Hutchison Whampoa Ltd; and Andrew Weir, Regional Senior Partner, Hong Kong & Global Head of Building, Construction and Real Estate Practice, KPMG.



The seminar highlighted the impacts of the initiatives of the Hong Kong Exchanges and Clearing Ltd to promote risk management culture among listed issuers on governance, and brought to the

forefront the emerging trends that might affect Hong Kong and other Asian jurisdictions. The Institute was glad to partner with the Hong Kong Trade Development Council in organising the seminar as part of the International Financial Week following the Asian Financial Forum 2015. Samantha Suen FCIS FCS(PE), Chief Executive HKICS, chaired the seminar.

*The Institute thanks KPMG for sponsoring the seminar venue.*

## Membership

### New Graduates

Congratulations to our new Graduates listed below.

Chan Chui Ying	Chan Yi Man	Ho Choi Kuen	Li Sau Yi	Wong Yuen Yan
Chan Fung Mei	Chau Fung Mei	Kwok Po Yi	Lung Chi Kit	Yip Yuk Ling
Chan Kwan Wai	Chau Po, Jason	Lam Kwan Yin	Man Yun Wah	
Chan Tsz Yan	Cheung Man Lung	Lau Hung Mei, May	Ng Sin Man	
Chan Wai Lan	Fung Man Wai	Lee Tsz Kin	Tang Ching Ha	
Chan Wan Ting	Hau Yui Shan	Leung Ho Yee, Rachel	Tsui Pui Ling	
Chan Wing Yan	Ho Ching Man	Li Lai Nar	Wong Kwok Yin	

## Membership (continued)

### Happy Friday for Chartered Secretaries – investment wisdom for busy professionals

Don't miss out on the opportunity to learn tips on proper asset allocation for better retirement from Agnes Wu Mang Ching (胡孟青), a veteran market commentator, at the Institute's social gathering to be held on the evening of Friday 27 March 2015. Seats are limited so please register as soon as possible.

*For details, please refer to the flyer on page 47, or visit the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*

### Membership Activities Plan for 2015

Following the Membership Committee meeting on 10 February 2015, the Institute will organise activities in the following four categories to cater for the needs of our members of various interests and age ranges.

1. Mentorship programme
2. Members' networking
3. Young group, and
4. Community service.

*We invite all members to participate. Please stay tuned for our activity updates on the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk), or send us an email: [member@hkics.org.hk](mailto:member@hkics.org.hk).*

### Luncheon with the chief secretary

The Hong Kong Coalition of Professional Services held a luncheon talk on 11 February 2015. Carrie Lam, GBS, JP, Chief Secretary for Administration of the Hong Kong Special Administrative Region, gave a speech on the method for selecting the Chief Executive by universal suffrage at the luncheon, followed by an interactive session.

*The luncheon was attended by 11 professional bodies in Hong Kong, including HKICS, and representatives of their respective young groups. Fourteen Institute members attended the luncheon.*

### Fellowship and Associateship application deadlines in 2015

The Institute is dedicated to helping Members and Graduates develop their careers after gaining the professional Chartered Secretarial qualification. Members and Graduates are encouraged to advance their membership status to become Associates and Fellows once they have obtained sufficient relevant working experience. As per Council's direction, the promotional campaign to increase the number of Fellows continues. Act now to enjoy a special rate for the Fellowship election fee of HK\$1,000 up to 31 July 2015 (that is, end of the 2014/2015 financial year) and the exclusive Fellowship benefits. Please refer to the 'Membership' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

Fellowship and Associateship applications are assessed by the Membership Committee on a regular basis. Application deadlines and the respective approval dates (subject to satisfactory receipt of application and supporting documentation) in 2015 are set out below.

Application deadlines	Scheduled approval dates
Thursday 16 April 2015	Tuesday 5 May 2015
Thursday 18 June 2015	Friday 17 July 2015
Thursday 3 September 2015	Tuesday 22 September 2015
Thursday 12 November 2015	Tuesday 8 December 2015

*For enquiries, please contact Sarah Hui, Manager, Membership at: 2830 6018, or email: [member@hkics.org.hk](mailto:member@hkics.org.hk).*



## International Qualifying Scheme (IQS) examinations

### 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

#### Examination enrolment

The examination enrolment period is from 1 March to 31 March 2015. The Examination Entry Form can be downloaded from the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk). All entries must be received by the Secretariat by 6pm on Tuesday 31 March 2015, and, if by post, with a post-mark on that date. No late applications will be accepted in any circumstances. To avoid postal errors or delays, students are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre selected after the examination application has been submitted.

#### Syllabus and reading list updates

From the June 2015 examination diet onwards, the IQS examinations will be based on the new Companies Ordinance (Cap 622).

Students are reminded that the old Companies Ordinance (Cap 32) has been retitled as 'Companies (Winding Up and Miscellaneous Provisions) Ordinance' and contains provisions relating to prospectuses, winding-up, insolvency of companies and disqualification of directors.

Please note that the syllabus and reading list for the following subjects have been updated with the requirements under the new Companies Ordinance and will come into effect from the June 2015 examination diet:

- Hong Kong Corporate Law
- Corporate Governance, and
- Corporate Secretaryship.

*Students may refer to the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk) for details.*

#### IQS study pack

Students can order the study packs on Corporate Administration, Corporate Governance, Hong Kong Corporate Law (2015 edition) and Corporate Secretaryship. Purchase of the study pack is mandatory for the enrolment of each subject examination.

*The order form can be downloaded from the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*

#### HKICS Examination technique workshops

The Institute will organise a series of three-hour IQS examination technique workshops. These workshops, commencing in mid-April, aim to help students improve their examination techniques. Each workshop costs HK\$470. Students may download the enrolment form from the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk)

## IQS examination pass rates (December 2014)

Subject	Pass rate
<b>Part I</b>	
Strategic and Operations Management	52%
Hong Kong Corporate Law	18%
Hong Kong Taxation	43%
Hong Kong Financial Accounting	56%
<b>Part II</b>	
Corporate Governance	29%
Corporate Administration	31%
Corporate Secretaryship	36%
Corporate Financial Management	31%

## Studentship

### New Students Orientation

Students who have registered since September 2014 are invited to attend the 'New Students Orientation' to be held on Thursday 12 March 2015. This event aims to give new students up-to-date information about the HKICS and serves as a platform for them to meet with other students. The IQS examinations subject prize awardees will also share their examination preparation tips at the event.

<b>Date</b>	Thursday 12 March 2015
<b>Time</b>	7pm – 8.30pm
<b>Venue</b>	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central, Hong Kong

The enrolment form can be downloaded from the 'Studentship' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk). Please fill in the reply slip and return it by email to [student@hkics.org.hk](mailto:student@hkics.org.hk). For enquiries, please contact Annis Wong at: 2830 6010, or Carmen Wong at: 2830 6019.

## Subject prize and merit certificate awardees

The Institute is pleased to announce the following awardees of subject prize and merit certificates at the December 2014 examination diet. The subject prize was awarded by The Chartered Secretaries Foundation Ltd. Congratulations to all awardees!

Subject	Subject prize winner
Hong Kong Corporate Law	Yau Kar Yi, Grace
Subject	Merit certificate awardees
Strategic and Operations Management	Lam Yuen Yee
Hong Kong Financial Accounting	Wan Hoi Ying Yeung Wing Chong
Hong Kong Taxation	Ho Mei Yi Lai Kit Ying Lai Po Ying Lam Hoi Kei Law Sin Pui Wang Xichun
Hong Kong Corporate Law	Chan Wai Kit, Ricky Luk Tak Lam Yeung Ka Woon, Catherine Yuen Sze Chai
Corporate Governance	Chan Yuk Yee Kwok Yuen Ni
Corporate Administration	Chan leok Mun Choi Ying Kwan Ho Chor Yin Ho Mei Yi Lam Wai Yi Lo Hong Ting, Josephine Peng Junlei Poon Wai Sze, Grace Wong Pui Yin Yeung Wan Mei

## Studentship (continued)

### Business Management Fair 2015 at HKUST

The Institute participated at the Business Management fair organised by The Hong Kong University of Science and Technology (HKUST) on 10 February 2015, which served as a platform to gather employers, recruiters and students. At the fair, the Institute had a promotion booth to introduce the Chartered Secretarial profession and its Student Ambassadors Programme to the visitors.



*At the promotion booth*

### Student Ambassadors Programme (SAP) – ecotour outing

On 24 January 2015, 23 student ambassadors and their mentors joined an ecotour outing to the New Life Interactive Farm in Tuen Mun.



*Group photo*

### HKICS professional seminar at Lingnan University

Chief Executive Samantha Suen FCIS FCS(PE) was invited to deliver a talk on 'Chartered Secretary – a gateway to success' to over 60 undergraduates and master degree students at Lingnan University on 10 February 2015. At the seminar, Ms Suen introduced the Chartered Secretarial profession and shared her career development as a Chartered Secretary. She also encouraged the students to grasp the opportunity to develop themselves in the increasingly recognised and challenging Chartered Secretarial profession.



*At the seminar*



*Samantha Suen receiving a souvenir from Clement Shum, Visiting Associate Professor, Department of Accountancy, Lingnan University*

### Payment reminders

#### Studentship renewal

Students whose studentship expired in January 2015 are reminded to settle the renewal payment by Monday 23 March 2015.

#### Exemption fees

Students with exemptions approved via confirmation letter on 30 December 2014 are reminded to settle the exemption fee by Monday 30 March 2015.



## Investment Wisdom for Busy Professionals Happy Friday for Chartered Secretaries

The daily life of Chartered Secretaries is often hectic and it is not always easy for them to find time to manage their own assets. The Institute has invited Ms Agnes Wu Mang Ching (胡孟青小姐), a veteran market commentator, to share her insights and tips on asset allocation and investment.

### Event Details

**ENROL NOW!**

Date : Friday, 27 March 2015  
 Time : 6.30pm – 6.45pm (Registration)  
 6.45pm – 8pm (Speaker's presentation)  
 8pm – 8.15pm (Q&A and networking)  
 Venue : Club Lusitano  
 27/F, 16 Ice House Street, Central, Hong Kong  
 Fee : HK\$100 (Light refreshments provided)  
 Language : Cantonese



### About the Speaker

Ms Agnes Wu Mang Ching (胡孟青小姐)

- Market commentator
- Programme host for Metro Finance Radio
- Columnist for Apple Daily, Sky Post, AM730, iMoney and Economic Digest
- Director for Hong Kong Financial Information Consultants Limited



### Outline

- The four pillars of investing
- Different asset classes
- Asset allocation strategies that work
- A prize-winning plan for investing in a low-interest-rate environment



HKICS members and graduates, come and join NOW by completing and returning the enrolment form with payment. Priority enrolment with seat guarantee for Fellows before 6 March 2015. For enquiries, please contact Vicky Lui at 2830 6088 or Sarah Hui at 2830 6018, or email: [member@hkics.org.hk](mailto:member@hkics.org.hk).



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## Company Secretarial Professionals

Our Corporate Services Division is fast growing in our practice area and we are looking for company secretarial professionals to join us.

Requirements:

- ▶ Degree holder and minimum 1 year relevant experience;
- ▶ Registered students of HKICS preferred;
- ▶ Experience in handling assignments of Hong Kong-listed companies preferred but not essential;
- ▶ Self-motivated, well-organized, detail-minded, good interpersonal skills and willing to take challenges;
- ▶ Excellent command of both written and spoken English and Chinese;

*Candidates who are members of HKICS with 7 years solid experience and with special focus in listed companies will be considered for an executive position.*

We offer to successful candidates:

- ▶ 15-day annual leave (20-day for managers)
- ▶ 5-day work, study / examination leave
- ▶ Qualifying premium upon completion of HKICS examinations
- ▶ Excellent job exposure and career prospects

**Applicants should send their full C.V. and expected salary to:**

HR Manager, Level 54, Hopewell Centre, 183 Queen's Road East, Hong Kong or by email to: [hr@hk.tricorglobal.com](mailto:hr@hk.tricorglobal.com) or by fax to 2543-7124.

**Please quote reference: "Company Secretarial Professionals" on your application.**

Personal data provided by job applicants will be used strictly in accordance with the employer's personal data policies, a copy of which will be provided immediately upon request.

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# 16th Annual Corporate and Regulatory Update

**Date:** Wednesday, 3 June 2015

**Time:** 8.45am - 6.20pm

**Venue:** Hall 5G, Hong Kong Convention  
and Exhibition Centre, Wanchai  
Hong Kong

**Co-sponsors & speakers from:**

- Companies Registry
- Hong Kong Monetary Authority
- Securities and Futures Commission
- The Hong Kong Exchanges and Clearing Limited

Please refer to our website for details: [www.hkics.org.hk](http://www.hkics.org.hk).

For ACRU enquiries, please call 2233 9321 or email to [event@hkics.org.hk](mailto:event@hkics.org.hk).

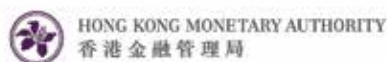
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- Initial Public Offerings & Share Registration
- China Entry & Consulting
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- Management Consulting
- Fund Administration Services

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