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November 2015

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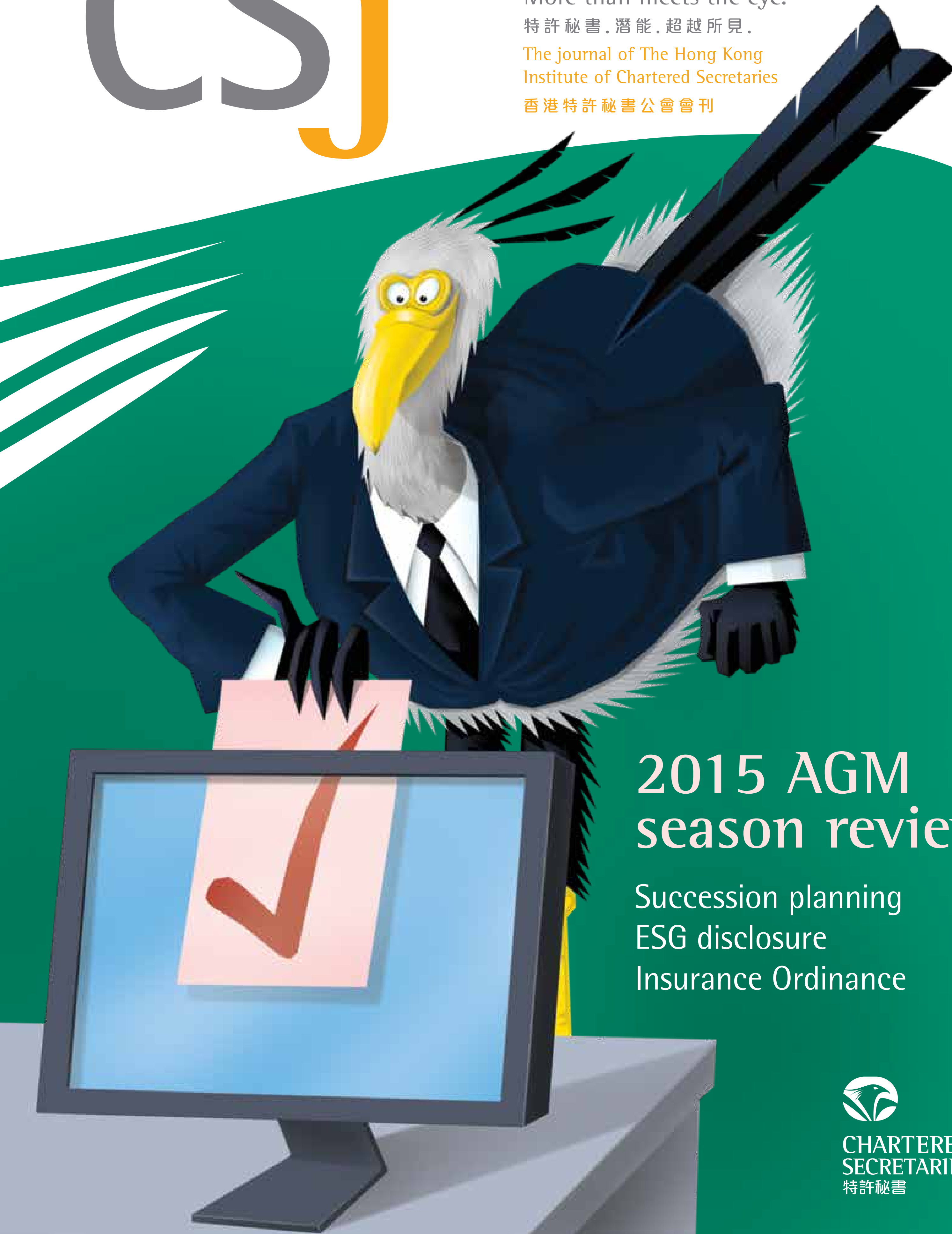

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

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

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The new normal

Last month our Institute held a press conference to launch our joint KPMG/HKICS publication – *Risk Management: Looking at the New Normal in Hong Kong*, and it is this report that I want to make the centre piece of my president's message this month.

The report is based on the findings from a survey of 279 senior managers working in the Hong Kong and China markets, and it gives a snapshot of their attitudes to, and preparedness for, the management of risk. The good news is that the survey indicates a high level of awareness among respondents about the importance of risk management, but the survey also found that there are some rather glaring gaps in their risk defences. For example, at the time of the survey (Q1 2015): 64% of respondents had not developed a formal risk appetite statement; a rather alarming 15% did not have an internal audit function; and, of those companies with an internal audit function, 57% could not clearly link back their audits to the top risks facing the organisation.

Those companies without an internal audit function will be particularly busy over the next couple of months. From the beginning of next year, having an audit function will be subject to a 'comply or explain' requirement in our Corporate Governance Code. This new requirement, together with a 'comply or explain' requirement for companies to review annually the effectiveness of their risk management and internal control systems, will be implemented for accounting periods beginning on or after 1 January 2016.

These new regulatory measures are designed to improve companies' risk management controls. Our intention in bringing out our risk management report, however, goes deeper than regulatory compliance. Since the 2008 global financial crisis, risk management has moved increasingly centre stage for everyone involved in corporate governance. What essentially does a board do if not monitor the organisation's risks and provide strategic direction for the organisation in view of the risks and opportunities it faces in the external environment?

If risk is central to the board's function, it follows that it must also be central to the function of members of our profession. We have a clear role to assist directors to effectively discharge their duties with regards risk, and this impacts both our board support and our board advisory work. The 'new normal' therefore for company secretaries, as for all governance professionals, is that we need to engage with risk management as a central part of what we do.

This 'new normal' has been recognised by our global profession. Risk management is one of the topics that the Institute of Chartered Secretaries and Administrators (ICSA) is considering adding to the curriculum of our Chartered Secretarial qualification. To remain relevant, the ICSA believes, we will need to demonstrate our competence in a wider range of fields and we will need to posses a wider range of knowledge and skills. Is there, therefore, a need for more options and alternative routes to support people in preparing for their career in the very broad domain of governance, risk and compliance?

We will be seeking your views in the coming months on this and other questions as part of the ICSA's international survey – the 'International Standard Review'. If you have views you would like to share with us on this topic, please do get in touch. We seek to ensure that our members have the best possible preparation for their careers in the changing business environment.

Dr Maurice Ngai FCIS FCS(PE)

新常态

公会上月举行记者会，发布公会与毕马威会计师事务所共同出版的刊物《风险管理：香港新常态观察》。今期的会长的话，就是以这份报告为主题。

报告根据对279名在香港和中国内地工作的高级管理人员所作的调查结果，说明他们对风险管理的态度，和是否准备好管理风险。好消息是，调查显示受访者对风险管理的重要性有极高意识，但亦显示在防范风险的措施方面，有些相当不足之处。例如在调查期间（2015年第一季），受访者中有64%没有正式的风险胃纳声明，多至15%未设内部审核职能，令人惊讶；而设有内部审核职能的公司当中，57%所做的审核未能与机构面对的重大风险清晰联系起来。

未设内部审核职能的公司在未来数个月将特别忙碌。由明年初起，设置审核职能，将成为《企业管治守则》内「不遵守就解释」的规定。另一项「不遵守就解释」的规定，是公司每年须检讨其风险管理和内部监控系统是否有效。两项规定均于2016年1月1日起开始的会计年度内实施。

这些新规定的目的，是提升公司的风险管理管控措施。而我们发表《风险管理：香港新常态观察》报告的用意就不仅是提倡合规。自2008年环球金融危机以来，风险管理对企业管治人员来说日趋重要。董事会所做的不就是监察机构的风险，并因应所面对的外在环境中的风险，为机构提供策略指引吗？

假如风险是董事会职能的重点，也必定是专业特许秘书职能的重点。对于协助董事有效履行与风险有关的职责，我们责无旁贷；这也影响到我们为董事会所提供的支援工作和建议。因此，对特许秘书和所有管治专业人员来说，「新常态」就是有需要以风险管理为日常工作的重点。

全球各地的专业特许秘书也认识到这个「新常态」。特许秘书及行政人员公会(ICSA) 正考虑在特许秘书资格课程范围中加插风险管理课题。ICSA认为，特许秘书应与时并进，在更多方面显出我们的能力，并掌握更广泛的知识与技能。因此，有否需要提供更多选择和途径，协助人们准备从事有关管治、风险与合规这广阔范畴的工作？

在未来数月，我们会邀请会员就以上和其他课题发表意见，这亦会成为ICSA对其「国际标准检讨」全球调查的部分内容。如对这些课题有任何意见，欢迎阁下与我们联络。公会致力协助会员在瞬息万变的商业环境中为事业发展作至佳准备。

魏伟峰博士 FCIS FCS(PE)

2015 AGM season review

Lucy Newcombe, Director, Global Corporate Communications, Computershare, looks at the trends and transformations emerging from this year's AGM season.

Globally, the 2015 AGM season saw an increase in shareholder activism, including in Asia. There were two particularly notable campaigns in Asia, one in South Korea and one in Japan.

In Korea Elliott Associates LLP, a US hedge fund that is also active here in Hong Kong where it is trying to force BEA to disclose papers relating to Japanese multinational banking and financial services company Sumitomo Mitsui, ran a lengthy campaign opposing Samsung Group's proposed merger of two of its business units. The campaign included court proceedings to try to prevent the corporate action. Elliott considered Cheil Industries Inc's offer to buy Samsung C&T Corp unlawful, creating significant regulatory risk and being disadvantageous to minority shareholders. The campaign pitted Elliott against South Korea's wealthiest family and the country's largest conglomerate, ground that few activists have previously dared to tread in a country which is widely acknowledged as being well behind the curve in terms of corporate governance in the developed world.

Despite Elliott losing the battle, awareness of minority shareholder rights was raised significantly in South Korea and it is hoped that the impact of the struggle may help influence future activist attempts in the country.

Governance advocates may also take some solace from signs of change in Japan, which historically has shared many corporate practices with South Korea. Japan's Stewardship Code (finalised in February 2014) and fully implemented in August the same year, was introduced with the aim of promoting sustainable growth of companies through investment and dialogue. Institutional investors are expected to follow the spirit of the Code in their activities and take proactive measures to further enhance dialogue with their investee companies.

Consequently, companies are starting to react more positively to outside investors focusing attention on corporate governance. US investor Daniel Loeb's hedge fund, Third Point LLC, pushed to break up Sony Corp and while the company rejected Mr Loeb's specific requests, the Japanese technology giant made some major concessions before Loeb subsequently sold his whole stake last October, realising a 20% gain on his initial US$1.1 billion investment. The businessman moved on to the secretive Japanese robot-maker Fanuc Corp – which then voluntarily increased its dividend and started an investor relations department after Mr Loeb began requesting changes.

Hong Kong and Mainland China

If AGMs in China were held in August and September rather than generally in May and June, it's very likely we'd be looking at a totally different set of figures relative to this year's attendance and voting. Dubbed 'Black Monday', 24 August ended with Chinese equities down 8.5%, wiping out hundreds of billions of dollars in market capitalisation. The following few days also saw drops across the market, albeit not quite as dramatic. According to the Associated Press news agency, roughly 6% of Chinese households own stocks and shares, so images of worried-looking retail investors flooded news feeds around the globe.

> “the campaign pitted Elliott against South Korea's wealthiest family and the country's largest conglomerate, ground that few activists have previously dared to tread”

If AGMs had been held that week, it is easy to imagine that organisers would have been inundated with attendees concerned to hear about plans for stabilising their investments, that venues would have been unable to cope with the volume of shareholders turning up, security would have been stretched and the local and international media would have had story after story to write about.

In reality, the 2015 AGM season saw a continuation of the attendance and voting

Highlights

- globally, there have been upward trends in shareholder activism, the popularity of online voting and shareholder rights legislation
- companies in Hong Kong need to consider the communications they have in place to encourage on-time arrival and voting at the AGM
- most AGMS in China were held before the stock market slide that began in July, resulting in little change to the historical attendance and voting trends

trends we have seen in recent years. Shareholder numbers for the meetings with poll voting that Computershare manages across Hong Kong and China rose by more than 3,300 more people, an increase of 8% year on year. The numbers attending large meetings – those with more than 100 attendees – rose most sharply, increasing by an average of 60 people per meeting.

Bank of China was overtaken by the Industrial and Commercial Bank of China (ICBC) in terms of in-person attendance – with 4,895 people showing up for ICBC's meeting. BOC had 4,346 shareholders attend in person, the vast majority of these in Hong Kong. China Construction Bank had the third highest attendee numbers, with 3,217 people from China and Hong Kong making the journey to the meeting.

However, disappointingly, this increase in attendance continues to be let down by a lack of voting – with a year-on-year fall of over 5% in voting by those attending the 766 meetings that Computershare runs. Some of this could well be attributed to late arrival – those arriving late at an H-share meeting are not entitled to cast their vote. The message for companies remains – if there is a big difference between your attendance and voting numbers, quite simply you are paying to host people who are not contributing to the corporate governance of your entity. If you want to derive benefit from shareholders who take the time and trouble to attend in person but do not vote, you need to consider the communications you have in place to encourage on-time arrival and voting at the AGM itself.

Happily, overall, the percentage of issued share capital voted (as opposed to the number of individuals who vote their shares) across the meetings that Computershare manages remains comparable and often higher than levels in other countries – with 76% of issued share capital being voted this season.

In China, the state of the stock markets in the spring will be a major factor in attendance and voting levels at AGMs in 2016.

In Hong Kong, the shareholder engagement consultation released by the Securities and Futures Commission has come in for some heavy criticism from listed companies and institutional investors alike, so it remains to be seen what will eventually be put into place and whether this will affect how companies approach AGMs in the future.

Attendance trends in German AGMs

	2014	2015
Siemens	+11%	– 5%
Daimler	+10%	-5%
BASF	+ 5%	– 1%
Deutsche Bank	+7%	+ 3%

Germany

In 2014, many companies on the DAX, the German blue chip stock market index, experienced increased institutional shareholder voting at their AGMs. This was thanks to extensive investor relations activity and educational programmes that had been put in place to counter the effect of a 2012 court decision which created uncertainty among investors and custodians as to how to execute a legally sound cross-border vote at German AGMs.

In 2015, AGM attendance in Germany saw a slight decrease compared to the previous year, but this may reflect the better investor relations resulting from the investments described above.

One significant change for the 2016 season is the new requirement for mandatory reporting of voting rights belonging to third parties, which has been adopted under the Small Investor Protection Act. It remains to be seen whether this will increase retail investor presence at meetings in future seasons. The Act also removes the uncertainty around cross-border voting.

UK

A relatively quiet AGM season in the UK saw another slight decrease in overall attendance, though thanks to the prevalence of electronic voting solutions, the percentage of issued share capital that was voted rose again year on year and is around 65% for Computershare clients in the FTSE350. 100% of Computershare's FTSE350 clients now offer both eProxy and Crest proxy appointments, which has further minimised the amount of paper in the voting chain. We anticipate that this will continue to be the norm during future AGM seasons.

> in China, the state of the stock markets in the spring will be a major factor in attendance and voting levels at AGMs in 2016

Another point of note is that, in spite of shareholders now having a binding say on pay, more people are still contesting companies' remuneration reports (compensation already paid) rather than companies' remuneration policy (future pay plans). As a result, no companies have yet lost a vote on their remuneration policy.

Changes to the UK listing rules were introduced by the Financial Conduct Authority in May 2014 which require premium listing companies (a group of companies that are, amongst other criteria, traded on the London Stock Exchange) with controlling shareholders to 'dual report' on the results of resolutions electing independent directors, starting this AGM season.

A controlling shareholder is anyone holding more than 30% of the total voting rights of a company. The shares can be held by one person, or collectively with other associates or shareholders acting 'in concert'.

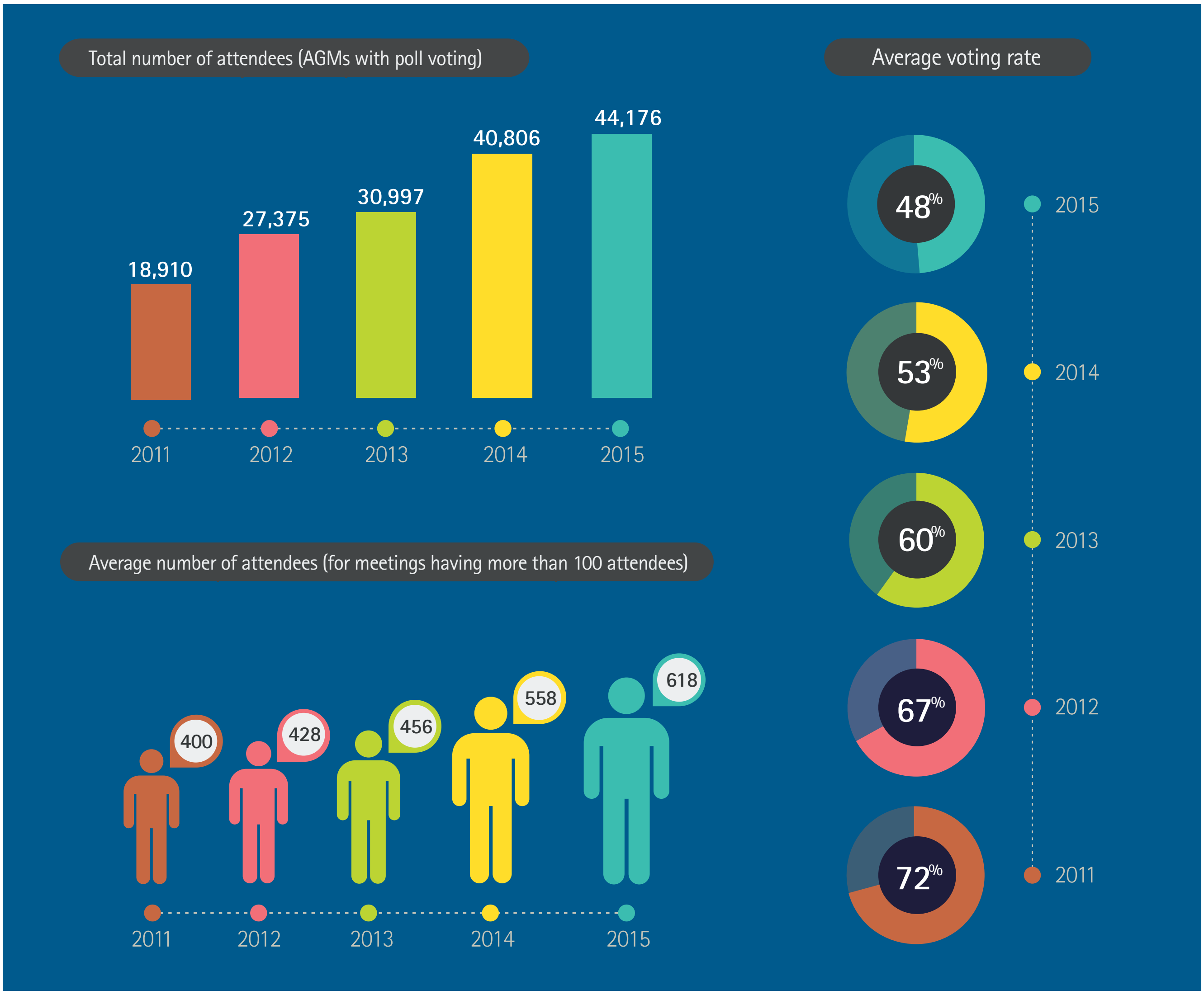
The changes mean that the votes cast by a controlling shareholder need to be deducted from the final result of specified resolutions, providing an independent shareholders' result in addition to the standard result representing the votes of all shareholders so that everyone can see what the result would have been without the controlling shareholder's votes.

US

Proxy access has been the biggest issue for the 2015 season in the US, and has been a significant turning point for the issue as a record number of proxy access proposals gained widespread support.

'Proxy access' describes the ability of shareholders to directly access a company's proxy materials, including permitting the inclusion of a shareholder-proposed director nominee (or slate of nominees) and a statement in support of the nomination(s) in the company's proxy statement. Although current US securities regulations do not grant shareholders access to company proxy materials, proxy access may be available to shareholders

Key trends in Hong Kong and Mainland China



by way of a company's organisational documents (for example, articles of incorporation, bylaws or corporate governance guidelines), as permitted by state corporate law.

While proxy access did not garner significant attention over the past two proxy seasons, it is one of the most notable developments of the 2015 proxy season. There were 106 proxy access proposals submitted this year, of which 16 were withdrawn or omitted. On average, proxy access has garnered 54% support, with 49 companies receiving a majority of votes cast in favour (only six companies were in this category in 2014).

Proxy access is no longer unusual, although it is far from being a practice as generally accepted as, for example, majority voting for directors. Even so, as proxy access becomes more common, it appears likely that it will rarely be used (consistent with its rare use in other countries where it is more commonly in place). It also seems unlikely to be used by shareholder activists who engage in traditional proxy fights. Rather, it will most likely be used as a carrot to encourage companies to engage their investors and to take action on issues of importance to them.

Australia

Computershare was involved in over 750 meetings in Australia in 2014, with the busiest period between September and early December. While the amount of issued capital voted across all companies remained flat at 45.4% in 2014, there was a decrease of almost 6% in the issued capital voted for ASX50 companies. However, the amount of issued capital voted via online services has increased over 260% since 2010 – from 8.9% to 32.8%. In the last year alone it increased by 37.8%.

The change in voting participation was minimal, with 5.27% of shareholders voting, up 0.3% on 2013. A downward trend in attendance has continued, with numbers dropping by approximately 10% per year, until this season when it increased slightly, up 0.8% on 2013.

The 2014 meeting season was the fourth season that the Australian two strikes legislation was in operation. This requires the board of a company to stand for re-election if 25% or more of votes are cast against remuneration two years in a row and is designed to give shareholders more power. In 2014, more companies received a first strike (85 in 2014 compared with 80 in in 2013), however the number of companies receiving a second strike decreased by over 50% (10 in 2014 compared with 22 in 2013). Awareness around the directors' remuneration report has increased since the introduction of this legislation, and has contributed to a decline in the overall number of strikes received. Companies are also engaging proxy advisers in discussions with large institutional holders on their remuneration report policies in advance of a meeting.

In 2014 the level of investor discontent regarding executive pay was higher for companies in the ASX300. Analysis of the proportion of votes lodged against the remuneration report shows the average was 7.4% in the ASX300, versus 5.8% for companies outside the ASX300. Votes against the remuneration report for ASX50 companies are at the lowest percentage of all ASX groupings, revealing that investor discontent about executive pay appears to increase from the ASX50 through to the ASX300.

Lucy Newcombe
Director, Global Corporate Communications, Computershare

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Succession planning

CSj talks to Michael Chan Yun Kwong, Chairman of fast-food group Café de Coral, and co-founder of the Legacy Academy which coaches families to pass on their businesses to the next generation in a sustainable way.

The easiest way to lose a friend, an old saying goes, is to start a business together. The same is true within a family. That's partly why passing on a business to the next generation is anything but simple and may open painful wounds. Indeed, HSBC said in a report earlier this year that next to divorce and bereavement, transition of a family business can be the most stressful time in your life. But done properly, a successful ownership succession is the reward of a lifetime; a legacy passed on to the very people you love and trust the most.

Michael Chan Yun Kwong, Chairman of fast-food group Café de Coral, knows this better than most. For almost three decades, he's been running the company his father-in-law founded, and headed by his brother-in-law as CEO. He also co-founded the Legacy Academy, which is dedicated to raising awareness of the importance of succession planning.

'Succession planning can be like a psychological tug-of-war', Mr Chan said in an interview with *CSj*. 'That's why it's so important to start the planning and preparation many years ahead of the transition. Most family business owners in Hong Kong want to pass on their business and legacy to the next generation, but very few have a plan for it.'

Family businesses are the backbone of most societies and account for about 80% of the global economy. Still, the diversely-held and professionally-managed listed company is often taken to be the 'ideal' company. How do you think family businesses can be role models?

'Family businesses are a driving power of the global economy and should get more credit. I think they could be very good role models. You have family members who have continuity and long-term vision. There's a saying: "professional managers look at business on annual perspective, family managers on a generational perspective". So family members are more concerned about the values and principles of running a business. And in terms of transitions, there's a consistency among management. Even if you hire an outside professional manager, he or she will align with family dynamics. I believe it's a good model for sustainability in the long term, both for listed and non-listed companies.

Having said that, I believe the reputation of family businesses might sometimes be unfavourable because many are not prepared for succession. They fail because they don't plan, and instead have to sell out or close down. That's why many family businesses don't get over to the next or the third generation. But if you plan and have corporate governance and consider all intangible values, I think family businesses should not have this reputation.'

Café de Coral – which also operates Oliver's Super Sandwiches, Spaghetti House and Super Congee & Noodles – has achieved 27-fold sales and profit since it listed on the stock exchange in 1986. In your annual report, you say the company is 'undaunted by short-term ups and downs'. How has this long-term perspective helped you grow, and do you think this is typical for Hong Kong family businesses?

'From a family business perspective, you always want to provide opportunities for future generations and make use of the business platform to develop their potential. This is the major reason for a

Highlights

- poor succession planning is the most common reason that family businesses don't survive into the second or third generations
- it is important to start the planning and preparation many years ahead of the transition
- the succession process is about much more than just writing a cheque and transferring the wealth – you have to look at family values, relationships and history

business enterprise to exist, especially for a family business. This is also the main motivation for some of the world's most successful family businesses, like Rothschild, JP Morgan and Rockefeller'.

Your father-in-law, Victor Lo, started the restaurant chain in 1969. Recently you handed over the baton to your brother-in-law, Sunny Lo. How did you handle this process?
'It took a four-year transition period. He is doing well. But at the end of the day, I don't want to comment too much on existing management. I have this philosophy – when you've withdrawn from management, don't intervene. Give them a free hand to do whatever they want.'

How does it feel to pass on such responsibility?
'When you go through a succession, you have to let go of power. You might have had that power for say 30 or 40 years, so letting go is quite a psychological challenge – it's like letting go of your life. Power is like opium; once you get the taste for it, you want more. Even for a father to pass on power to a son, there will often be a lot of reluctance on the part of the father. I've seen many cases where the succession did not succeed because the father hung on to power.

The other psychological burden is that the successor himself wants to make a difference and doesn't want to have any part with the old guys of the previous generations. He or she often wants to start over fresh. However, one should remember that a succession usually isn't just one person handing over power to another person; it's a whole group of people handing over to another group, that's how I perceive it.'

Rivalry between siblings and family members might also be a factor, how should one deal with that?
'In fact, my personal philosophy of succession planning is to first look at the family. Family always comes first, then the business. Families are by nature irrational, so we're not always talking about reason. Look at all intangibles, like harmony, consensus and relationship between siblings and parents. Family traditions and relationships are much more important than just writing a cheque and transferring the wealth. Governance of a family business is an art as well as a science.'

Your son runs a chain of bakeries in China and your daughter an interior design company. They are not actively involved in the Café de Coral family business. Would you say passing on a legacy is more than just passing on a business?
'Precisely. When you talk about legacy, you don't need to talk just about business, it's more a question of the DNA and the personality. I often use the analogy of a soya bean: if you are a soya bean, this doesn't have to mean that your son or daughter will become a soya bean, they might prefer to become bean sprouts. So even if you enjoy running your own business, it doesn't have to mean that your son or daughter will enjoy running it. They will inherit other values from the family legacy.'

Today, many of the new generation are reluctant to take over family businesses. A 2010 study by the Chinese Academy of Sciences said that 90% of people running family businesses want to pass them on to their children, but 95% of the second generation don't want to take them up. Why is that?
'In China, where the children have received a more liberal education abroad, they are often reluctant to accept the operational methods of their parents when they come back to the family enterprise. They may feel that they no longer share the same value system as their parents and disagree with how they operate the business. Many young people want to have a more democratic and transparent structure. In addition, many of the second generation are very rich but want to make a difference to society as a whole. They may prefer to find work in an NGO to exert their influence.

Another reason is that, whatever the children do, they may feel that they will never be able to outshine their parents. They fear they will always live under the shadow of the ones who created the wealth. There is a saying that goes: parents are the black hole that sucks the dream out of the younger generation. You often pursue the dreams of your parents, and not your own. Today, many of the second generation prefer to create their own dreams.

I read in a Chinese newspaper that a young guy who wanted to prove his determination not to take over his parents' business chopped off four of his fingers.'

Two years ago you co-founded the Legacy Academy, which coaches businesses to pass on their legacies in a sustainable way. Why did you start it?
'There were reasons both on a personal level and a societal level. I had personally gone through a succession process and had come to appreciate that planning for succession is not something that can be done overnight. Many people think the chairman can just sit down with his son and say: "Tomorrow you'll take over". But that doesn't happen. Succession needs time; five to 10 years of

"done properly, a successful ownership succession is the reward of a lifetime; a legacy passed on to the very people you love and trust the most"

planning, but few make the effort to plan their succession with that kind of timeline. In China and even in Hong Kong, 90% of businesses want to have succession eventually, but a JP Morgan survey suggests that 88% have not done any planning.'

Why do so few companies plan their succession?

'Human nature. We tend not to do any planning until we are confronted by a critical situation, especially on subject matters like this. We don't want to face the fact of death or illness – if you don't talk about it, it won't happen, right?

If you look at the Corporate Governance Code in the listing rules, there's almost nothing about succession planning, but if a succession process fails it can be disastrous both for the family and the shareholders. The business might have to be sold or closed down. That's why I'm so curious and have done so much research. That's why I want to raise awareness in Hong Kong.'

What has the reaction been to the Legacy Academy?

'There's a lot of interest from private bankers, insurance companies and academics who want to understand the dynamics of succession planning. There's also big interest from professional bodies, like the Hong Kong Institute of Directors and the Hong Kong Institute of Certified Public Accountants.'

Having many family members as senior executives in a listed company, could that potentially be a source of conflict of interest, and how would you deal with that?

'It all depends on whether the family group perceive the company as a "private club" or in true sense as a public company. In my perspective, most families in Hong Kong that run public companies take it very seriously. They have independent directors and strong corporate governance to make sure family interests as well as other shareholders' interests are taken care of.'

In a company, who should be responsible for the succession planning, and what role does the company secretary play?

'Of course, the responsibility has to come from the top. No one will go to the chairman and tell him it's time to retire. Having said that, I think company secretaries play a pivotal role to institute measures to ensure proper succession planning, such as a correct planning process, instructions, policies and procedures. They will need to ensure the plan is incorporated into the company charter in a consistent way. Family businesses, especially with many members, need structure. So the company secretary has a very important role.'

What advice would you give to a company secretary in terms of succession planning?

'In the planning process, company secretaries are important for transparency. They can lay it down in black and white so everybody will realise that the process in not just for a closed group. They will also overlook vital policies and procedures, like employment policies, how you set salaries for incoming and exiting CEOs, or what happens if someone wants to sell shares.'

What are the first things you need to think about when planning a family succession?

'First, family assessment. You make an inventory of your family members, their talents, ages, and so on. Then you have family meetings. Some family members might just want to be shareholders and collect their dividend, others might want to be part of management. The meetings have to be transparent. This is very important. The meetings are not casual. You need an agenda and facilitators.

Third, make a family charter. Even among families you need a charter that establishes policies and procedures. It's not just about wealth, but values and traditions. In fact, one Hong Kong company said in its charter that members should "try their best to have early marriages", because they want more offspring so the family would grow larger.'

You talk a lot about non-monetary values, what does it mean to you to pass on a legacy?

'When we talk about a successor, it's not just a business successor we are looking for but a family successor. A successor has three roles: as business leader, family leader and mentor for the next generation. In some cases, the same person can perform all three roles, or it might be three different people. Ideally, it's the same person.

A common mistake when family businesses talk about legacy and succession is to talk solely about wealth. It's more important to think about governance, traditions and intangibles like family values and relationships.'

Investors and business academics often talk about profit maximisation. Do you think we need to raise other intangible values in the debate?

'Definitely. The idea of profit maximisation has been quite popular for the last few decades, but I think since the turn of the century, especially after the financial crisis, people have come to realise that profit maximisation might not be sustainable. People today look more at what are the real reasons behind wealth creation and they start questioning the whole idea. The rising generation has a lifestyle of health and sustainability. They are concerned about human rights, environmental issues, the underprivileged and social justice more than profit maximisation.'

You've said that Japanese families are the best in the world at passing on businesses, could you talk a little more about that and also about what Hong Kong businesses can learn from Japan?

'In Japan there are 3,146 businesses that have existed more than 200 years. It has to do with culture and how the Japanese view legacy. It's quite different from most other countries. The Japanese have a very high respect for traditions and heritage. This mindset is a key ingredient. They look at the intangibles more than the tangibles of wealth transfer.

Many capitalist countries, including Hong Kong, have been taught and trained to look at legacy or succession planning only from the wealth perspective. That is one of the reasons we have the common saying that "wealth cannot be transferred to three generations". If you just look at wealth, you will keep diluting from generation to generation, so you have to look at family values, relationships and history.'

You've also said that China is in the midst of the greatest inter-generational transfer of wealth ever – why is that?

'In China entrepreneurs have no experience in succession planning at all. The opening up of the economy was only some 30 years ago. So many of those early entrepreneurs are now over 60 years old. This is in fact the first time they have had to address succession planning challenges. In China, the number of businesses that have existed for more than 200 years, you can count on less than 10 fingers.

In Hong Kong it's a little bit better. We've been more stable as a capitalist economy for the last 40-50 years. We've already seen some successful families who have sustained the business over past two or three generations.'

How does the Confucian tradition affect successions here?

'On one hand, Confucian culture is beneficial in terms of its emphasis on respect and hierarchy, but this can also be a heavy burden. Confucianism talks about seniority over ability, and male domination over female. If you only have one daughter, some people feel they don't want to hand over ownership to a woman. Even in Hong Kong some businessmen have this sentiment.'

What's your view on that?

'It's very dangerous. In terms of business sustainability you have to look at ability more than seniority, and you have to go beyond the male and female differences. For family businesses, women sometimes play a more important part in terms of sustainability. I've seen many women successful in running family business.'

Johan Nylander, Journalist

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An independent Insurance Authority for Hong Kong

The Hong Kong government has launched a reform of the insurance sector which will lead to the creation of an independent Insurance Authority. Caroline Thomas, Senior Associate, Holman Fenwick Willan, offers her thoughts on what this might mean for Hong Kong.

Professor KC Chan, The Secretary for Financial Services and the Treasury (Financial Secretary), has described the establishment of an independent Insurance Authority (iIA) in Hong Kong as 'the most important regulatory reform in the insurance sector since the passage of the Insurance Companies Ordinance in 1983'. This article seeks to explain why the government chose to establish an iIA, sets out where we are currently at in the process, gives a summary of what the reforms entail and finally offers some thoughts on what this all might mean for Hong Kong.

Reasons for the reforms

The iIA is an inevitable development in light of the global trend of increased insurance regulation and in particular the Insurance Core Principles (ICPs) issued by the International Association of Insurance Supervisors (IAIS). The IAIS, of which Hong Kong is a member, is the international standard setting body responsible for developing principles, standards and other supporting material for the supervision of the insurance sector and assisting in their implementation. The IAIS, a member of the Financial Stability Board, is routinely called upon by the G20 leaders and other international standard setting bodies to provide input on insurance issues as well as on issues related to the regulation and supervision of the global financial sector.

The IAIS has established the principle that a supervisory authority for the insurance sector should be independent of the government. ICP 2.4 reads: 'The supervisor and its staff are free from undue political, governmental and industry interference in the performance of supervisory responsibilities. The supervisor is financed in a manner that does not undermine its independence. The supervisor has discretion to allocate its resources in accordance with its mandate and objectives and the risks it perceives'.

However, under Hong Kong's current regulatory regime, the Insurance Authority is personified in the Commissioner of Insurance (a civil servant) who is supported by the Office of the Commissioner of Insurance (OCI). Further, intermediaries (namely agents and brokers) are regulated by the Insurance Agents Registration Board (administered by the Hong Kong Federation of Insurers (HKFI)), the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Associations, which are so-called self-regulatory organisations (SROs) and thus closely connected to industry.

Thus the current regulatory arrangements in Hong Kong clearly do not comply with ICP 2.4 – the OCI is not independent from the government, and the SROs are not independent from the industry.

Independence is not the only aim of the reforms, however. The Legislative Council Brief dated 16 April 2014 (Brief), with which the Insurance Companies (Amendment) Bill 2014 (Bill) was introduced to Hong Kong's Legislative Council (LegCo) in April 2014, lists two objectives of the iIA – prudential regulation (to ensure that insurers are financially sound) and conduct regulation (to ensure that sale and after-sale of insurers and insurance intermediaries are conducted honestly, fairly and professionally).

As regards prudential regulation, the Brief notes: 'the challenges in the coming years are to implement a risk-based capital framework for insurers and observe the IAIS's requirements on macro-prudential surveillance, group-wide supervision and corporate governance of insurers'. As regards conduct regulation, the Brief notes: 'there has been rising public expectation of robust oversight of insurance intermediaries, especially when insurance products are getting more sophisticated and diversified (such as … annuities for retirement planning …)'.

Where are we in the reform process?

The Bill was passed by LegCo on 10 July 2015 and gazetted on 17 July 2015 as the Insurance Companies (Amendment)

Highlights

- insurers and intermediaries should use the transition period to the full implementation of the reforms to prepare themselves for the upcoming changes
- the independent Insurance Authority will be responsible for prudential and conduct regulation of insurers and enforcing the anti-money laundering regulatory regime, and a statutory licensing regime for insurance intermediaries will replace the self-regulating organisations
- the independent Insurance Authority will have powers to conduct inspections, initiate investigations and impose disciplinary sanctions on authorised insurers

> there is no doubt that the introduction of the independent Insurance Authority (iIA) will lead to more regulation of the insurance industry in Hong Kong, with the iIA empowered to adopt a watchdog role similar to the Securities and Futures Commission and the Hong Kong Monetary Authority

Ordinance (Amendment Ordinance). The Amendment Ordinance will come into operation on a date to be specified by the Financial Secretary in the Gazette. It will launch in three stages, over two to three years, to allow for a smooth transition from co-regulation by the OCI and the SROs to regulation by the iIA.

As stage one, the government plans to establish the Provisional Insurance Authority (PIA) by the end of 2015. The PIA will hire staff and lease offices etc. In stage two, which is likely to take place in late 2016 or 2017, the PIA will be renamed the 'Insurance Authority'. This body, as the iIA, will take over the duties of the Commissioner of Insurance and the OCI such as the prudential and conduct regulation of insurers and enforcing the anti-money laundering regulatory regime. On 9 October 2015 the Financial Secretary gazetted a commencement notice which seeks to bring into effect from 7 December 2015 the provisions of the Amendment Ordinance which are necessary for the establishment of the PIA (that is, stage one).

During stage two, the regulation of insurance intermediaries by SROs will continue but preparations will be carried out for stage three, which is likely to take place in late 2017 or 2018 or later, in which the iIA will take over these functions. Stage three is a major shift – a statutory licensing regime for insurance intermediaries will replace the SROs.

Schedule 11 IO (Insurance Ordinance) provides for the savings, transitional and supplemental arrangements that relate to the Amendment Ordinance and provides that for a three-year transitional period, beginning on the day stage three is implemented, intermediaries licensed by SROs will be deemed validly licensed and that disciplinary and appeal cases arising while the SRO regime was in force, will be followed up by the iIA applying the rules/codes of conduct that were valid at the time.

What do the reforms entail?

The Amendment Ordinance is what is termed an amendment ordinance. It amends the Insurance Companies Ordinance and renames it the Insurance Ordinance (IO) to reflect the fact that its application will significantly widen. In this article, I will focus on the five aspects of the iIA set out below.

1. Legal structure, composition and financing

The iIA will be a body corporate (and no longer part of the government). It will be made up of a chairperson, a chief executive officer and no fewer than six other directors of whom a majority must be non-executive directors (NEDs) (new Sections 4AA(1) and (2) IO). At least two NEDs must have industry knowledge and experience and the others must have knowledge and experience in other areas such as actuarial science, accounting, law and consumer affairs (new Sections 4AA(3)(a) and (b) IO). The iIA is required to appoint at least two industry advisory committees – one for long term business and the other for general business (new Section 4C IO). It is expected that there will be periodic meetings and that the committees may use these to raise industry concerns with the iIA.

Annex E to the Bill records that, as at April 2014, the OCI had 150 staff members, including the Commissioner of Insurance, 48 insurance officers, 22 officers of the general grades and 79 non-civil service contract staff. It is proposed that, to achieve the desired institutional independence and operational flexibility, the iIA should recruit its own staff, with the OCI's current staff being retired, redeployed to other departments or otherwise (it is expected that some OCI staff will apply for iIA roles). At inception, the iIA is likely to have over 50% more staff than the OCI currently has (around 250 staff). This increase is in part explained by the fact that the iIA will take over the regulatory roles of the three SROs.

The iIA is to be self-financed (giving rise to savings to the public coffer of HK$110 million per annum, being the recurrent funding for the OCI). The proposal is that the government will make a lump sum provision of HK$500 million to the iIA to facilitate its initial operations and that the iIA will eventually be financed solely by:

i. licence fees payable by insurers and insurance intermediaries (which will be waived for the first five years),

ii. user fees for providing specific services by the iIA, and

iii. a levy of 0.1% on insurance premiums (which levy will be prescribed by subsidiary legislation).

It is proposed that the levy will be introduced over a five-year period (Y1 0.04%; Y2 0.05%; Y3 0.06%; Y4 0.07%; Y5 0.085%; Y6 0.1%), subject to caps of HK$100 per life insurance policy and HK$5,000 per non-life insurance policy in a year.

2. New licensing and corporate governance requirements for insurers
An authorised insurer will not be able to appoint an individual as controller (as defined in new Section 13A(12) IO and including the managing directors and chief executive); or a director (new Section 13AC IO); or a person in a 'control function' of an insurer (excluding captives) without iIA approval. The term 'control function' is defined in new Section13AE(12) IO and includes the following functions: risk management, financial control, compliance, internal audit, actuarial and intermediary management.

In all cases, iIA approval will not be forthcoming unless it is satisfied that the individual is a fit and proper person (as defined in new Section 14A IO) to be so appointed. Approval can also be revoked. This gives the iIA the power both to block and revoke appointments of 'controllers' and directors (which the current Insurance Authority already has) and persons in 'control functions'. The iIA will have similar powers to block and revoke the appointment of actuaries (new Section 15 IO).

3. New licensing and corporate governance for intermediaries
Currently the SROs collectively issue five categories of licences and these same categories of licence will be issued by the iIA (see box below).

The crucial point to note is that the iIA regime is activity-based, the idea being that persons who engage in 'regulated activities' (be they individual insurance agents, technical representatives of insurance agencies or insurance broker companies, or employees of insurers) should be subject to the same licensing and conduct requirements (Section 64G IO). It will be an offence, punishable by fine and even imprisonment, under new Section 64G(4) IO, for a person to (or hold themselves out as) carry out a 'regulated activity' without a licence.

The new Schedule 1A of the IO will contain the definitions set out below.

Part 1 Regulated Activity

1. Any of the following is an act specified for the purposes of Section 3A(a)—

   - the act of negotiating or arranging a contract of insurance

   - the act of inviting or inducing,

The five categories of licence to be issued by the independent Insurance Authority

	Insurance agent	Insurance broker
Licence to business entities	(1) licensed insurance agencies	(2) licensed insurance broker companies
Licence to individuals	(3) licensed individual insurance agents (4) licensed technical representatives (agents)	(5) licensed technical representatives (brokers)

or attempting to invite or induce, a person to enter into a contract of insurance

- the act of inviting or inducing, or attempting to invite or induce, a person to make a material decision, and
- the act of giving regulated advice.

The definitions of 'material decision' (contained in new Part 2 to Schedule 1A IO) and 'regulated advice' (contained in new Part 3 to Schedule 1A IO) are respectively making a decision in relation or giving an opinion in relation to the following:

- the making of an application or proposal for a contract of insurance
- the issuance, continuance or renewal of a contract of insurance
- the cancellation, termination, surrender or assignment of a contract of insurance
- the exercise of a right under a contract of insurance
- the change in any term or condition of a contract of insurance, and
- the making or settlement of an insurance claim.

There are some exceptions to the new licensing requirements, for example for counsel, solicitors, public accountants, actuaries and loss adjusters (new Section 123(1) IO) but also for (re) insurers and intermediaries. For example, a new Section 123(2) IO will provide that a person acting on behalf of an authorised insurer or a licensed insurance intermediary is not prohibited from carrying on a regulated activity if carrying on that activity only involves the discharge of clerical or administrative duties for the insurer or the intermediary.

New Section 123(3) IO provides that employees of authorised captives and authorised reinsurers are also exempt from the licensing regime (the rationale is that they do not distribute insurance to consumers). New Section 123(4) IO provides that an employee of an authorised insurer does not need to be licensed if he carries on a 'regulated activity' that only involves the discharge of underwriting or claims handling duties for an insurer. There remain some grey areas, such as whether employees of insurers who have settlement authority require a licence. These will hopefully be addressed in guidelines which the HKFI is pushing the government to publish. It is not inconceivable that the iIA will establish new licence categories for the staff of insurers as the above listed five categories of licences do not obviously cater for them.

Every licensed business entity (see above table) must appoint a responsible officer (RO), who must be approved by the iIA, and who must be given sufficient resources to promote compliance with the Insurance Ordinance (new Sections 64ZE and F IO). ROs will be responsible for ensuring that internal and control systems are in place to promote compliance with the conduct requirements within a body corporate. The iIA will have the power not to approve an RO unless it is satisfied that the individual is a licensed technical representative and is fit and proper.

4. The iIA's new powers

The sections of the iIA Ordinance setting out the iIA's powers have borrowed from the legislation that establishes the Securities and Futures Commission (SFC). Consequently the iIA will have teeth – namely express powers to conduct inspections, initiate investigations and impose disciplinary sanctions on authorised insurers (Part VA and amendments to Part X IO). A licensee guilty of misconduct or considered not fit and proper will be subject to disciplinary sanctions, including suspension or revocation of licence or financial penalty up to the greater of HK$10 million or three times the amount of the profit gained or loss avoided (Section 81(4)(e) IO) and/or a reprimand.

The iIA's powers will be draconian and one concern that was raised was that the iIA's function of carrying out investigations and making disciplinary decisions might not be sufficiently separated. (By contrast Hong Kong's new competition regime is divided into a Competition Commission that investigates and prosecutes offences and a Competition Tribunal which sanctions them.) A proposal that the iIA should be mandated to consult the proposed expert panel before making major disciplinary decisions, such as the revocation of licences, was rejected.

> "an independent and professional insurance regulator ... could bring Hong Kong in line with modern supervisory standards and practice and enhance the standing and stability of the jurisdiction"

However, assurances have been made that the iIA will put in place 'Chinese walls' to ensure that its investigative staff will not be involved in the disciplinary process and the determination of disciplinary sanctions. Furthermore, the iIA is likely to make reference to fining guidelines similar to those currently adopted in other financial regulatory regimes to be taken into account when determining the quantum of a pecuniary penalty.

5. The establishment of the IAT
New Part XII and Schedule 10 of the IO establish the Insurance Appeals Tribunal (IAT). Again, the sections of the IO relating to the IAT will be based on the legislation creating the tribunal to which SFC decisions can be appealed. The chairperson of the IAT must either be a former judge or must be eligible for appointment as a judge. For determining a review, the Financial Secretary, on the recommendation of the chairperson, must appoint two panel members as ordinary members in relation to the review.

Reviews to the IAT must be brought within 21 days (new Section 100 IO). The IAT can determine reviews in respect of iIA decisions (for example, authorisation, licensing and disciplinary decisions) and has the power to confirm, vary or set aside the decision; or remit the matter to the iIA with any directions it considers appropriate (new Section 101 IO). It has the discretion to award costs (new Section 106 IO). However, late in the legislative process, specific provisions were added to the Bill providing that, with the consent of both parties to the review, the IAT may make a determination on the basis of written submissions only. This documents-only procedure (new Section 102(2) IO) is aimed at giving appellants a lower cost alternative.

Conclusion and what next?

An independent and professional insurance regulator whose statutory functions include 'promoting competitiveness of the insurance industry in the global insurance market' (new Section 4A(2)(f)(ec) IO) should bring Hong Kong in line with modern supervisory standards and practice and enhance the standing and stability of the jurisdiction. Section 4A(2)(f)(ec) IO was added following consultation and it will be very interesting to see how the iIA interprets it. Certainly Hong Kong's insurance industry faces significant competition from Singapore.

There is no doubt that the introduction of the iIA will lead to more regulation of the insurance industry in Hong Kong, with the iIA empowered to adopt a watchdog role similar to the SFC and the Hong Kong Monetary Authority. Many of the details will be spelt out in guidelines and revised codes of conduct to be published by the iIA in due course. These codes and guidelines are expected to draw out the differences between the two types of intermediary – broker and agent, and hopefully clarify what the requirements on intermediaries to act in the best interests of policy holders and to disclose conflicts of interest (new Sections 90 IO) will mean for both – and specifically for insurance agents. It is likely that the iIA will require intermediaries to disclose commissions or other advantages received.

The introduction of the iIA may well have repercussions for the structure of the Hong Kong insurance market. Not only will the iIA likely be a more stringent regulator, but more reforms are to come – the government has signalled that the iIA will introduce further reforms including risk-based capital, a policy holders protection fund, group wide supervision and increased consumer protection. It is not inconceivable that the increased regulatory burden (and risk-based capital or insurers) will trigger consolidation – Hong Kong being a small market with many players.

That said, there is still time to adapt and insurers and intermediaries should avail of this time to prepare themselves for the upcoming changes.

Caroline Thomas
Senior Associate
Holman Fenwick Willan

Getting ready for ESG

Imelda Kwong, Senior Manager, Risk Assurance, PricewaterhouseCoopers, highlights the challenges involved in environmental, social and governance (ESG) reporting and provides a practical way forward for companies to get ready for the raised compliance expectations regarding ESG disclosure.

Proper and structured disclosure of ESG performance is becoming increasingly important for organisations in Asia. In recent years, Asian stock exchanges have introduced protocols for mandatory or voluntary reporting for listed companies. In Hong Kong, locally registered companies are required to include environmental disclosures in their Business Review report under the new Companies Ordinance, which was implemented in March 2014. Furthermore, as proposed in the recent consultation paper issued by Hong Kong Exchanges and Clearing in July 2015, listed companies are likely to be required to disclose ESG matters on a 'comply or explain' basis by 2016/2017.

The ESG journey is unique for each organisation. One of the main challenges for companies is execution – how to develop an approach that can deliver on your ESG strategies and goals. But, with a clear understanding of the value in ESG, companies can actually turn these challenges into new business opportunities. Companies may need to draw on the help of external experts to support the conversion of a traditional business operation into one that also benefits society and protects the environment. To fully articulate ESG performance and demonstrate sustainable growth, a relevant and material sustainability report is key.

Understanding the business case for ESG reporting

In addition to mandatory disclosure compliance, investors are looking increasingly for socially responsible behaviour in listed companies. In this regard, they will critically examine the information disclosed, especially in areas such as sustainable and responsible investing. As a result, ESG reporting is now mainstream.

To ensure long-term success in ESG, the commitment should be based on value-creation for the company and society. Smart ESG strategies focus on key impact areas for the business and society, with the aim of developing solutions which address major challenges from both areas and bring mutual benefits to each other. The following table highlights the direct and indirect values brought about by ESG reporting.

ESG reporting frameworks and guidelines

As ESG reporting has become more common, various reporting frameworks have been developed. The Hong Kong Stock Exchange has issued its own *ESG Reporting Guide* for listed companies to follow. Additionally, the Global Reporting Initiative and the International Integrated Reporting Council provide sustainability reporting frameworks that are adopted globally. No matter which reporting framework an organisation chooses to follow, ESG reporting can be outlined in five stages and broken down into a number of practical steps.

1. Build your ESG governance structure
2. Assess materiality

> "the ESG journey is unique for each organisation"

3. Collect data
4. Develop a reporting framework
5. Write the report

There are no specific guidelines to implement reporting. The following steps act as a guide that can be tailored to individual organisations. Each of the five stages is designed to structure and stimulate the thinking process with a continuous approach towards improving business and social benefits. Each organisation should adapt those guidelines relevant to their particular situation and remain focused on their own value creation process.

The challenges ahead

1. Build your ESG governance structure

Corporate responsibility and sustainability/

Highlights

- top management should have the ultimate responsibility for approving and setting the organisation's ESG vision
- ESG reporting needs to be embedded within the strategic objectives of an organisation in order to realise tangible and sustainable benefits for the organisation
- ESG reporting should not become a compliance exercise – it should be used as a practical tool for improving transparency to stakeholders and performance

The changing landscape

The same technologies that are transforming business models can turn a local problem into a global event within a matter of hours or minutes.

It is no longer just the board and shareholders who have an interest in corporations and their business performance.

For all stakeholders, the traditional numbers are increasingly becoming only part of the story.

ESG programmes are often separated from the core strategy and operations of an organisation. A successful ESG strategy not only creates social value, but also governs and engages with the organisation at all levels, vertically and horizontally.

When starting, organisations tend to have issues in deciding who should lead the ESG reporting and what the team composition should look like. It is very important to build the right team with a good structure, and a responsibility matrix that together form the basis of the organisation's ESG driving force. There is no set standard for team structure. However, a responsible group should govern ESG initiatives with top management's support. Top management should have the ultimate responsibility for approving and setting the organisation's ESG vision. Having a responsible group for driving sustainable practices across core functions of an organisation with support from senior management allows goals and policies to be established, missions and directions to be set, and strategies to be executed. An ESG governance structure also reinforces communication within the organisation to ensure adequate support is provided to implement ESG initiatives.

Tip: establish a multidisciplinary steering group. In your governance framework around the reporting process, make sure there is one steering group that provides mission and milestones for the reporting project team. The steering group should also assess whether these milestones are being achieved during the writing and reporting process. Its membership should be multidisciplinary, for example including representatives from strategy, HR, internal audit, external communications, investor relations and reporting.

2. Assess materiality

The principle of materiality assessment is to define, in order of priority and impact, the ESG issues that are most important to an organisation's business and stakeholders. Materiality assessment is therefore a key step in developing a holistic understanding of the strategic risks and in identifying opportunities arising from global, as well as local, trends. As all organisations have to come up with their own relevant material issues and engage their stakeholders, the challenge is how best to define those material issues. Relevant questions include: which stakeholder(s) should we engage? How many stakeholders should we engage and how should we engage them? How should we incorporate material issues that are relevant to operations in various locations?

To have a valuable materiality assessment, the following steps are fundamental:

i. Establish a programme of systematic engagement with investors and other stakeholders (internal and external), which should be embedded in your governance structure/process. *Tip: it is best to integrate your annual stakeholder dialogue and materiality analysis in your reporting manual, so that it becomes part of the formal reporting process and instructions. In your first year of reporting, it is more achievable to engage internal stakeholders and then incorporate external stakeholders as your reporting matures.*

ii. Identify a list of relevant issues to your organisation and stakeholders based on desktop research. *Tip: maintain an outside-in perspective to get an all-encompassing view of the operational context, competitor analysis and megatrends.*

iii. Reduce the list of relevant issues

and prioritise key concerns with stakeholders. *Tip: it is crucial to identify key stakeholders for this process and establish the method of engagement with each stakeholder. Will it be a survey, a meeting or an interview? Depending on the size and type of stakeholder group, different methods can be used. For example, if a company is looking to engage all its employees, a practical way is to conduct a survey. On the other hand, if a company is looking to engage senior board members, a meeting may be more appropriate. An organisation can engage as many or as few stakeholders as they see fit – as long as the views of each stakeholder group truly reflect the key material issues of the business. It is best to engage different stakeholder groups to get a holistic view of the organisation's issues and to avoid narrowing down on one aspect only.*

iv. Consolidate the results from stakeholder engagement and present to the board for discussion and approval. *Tip: the impact of each issue can be scored and shown in a matrix form to classify the top material issues. Review the issues regularly to keep track of the latest trends. Consider benchmarking your material issues with your competitors and referencing industry issues to ensure the material issues are reasonable and relevant.*

3. Collect data

The data collection process is a demanding task that is frequently problematic. Common problems arise from identifying the right data to collect, how/where to collect data and ensuring its accuracy. To provide a perspective on the trends and allow a comparison of data throughout a time-span, it is important to collect relevant, complete and accurate data as soon as possible. If an organisation is just beginning to publish an ESG report, communication with data owners is essential. Also, a well-defined system/process to capture reliable and accurate data helps support key decisions and business strategies. The main points for data collection include:

i. clearly define data boundaries and specifications prior to data collection

ii. establish data collection procedures to serve as a protocol to what information is collected and how the information is gathered, compiled and calculated based on industrial/ local/ international practices, and

iii. verify the completeness, accuracy and assumptions made during data collection.

Although third-party assurance is not mandatory, organisations often undergo the assurance process to achieve the highest level of integrity and value for the obtained data. Assurance adds transparency and credibility to the report. However, note that it does not serve to affirm that the ESG issues disclosed are being well addressed by the organisation.

Tip: identifying and developing the right key performance indicators helps reveal the impact and value an organisation brings to the environment and communities around it.

How ESG adds value

Direct value	
Cost reduction • Eco-efficiency cost savings • Reduced cost of compliance • Reduced procurement costs • Increased employee morale and productivity	Revenue growth and competitive advantage • Business model innovation • Product innovation • New revenue streams • First mover advantage • Reputational position in new and/ or growing markets
Indirect value	
Risk management • Reduced cost of capital • Reduced reputational, operational, supply chain or regulatory risk • Reduced dependency on scarce resources	Brand and intangibles • Brand enhancement • Employee engagement, attraction and retention • Improved market access with 'licence to operate'

(Source: 'Implementing Integrated Reporting', PwC, July 2015)

> "the [ESG] report should cover material issues that concern key stakeholders"

In order to achieve this, an organisation needs to develop robust, standardised methodologies for measuring outputs and impacts. Primary data may not be adequate, and different methodologies as well as creativity may need to be used to produce a meaningful output. However, management should understand that investors would rather have data with some inherent limitations than none at all.

4. Develop a reporting framework
ESG reporting needs to be embedded within the strategic objectives of an organisation in order to realise tangible and sustainable benefits for the organisation. It should not become a compliance exercise – it should be used as a practical tool for improving transparency to stakeholders and performance. Hence, the steering group must continue to revisit the three fundamentals that underpin the framework for report development each year:

i. identify the requirements for reporting (organisations should have decided which reporting framework to use at this stage), analyse gaps and develop a reporting action plan

ii. develop a reporting concept and structure, and

iii. discuss the ESG content index and discuss the presentation of indicators (options: storyboard the report, develop the report text and review after the artwork has been completed).

5. Write the report
Effective accountability and transparent reporting are key to addressing ESG issues and performance. In report writing, one main challenge is to find the balance between depth and readability. To have an effective report, organisations should consider the points below.

- Designate a chief editor to provide consistency of content, style and language throughout the report.
- Provide a narrative description and supporting graphics that explain each reporting aspect, such as the company's sustainability governance system and how it fits into the overall governance structure.
- Describe sustainability policies that have been implemented and explain how management ensures that the policies are working.
- Develop a system or procedure to sign off on the final report by various departments and top management. Consider the authority to sign off on less satisfactory news and restatements.

A good ESG report is written in simple language that is easy to comprehend. The report should cover material issues that concern key stakeholders. It should also provide insight into management's approach to addressing and mitigating ESG related risks and demonstrate ways in which an organisation is a good steward of financial, human and natural capital.

Tip: periodically check whether the information is comparable with that issued by your peers. The true value of information lies in comparability.

Going forward

The matters covered above are only pointers that help to formulate a good ESG report. As ESG requirements become more encompassing, new regulations and requirements will inevitably be stipulated. Therefore, it is imperative that organisations keep abreast of these provisions so they will not fall behind and find themselves handicapped in complying due to scarcity or lack of expertise and available resources.

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Listing compliance in the Stock Connect era

How should Chinese companies with listings inside and outside Mainland China address the different regulatory requirements and governance expectations of their various listing jurisdictions? The latest in the Institute's Affiliated Persons ECPD seminar series addressed this and other governance challenges facing Chinese companies with listings overseas.

At the '38th Affiliated Persons (AP) ECPD H-share Corporate Regulatory Conference' held by the Institute in Beijing from 16 to 18 September 2015, speakers and attendees were invited to share their views on 'Effective corporate governance and internal control in the era of Shanghai-Hong Kong Stock Connect'.

In his address to the conference, Institute President Dr Maurice Ngai FCIS FCS(PE), said that, with the implementation of Shanghai-Hong Kong Stock Connect, H-share and A-share companies are exposed to the different regulatory requirements, corporate governance expectations and investment philosophies of the Mainland, Hong Kong and the international arena. The differences in regulation and practices between the Mainland and Hong Kong make it difficult for practitioners to understand and master such governance issues as information disclosure, inside information control, shareholder identification, investor communication and coordination of general meetings. These differences make correct judgements and decisions difficult and pose great challenges for companies with overseas listings.

Representatives from regulatory bodies from the Mainland and Hong Kong, including the China Securities Regulatory Commission (CSRC) and Hong Kong Exchanges and Clearing Ltd, together with seasoned professionals from within and outside Mainland China, were invited to discuss the issues with a view to providing a platform for communication, experience sharing and practical problem solving.

New trends in listing overseas

The representative of the CSRC Department of International Affairs spoke on the topic – 'Overseas IPO examination system reform and practices'. Currently, there are three ways to go public overseas, namely, directly in the form of H-shares, or indirectly as red chips, or as 'small red chips'. 'Red chips' are Chinese owned or controlled companies incorporated overseas – large red chips are mainly large, state-owned enterprises and small red chips are smaller private companies.

'The current policy is to actively encourage eligible enterprises to go public overseas in accordance with the development strategy of the state and their own development needs, taking advantage of two different markets and two types of resources to enhance competitiveness. We support direct listing in the form of H-shares and do not encourage indirect listing as red chips,' the representative said.

The CSRC speaker added that there are a number of problems associated with the red chip approach.

1. The legal framework is not complete. Comprehensive legislation or regulation on indirect listing overseas is not yet in place. Document 21 of 1997 covers only 'red chips', and Announcement 10 of the Ministry of Commerce does not cover a comprehensive range of regulatory targets; leaves ample room for supervisory arbitrage; involves relatively complicated procedures; and is difficult to operate.

2. The cost of meeting overseas listing requirements is high and there is the risk of malicious short selling.

3. Regulatory loopholes have resulted in breaches of rules and laws. For a long time, there has been a regulatory gap

> “overseas listing has become more open, transparent and predictable”
>
> Department of International Affairs, CSRC

for 'small red chips'. Some of these companies have been evading tax or illegally transferring local assets.

4. These companies are often beyond the reach of the macroeconomic [regulation and] control policies of the state. Some small red chip companies evade the policies and restrictions on foreign investment, industry policies, and control policies on real estate, excessive production capacity and heavy pollution, adversely affecting macroeconomic management.

Against the background of streamlining administration and decentralisation by the State Council, the CSRC representative presented recent reforms of the system of overseas IPO examination. In March 2015, the National Development and Reform Commission and the Ministry of Commerce revised the 'Catalogue of Industries for the Guidance of Foreign Investments', largely reducing the number of restricted industries and relaxing foreign investments.

In December 2014, the State Administration of Foreign Exchange removed the requirement for settlement of foreign exchange under repatriated funds raised through H-shares to be approved, facilitating the inward flow of funds. The Ministry of Environmental Protection removed the requirement for environmental examination for companies seeking overseas listing, and the Ministry of Land and Resources and Ministry of Housing and Rural-Urban Development improved the mechanism for land examination.

The CSRC also introduced a series of reforms from 2013, including removal of the financial threshold requirement, removal of financial examination, disclosing the flow, focus and progress of examination, removal of the pricing restrictions on A- and H-shares, removal of restrictions applicable to A-shares, substantial reduction of amount of feedback, improvement of internal and external examination procedures, substantial streamlining of reporting documents, and disclosing the focus and progress of examination for the first time.

With these measures in place, there has been an upsurge in the number of applications for overseas listing. According to the CSRC representative, as at end of

Highlights

- Chinese companies with listings in Hong Kong and overseas need to adapt to the different regulatory philosophies of their listing locations
- the key challenges for such companies are to address the regulatory requirements and governance expectations relating to information disclosure, inside information control, shareholder identification, investor communication and the coordination of general meetings
- the CSRC supports direct overseas listings of Chinese companies in the form of H-shares, but it discourages indirect listings as red chips

August 2015, 51 applications for overseas listing had been received, a 104% growth over the same period last year. The efficiency of the examination process had been greatly enhanced. By the end of August 2015, CSRC had completed the processing of 43 applications, an increase of 48% over the same period last year, and the examination time had been reduced by over 50%. The amount of funds raised also increased markedly. As at the end of August 2015, 23 Mainland enterprises raised has a total of about US$28.3 billion, an increase of 310% over the same period last year.

Overseas listing has become more open, transparent and predictable. Going forward, the CSRC will – in line with the 'go global' strategy, the 'One Belt, One Road' initiative and relevant arrangements under CEPA in support of the development of the Hong Kong market – continue to pursue reforms of the regulation of overseas listing to strengthen and enhance the role of Hong Kong as an international financial centre.

Shanghai-Hong Kong Stock Connect – an update

Franky Chung, Senior Vice-President, Mainland Division, Hong Kong Exchanges and Clearing Ltd, shared with participants the 'latest developments of Hong Kong's capital market under the Stock Connect system'. In comparison with other markets, he considered that the Hong Kong market is less volatile, mainly comprising mature institutional investors. Most listed companies in Hong Kong pay dividends to attract investors. The steady and consistent stream of dividend provides a stable source of income for investors. And Mainland enterprises play a very important role in the Hong Kong market . The top 10 enterprises in terms of market capitalisation include China Mobile, China Construction Bank, etc. The top 10 enterprises with the greatest turnover include Tencent, Ping An Insurance, etc. The transaction patterns of Shanghai-Hong Kong Stock Connect show that investments into Shanghai focus on large-scale financial, industrial and consumer stocks, while investments into Hong Kong are spread among a large variety of stocks, with a marked preference for medium-sized companies. He said that Mainland investors participating in Stock Connect are mostly individuals, but the number of institutional investors is growing fast. In future, the Shanghai-Hong Kong Stock Connect model can be expanded and copied to various asset classes.

Effective communication with investors

The BlackRock Group takes an active engagement approach to its investments in Mainland enterprises listed in Hong Kong. Pru Bennett, the Group's Head of Corporate Governance and Responsible Investment in Asia-Pacific, discussed the concept of 'responsible investment' at the conference. 'Investors have a duty to supervise the companies they invest in, and stay in contact with those companies through voting and direct dialogue,' she said.

In managing its investments, BlackRock bases its decisions largely on the state of corporate governance of the listed companies. It analyses the impact of environment, social and governance issues before making an investment. It communicates with the management or board of directors of the companies on corporate governance issues. For some special industries, social, ethical and environment issues are covered in the dialogue. It votes at annual general meetings and special general meetings in the best long-term economic interests of shareholders. It participates actively in the market to understand best practices to promote the creation of long-term value for shareholders. BlackRock is focused on protecting and enhancing the economic value of the companies its clients invest in, but does not make social, ethical and environmental value judgements for its clients.

Shareholder engagement was also addressed by another institutional investor at the conference. Cas Sydorowitz, Managing Director, Georgeson UK, spoke on 'Corporate governance and general meetings'. He said that communication with investors is essential for companies. The media is quick to report crises and 'news value' tends to be associated with the discord between investors and listed companies. Confrontations with investors will therefore only lead to negative attention. In this context, communication with investment decision makers is a powerful tool to improve relations with investors, he said.

He added that communication should start at the beginning of the process, not just before a meeting. Remuneration should be tied to the implementation of agreed strategies and the achievement of company goals. There must be communication with beneficial shareholders when appropriate, and with corporate governance professional firms whose names do not appear in the register of shareholders. Communication should be maintained with holders of US depository receipts because they may hold common shares. Communication must be maintained with every investor who has contacted the company for various reasons.

> investors have a duty to supervise the companies they invest in, and to stay in contact with those companies through voting and direct dialogue
>
> Pru Bennett, Head of Corporate Governance and Responsible Investment, Asia-Pacific, BlackRock Group

CRRC's restructuring – a case scenario

The China Railway Rolling Stock Corporation (CRRC) is the world's largest train builder. It was formed on 1 June 2015 with the merger of China Southern Rail Corporation and China Northern Rail Corporation. Xie Jilong, CRRC's Board Secretary, discussed this merger as an interesting case scenario for how to manage such large-scale restructurings.

On 18 September 2014, China Southern Rail Corporation and China Northern Rail Corporation set up a steering committee to initiate a merger. The relevant regulatory authorities were contacted to discuss the merger plan. Technically, China Northern Rail Corporation was acquired by China Southern Rail Corporation. There is usually a premium on the price of the shares of the company being acquired in most acquisition deals, but, out of cost-benefit considerations, the CRRC merger was achieved on an equal footing.

In addition to the approval by the State Council, the restructuring required approvals by the three groups of bodies set out below.

1. Governance bodies – these included the board, shareholders and the State-Owned Assets Supervision and Administration Commission, the *de facto* controller.

2. Administrative and industry supervisory bodies – these included the Ministry of Commerce, State Administration for Industry and Commerce, China Railway Corporation, Ministry of Industry and Information Technology, Ministry of Finance, State Administration of Taxation and various anti-monopoly departments.

3. Capital market supervisory bodies – these included the securities regulatory authorities and stock exchanges on the Mainland and overseas, and the China Securities Depository and Clearing Corporation.

The restructuring deal could have been voted down if 10% or more of the shareholders of China Northern Rail Corporation were opposed to it. So the voting of H-share shareholders of China Northern Rail Corporation was a key risk area for this transaction. To ensure smooth approval, both Northern and Southern Rail Corporation closely monitored the market and adequately communicated with their shareholders.

On the day and the day following the announcement of the transaction, joint telephone conferences were held to present to investors the structure of, and justifications for, the transaction. Financial advisers were engaged to answer relevant questions. After the issue of the shareholder's circular and before the general meeting, joint press meetings and analyst meetings were held, joint road shows were conducted where the senior management met with key shareholders of the two companies to discuss in depth the details of the transaction and to answer questions. A professional nominee company was engaged to collect shareholders' feedback, as well as information on voting preferences and shareholding structures. Meetings were held through this nominee company with ISS and Glass Lewis, two large service companies collecting shareholders' views. Continuous market monitoring was maintained via the financial advisers.

Based on the experience of this restructuring exercise, Xie Jilong concluded that agreeing on the principal responsible party is a prerequisite of restructuring, and achieving a consensus among all stakeholders is key to a successful restructuring. Other key things to get right include the design of the restructuring proposal and ensuring the work team has the knowledge and expertise to successfully conclude the deal. CSj

The '38th Affiliated Persons ECPD H-share Corporate Regulatory Conference' was held in Beijing from 16 to 18 September 2015. *See page 41 of this month's journal for more information.*

沪港通时代 境外上市企业治理的新挑战

在境内外两地或多地上市的中国企业，应如何掌握各地不同的法规要求和治理期望？公会最近的联席成员加强持续专业发展讲座探讨了这课题，并讨论海外上市中国企业面临的其他治理挑战。

香港特许秘书公会于9月16日至18日在北京举办了“中国境外上市企业规管研讨会”，邀请业内专家就“沪港通时代的企业有效治理与管控”的主题进行研讨。

香港特许秘书公会会长魏伟峰博士在致辞时表示，自沪港通开通以来，内地H股和A股上市公司面临中港两地甚至国际不同的法规要求、治理规管与投资理念。中港两地在法规及实务操作等方面的差异，致使两地执业人士在信息披露、内幕信息管控、股东识别与投资者沟通以及股东大会统筹等规管治理的识别与掌控更趋复杂，加大了正确判断与决策的难度，面临新的严峻挑战。此次研讨会邀请了两地监管机构中国证监会、香港交易所的代表及国内外资深专业人士与大家就相关问题进行研讨，旨在为大家提供一个沟通交流、共享经验并解决实务问题的平台。

境外上市新趋势 - 更为公开、透明、可预期

中国证监会国际部代表介绍了“境外上市审核制度改革与实务重点”，目前企业境外上市分为三种方式，分别是直接上市的H股方式，间接上市的红筹模式及小红筹方式。

“目前的政策导向是积极支持符合条件的境内企业根据国家发展战略及自身发展需要到境外上市，充分利用两个市场、两种资源不断提高竞争力，支持H股方式的直接上市，不鼓励红筹等间接上市方式”。

据该代表介绍，目前红筹模式存在诸多问题：一是法律规定不完善，目前尚未有关于境外间接上市的完整的法律规定或规范性文件。1997年21号文的规范范围仅限于“红筹”，商务部10号令规范对象不全，监管套利空间大，程序较为复杂，可操作性不强。二是境外架构成本高，而且存在被恶意做空风险。三是监管缺失，滋生违法违规行为：“小红筹”长期处于监管缺失状态，部分“小红筹”企业存在逃避纳税义务、转移境内资产等违法违规行为。四是国家宏观调控政策落空，部分“小红筹”企业规避外资准入政策、产业政策、房地产、产能过剩以及重污染等调控政策，给宏观经济管理造成不利影响。

在国务院简政放权的大背景下，中国证监会代表介绍了近期监管部门对境外上市审核制度进行的改革：2015年3月，发改委、商务部修订外商投资目录，大幅缩减限制类条目，外资准入放宽；2014年12月，外汇局取消H股项下境外筹集资金调回结汇审批，资金入境便利；此外，环保部取消了上市环保核查，国土部、住建部优化了土地核查机制。证监会也进行了系列改革，从2013年以来，陆续取消财务门槛，全面取消财务审核，对外公开审核流程、审核要点、审核进度，取消A/H股定价限制，取消参照A股禁止性条件，大幅精简反馈意见数量，优化内、外部审核程序，大幅精简申报文件，首次公开审核关注要点及审核进度等。

在这些举措下，境外上市申报数量大幅增长，该代表表示，截止2015年8月底，证监会共收到境外上市申请51件，同比增长104%。审核效率显著提高，截止2015年8月底，证监会已审结43件境外上市申请，同比增长48%，审核时间同比减少50%以上。此外，融资额显著增长，截止2015年8月底，共有23家境内企业境外上市融资，合计融资约283亿美元，同比增长310%。境外上市变得更为公开、透明、可预期。下一步，证监会将结合“走出去”、“一带一路”等国家战略以及在CEPA项下支持香港市场发展的有关安排，继续深入推进境外上市监管改革，巩固和提升香港作为国际金融中心的地位。

> “境外上市变得更为公开、透明、可预期”
>
> 中国证监会国际部代表

沪港通模式有望扩容

联交所内地事务科高级副总裁钟创新则与参会嘉宾交流了“互联互通制度下香港证券市场的最新发展”，他认为，与其他市场相比，香港市场以成熟机构投资者为主，波动性较小；香港上市公司多主动分红以吸引投资者，稳定和持续的红利分配为投资者创造稳定的收益来源。而在香港市场中，内地企业在证券市场的地位举足轻重，市值排名前十的企业包括中国移动、建设银行等，成交活跃前十的公司则有腾讯控股、中国平安等。从沪港通的交易情况来看，北向投资偏向大型的金融、工业和消费品股，南向投资偏向不同类型股，对于中型股的偏好尤其明显。他表示，当前港股通投资者以个人投资者为主，但机构投资者入市加快，未来沪港通模式可以扩容及复制至多个资产类别。

摘要

- 在香港和海外上市的中国企业，要适应上市地不同的规管理念
- 这些企业面临的主要挑战，是处理有关信息披露、内幕信息管控、股东识别、与投资者沟通以及股东大会统筹等方面的规管要求和治理期望
- 中国证监会支持H股方式的直接上市，不鼓励红筹等间接上市方式

“投资者有责任监控被投资公司，并通过投票和直接对话与其保持对接”

贝莱德集团亚太区公司治理与责任投资主管Pru Bennett

此次合并需要三个维度的审批，统一布局，缺一不可，而国务院审批是这三个维度的关键。这三个维度包括：

1. 公司治理决策：包括董事会、股东以及实际控制人国资委的审批；

2. 行政及行业审批审核：包括商务部、工商总局、铁总、工信部、财政部、税总及各国家反垄断部门；

3. 资本市场监管：境内外证监会、交易所以及中国证券登记。

由于南北车集团均不持有H股，只要有10%的北车股东反对，交易就会被否决，因此北车H股股东投票问题是本次交易的重要风险点。为确保交易通过，南北车集团充分做好了市场监测与股东沟通工作：交易公告当天或第二天举行联合电话会议向投资者介绍交易结构和理据，并安排财务顾问公司代为回答相关问题；在发出股东通函后股东大会前，举行联合新闻宣传会与分析师会议，公司高管举行联合路演与双方的重要股东会面，深入讨论交易细节和回答问题，聘请专业股东投票代理机构收集股东反馈意见，投票意向资料和股东结构信息，通过此股东投票代理机构与市场两大股东意见服务机构ISS和Glass Lewis 会晤；并持续通过财务顾问每天提供的信息进行市场监测。

谈及此次合并重组的心得，谢纪龙总结：落实责任主体是合并重组的首要条件，各利益相关方达成统一意见是合并成功的关键因素，方案设计是影响合并成败的重要一环，而工作团队的执行力是确保成功的中心环节。CSj

与投资者的有效沟通

贝莱德集团是世界上最大的投资管理公司，其亚太区公司治理与责任投资主管Pru Bennett 是首家国际机构投资者主动与内地在香港上市公司接触沟通的高层领导，她介绍了贝莱德集团的责任投资管理方法。她指出“投资者有责任监控被投资公司，并通过投票和直接对话与其保持对接”。贝莱德的投资管理方法是：在决策时非常看重上市公司的公司治理状况，在投资前分析环境、社会、公司治理(ESG)问题对其投资的影响；就公司治理与管理层或董事会成员进行对接或交流，对某些特殊行业企业还涉及社会、道德及环境事项；在公司年度股东大会和特别会议上就股东的最佳长期经济利益进行投票；积极参与市场以了解促进股东长期价值创造的最佳实践，并对其做出贡献。贝莱德专注于保护和提高其所代表的客户所投资的公司的经济价值，但不代表客户做出社会、道德及环境价值的判断。

Georgeson英国行政总裁Cas Sydorowitz 演讲主题为“公司治理与股东大会”，他表示，对于企业来说，与投资者沟通是必要的，媒体热衷追逐危机，而事件的新闻价值往往源于投资者和上市公司的分歧，一旦反对成为趋势，则会产生更多的关注。“沟通是有力量的”，他建议，为了更好的与投资者沟通，应与投资决策人沟通；尽早沟通，不要在会前才开始沟通；把薪酬与完成既定战略和实现公司目标联系在一起；确保在适当的时候与受益股东进行沟通；与并未出现在股东名册上的公司治理专业公司沟通；与美国存托凭证持有人沟通，因为他们有可能持有普通股；确保联系到每一位曾因各种问题与公司进行过联系的投资者。

围绕类别股东的批准设计中国中车合并重组方案成功案例介绍

中国中车股份有限公司董事会秘书谢纪龙应邀在此次研讨会上分享了中国中车的合并重组“重大无先例”之成功案例。2014年9月18日，南北车成立合并工作领导小组，开启合并工作，并与相关监管机构进行沟通，研讨合并方案。在采用吸收合并方式的情况下，通常会对被吸并方的股价给出一定的溢价，最终从成本和效率的角度考虑，双方对等合并，技术上采用南车吸并北车的方式进行。

中国境外上市企业规管研讨会”，是公会联席成员第38期加强持续专业发展讲座，于9月16日至18日在北京举行。详情见今期公会动态。

A bird's eye view

Company secretaries need to be proficient in a wide range of practice areas. *CSj*, the journal of The Hong Kong Institute of Chartered Secretaries, is the only journal in Hong Kong dedicated to covering these areas, keeping readers informed of the latest developments in company secretarial practice while also providing an engaging and entertaining read. Topics covered regularly in the journal include:

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls

Subscribe to *CSj* today to stay informed and engaged with the issues that matter to you most.

Please contact:

Paul Davis on +852 3796 3060 or **paul@ninehillsmedia.com**

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CSj, the journal of The Hong Kong Institute of Chartered Secretaries (www.hkics.org.hk), is published 12 times a year by Ninehills Media (www.ninehillsmedia.com).

CHARTERED SECRETARIES 特許秘書

Professional Development

Seminars: September to October 2015

11 September
Duty free? Think again. Directors' duties in BVI and Cayman

Chair: Roger Leung FCIS FCS, Managing Director, Union Services & Registrars
Speakers: Matthew Roberts, Partner, and Ellie Crespi-McCarthy, Senior Associate, Harneys, Hong Kong

15 September
Merger and acquisition in China

Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd
Speaker: Christopher Betts, Partner, Skadden, Arps, Slate, Meagher & Flom

17 September
How to have effective investor relations

Chair: Jack Chow FCIS FCS, Institute Professional Development Committee Chairman, and Managing Director, Private Equities, VMS Investment Group
Speakers: Dr Eva Chan FCIS FCS(PE), Institute Membership Committee Vice-Chairman, Chairman of the Hong Kong Investor Relations Association, and Head of Investor Relations, C C Land Holdings Ltd

21 September
Shareholders' disputes involving listed companies

Chair: Edmond Chiu FCIS FCS, Institute Membership Committee Member, and Director, Corporate Services, VISTRA Hong Kong
Speaker: Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyers

22 September
Joint seminar with HKICPA and the Law Society of Hong Kong: sustainability and responsibility reporting – directors' potential liability and possible defences

Chair: Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research
Speakers: Professor Jean du Plessis, Deakin University, Australia; April Chan FCIS FCS(PE), Institute Past President and Company Secretary, CLP Holdings Ltd; Brian Ho, Sustainability Leader (China South, Hong Kong and Macau) of Climate Change and Sustainability Services, Ernst & Young; and Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research

24 September

外资企业如何成功挂牌上新三板

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

29 September

ESG reporting: comply or explain

Chair: Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research
Speakers: Dr Glenn Frommer, Managing Partner, ESG Matters Ltd; and Theodora Thunder, Managing Director, Streeter Strategic Ltd

5 October

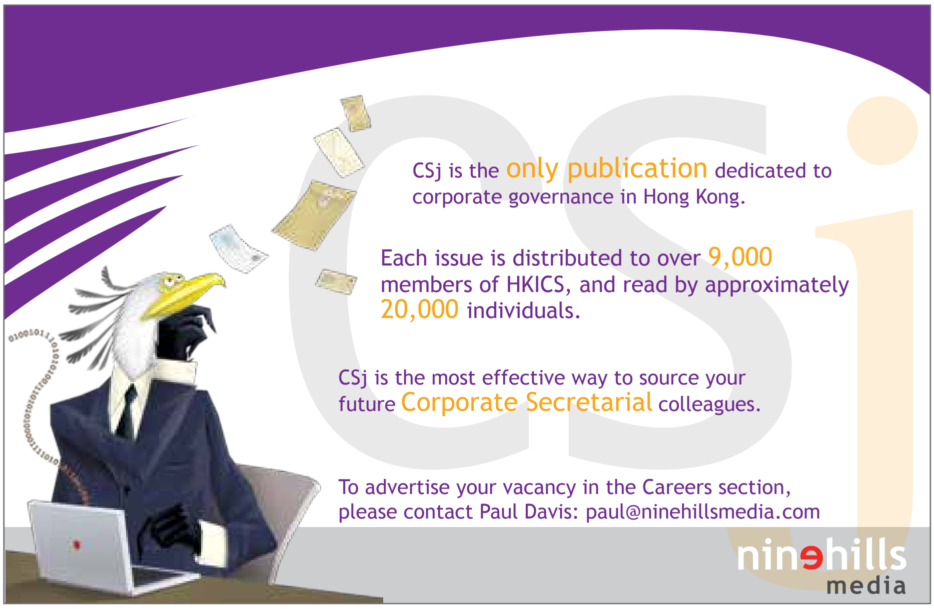
How to handle Hong Kong tax audits

Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd
Speaker: Kaiser Kwan, Partner and Joyce Au, Manager, Field Audit and Tax Investigation team, PricewaterhouseCoopers

8 October

BVI corporate law – a review of recent and proposed changes

Chair: Ernest Lee FCIS FCS(PE), Institute Professional Development Committee Member, and Partner, Assurance, Professional Practice, Ernst & Young
Speaker: Barry Mitchell, Group Legal Counsel, AMS Law Ltd



Professional Development (continued)

ECPD

Forthcoming seminars

Date	Time	Topic	ECPD points
12 Nov 2015	6.45pm – 8.45pm	Complex money laundering typologies and red flags	2
20 Nov 2015	6.45pm – 8.15pm	Company secretaries practical training series: how to handle corporate changes – such as, company name, officer, auditor, accounting reference date	1.5
25 Nov 2015	4pm – 5.30pm	Understanding captives and their functions contributing to risk management	1.5
27 Nov 2015	3pm – 5.40pm	The new Companies Ordinance – enforcement of contract, formality and execution	2.5
3 Dec 2015	6.45pm – 8.15pm	ESG – what should be included under the environmental aspect?	1.5
4 Dec 2015	4pm – 5.30pm	How does ESG relate to business sustainability?	1.5
8 Dec 2015	6.45pm – 8.15pm	2015 AGM season review	1.5

For details of forthcoming seminars, please visit the ECPD section of the Institute's website: www.hkics.org.hk.

MCPD requirements

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

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

MCPD requirement extends to graduates

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

Corporate regulatory conference for Chinese companies listed overseas

The Institute held the '38th Affiliated Persons (AP) ECPD H-share Corporate Regulatory Conference' in Beijing from 16 to 18 September 2015. The conference – under the theme of 'Effective corporate governance and internal control in the era of Shanghai-Hong Kong Stock Connect' attracted over 140 senior executives from Chinese companies listed in the Mainland and/or Hong Kong, as well as those to-be-listed and private companies. Eight speakers from key regulatory, professional service firms and multinational organisations shared their views on relevant themes (see table below).

Organisation/speakers	Topic
The China Securities Regulatory Commission (CSRC)	Overseas IPO examination system reform and practices
The Stock Exchange of Hong Kong (HKEx)	Latest developments of Hong Kong's capital market
BlackRock Group	BlackRock's approach to investor stewardship
Georgeson UK	Corporate governance and general meetings
China Petroleum & Chemical Corporation (SinoPec)	SinoPec's experience of the administration and control of information disclosure and insider dealing
CRRC Corporation Ltd	CRRC's restructuring practice in respect of classified shareholders' meetings
Two senior lawyers from Herbert Smith Freehills LLP and Clifford Chance LLP	Connected transactions, shareholder circulars and approval, and governance and preparation of general meetings

The Institute would like to express its gratitude to all speakers and participants. Thanks also to the supporting organisations: HKEx, Listed Companies Committee of Hong Kong Chinese Enterprise Association; the event partners: Herbert Smith Freehills LLP, Clifford Chance LLP; associate organisers: Shinewing CPA and Computershare Hong Kong Investor Services Ltd; and sponsor Toppan Group.

This conference is reviewed on pages 30-36 of this month's journal.

At the conference

Advocacy

HKICS attends forums to discuss strategic role of Hong Kong in Mainland development and opportunities for Hong Kong professionals

Institute President Dr Maurice Ngai FCIS FCS(PE) attended the forum organised by the One Country Two Systems Research Institute, the Chinese Association of Hong Kong & Macau Studies, Hong Kong Institute of Asia-Pacific Studies, Research Centre of Hong Kong & Macau Studies of the Beijing University on 20 September 2015. The forum discussed the strategic role of Hong Kong in Mainland development. In the opening remarks, HKSAR Chief Executive CY Leung highlighted Mainland China's 'One Belt One Road' initiative and the opportunities it can potentially bring to Hong Kong. He also discussed how the free flow of talent, professional services, legal and dispute resolution services, international finance and other aspects of Hong Kong will be beneficial to the further development of the Mainland.

On 25 September 2015, Dr Ngai, Institute Treasurer Bernard Wu FCIS FCS, and Chief Executive Samantha Suen FCIS FCS(PE), met with representatives of the One Country Two Systems Research Institute to discuss opportunities for Chartered Secretaries in the Shenzhen Qianhai Free Trade Zone.

HKICS speaks at the HKICPA career forum

Two Institute Past Presidents: Edith Shih FCIS FCS(PE) and Natalia Seng FCIS FCS(PE), discussed the entry requirements and career prospects of Chartered Secretaries, as well as their personal career paths with undergraduates attending the annual career forum organised by the Hong Kong Institute of Certified Public Accountants (HKICPA) on 3 October 2015.

At the event

HKICS launches risk management survey report with KPMG

KPMG China and the Institute conducted a survey of Hong Kong-based senior management, focusing on risk management in the Hong Kong and China market. With new corporate governance requirements for companies listed or looking to list in Hong Kong, the intention was to capture what the 'new normal' for risk management looks like in the region. This survey gathered data from 279 respondents from across a range of industries.

The report titled 'Risk Management – Looking at the New Normal in Hong Kong' was launched at a press conference on 13 October 2015, and is available at the Publications section of the Institute's website: www.hkics.org.hk. The report was reviewed in last month's CSj (see 'Risk management: a call to action', CSj October 2015, pages 22–27) and in this month's President's Message.

From left: Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, HKICS; Jyoti Vazirani, Principal, Risk Consulting, KPMG China; and Dr Maurice Ngai, President, HKICS

Membership

New graduate

The Institute would like to congratulate Cheng Ling Kwan who joined the Institute as a graduate in August 2015.

New associates

Congratulations to our new associates listed below.

Au Hei Ki	Cheng Ka Wing	Ko Nga Kit	Leung Ngan Yi	Ping Siu Wai
Chan Chi Yan	Cheng Ling Ling	Kwong Wai Yin	Li Ching Man	Tam Wai Chi
Chan Chung Yin	Cheuk Ling	Lam Wai Yi	Li Lok Yan, Katrina	Wong Lik Yi
Chan Ka Lun	Chow Yee Ting	Lau Wing Pan	Li Shuk Ling	Wong Tsz Wan
Chan Lok Yee	Chui Ka Ling	Law Sin Pui	Li Sui Lau	Yau King
Chan Lok Yin	Fu Ngai Kui	Lee Kwok Keung, Quintin	Liu Kit Ying	Yiu Ka Lun, Ken
Chan Yuk Ting	Ho On Kin	Lee Pui Key, Peggy	Lo Ka Lun	Zhang Dongmei
Chau Tsui Shan, Tracy	Ho Tak Wing	Lee Wing Sze	Lo Wing Suen, Aurelia	

New fellows

The Institute would like to congratulate the following Fellows elected in September 2015.

Choi Pui Sze FCIS FCS(PE)

As a Senior Manager of the Corporate Secretarial Services practice of Ernst & Young, Hong Kong, Ms Choi has extensive experience in the corporate secretarial and investor services areas. She leads a team of professionals to provide corporate governance, corporate restructuring and advisory services. Ms Choi graduated from the University of Hong Kong with a Bachelor of Arts in Translation. She also holds a Master of Business Administration of International Management from The University of London and the Practitioner's Endorsement qualification issued by the Institute. She serves as a member of the Professional Services Panel and the AML/CFT Working group of the Institute.

Po Chun Wong FCIS FCS

Dr Po is Deloitte's Asia-Pacific and China National Merger & Acquisition Tax Leader. He has more than 28 years of experience in China tax and business advisory services. He works closely with his teams to provide a wide range of tax services for in-bound and out-bound investment. He has been the lead engagement tax partner of various worldwide enterprise acquisitions, and an active speaker for professional bodies. Dr Po obtained his Doctorate in Business Administration from The Hong Kong Polytechnic University and Master of Business Administration from The Chinese University of Hong Kong. He is a fellow of the Hong Kong Institute of Certified Public Accountants, the Association of Chartered Certified Accountants and the Taxation Institute of Hong Kong. He is also an associate of the Institute of Chartered Accountants in England and Wales.

Membership (continued)

Chiu Ming King, Edmond FCIS FCS

Mr Chiu is the Director of Corporate Services of Vistra Corporate Services (HK) Ltd, where he leads a team of professional staff to provide a full range of corporate services. Mr Chiu has over 10 years of experience in the company secretarial field and currently serves as the company secretary and joint secretary of a number of main board listed companies in Hong Kong. Mr Chiu has been a member of the Membership Committee and Professional Services Panel of the Institute and represented the Institute in the Young Coalition Professional Group of The Hong Kong Coalition of Professional Services since 2013.

Fung Mei Ling FCIS FCS

Ms Fung is the Head of Compliance of Greater China Corporate Consultancy and Services Ltd which provides corporate services, including company secretarial services, to listed companies. She has been the company secretary of a number of listed companies for more than 10 years and has extensive experience in providing company secretarial, compliance, corporate governance and corporate finance services for listed companies in Hong Kong. She is a holder of Master of Finance from Curtin University of Technology.

Other newly elected fellows included:

Chu Ka Yee FCIS FCS

Company Secretary and Qualified Accountant, China Unicom (Hong Kong) Ltd

Ng Wing Shan FCIS FCS

Assistant Vice-President of Corporate Secretarial Department, SW Corporate Services Group Ltd

Membership activities

Community Service – Dementia talk

Following the interactive talk and visit held in July 2015, the Institute once again collaborated with the Jockey Club Centre for Positive Ageing (JCCPA) to hold an interactive talk for members on 23 September 2015. Ms Heiman Cheng, Project Manager of JCCPA, gave an overview of dementia and illustrated the daily life of a dementia sufferer through a role-play session. Over 120 members attended the talk with positive feedback.

Young Group – badminton

As part of the Young Group sport series, a badminton activity was organised on 26 September 2015 at the Kowloon Park. A professional coach was there to help members conduct the exercise in a healthy and safe way. We hope to greet you at the next activity organised by the Young Group, Sub-group of the Membership Committee.

Members participating in the seminar

Members and friends enjoying the badminton

Community Service – reverse mortgage and enduring power of attorney

A reverse mortgage is a potentially useful financial instrument for the elderly to consider when planning for their retirement. This topic has an increasing relevance in Hong Kong as its population ages. On 29 September 2015, the Institute invited Susie Cheung FCIS FCS(PE), General Counsel and Company Secretary of The Hong Kong Mortgage Corporate Ltd (HKMC), and the Institute Membership Committee Chairman, to give an overview of reverse mortgages and the respective roles of the HKMC, banks and borrowers. Over 160 members attended the seminar.

Stella Lo FCIS FCS, Chair of the seminar, presenting a souvenir to Susie Cheung FCIS FCS(PE)

Repulse Bay Dragon Boat Race

On 11 October 2015, the Institute's Dragon Boat Team gathered again for the third and last race of 2015 at Repulse Bay. The team was awarded fifth position in the Sliver plate race with a trophy as a recognition of their effort.

Congratulations to the Institute's Dragon Boat Team

Members' Networking – 'Senior Management/Board Readiness': experience sharing and practical skills

The 'Senior Management/Board Readiness' series was launched in April 2014 to equip members for senior management and board candidacies. On 14 October 2015, the third workshop was held with two distinguished speakers, Anita Fung, Former Chief Executive Officer of the Hongkong and Shanghai Bank Corporation, and Catherine Zhu, Managing Director of Egon Zehnder, sharing their experiences and practical tips on how to prepare for senior management and board positions.

Susie Cheung FCIS FCS(PE), Chair of the seminar, facilitating discussions among the speakers and audience

From left: Catherine Zhu, Susie Cheung and Anita Fung

Forthcoming membership activities

Date	Time	Topic
7 November 2015	8.30am – 12pm	Young Group – influence others through interpersonal competence (full)
20 November 2015	6.45pm – 8.30pm	Young Group – holiday gathering: let's have drinks and fun!
28 November 2015	10am – 2.30pm	Members' Networking – tour to Tao Heung Museum of Food Culture

For details of forthcoming membership activities, please visit the Events section of the Institute's website: www.hkics.org.hk.

International Qualifying Scheme (IQS) examinations

December 2015 examination

A. Examination timetable

	Tuesday 1 December 2015	Wednesday 2 December 2015	Thursday 3 December 2015	Friday 4 December 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

B. Admission slips

The admission slips, together with 'instructions to candidates', will be posted to candidates during the second week of November 2015. Details of the examination and instructions will be provided.

For enquiries, please contact Ruby Ng at: 2830 6006, or Mandy So at: 2830 6068.

C. Examination centres

Applicants may choose to take the IQS examinations at any of the three examination centres – that is, in Hong Kong, Beijing or Shanghai.

Studentship

New students orientation

Nearly 70 newly registered students joined the New Students Orientation on 22 September 2015 to learn about the examinations, exemption details, and student support services provided by the Institute.

HKICS Education Committee member Jerry Tong FCIS FCS also presented certificates to the subject prize and merit certificate awardees for the June 2015 examination diet. Louisa Yeung (subject prize winner, Hong Kong Corporate Law) and Ellen Suen (subject prize winner, Hong Kong Financial Accounting) shared their tips and experience on examination preparation.

Subject prize winners Louisa Yeung (right) and Ellen Suen sharing

Jerry Tong and the awardees

Studentship (continued)

Student Ambassadors Programme 2015 – kick-off ceremony

The Student Ambassadors Programme (SAP) for the new academic year was launched on 12 September 2015. Mentors met with new mentees at the kick-off ceremony. Polly Wong FCIS FCS(PE), Education Committee Chairman, presented souvenirs to the mentors to acknowledge their contribution and certificates to mentees of the previous academic year. Two student ambassadors, Gigi Lau from Hang Seng Management College, and Jessica Wu from The Chinese University of Hong Kong, shared their summer internship experience.

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

At the SAP 2015 kick-off ceremony

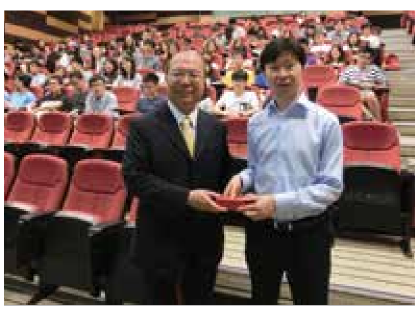
- Angel Chan ACIS ACS
- Elly Chan FCIS FCS
- Eric Chan Bing Kuen ACIS ACS
- Eric Chan Chun Hung FCIS FCS
- Cavan Cheung ACIS ACS
- Ho Tak Wing ACIS ACS
- Queenie Ho ACIS ACS(PE)
- Eddy Ko ACIS ACS
- Wellman Kwan FCIS FCS
- Ricky Lai FCIS FCS
- Timothy Lam ACIS ACS
- Katrina Lam ACIS ACS
- Louisa Lau FCIS FCS(PE)
- Ruby Lau ACIS ACS
- Alan Lee ACIS ACS
- Simon Lee ACIS ACS
- Allan Lee FCIS FCS
- Anna Leung ACIS ACS
- Bruce Li FCIS FCS(PE)
- Eddie Liou FCIS FCS
- Kitty Liu FCIS FCS
- Patrick Sung FCIS FCS
- Carmen Tong ACIS ACS
- Jerry Tong FCIS FCS
- Lindsay Wong ACIS ACS
- Bernard Wu FCIS FCS
- Sandy Yan ACIS ACS
- Rebecca Yu FCIS FCS


Group photo of SAP 2014 mentees


Group photo of SAP 2014 mentors

HKICS professional seminar – The Hong Kong University of Science and Technology

The Institute organised a professional seminar to promote the Chartered Secretarial profession at The Hong Kong University of Science and Technology (HKUST) on 23 September 2015. David Fu FCIS FCS(PE), Council member and Education Committee member, and Company Secretary of John Swire & Sons (HK) Ltd, delivered a talk on the 'company secretarial profession in Hong Kong' to more than 60 HKUST students.


David Fu (left) was given a souvenir following his talk at HKUST

Payment reminders

Studentship renewal

Students whose studentship expired in September 2015 are reminded to settle the renewal payment by Saturday 21 November 2015.

Exemption fees

Students whose exemptions were approved via confirmation letter on 26 August 2015 are reminded to settle the exemption fee by Thursday 26 November 2015.

Careers

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 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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CHARTERED SECRETARIES
特許秘書

Celebrating Our Heritage

HKICS Annual Dinner 2016

Ballroom, JW Marriott Hong Kong

Thursday, 14 January 2016
6.30pm Cocktail reception
7.30pm Dinner

Guest of Honour

Ms Ada Chung FCIS FCS JP

Registrar of Companies
The Companies Registry
The Government of HKSAR

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

Attire: Lounge suits

For enquiries and registration, please contact Vincy Wong at 2830 6048 or event@hkics.org.hk.

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