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March 2016

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



The new Companies Ordinance

Business as usual?

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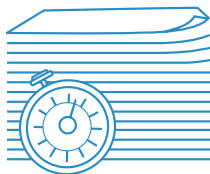
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China,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

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Membership statistics update

As of 31 January 2016, the Institute's membership statistics were as follows:

Students: 3,387
Graduates: 498
Associates: 5,109
Fellows: 545

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March 2016

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Contents

Cover Stories

The new Companies Ordinance: second anniversary review 06

The Companies Registry reviews what the new Companies Ordinance has achieved for Hong Kong and highlights some of the more commonly raised implementation issues.

The challenges of the new Companies Ordinance: an accountant's perspective 12

While the transition to the new Companies Ordinance appears to have been relatively smooth, Catherine Morley, Partner, Department of Professional Practice, KPMG China, points out that the journey has only just begun.

In Profile

A career considered 18

April Chan, who retired at the end of last year as Company Secretary of CLP Holdings, looks back over her career and shares some thoughts on the road ahead for corporate secretaries in Hong Kong.

In Focus

Talking strategy 24

CSj talks to the new HKICS President, Ivan Tam, about the way forward for the Institute and the profession in the years ahead.

The Competition Ordinance – your questions answered 28

The Competition Commission answers key questions about the Competition Ordinance, its enforcement priorities and how to ensure compliance.

Practical Training

Concise and precise: the art of taking minutes 32

This month we launch the first in a new series of articles looking at the practical skills and knowledge company secretaries need to acquire. This first article in the series looks at a skill which has been an essential part of the company secretarial function for as long as the profession has been around – minute drafting.

Case Note

Company secretaries – know your duties 36

A recently concluded Market Misconduct Tribunal hearing highlighted the essential responsibilities and duties of company secretaries in Hong Kong. Mike Scales FCS FCIS, former Chairman of the Institute of Chartered Secretaries and Administrators in Hong Kong Ltd, takes a look at the lessons that should be learned from this case.

HKICS News

President's Message 04

Institute News 40

Student News 46





Welcome to another edition of our journal. Firstly, I would like to mention that Council, together with our senior secretariat team, had a very successful strategy meeting last month in which we agreed our key goals over my tenure as president. We find ourselves at an important juncture in the development of our Institute and profession. I believe if we rise to the challenge and position ourselves correctly, there is huge potential in the years ahead to develop our profession in Hong Kong and the greater China region. Our In Focus article this month (pages 24–27) will update you on these important issues so I will not go into further detail here.

Our journal theme this month is to give a progress report on Hong Kong's transition to its new Companies Ordinance on the second anniversary of its implementation. In this column, however, I would like to focus on another issue gracing the pages of this edition of our journal.

It has often been observed that our position as company secretaries is an unusual one. We are a part of senior management but our position sits outside the 'line management' hierarchy. Similarly, we sit on the board of directors but we are not a member of the board itself. The subtleties involved in this position is both the source of the unique

Professional standards

value we bring to organisations and an ever-present danger of confusion.

This danger became acutely apparent in a recently concluded Market Misconduct Tribunal hearing which looked into the dealings in the shares of Asia Telemedia Ltd. We are indebted to Mike Scales FCS FCIS, a former helmsman of the HKICS, for highlighting the lessons that need to be learned from this case. Mike points out in his Case Note article this month (see pages 36–39) that the importance of this case for members of our profession is not in the Tribunal's verdict on the allegations made – in fact, no market misconduct was identified – but rather the discussions during the Tribunal hearings regarding the expected roles and duties of Asia Telemedia's company secretary.

The company secretary in this case, who is a Chartered Secretary, characterised her role as being an administrative servant of the company without any decision-making power. This may well have been true, but it gives only a partial picture of the expectations of the company secretarial role. The important point to bear in mind is that Chartered Secretaries, as employees, may have an obligation to follow instructions but that does not override their professional obligation to use their influence to ensure compliance with all relevant regulation and legislation, and to uphold good governance and ethical practices.

This is the point that Mike Scales seeks to highlight for readers of this journal and it is a point our Institute has been keen to promote, particularly among fresh recruits to the profession. It is still fairly common for company secretaries to be perceived as

fulfilling a purely administrative role. This is partly a legacy of history since this is how the role started out, but things have moved on quite significantly from the 19th century and our stakeholders, including employers, regulators and shareholders, have increasingly high expectations of the company secretary as a trusted adviser to the board and independent gatekeeper in governance matters.

Different companies make differing uses of the company secretarial role, but anyone bearing the CIS/CS post-nominals carries the reputation of the profession on his or her shoulders. All members of our Institute have an obligation to abide by our code of conduct – as set out in *The Essential Company Secretary* which is available on our website under 'publications/ guidelines'. *The Essential Company Secretary* was cited in the Tribunal hearing as an authoritative description of the duties and responsibilities of company secretaries in Hong Kong.

Ultimately, perhaps the real lesson to be learned from the Asia Telemedia case is that we need to wear our post-nominals with pride. We are not secretaries, we are Chartered Secretaries and as such we belong to a profession with a long history and high standards of integrity, skill and dedication.

A stylized, handwritten signature in black ink, appearing to read 'Ivan Tam'.

Ivan Tam FCIS FCS

專業標準

欢迎阅读本期月刊。首先在此一提，理事会与秘书处管理层在上月举行策略会议，成果甚丰，议定了本人在会长任期内的主要目标。我们正处于公会和特许秘书专业发展的重要时刻，相信假如我们迎接挑战，定位正确，可期待未来数年在香港和大中华地区发展特许秘书专业的潜力相当庞大。本期的焦点文章（第24至27页）详述这些重要事项，在此不赘。

本期的主题是趁新《公司条例》于香港推行两周年之际，报告新条例的实施进展。此外，本人想在这里介绍今期文章的另一议题。公司秘书一般被视为地位相当特殊的职位：我们是高层管理的一员，却不在业务管理的架构内；同样，我们出席董事会，却并非董事。这职位的微妙之处就是，我们既为机构带来独特的价值，也会造成角色混淆的困惑。

市场失当行为仲裁处最近完成聆讯的一宗个案，正突显了这种角色混淆的情况。感谢公会前会长施米高FCS FCIS为我们说明这宗个案的教训。在本期的个案摘要（第36至39页）中，施米高指出，对专业特许秘书来说，这宗

个案的重要性不在于仲裁处就指控所作的裁决——事实上，结论是个案中未发现市场失当行为——而在于聆讯期间就亚洲电信媒体的公司秘书应有的角色和责任所引起的争议。

个案中的公司秘书是一名特许秘书，她形容自己的角色是负责公司的行政职务，并无任何决策权。这也许是事实，却也只是一般人对公司秘书这个角色的期望的一部分。应紧记的是，特许秘书作为雇员或有责任遵从指示，这却不应凌驾特许秘书的专业责任，亦即运用影响力，确保机构遵从所有相关规例和法例，并维持良好管治和道德操守。

这是施米高特别要向本刊读者指出的重点，也是公会致力提倡的理念，特别是向刚加入这专业的新人所推广的讯息。许多人仍然认为公司秘书纯粹担当行政角色。这看法有其历史背景，公司秘书最初的角色确实如此，但发展至今，情况已与十九世纪截然不同。我们的持份者，包括雇主、监管机构 and 股东，对公司秘书的期望日高，视之为董事会可信赖的顾问，以及管治事务的独立把关者。

公司秘书在不同公司的职责各有差异，但具有CIS/CS专业衔头的人士均肩负专业特许秘书的名声。公会所有会员均有责任遵守公会的专业操守准则。这些准则载于《不可或缺的公司秘书》小册子中，可于公会网站「公会出版刊物」一栏阅览。仲裁处的聆讯中曾引述该小册子的内容，作为香港公司秘书职责的权威说明。

归根究底，亚洲电信媒体一案的真正教训，也许是我们应以CIS/CS的身份为傲。我们并非一般秘书，而是特许秘书；我们的专业历史悠久，并秉持高度诚信、技能和坚守专业精神。



谭国荣先生 FCIS FCS

The new Companies Ordinance: second anniversary review

It has been two years since the implementation of the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong, on 3 March 2014. In this article, the Companies Registry reviews what the law has achieved for Hong Kong and highlights some of the more commonly raised implementation issues.

The new Companies Ordinance (NCO) provides a modernised legal framework for the incorporation and operation of companies in Hong Kong. The main objectives of the NCO are to enhance corporate governance, facilitate business, ensure better regulation and modernise Hong Kong's company law.

The NCO achievements

Since the implementation of the NCO on 3 March 2014, Hong Kong's position as an international financial and commercial centre has been further reinforced.

A host of initiatives to enhance corporate governance have been introduced under the NCO. These include, among others, requiring every private company to have at least one individual acting as director to enhance corporate transparency and accountability, and introducing more effective rules to deal with directors' conflicts of interest to foster shareholder protection. According to the World Bank's *Doing Business 2016* report, Hong Kong sustains its top position in 'protecting minority investors' among 189 economies. The World Bank commended Hong Kong for introducing requirements for directors to provide more detailed disclosure of conflicts of interest under the NCO.

A number of measures have been introduced to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of small and medium-sized enterprises. The NCO has simplified the procedures for starting a

business in Hong Kong by abolishing the memorandum of association and making the use of a common seal optional. Hong Kong improved its ranking from eighth to fourth globally in the 'starting a business' category of the *Doing Business 2016* report.

The NCO also provides an alternative court-free procedure for the reduction of a company's capital and introduces a new administrative procedure for the restoration of companies to the Companies Register. Some statistics from 2015 which demonstrate the popularity of the new initiatives brought in by the NCO to facilitate business and save costs are as follows:

- around 57% of the new companies incorporated electronically adopted the sample articles of association provided at the e-Registry (www.eregistry.gov.hk)
- 173 out of 176 companies which reduced their capital made use of the alternative court-free procedure
- 328 applications for restoration of companies to the Companies Register using the administrative restoration procedures were received in 2015, which represented about 54% of the total number of applications for company restoration, and
- 26 groups of companies have undergone amalgamation through the new court-free procedure.

In recognition of the efforts of the Companies Registry (CR) in implementing and promoting the NCO to foster Hong Kong's competitiveness as an ideal place to do business, the CR was awarded the Gold Prize of the Departmental Service Enhancement Award in the Civil Service Outstanding Service Award Scheme 2015.

Implementation issues

Despite a generally smooth transition to the NCO, we highlight below some of the more commonly raised implementation issues under the new law.

Delivery of annual returns

Under the NCO, an annual return of a public company or a guarantee company is required to be delivered, together

Highlights

- the new Companies Ordinance has helped to raise Hong Kong's ranking in the World Bank's annual *Doing Business* reports
- the new Companies Ordinance has brought in key corporate governance requirements, in particular more effective rules to deal with directors' conflicts of interest
- the new initiatives brought in by the new Companies Ordinance to facilitate business have been popular with the market

with certified true copies of the relevant financial statements, directors' report and auditor's report, within 42 days after

Tips on annual return preparation

When preparing the annual return (Form NAR1), the Companies Registry reminds companies to:

- make reference to the company's up-to-date records before completing the respective entries in the annual return and the schedules/continuation sheets
- sign the annual return and attach all the completed schedules/continuation sheets
- deliver the annual return of a public company or guarantee company together with certified true copies of the related financial statements
- double check that the correct particulars are provided and there are no missing entries/pages/schedules/continuation sheets
- comply with the deadline for delivery of annual return to avoid payment of higher annual registration fees
- pay the correct annual registration fee, and
- deliver proper forms for reporting changes in the particulars of the company, for example changes in the location of registered office, if any.

the company's return date, that is, six months (for a public company) or nine months (for a guarantee company) after the end of the company's accounting reference period.

For a public company or a guarantee company registered under a former Companies Ordinance, the new requirements apply to the first financial year of the company that begins on or after the commencement date of the NCO and all subsequent financial years. For example, if a guarantee company prepares its financial statements up to 31 March every year, its first annual return would have to be delivered under the NCO on or before 11 February 2016, within 42 days from 31 December 2015.

The CR issued an external circular – *Delivery of Annual Returns under the Companies Ordinance* – on 31 July 2015 to remind public and guarantee companies of the relevant requirements. A simple and user-friendly 'Annual Return e-Reminder' service is available free of charge at our e-Registry (www.eregistry.gov.hk) to facilitate compliance. Users of the service will receive electronic notifications for delivering annual returns.

Business review

To improve the disclosure of company information, public companies and companies not falling within the reporting exemption are required to prepare, as part of the directors' report, a more analytical and forward-looking business review. The review must contain, *inter alia*, a description of the principal risks and uncertainties facing the company and information relating to environmental and employee matters that have a significant impact on the company.

A private company that does not fall within the reporting exemption need not prepare a business review if it has members' approval of a special resolution passed by 75% of its members. The special resolution must be passed at least six months before the end of the financial year to which the directors' report relates.

Reduction of capital

The NCO introduces an alternative court-free procedure for reducing capital based on a solvency test. Under the procedures, the company is required to satisfy the solvency test, pass a special resolution for reduction of capital and publish notices in the gazette and newspapers. The special resolution and reduction take effect when the return on reduction of share capital is registered. The new procedure is faster and cheaper than the procedure under the old Companies Ordinance which involved filing an application with the court.

Amalgamation

A new court-free regime for amalgamation which facilitates corporate activities and reduces compliance costs, is introduced in the NCO. The new procedure can be adopted to achieve amalgamations of wholly-owned intra-group companies, either vertical (between the holding company and one or more of its wholly-owned subsidiaries) or horizontal (between two or more subsidiaries of the same holding company).

To give ample notice to interested parties, the directors of each amalgamating company must give written notice of the proposed amalgamation to every secured creditor and publish notice of the proposed amalgamation in a newspaper at least 21 days before the date of the general meeting at which the resolution

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NCO on 3 March 2014, Hong
Kong’s position as an international
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”



is to be approved, or on or before the circulation date of the proposed written resolution if the articles do not specify a period (Section 682).

Administrative restoration of companies

The NCO introduces a new administrative procedure for the restoration of companies to the Companies Register. The new procedure is widely accepted and used by the business community.

In order to facilitate timely receipt of the notification of the decision of the Registrar of Companies (the Registrar) on the application, the applicant is reminded to provide a complete correspondence address in the application form.

Under the NCO, if the name of the company upon restoration is the same as the name of an existing company, the restored company must change its name within 28 days after the restoration. It is an offence under the NCO if the restored company fails to change its name. The Registrar may change the name of the restored company to a name that consists of the words 'Company Registration

Number' as its prefix, followed by its company registration number if the company fails to comply with the Registrar's direction to change name.

Deregistration of companies

Before making an application for deregistration, a company is subject to the requirements set out below.

- It must ensure that all its properties (including any credit balance in its bank accounts, motor vehicle, landed property, etc) have been properly disposed of. Once the company is dissolved, every property and right vested in or held on trust for the company immediately before the dissolution will be vested in the government as *bona vacantia*.
- It should settle all its outstanding liabilities (including various kinds of service fees) before applying for deregistration; otherwise, third parties may raise objection to the deregistration of the company, and the Registrar may reject the application. To give false or misleading information in the application, for

example, as regards the indebtedness of the relevant company constitutes a criminal offence.

To facilitate electronic submission of applications at the e-Registry, a copy of the 'Notice of No Objection to a Company being Deregistered' (NNO) issued by the Commissioner of Inland Revenue should be certified as true by the applicant, a director or the company secretary of the company. The PDF file of the NNO should be delivered together with the electronic Form NDR1 'Application for Deregistration of Private Company or Company Limited by Guarantee'.

Requirements for the certified translation of documents

A non-Hong Kong company registered under Part 16 of the NCO is required under various provisions of the NCO to deliver copies of documents issued in its place of incorporation (for example articles, certificates of incorporation, accounts, etc) for registration. Copies of such documents should be certified pursuant to Section 775 of the NCO. If the documents are not in English or Chinese, a certified translation in

either of these languages has to be delivered. The translation of documents should be certified pursuant to Section 4 of the NCO.

Looking ahead

Further to the implementation of a full scale electronic filing service covering 84 specified forms at the e-Registry portal in March 2015, the CR targets to introduce a full range of electronic search services on the mobile platform (www.mobile-cr.gov.hk) by mid-2016.

Other legislative proposals in the pipeline are discussed below.

Open-ended fund companies

Following a public consultation in March 2014, the government has formulated the legal framework to introduce



open-ended fund companies (OFC) in Hong Kong to facilitate the setting up of investment funds. The Securities and Futures (Amendment) Bill 2016 was introduced into the Legislative

“
the World Bank
commended Hong
Kong for introducing
requirements for directors
to provide more detailed
disclosure of conflicts of
interest under the new
Companies Ordinance
”

Council in January 2016 to lay down the framework for the new regime. While the Securities and Futures Commission will regulate the operation of OFC, the CR will be responsible for processing the incorporation of OFC and the registration of their corporate filings.

Enhancing awareness

Examples of the Companies Registry's efforts to enhance stakeholders' awareness of the new Companies Ordinance requirements include:

- issuing reminder letters to all guarantee companies in September and October 2015 to remind them of the new requirements on delivery of annual returns under the NCO
- issuing letters to private companies which do not have a natural person acting as director to remind them of the new requirement to have at least one natural person acting as a director
- setting up an Inspection Unit in its Enforcement Section to conduct site visits of the registered office addresses of companies, including checking compliance with the requirements on disclosure of company names and keeping of company registers, and
- updating the 'frequently asked questions' on the NCO on the Registry's website and setting up a new subsection containing copies of Table A in the old Companies Ordinance (Cap 32) for the reference of companies which had adopted the provisions in Table A as their articles of association before the commencement of the NCO.

Uncertificated securities

The Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 was published in the gazette on 27 March 2015 to provide the legal framework for the establishment and implementation of an uncertificated securities market regime in Hong Kong. Detailed provisions on the operation and regulation of the uncertificated securities market will be set out in new subsidiary legislation to be made under the Securities and Futures Ordinance.

Companies Registry

HKSAR Government

More information is available on the Companies Registry's website: www.cr.gov.hk.



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HKICS ACRU 2016

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Convention and
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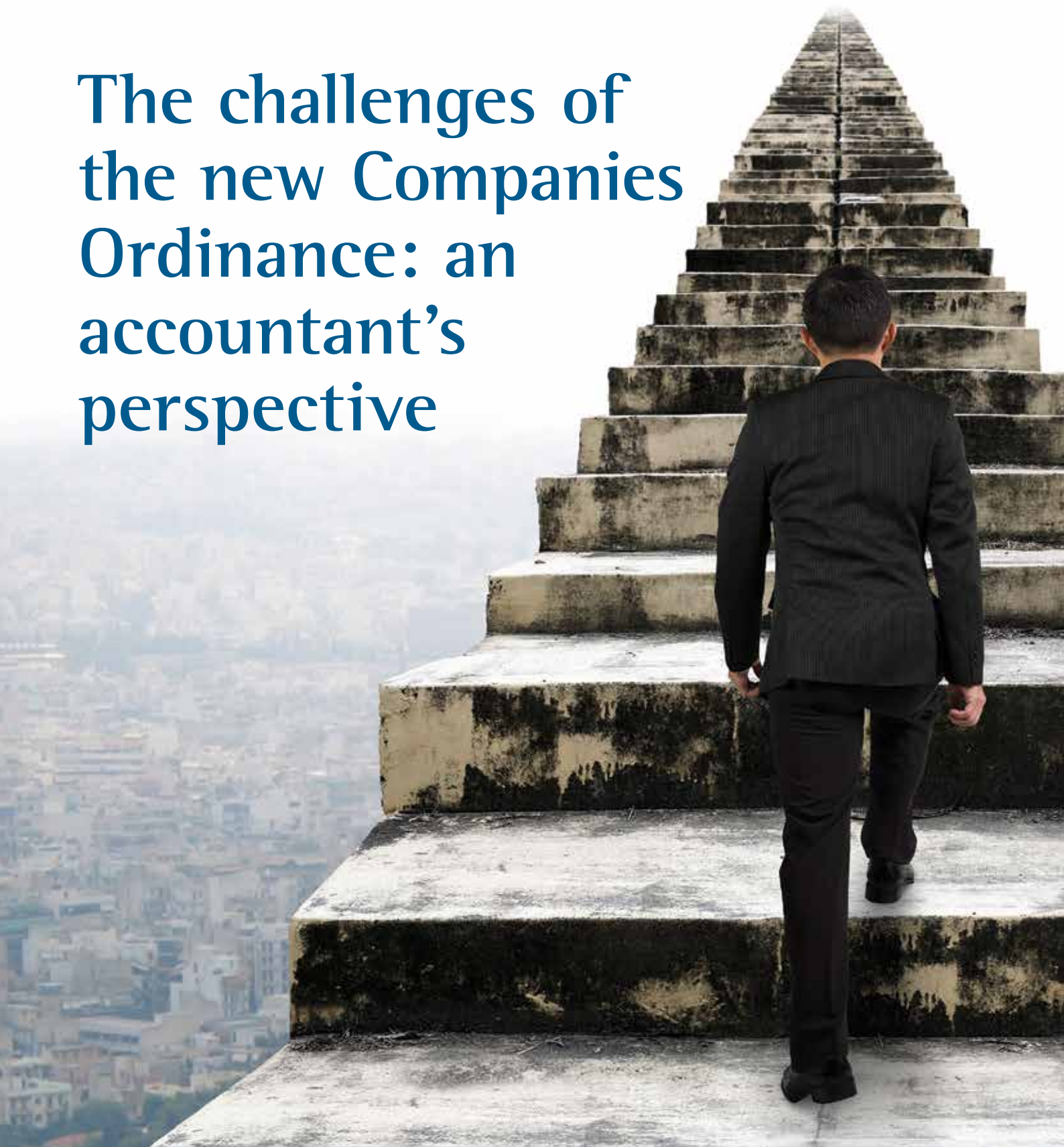


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For enquiries, call 2830 6011 or 2830 6070 or email to ecpd@hkics.org.hk.

The challenges of the new Companies Ordinance: an accountant's perspective



While the transition to the new Companies Ordinance appears to have been relatively smooth, Catherine Morley, Partner, Department of Professional Practice, KPMG China, points out that the journey has only just begun.

Normally by the time of second anniversaries you can look back on a period of change and already be feeling that the new 'business as usual' has arrived. But for most accountants, auditors and any others involved in the preparation of annual reports under the new Companies Ordinance it's not quite that simple.

It is true that when the new Companies Ordinance came in on 3 March 2014, we needed to be mindful of the automatic transition to the new no par value regime and the new provisions on reduction of share capital and amalgamations. These were welcome changes which dispensed with much of the complexity and rigidity of the predecessor Companies Ordinance around the question of capital management and the new concepts appear to have settled down well without too much confusion.

But the financial year which crossed over 3 March 2014 was just the start of the journey for us. The main impact for us comes in the following financial year when Part 9 of the new Companies Ordinance, the main source of requirements relating to audited annual reports, comes into effect.

The companies first impacted by the implementation of Part 9 were those with 31 March year ends: by now they should have already reported their 2015 financial statements and it is from experience working with these companies that we can see where the main challenges from the new Companies Ordinance can be found. But as most companies in Hong Kong have a December year end and at least six months in which to put together their annual reports, this means that in practice many companies will not even have started to prepare their first annual reports under the new regime.

Highlights

- experience so far indicates that achieving qualitative compliance with the new business review requirement is the toughest challenge posed by the new Companies Ordinance
- those drafting the business review need to understand that the objective is to report to shareholders through the eyes of the directors in a balanced, neutral and understandable way – not to market the company in a favourable light
- some companies have been caught out by deadlines brought in by the new Companies Ordinance – companies need to get in the habit of planning ahead for annual reporting

So what should these companies be looking out for?

The business review

The most substantive mandatory change on everyone's mind is the introduction of the new business review for all Hong Kong incorporated companies unless explicitly exempt.

Although the review is required to be included in the directors' report, in practice there should be close links between the contents of the review and the financial statements. For example, Schedule 5 requires that the analysis of the development, performance and position of the business should include financial key performance indicators, and these will often be computed using data reported in the financial statements. In addition, preparing the accounting numbers for matters such as depreciation, impairments, onerous contracts and provisions often requires making judgements and estimates using information about the principal risks and uncertainties facing the company and the likely future development in the company's business, both of which are mandatory topics required in the business review under Schedule 5.

Therefore it is important that there is consistency between the story told in the business review and underlying the financial statements. In fact, not only should the preparers of the directors' report and the preparers of the financial statements make sure they have a common understanding with each other, but also the auditors now have an express duty under Section 406 of the Companies Ordinance to state if in their opinion the information in the directors' report is not consistent with the financial statements.

Given this close linkage, the Hong Kong Institute of Certified Public Accountants (HKICPA) was invited by the Companies Registry to develop guidance to assist in the preparation of a business review which would satisfy Schedule 5 of the Companies Ordinance and provide information that is useful for members of the company. This guidance was issued in July 2014 in the form of an 'Accounting Bulletin', specifically *Accounting Bulletin 5 (AB5)*.

AB5 is for guidance only and does not introduce additional accounting, disclosure or legal requirements. However, it sets out guiding principles which address fundamental aspects of a business review and are therefore relevant to companies of all sizes. These principles are as follows:

1. the review should set out an analysis of the business through the eyes of the board of directors
2. the scope of the review should be consistent with the scope of the financial statements
3. the review should complement as well as supplement the financial statements, in order to enhance the overall corporate disclosure
4. the review should be understandable, and
5. the review should be balanced and neutral, dealing even-handedly with both good and bad aspects.

The first two principles relate to explicit requirements of the Companies Ordinance:

- seeing the business 'through the eyes

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from experience we know that surprises and misunderstandings can come from underestimating the time and effort required to ensure compliance with the new Companies Ordinance
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of the board of directors' reflects the fact that the business review should form part of the directors' report to be approved by the directors under Section 391; and

- being consistent with the 'scope of the financial statements' means that the review should cover the group as a whole in accordance with Section 4 of Schedule 5 if the directors' report is to be attached to consolidated financial statements.

The remaining three principles relate to the quality of the business review: the review should add value to the annual report in a way that is understandable, balanced and neutral. In other words, it should neither simply repeat the financial statements, nor should it be seen as an opportunity to add a marketing spin to the annual report by focusing only on the 'highlights' and ignoring or disguising some inconvenient truths which shareholders or other readers of the annual report might be very interested to know.



Experience so far indicates that it is in achieving these qualitative aspects where companies are finding it hard to find the right balance: how much information is enough to give a 'fair review' of the business? How to stress key information without appearing biased? How to supplement and complement the financial statements with insightful information on risks and future prospects when the job of writing the business review has been handed to the accounts department?

There is no 'one size fits all' answer to these questions. However, experience has shown that there are some common sense ways to approach the task which increase the likelihood that the business review will be clear, concise and tailored to the

size and complexity of the company's operations. These include:

- involving the right people in contributing content: people with responsibilities for driving the business are far more likely to have relevant material and knowledge at their fingertips than a junior in the accounts department
- ensuring that those drafting the business review have the right mindset: they need to understand that the objective is to report to shareholders through the eyes of the directors in a balanced, neutral and understandable way, not to market the company in a favourable light
- collating useful data beyond what will be reported in the financial statements – for example, having access to data on staff turnover or from staff satisfaction surveys is useful when trying to give an unbiased account of the company's key relationships with its employees, and
- ensuring there is enough time to do the job properly – it may not take long to write the review, but better to start early in case some key data takes time to find or to allow time for review by others with direct knowledge of the business, than to leave it to the last minute.

All of this is scalable: in smaller or less complex companies, much of the information needed may be easily apparent to anyone who has regularly attended management meetings and paid attention to the areas that were discussed. For example, the discussions may have focused on the performance against budget, gross margins, net cash flows, trends in customer loyalty or staff turnover and the impact on profitability of rising rents or falling asset values. Such discussions are about the current performance and financial position of the business, including the key performance indicators which are regularly monitored, the principal risks facing the company and its future prospects, all of which are key topics required in a business review. If a company's review is drafted by someone who has a good understanding of these discussions, then the review stands a good chance of being well-written and appropriate to that company, even if in the end it is only one or two pages long.

Looking at how others have prepared their business reviews may also be a good source of ideas for how to present

the information. But this cannot be a substitute for the four key ingredients listed above – each business review should first and foremost reflect the business of the company as the directors see it, and not be a copy of someone else's idea of acceptable wording or typical KPIs.

Other challenges

Other than the business review, there will be some other compliance matters that will be easy to observe from 2015 annual reports: for example, an up-to-date auditor will be using more modern terminology in their auditor's report in order to comply with Section 406 and the company-level balance sheet (now called the statement of financial position) should have been relegated to the notes to the consolidated financial statements in order to comply with Schedule 4. These and other house-keeping changes will cause time and effort in the year of change but other than this are not burdensome.

The rest of the impact of the new Companies Ordinance on financial reporting is more subtle and here lie the potential pitfalls, particularly for

practitioners responsible for advising companies on 'what's new', or taking responsibility for ensuring accurate and complete compliance. From experience we know that surprises and misunderstandings can come from underestimating the time and effort required to ensure compliance with the new Companies Ordinance – in particular carrying out the activities set out below.

Finding the detail

Under the predecessor Companies Ordinance many of us were used to finding requirements in self-contained sections such as Section 129D or Section 161. Under the new Companies Ordinance we have to be more diligent. At the very least, we need to search out the relevant regulations, such as Cap 622D for directors' reports, and Cap 622G for disclosures relating to directors' remuneration and loans etc. But we also need to be careful to check the scope of requirements and to make sure we've found the relevant definitions. Don't look only in the section itself – it may not be that obvious or simple.

Spotting what's changed

Many of the requirements in Part 9 and its regulations have been brought forward from the predecessor Companies Ordinance. This brings a welcome amount of continuity but also the risk of a false sense of security. The devil, as they say, is in the detail, and in these early years the smart practitioner will check and double-check the original wording of the Companies Ordinance and not rely on summaries or seminar notes to tell them what's new. For example, 'pensions' and 'retirement benefits' may sound like the same thing, but the difference becomes apparent when you realise that free medical benefits or other non-cash

Key tips on compliance

- don't underestimate the new Companies Ordinance, especially in these early days – invest time and effort in working directly with the Companies Ordinance and take care to search it thoroughly to find the relevant text
- once you find the text don't assume that nothing has changed simply because it looks familiar – again time and effort is needed to make sure there isn't some devil hidden in the detail
- a successful implementation also requires teamwork – corporate secretaries, accountants, auditors and lawyers all need to step a little into each other's worlds in order to work together and in this corporate secretaries have a key pivotal role



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perks provided to retired directors are now discloseable as part of directors' retirement benefits, when perhaps previously they may not have been regarded as a form of 'pension'.

Planning ahead

One change that caught some companies by surprise is the requirement for shareholders to be approached during the year in order to claim relief from reporting requirements. In particular, private companies that missed the deadline for the Section 388 special resolution (which must be 'at least six months before the year end') may have to prepare a business review for the first time in their 2015 directors' report. Similarly, the exemption from consolidation for partially owned subsidiaries is only available if shareholders are notified in writing at least six months before the year end each year. It is easy to be caught out by these requirements unless companies get in the habit of planning ahead for annual reporting and making sure they go through the proper procedures.

The above activities focus on the very important question of 'what does the new Companies Ordinance say?' But in some cases there has been a far harder challenge for practitioners to wrestle with. This is 'what does the new Companies Ordinance mean?' In this regard, my final tip is to pay close attention to the range of answers to 'frequently asked questions' issued by both the Companies Registry and the HKICPA (with the support of the Companies Registry) and other materials, such as the HKICPA's *Accounting Bulletin 6* on Section 436. These materials are available on their websites and can provide comfort when the Companies Ordinance requirements seem unclear, or when practical interpretation may be needed in order to operationalise the requirements. The materials already available are quite extensive, but look out for more developments in this space as practice settles down.

Catherine Morley

Partner, Head of Department of Professional Practice, KPMG China

Catherine has been a member of the Hong Kong Institute of Certified Public Accountants' (HKICPA) Financial Reporting Standards Committee (FRSC) since 2004, including chairing that committee from 2014 to 2016. She was also a member of the government's Standing Committee on Company Law Reform from 2008 to 2014. She continues to chair the HKICPA's Working Group on the financial reporting implications of the new Companies Ordinance and is also a member of the HKICPA's Professional Standards Monitoring Expert Panel and the Financial Reporting Review Panel of the Financial Reporting Council.

The HKICPA and Companies Registry guidance materials mentioned in this article are available on their websites: www.hkicpa.org.hk and www.cr.gov.hk.



A career considered

At the end of last year, April Chan retired as Company Secretary of CLP Holdings. Her career took her to the top of the corporate secretarial profession as a former president of both the HKICS and the Corporate Secretaries International Association and as the company secretary of one of Hong Kong's largest and best known listed companies. This month, she looks back over her career and shares some thoughts on the road ahead for corporate secretaries in Hong Kong.

Thanks for giving us this interview – could we start by looking back over your career?

'Certainly. I grew up in Hong Kong. I studied Company Secretaryship and Administration at the Hong Kong Polytechnic, and got my Chartered Secretarial qualification after taking the ICSA examinations.'

Had you already decided that you wanted to be a company secretary?

'No, I knew nothing about the work of the company secretary. My eldest sister advised me that this might be a suitable career for me and I must thank her for that. At that time the Polytechnic was the only institute with a relevant curriculum and the competition was so high that the admittance ratio was 1 in 40 – so I was fortunate to get in and get my qualification.'

Having graduated, I started my career in a CPA firm and my boss there was my first mentor. I am very grateful to him – despite the fact that I was only a fresh graduate, he gave me a free hand to handle clients. Actually, he was very demanding but that gave me a good training in the need to be cautious and meticulous about details.

I was with the firm for about three years before I got married and went to the UK with my husband. When we came back to Hong Kong, I took up a position on the team setting up the Hong Kong Academy for Performing Arts (APA). I am very proud of the fact that, with a lot of persistence, I was able to persuade the government to create a suitably prestigious address for the APA – Number 1 Gloucester Road. I was offered various addresses for the site but I managed to persuade the relevant government departments to create an address that would help add credibility to the APA and help it recruit high-quality teachers from overseas. My instinct has always been to ask questions and that has helped me throughout my career.

After three years in Hong Kong, my husband and I migrated to Australia where I worked for a University. After two years in

Australia, we came back to Hong Kong and I started to work for CLP – that was in 1988.'

Working 27 years for one company is unusual in today's job market – what was it that worked so well at CLP?

'CLP is a very good employer. It has a culture of integrity which has a lot to do with the Kadoorie family shareholders. I started working for the present chairman's father, Lord Kadoorie, then Sir Sidney Gordon and Sir Michael Kadoorie. They all had very good shared values and always encouraged good governance. This culture has meant that CLP has been able to recruit and retain good staff.'

When I first joined CLP, the average length of service was 25 years. I didn't think I would last even five years in the same job but working for a company with that kind of culture makes a lot of difference for a company secretary. I had a lot of encouragement and support to introduce good governance practices from the chairman, the board, senior management and from colleagues as well. This not only made my job easier, it also gave me a lot of job satisfaction.'

Highlights

- working as a company secretary is a balancing act; you need to balance the interests of everybody while remaining neutral
- ensuring good governance internally in the company is no longer enough, company secretaries have to engage the company's stakeholders and stay up to date with their changing expectations
- the company secretarial role will evolve towards a management role – it makes sense for the company secretary to be involved in setting, as well as communicating, strategy

Do you think this is an important thing for fresh recruits to the profession to bear in mind – the difference that a good corporate culture can make to the work of a company secretary?

'One of the most important tasks of the company secretary is to safeguard directors' and shareholders' interests by promoting good governance across the organisation. If you don't have the right employer with a good culture of integrity, it is not possible to do this. Of course, it is a two-way exchange – the new recruits also have their own responsibilities.'

How has the role of the company secretary changed over the course of your career?

'It has evolved as the regulatory environment has evolved over the last three decades. In the early days, the role was more focused on meeting the statutory requirements. As the company secretary, people expected you to ensure compliance with the Companies Ordinance. Once the listing rules had been introduced, the role expanded to ensure compliance with the listing rules, if you were working for a listed company, but the job was still very compliance-focused. People tended to think that you had to comply with the rules and that was all.

Since then, the regulatory environment has not only become more stringent but investors' expectations have changed as well. We have moved towards a corporate governance focus and the company secretary role has become more advisory. As the company's governance adviser, company secretaries need to keep up to date with the international corporate governance environment so that they can build up the company's governance framework and introduce international best practices.

More recently the company secretarial role has gone through further changes. Just ensuring good governance internally in the company is not enough, you have to engage your shareholders, your investors and other stakeholders, because their expectations are changing. In the past, the assumption was that if a company had good governance investors would buy the shares. These days, investors and other stakeholders are looking beyond the usual criteria – they are looking at things like your environmental, social and governance (ESG) reporting as well. So the reporting role of the company secretary has become more comprehensive. These days you can't just think in terms of financial reporting – people increasingly expect you to report on an integrated basis. If a company moves to integrated reporting, the company secretary needs to have a lot more communication with stakeholders and

needs to think about how to package and present the information so that the stakeholders can understand it easily.'

You must also have seen a lot of technological changes over the course of your career?

'Yes. People expect a quicker response from the company secretary. Twenty years ago we had a shareholders' hotline or a dedicated email address for enquiries – these days that is not enough. You need to respond to telephone enquiries promptly and answer emails within 24 hours. You also need to meet with stakeholders and invite them to meet the management. You also need to be more proactive; you need to go out and speak to your investors on governance issues.'

Where do you think these trends regarding the company secretarial role are heading?

'Compliance is still the basic core, especially for listed companies, that's what the company secretary is for, but I think that the role will evolve towards a management role. It makes sense for the company secretary to be involved in setting, as well as communicating, strategy. Otherwise, when you talk about your

Career notes

- 1981 – Admitted as an Associate of the Hong Kong Institute of Chartered Secretaries (HKICS)
- 1988 – Joined CLP Holdings as Senior Administrative Officer
- 1994 – Elected as a Fellow of the Institute of Chartered Secretaries and Administrators (ICSA) and HKICS
- 2004 – Elected a Council Member of the HKICS – served until 2014
- 2005 – Became Company Secretary at CLP Holdings
- 2009 – Elected President of the HKICS – served until December 2011
- 2010 – Elected Inaugural President of the Corporate Secretaries International Association (CSIA) – served until December 2011 and served on the CSIA Council and Executive Committee until December 2015
- 2013 – Named Asian Company Secretary of the Year by Corporate Governance Asia
- 2015 – Retired from CLP

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governance practices you don't have a context for why you are promoting these practices to your investors.'

If company secretaries are too closely associated with management, is there a risk they will lose their value as independent advisers?

'I don't think so because independence is a mindset. If there are some conflicting views and interests among the directors and management, then you need to remind yourself that you are the company secretary and you have to be neutral and independent. You need to strike a balance. Actually, working as a company secretary is a balancing act; you need to balance the interests of everybody while remaining neutral so that people will know that you are trustworthy. I have always said that the most important thing for a company secretary is to earn the trust of your directors and the respect of management. Then you can do what you think is best for the company.'

Being part of management helps you carry out your job. It means that you are not excluded from the formulation of strategy and determining issues such as what the critical ESG issues are that the company should tackle and how to capture ESG data.'

What about taking the further step of joining the board – do you think it would be difficult to maintain the neutrality and independence you have been talking about if a company secretary takes a board position?

'I think becoming an executive director would "blur the line". After all, directors need to seek the advice of the company secretary on their best interests – such as whether they are adequately

protected by the company's D&O policies. I have always thought that the company secretary should be a single, unique role. Some companies have combined it with the role of the CFO, the general counsel, or an executive director role, but I personally think that it is best just to be the company secretary. That way you can have a dedicated focus on the work that you need to do.'

But there are no hard and fast rules on this issue. After I retire, the company secretary role at CLP will be combined with the general counsel role backed up by a deputy company secretary.'

What are your feelings about retiring from CLP?

'Mixed feelings. I will miss my good colleagues and I will definitely miss my chairman; he's such a gentleman. I will miss the job satisfaction here, but I think it is time to move to the next chapter. I am glad that I will have more time for other things. For example, I am very involved with the Hong Kong Breast Cancer Foundation. I would like to spend more time to promote breast health, in particular to underprivileged women. When you approach your retirement age, you find that you need to learn more. I have already found that I am inadequate in so many things. I need to learn computer skills, I need to get a coach for my golfing, I want to learn singing and also leave some time for travelling.'

When you were HKICS President, you emphasised the need for company secretaries to speak out – do you think that this message is a key part of your legacy for the profession?

'Yes and I think the Institute's voice is heard more these days, as evidenced by the many soft consultations that HKICS members are invited to contribute to by the Securities and Futures

Commission and the Exchange before the publication of their public consultations. In recent years, we have also published a lot of research papers and guidance notes. These help to promote the voice of our members, and enhances our status and recognition in Hong Kong as well as globally.

Having said that, the Institute is looking for further improvements. In particular we need to reach a wider audience through channels such as TV, radio, newspapers and social media. When I was president, I did a lot of interviews and had a series of talks about governance matters on the radio. I hope we can do more of this.

Another legacy I would say is the establishment of the Corporate Secretaries International Association (CSIA), of which I was the first elected president.'

At the time the CSIA was set up, the Institute of Chartered Secretaries and Administrators (ICSA) was facing difficulties and it was a more internally-focused organisation. Now that the ICSA has relaunched itself with a global focus, do you think there is a potential overlap with what the CSIA was set up to do?

'Being a member of ICSA, I am pleased to see the ICSA moving forward by opening itself up. But the CSIA does need to identify what its niches are. The CSIA needs to find how it can differentiate itself from the many other governance organisations in the world. I think the best way to do this is to pursue initiatives like lobbying the WTO to include the 'corporate governance, compliance and secretarial advisory services' listing in its 'Trade in Services' business classification listings. This initiative started when I was president of the CSIA and I do hope that the organisation will strengthen its cohesiveness and bring forward this initiative. It will be a long and difficult journey, but it will help to differentiate the CSIA from other governance organisations around the world.'

What do you think the big issues for corporate secretaries will be in the years ahead?

'I think there will be three major issues. The first one will be the regulatory environment. There will be tighter regulation, more stringent listing rule requirements and more demands from stakeholders.

The second issue will be the changing expectations regarding ethics, values and codes of conduct. The ICAC has just done an opinion survey which looked, among other things, at people's tolerance of bribery. The survey found that there was a higher tolerance level

among younger people (those aged 15–24), when compared to that of the older generation (those aged 25–64). In fact, the younger group's tolerance was almost double that of the older group. That's very worrying. Professionals will need to address this issue in the years ahead, looking at questions such as – how can we rejuvenate the code of conduct under which we operate? What ethical standards and values should we uphold and embrace in order to be considered a professional and good company secretary?

The third issue will be keeping informed about the international trends in corporate governance. Company secretaries need to remain up to date with these trends and developments if they want to be considered professional and if they want to stay ahead of the game.'

April Chan was interviewed by Kieran Colvert, Editor, CSj.

Pro Bono

April Chan's career has been defined not only by her professional work, but also the *pro bono* work she has done for the profession and other public service organisations. She has served as a director of the Hong Kong Coalition of Professional Services; an 'Observer' at the Independent Police Complaints Council; and a member of the Citizens Advisory Committee on Community Relations (CACCR) and the Mass Media and Education Sub-Committee of CACCR at the Independent Commission Against Corruption of the HKSAR.

Her work for the profession culminated in her presidency of both the Hong Kong Institute of Chartered Secretaries (HKICS) and the Corporate Secretaries International Association (CSIA). She has also served as Chairman of the HKICS Membership and Human Resources Committees, and the HKICS Company Secretaries Panel, Technical Consultation Panel and Special Entry Scheme Interview Panel.

She continues to serve as the Chairman of the HKICS Technical Consultation Panel and HKICS Appeal Tribunal (appointed in January this year), and as a member of the HKICS Special Entry Scheme Interview Panel. She also continues to serve both as a Council Member and Company Secretary for the Hong Kong Breast Cancer Foundation and as the Honorary Secretary of the Hong Kong Women Professionals & Entrepreneurs Association.

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



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Talking strategy

CSj talks to the new HKICS President, Ivan Tam, about the way forward for the Institute and the profession in the years ahead.

Thanks for giving us this interview. Could we start by discussing the strategic goals you will be working towards during your term as HKICS president?

'I would like to keep up the momentum of the work of my predecessors in this role. Our Institute is dedicated to the promotion of our members' role in the formulation and effective implementation of good governance policies, as well as building up the professionalism of our members working in Hong Kong and the Greater China region – this is the region we cover for the Institute of Chartered Secretaries and Administrators (ICSA). Apart from our China development, we shall carry on promoting international ties and exploring ways to extend our reach to Taiwan very soon.

As the Institute has stronger and sustainable financial strength now, this means we can be more ambitious in our objectives – particularly in terms of building up our member and student support services.

The number of our members and students is increasing steadily – right now we have over 9,000 in total – and I think that upward trend will continue in the years ahead because of the rising demand for the value Chartered Secretaries, who are governance professionals, bring. Hong Kong is going through a period of change at the moment, but it is a leading global financial centre with significant competitive advantages. It has a very good infrastructure, particularly in terms of international standards and high corporate governance principles that are being practised in Hong Kong, in these areas our Institute is very strong.

China is a very big market and while it is also experiencing a period of change right

now – it has its own domestic reform – but the prospects are good. The renminbi is going to be globalised and national policy, not just the 'Belt and Road' initiative, promotes outbound investment. So Hong Kong continues to be very well placed as a springboard for companies in China seeking overseas listings. When companies want to list here or go out for outward investment, they need to adopt best practice in corporate governance and this is where our members play a role – companies need the professional support that company secretaries bring.'

You mentioned the need to build up the Institute's member and student support services – can we discuss that in more detail?

'To ensure our members are equipped with the technical knowledge and professional skills required to effectively carry out their duties has always been our goal. In terms of professional development, we aim to strengthen our Enhanced Continuing Professional Development (ECPD) programme, particularly in the areas of new regulations as well as practical training. We continue to invite the regulators, our senior members, other professionals such as accountants and lawyers, as well as renowned academics, to conduct seminars on new regulations and corporate governance related matters

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in the long term we should aim to be the leading governance institute in the region

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to update and enhance the knowledge of our members. You may also be aware that we have recently launched a new "Practical Workshop" series of seminars. We aim to further enhance this area so that new graduates can learn practical tips about company secretarial practice. This will help employers in the training of their junior staff.

We have also been able to line up seminars based on the *Corporate Secretaries Toolkit*, which was launched in 2014 by the Corporate Secretaries International Association (CSIA). Like our "Practical Workshop" series of seminars, the Toolkit was designed to provide training materials on the core knowledge and skills company secretaries need in their work. Seminars based on the Toolkit will be conducted for our members shortly.

We are also looking to upgrade our services to affiliates, members and students in

Highlights

- the HKICS aspires to be the leading governance institute in the region
- with greater financial resources available, the Institute intends to upgrade its member and student support services
- the upgrade will involve more CPD training on core company secretarial practice topics, expanding the reach of the Institute's Affiliated Persons (AP) programme and strengthening the Institute's advocacy and research work

Mainland China and to expand the reach of our Affiliated Persons (AP) programme. Initially we invited H-Share board secretaries to join our AP programme and now 47% of the H-Share board secretaries are our affiliates. We think it is time to be less restrictive in the criteria we look for when inviting affiliates to join our AP programme. After all, governance and compliance standards are just as important to multinational corporations and private enterprises. We intend to broaden the reach of the programme to include the board/company secretaries and senior executives of these types of companies.

We will still be focused on quality rather than quantity in our China work, though.

Our work towards professionalising board secretaries in the Mainland and providing training opportunities to our members and affiliates will continue. In fact, this month we have meetings lined up with the China Association for Public Companies (CAPCO) in Beijing and soon with the Shenzhen Stock Exchange to discuss joint training opportunities and other areas for collaboration. We will assist and contribute in developing more uniform nationwide standards in board secretary practice in China!

Will the HKICS be putting more resources into these areas?

'Yes, the Institute is in a stronger position financially and this means we have more

resources to put into our work. In 2015, the Institute rolled out the e-version of our monthly journal CSj to facilitate easier access by members and students anywhere they go, as well as help preserve the environment. We have also facilitated members and students to settle their payments by various credit cards. This year, the Institute has embarked on a major project to upgrade its membership database system. We aim to provide an enhanced and more automated service to our members. More information will be available to members later this year. We also plan to hire new people for our secretariat here in Hong Kong. I think we should set up a China desk at the Hong Kong secretariat to work closely with our Beijing Representative Office (BRO). We need to create a special team for that.

Meet your new president

Ivan Tam Kwok Wing has been a member of the HKICS since 1997 and became a Fellow in 1998. He joined the Council in 2010 and was elected to the HKICS presidency on 15 December 2015. He has contributed to the Institute's work both in Hong Kong and Mainland China, particularly in the areas of education and professional development. He continues to serve on the Mainland China Focus Group; ICSA/HKICS Name Working Group; Professional Development Committee; Company Secretaries Panel; and Technical Consultation Panel.

Ivan initially worked for a law firm and joined his current employer, the Chevalier Group, in 1986. As Executive Director and Deputy Managing Director at Chevalier, he oversees all legal affairs of the Group and is responsible for the operations of cold storage and logistics; fresh produce supply; insurance services; property investment and development; property management; and travel agency businesses.

Ivan also holds a number of public service appointments, including the appointment as the Honorary Vice Consul of the Kingdom of Bahrain to Hong Kong SAR and his membership of the Chinese People's Political Consultative Conference (CPPCC) of Changchun and Xuhui District of Shanghai, and the Guangdong Chamber of Foreign Investors. He is the Immediate Past President of the Hong Kong Association of Property Management Companies and a Councilor of the General Insurance Council in The Hong Kong Federation of Insurers. He is also a Fellow Member of the Chartered Institute of Arbitrators, the Royal Institution of Chartered Surveyors and a Chartered Member of the Chartered Institute of Housing.

I should add that the "upgrade" will affect all areas of our work. For example we are also looking to strengthen our advocacy and research work. In May this year, we will be launching our Anti-Money Laundering and Counter Financing of Terrorists (AML/CFT) Charter for corporate services providers (CSPs). CSPs will be able to subscribe publicly to the Charter to demonstrate that they are in compliance with prevailing best practice in AML/CFT compliance. In September we will be launching a new research report on shareholder communications and of course that same month will see our latest biennial corporate governance conference get underway!

The ICSA UK Division (UKRIAT) has just changed its name to 'ICSA: The Governance Institute' – do you think the HKICS is in need of a similar rebranding exercise?

'Actually, the Institute has been looking at this for some time. Last year, we set

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the Institute is in
a stronger position
financially and this
means we have
more resources to
put into our work
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ourselves the goal to become a leading governance institute in the region. At the Council strategy planning session last month, we were in agreement that we are now ready to replace the "a" with "the" – in other words, in the long term we should aim to be *the* leading governance institute in the region. With that in mind we also reached agreement that we should explore our options regarding changing the Institute's name. We have set up a ICSA/HKICS Name Working Group which is working on this!

Australia was the first ICSA Division to opt for a name change – adopting the name Governance Institute of Australia (GIA). In interview with CSj, Tim Sheehy, the former GIA Chief Executive and the current Director-General of the ICSA, said that the rationale behind the change was the need to create a more inclusive association of practitioners working in diverse fields who are linked

by being governance professionals. Would that also be the goal in Hong Kong?

'Yes, that is very much the concept. Many members of the ICSA and HKICS do not actually work as company secretaries – they may work in administration, they may work in corporate services, they may work in a number of different fields but corporate governance is the common thread linking them together. But we do need to be careful to ensure that any change does not undermine the interests and benefits that members currently enjoy in the HKICS. I think we should also bear in mind that the term "company secretary" has been adopted for many years in the listing rules and our profession is recognised under this term. Clearly, this is not a simple matter. Apart from anything else, we need to consider not just the name of the Institute but the professional knowledge and expertise that they can offer.'

Do you think that the current rebranding exercise in ICSA will eventually lead to a new professional title to replace the term 'company secretary'?

'We had a good discussion about this at our strategy planning meeting. If the career title bears the "governance" term, that will tie in if we are changing the Institute's name along those lines. In fact, "Chief Governance Officer", or CGO, is a term that is already in use in the US – it has joined the CEO and CFO designations. We have been told by some of our APs in China that the CGO title would enjoy better recognition. We will not rush to make a decision on the Institute's name and the professional title. We shall research and survey our stakeholders first. In any event, the rebranding is worthwhile only if it brings more value to the Institute and our members.'

Ivan Tam was interviewed by Kieran Colvert, Editor, CSj.

The Competition Ordinance – your questions answered

Since December 2015, businesses in Hong Kong have needed to ensure compliance with Hong Kong's new Competition Ordinance. This month, the Competition Commission answers key questions about the Ordinance, the Commission's enforcement priorities and how to ensure compliance.

What advice do you have to help businesses in Hong Kong comply with the Competition Ordinance?

'The Competition Ordinance (the Ordinance), by prohibiting anti-competitive behaviour, helps maintain a level playing field for businesses. This encourages effective distribution of economic resources, drives continuous innovation of products and services, enhances efficiency in supply and thus raises companies' competitiveness. Businesses, no matter how big or small, will stand to gain from the Ordinance which deters abusive anti-competitive practices.

Compliance with the Ordinance should be straight forward. Regardless of their size, businesses should make sure they never agree with their competitors to engage in cartel activities which include price-fixing, market allocation, output restriction and bid-rigging. They should also watch out for other arrangements between businesses that in some circumstances can harm competition such as sharing competitively-sensitive information like future price intentions. Larger businesses which might have substantial market power also have to ensure they don't abuse that power.

Our overall message is that if you act fairly and compete on a level playing field you will find that compliance is not necessarily costly or complicated. The key to successful competition compliance is to understand the risks the business is exposed to, manage those risks and ensure that all your staff are mindful of the need for compliance.

To help businesses review their business practices and develop a compliance strategy that best suits their needs, the Competition Commission (the Commission) has published a practical

toolkit: *How to Comply with the Competition Ordinance – Practical Compliance Tools for Small and Medium-sized Enterprises*. Businesses are welcome to download it from the Commission's website (www.compcomm.hk).'

What will be your enforcement policies/strategies?

'As mentioned in our enforcement policy, in the initial stage of the Ordinance's full operation, the Commission intends to direct resources to investigations and enforcement actions that result in the greatest overall benefit to competition and consumers in Hong Kong. Cartel conduct which includes price-fixing, output restriction, bid-rigging and market sharing are among those which the Commission will accord priority to.'

Do you think businesses are sufficiently aware that relatively common trade practices could potentially breach the ordinance?

'The Competition Ordinance has been in place for more than three years before coming into full force on 14 December 2015. The Ordinance was enacted in June 2012 with a design to phase in implementation so that businesses would have time to get familiar with the law and to get prepared. The Commission

has also made use of the time to engage with businesses, trade and professional associations, business chambers and the general public to assist them to become ready for the full implementation of the Ordinance. It has also produced numerous guidelines, education materials, brochures and run many meetings, seminars and exhibitions to help businesses understand the Ordinance.

Since the start of our engagement exercise, we have seen increased awareness and strong interest from stakeholders. Certain trades have ceased long-term business practices that might infringe the competition rules, demonstrating the emergence of a compliance culture. The latter development reflects well on our advocacy work. Our work on advocacy and education will be ongoing.'

One area of concern is the likely interpretation of the First Conduct Rule – in particular determining where to draw the line between legitimate dialogue between businesses and anti-competitive 'agreements, decisions and concerted practices' – do you agree that this will be a difficult judgement call for businesses?

'Businesses often share information. This is normal commercial behaviour that

Highlights

- the key to successful competition compliance is to understand the risks the business is exposed to, manage those risks and ensure that all your staff are mindful of the need for compliance
- businesses should not exchange competitively-sensitive information whether privately or through a trade association
- organisations that comply with competition law will perform strongly in their market by competing as efficient, innovative players in their field

rarely has anti-competitive impacts. However, sharing competitively-sensitive information – that is, strategic information that a business normally doesn't want its competitors to know, such as future prices, quantities and customers – can harm competition. Businesses should not exchange competitively-sensitive information whether privately or through a trade association.

Trade associations should set a good example and educate their members about making independent pricing decisions, and should not assist members to share competitively-sensitive information with each other.

To avoid infringing the law unintentionally, you should distance yourself from any meetings/events, or simply leave the scene when discussions on competitively-sensitive information occur.'

Will any attempt to pressurise distributors/retailers to observe recommended resale prices be considered price-fixing?

'Resale price maintenance (RPM) occurs when one business (such as a manufacturer) tries to set the price at which another business (such as a retailer) can sell an item, or imposes a minimum resale price on the other business. Such arrangements can undermine retailers' and similar businesses' pricing freedom and restrict competition. The Commission considers that RPM may have the object of harming competition and there may be circumstances when it amounts to serious anti-competitive conduct.

Nonetheless, there may be some circumstances where a specific RPM arrangement does not have the object of harming competition because of its

context and the purpose pursued by the arrangement. Where this is the case the Commission will assess whether the RPM causes harm to competition by way of its effects on the market.

Depending on the facts of the case, an RPM arrangement having the object or effect of harming competition might be excluded from the First Conduct Rule by reference to economic efficiencies.'

There has been some concern about when a business will be deemed to

have substantial market power. Could you elaborate on your enforcement policies regarding compliance with the Second Conduct Rule and, in particular, will you be providing guidance on what level of market share will be deemed to be substantial market power in Hong Kong?

'As stated in the Commission's guideline on the Second Conduct Rule, a substantial degree of market power arises where a business has the ability profitably to charge prices above competitive levels, or to restrict output or quality below

Mergers – a clarification

Mergers are exempted from the conduct rules under the Competition Ordinance. However, there is a separate merger rule (the Merger Rule) which applies only to mergers with respect to an undertaking which directly or indirectly holds a carrier licence within the meaning of the Telecommunications Ordinance.

On an issue relating to harm to competition in the telecommunications space, the Competition Commission and Communications Authority (Commission) will determine whether a merger:

- (1) has lessened, or will likely lessen, competition in Hong Kong, and
- (2) was within any exclusion under the Competition Ordinance.

The Commission will also determine the manner of notification of the Commission in relation to a merger. Whilst notification of a merger or a proposed merger is not required under the Competition Ordinance, the Commission does have investigative powers to ensure compliance with the Merger Rule. The Commission therefore advises undertakings to approach it to seek informal advice on a confidential basis and, where appropriate, to apply for a decision that the merger is a merger which would be excluded from the Merger Rule.

Undertakings should, where they believe that they are in a merger type situation, establish whether there is in fact a merger which would bring their conduct outside the conduct rules. In case of doubt, the Commission could be approached for informal confidential views, or a formal decision. In any event, where the merger relates to the telecommunications sector, that is, directly or indirectly involving a carrier licence within the meaning of the Telecommunications Ordinance, merger filing should be considered from a risk management perspective.

competitive levels for a sustained period of time.

The Commission maintains its view that market share does not alone determine whether an undertaking has substantial market power. Factors such as ease of entry and expansion, availability of supply-side substitution and buyer power have the capacity to prevent a firm with a high market share from having a substantial degree of market power.

In addition, market structures in Hong Kong vary widely. There is a risk that applying a particular market share percentage across sectors would become the focal point of analysis of substantial market power and could lead to an incorrect assessment regarding the existence or absence of substantial market power in a particular market.'

What message should company secretaries be giving directors regarding compliance with the Competition Ordinance?

'Organisations of any size have an important task of risk awareness and risk management. The key to effective risk management in competition law is instilling a compliance culture in an organisation which means that managers at all levels of a business, from the top down, need to demonstrate a commitment to complying with the law. Organisations that comply with competition law will perform strongly in their market by competing as efficient, innovative players in their field.

Company directors should take proactive steps to understand the Ordinance, identify risk areas and set up compliance programmes. The board and senior management must take overall

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responsibility for instilling a commitment to compliance – and the sales force, the contract negotiators and your business teams need to be aware of their obligations.

Company directors should be aware that the Competition Ordinance gives the Commission power to apply to the Competition Tribunal for an order disqualifying a person from being a director of a company. The Competition Tribunal will have the discretion to impose a disqualification order if the company is found to have contravened a competition rule and the Tribunal considers that person's conduct as a director makes the person unfit to be concerned in the management of a company.'

There has been a trend for legislation in Hong Kong to be more principles-based than in the past – do you think this is true of the Competition Ordinance and will companies need to make judgement calls regarding the spirit as well as the letter of the Competition Ordinance?

'The Competition Ordinance seeks to prohibit undertakings from adopting conduct which has the object or effect of harming competition in Hong Kong. Similar to established competition law regimes, it provides for general prohibitions in three major areas of anti-competitive conduct (described as the first conduct rule, the second conduct rule and the merger rule). As required by the Ordinance, the Commission has issued six sets of Guidelines to elaborate on the key elements of the general prohibitions to provide practical and detailed guidance on how the principle-based competition law would be interpreted and applied. The Guidelines are applicable to all sectors and industries in Hong Kong.'

Competition Commission

The Competition Commission's guidelines on compliance with the Competition Ordinance are available on the Commission's website (www.compcomm.hk).

Concise and precise: the art of taking minutes

This month we launch the first in a new series of articles looking at the practical skills and knowledge company secretaries need to acquire. Anthony Rogers GSB QC JP FCIS FCS, former Vice-President of the Court of Appeal of Hong Kong and a Senior Member of the HKICS, looks at a skill which has been an essential part of the company secretarial function for as long as the profession has been around – minute drafting.

In many ways, minute drafting for company secretaries is back to basics. For convenience, in this article the company secretary will be referred to simply as the secretary. As the person responsible for administrative duties, it has always fallen to the secretary to be responsible for the minutes. Increasingly, the secretary has many other important duties and responsibilities, but the preparation of minutes remains a crucial part of the secretary's role.

Quite simply, the minute is the official record of a meeting. The minute may be of a company's general meeting, a board meeting or a committee meeting; in all cases the basic facts of the meeting which have to be recorded in the minute will include:

- the persons present – whether the persons were there for all or part of the meeting and note can be taken of the apologies for absence

- the time and place of the meeting
- what was discussed (not what was said)
- any conclusions reached
- any resolutions passed with the exact wording, and
- the date of the next meeting (if agreed).

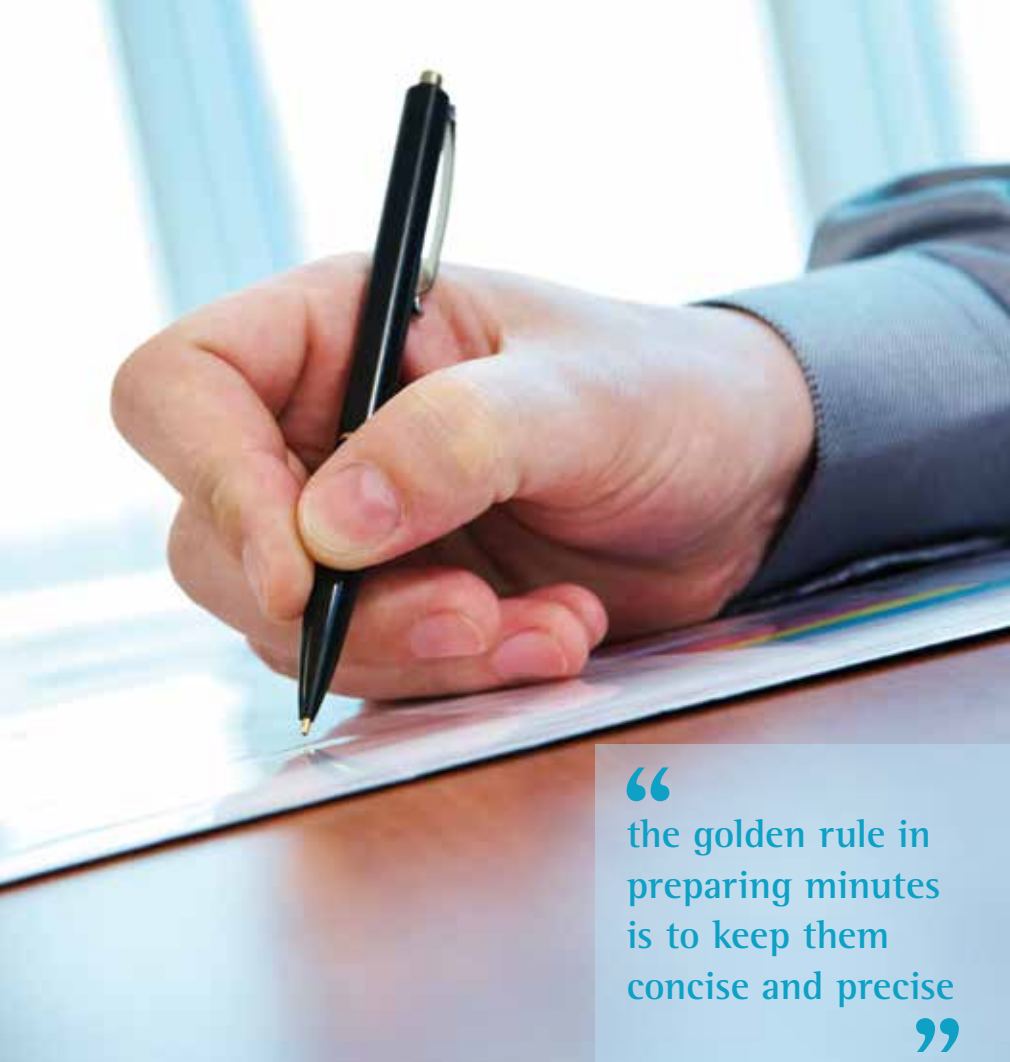
The golden rule in preparing minutes is to keep them concise and precise. Sometimes, what passes for a minute is simply a verbatim transcript of everything said at the meeting – such a record is a transcript not a proper minute.

The secretary will normally be responsible for the initial draft of the minutes of all company meetings, including annual general meetings or any extraordinary general meetings and also for the

initial drafting of the board meeting minutes. In respect of committees and panels there will usually be a secretary appointed for such committees. In each case, the chairman of the meeting will be responsible for the final version of the minutes.

Before turning to some thoughts about the practicalities of drafting, it is as well to remember that there are legal requirements governing the preparation and retention of minutes. Many of the procedures which are regarded as natural are, in truth, required by statute. In this article, reference will be to the Companies Ordinance Cap 622. For example all companies must keep records, which include minutes, of all general meetings for at least 10 years (see Section 618). Those minutes are required to be kept at the Registered Office or a place designated by the company (see Section 619) and may be inspected by members of the company (see Section 620). It can





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”

also be noted that written resolutions appointing an auditor must be sent to the retiring and incoming auditors (see Section 401) who also have a statutory right to attend the meetings and have copies and inspect the minutes.

Care also has to be taken now in respect of one-member companies. These are becoming more common following the change in the law. If such a company takes a decision which can only be taken in general meeting, or has the effect as if agreed by the company in general meeting, the member must provide the company with a record within seven days unless the decision was taken in writing (see Section 617). It should also be remembered that a single shareholder must solemnly remind himself of any conflict of interest and that, of course, must be minuted.

When it comes to resolutions taken at company meetings, the minutes become

crucial. The minutes should record the names of the proposer and seconder and whether the resolution has been passed or not and whether by a particular majority. Once the chairman of the meeting has made declarations in respect of those matters and there is an entry of that declaration in the minutes of the meeting, the minutes become conclusive evidence of that fact without further proof (see Section 590).

Highlights

- the minutes are a legal record of the proceedings at a meeting and are *prima facie* proof that the meeting was duly held and convened
- minutes may be important to show what matters have been considered in coming to a conclusion – this is becoming increasingly important with the ever increasing resort to litigation
- audio recordings of meetings are now almost universal but are no substitute for note taking – it is time-consuming to go back to recordings and the sense of the discussion still has to be distilled

Where there is a poll, things have become slightly more complicated under the new Companies Ordinance. Now the company must record in the minutes of proceedings of the general meeting not only the result of the poll, which includes the number of votes in favour of the resolution and the number of votes against the resolution, but also the total number of votes that could be cast on the resolution (see Section 594). That last figure can be a little bit complicated because it may depend on how many proxies attended the meeting.

The importance of minutes of a general meeting is highlighted by the fact that, if the minutes purport (whatever that means) to be signed by the chairperson of that meeting or by the chairperson of the next general meeting, they are evidence of the proceedings at the meeting and are *prima facie* proof that the meeting was duly held and convened, that all proceedings at the meeting duly took place and that all appointments made at the meeting are to be regarded as valid (see Section 621).

There are corresponding provisions in relation to minutes of board meetings. For example the proceedings have to be

recorded and the minutes kept for 10 years (see Section 481). There are similar provisions regarding the authenticity of the minutes and regularity of the conduct of the meeting once the minutes have been signed by the chairperson of the meeting or by the chairperson of the next directors' meeting (see Section 482).

One further point in relation to companies where there is a sole shareholder and director is that if the company makes a contract otherwise than in the ordinary course of the company's business, and that contract is not in writing, then the terms of the contract have to be set out in a memorandum which has to be delivered to the company within 15 days (see Section 482).

Note taking

When it comes to taking notes from which the minutes will be prepared, preparation is vital. At this stage the secretary, or other person, is the note taker but is not yet the minute drafter or taker. The note taker has to be familiar with the background to the meeting. That will inevitably entail reading previous minutes, knowing who will be attending the meeting and knowing the details of the agenda items. It is always wise to be familiar with any technical terms which are likely to be used, otherwise it may be difficult to follow and note the effect of any discussion. Audio recording of meetings is now almost universal but it is no substitute for note taking. It is time-consuming to go back to recordings and, at the end of the day, the sense of the discussion still has to be distilled.

Those taking notes for the minutes will often find it convenient to sit next to, or close to, the chairman of the meeting. This will be important on occasions, for

example if the person does not recognise a particular speaker. Attendance sheets are particularly important so that there is no doubt as to who attended the meeting.

Note takers have to ensure that they clearly understand what is discussed and should not be afraid to ask then and there if they find it necessary to clarify things. It is often highly unsatisfactory to ask afterwards what has been said. It is too easy to be given a one-sided view, even if the person giving the information has time after the meeting.

In taking notes it is important to concentrate on what is discussed and on the focus of the discussion. The note taker records the points that are raised but should avoid trying to take verbatim notes because they are generally not useful. They tend to be incomplete because the conversation usually goes too fast. What is more important is to get the sense of what is being said. Accounts and figures often present difficulties for note takers. Accountants and those going through accounts tend to rattle the figures off and it is difficult to get specific numbers down accurately at that time. The note taker should attempt to get the meaning of what the accountant or other person is saying and should keep pointers as to the particular figures, for example particular expenses. It is easier to make marks on the accounts so as to know where to find the specific figures. Then an accurate reference can be included in the minutes. One of the dangers to be avoided during a meeting is for the note taker to fail to stay focused. When the discussion becomes repetitive and boring there is a temptation to start tidying up the notes. It is important that the note taker maintains concentration on what is being said otherwise something might well slip by.

Another danger is that, if the note taker is a participant in a discussion, objectivity may be lost.

Turning notes into minutes

It is highly advisable to produce the first draft of the minutes within 48 hours of the meeting. As with other tasks, it is often the case that what seems to be a daunting or tedious assignment turns out to be not too difficult. The danger of delaying the preparation of the first draft is, of course, that memory lapses. Moreover, other people will also forget important points. Experience has shown that there is nothing worse than having to piece together what must have happened at a previous meeting when the next meeting is looming.

When minutes are prepared, the format should follow the format of the previous minutes. The third person style is preferable and it is prudent to keep names out of the minutes wherever possible. By concentrating on what was discussed rather than what was said by whom, it is more likely that the relevant facts will be recorded. There is another good reason for not mentioning names – once a name is mentioned, requests to be named will almost inevitably be made by others which will lead, increasingly, to the inclusion of verbatim notes of discussions.

There are some occasions when it is necessary to include names. As mentioned earlier, the minutes should record the names of the proposer and seconder of resolutions at company meetings. The minutes also need to record who is expected to act upon a board decision. Usually follow-up action by board members is noted at the right-hand side margin so that it is easily visible as to who has to do what before the next meeting.

“ minutes should always be drafted on the basis that they may be subject to production in court as evidence, although they may find their way onto the front page of the newspaper ”



Similarly, directors will need to be named where they request their dissent from a board resolution to be noted, or where their conflicts of interests need to be disclosed in the minutes. The record of a dissent or a conflict of interest are crucial for any future questions of liability. The record of a conflict of interest may have to be accompanied by a record of the action taken to mitigate such a conflict, for example withdrawing from the meeting while the matter is discussed and/or abstention from voting.

It is not every point that has to be minuted. For example, not all the pros and cons of a particular matter need to be minuted. What should be minuted are points that would be useful in the future. In this respect the purpose of the minutes should always be borne in mind. Minutes may be there simply to record resolutions. In that case the exact wording of any resolution should always be set out. Minutes may also be important to show the sequence of how different matters have progressed. This will help those who need to know why certain decisions were taken or were not taken.

Minutes may be important to show what matters have been considered in coming to a conclusion. This is becoming increasingly important with the ever increasing

resort to litigation. Board minutes may be required at some stage to show that there has been no unfair treatment of minorities. In one case the minutes of a health authority were important to show that rational consideration had been given as to what treatments could be offered to special patients.

Minutes should always be drafted on the basis that they may be subject to production in court as evidence although they may find their way onto the front page of the newspaper. Minutes should be written so that they are easily comprehensible to anybody. That will require that jargon is avoided wherever possible. Abbreviations also can be annoying to the reader. Paragraphs should be numbered. There is no need to keep the exact order of any conversation. It is far better to group matters in a way that will make it more comprehensible.

Where possible, cross-references can be inserted in the minutes to where any other documents can be found. Nowadays, with every company having its own website, lengthy items and speeches can be made easily available for those who want to, or need to, have reference to them.

Signing the minutes

Once the draft minutes are ready, they

should be sent to the chairman of the meeting for his approval. Minutes are usually signed at the next meeting after they have been formally approved. As noted, the minutes become official when they have been signed by the chairman of the meeting or by the chairman of the next meeting.

After the minutes have been signed, they cannot be amended. If mistakes are found after the minutes have been signed, then they should be acknowledged in a subsequent meeting and the minutes of the subsequent meeting should make that clear. The only exception might be a minor typographical error, in which case the original minute should be clearly altered and the amendments initialled and the matter noted at the next meeting.

Anthony Rogers GSB QC JP FCIS FCS
Senior Member, HKICS

Anthony Rogers is a former Vice-President of the Court of Appeal of Hong Kong, Chairman of the Standing Committee on Company Law Reform and a member of the Basic Law Consultative Committee. He was awarded the 2015 HKICS Prize for his leading role in the Chartered Secretarial profession in Hong Kong.

Company secretaries – know your duties



A recently concluded Market Misconduct Tribunal hearing highlighted the essential responsibilities and duties of company secretaries in Hong Kong. Mike Scales FCS FCIS, former Chairman of the Institute of Chartered Secretaries and Administrators in Hong Kong Ltd, takes a look at the lessons that should be learned from this case.

In March 2015, a Market Misconduct Tribunal (the Tribunal) hearing was concluded which had looked into dealings in the shares of Asia Telemedia Ltd (now known as Reorient Group Ltd) in 2007. No market misconduct was identified; however, in the course of the proceedings, the Tribunal commented on the expected roles and duties of Asia Telemedia's company secretary (who is a Chartered Secretary).

This article is not about the dealings in shares and is not intended to comment on the actions of the company secretary. However, HKICS members need to be aware of the comments made by the chairman of the Tribunal, Justice Hartmann, which are relevant in general to the duties expected of a company secretary of a listed company.

Justice Hartmann made reference to the HKICS publication *The Essential Company Secretary* – in particular its requirement for company secretaries to play an active role in promoting good governance. Whilst the Tribunal recognised that the company secretary's powers to make operational decisions may have been limited:

1. "her ability (and obligation) to give advice to the chairman and the board to ensure that the company complied with all the rules of good corporate governance was central to her responsibilities; and
2. advising on matters of good governance would have included advising on all matters relevant

Highlights

- the Market Misconduct Tribunal reaffirmed the duty of the company secretary to advise the chairman and the board on all matters of good governance
- the Tribunal made specific reference to *The Essential Company Secretary* as a description of the duties of company secretaries
- the Tribunal clarified that the company secretary's responsibility did extend to giving advice to the chairman and the board on matters that may constitute price-sensitive information

to the listing rules, and this in turn would have encompassed advising the chairman and the board on matters that should from time to time be reported to the market: such as matters that may constitute price-sensitive information."

HKICS members who are practicing company secretaries may want to take particular note of these comments, and re-read *The Essential Company Secretary*, which is available from the HKICS website (www.hkics.org.hk).

A fuller description of the comments made about the actions of the Asia Telemedia company secretary is set out below. The quotes are extracted from the report of the Tribunal into dealings in the shares of Asia Telemedia Ltd on and between 5 February 2007 and 6 June 2007. The full report is available on the Tribunal's website: www.mmt.gov.hk/eng/reports/reports.htm.

At one of the Tribunal hearings, the company secretary said that her duties with the company '...included

administrative duties such as preparing corporate governance reports (since 2006), annual returns and monthly returns, coordinating the printing of corporate documents such as announcements, circulars and annual reports, and organising shareholders' meetings'. She said that she 'also acted as an intermediary between the company's board of directors and the company's external advisers such as lawyers by relaying the instructions from the directors to the external advisers and relaying information and advice supplied

Essential reading

The Essential Company Secretary is a one-stop guide to the essential responsibilities and duties of company secretaries in Hong Kong. Compliance with guide is required of all members of the HKICS for both private and listed companies. The Institute deems the guide to be a description of the minimum standards of professional and ethical conduct for its members that are applicable across the board.


The most consistent theme of the guide is the need for HKICS members to actively promote good corporate governance practices and discharge their duties with a high degree of integrity. It points out that the reputation, both of the profession and the HKICS, 'stands and falls on the individual and collective efforts of its members in performing their duties with integrity, skill and dedication'.

The guide emphasises that company secretaries cannot afford to ignore any cases of non-compliance with legislation or regulation that come to their attention, even if the directors have purported to make someone else responsible for those matters. The company secretary has a duty to monitor these matters, regardless of the terms of his or her employment, and should draw such cases to the attention of the directors and advise them of their own and the company's duties and obligations.

The guide also specifically reminds company secretaries of their responsibilities regarding the disclosure of inside information. Since January 2013, company secretaries have been included in the definition of the company officers who are liable under the Securities and Futures Ordinance (SFO) if their intentional, reckless or negligent conduct results in a breach of the SFO disclosure requirements.

Appendix III of the guide reminds company secretaries of the need to:

- have procedures in place to identify, monitor and disclose inside information
- keep directors and senior management reminded of their continuous disclosure obligations, and
- properly document decisions on the disclosure of inside information and non-disclosure thereof based on safe harbours.

'The Essential Company Secretary' is available on the HKICS website (www.hkics.org.hk) under 'publications/ guidelines.' 

“ while the Asia Telemedia company secretary’s powers to make operational decisions may have been limited, clearly her ability (and obligation) to give advice to the chairman and the board to ensure that the company complied with all the rules of good corporate governance was central to her responsibilities ”



by such external advisers to the board of directors.’

However she qualified that by saying that, as the company secretary: ‘I had no power, nor was it my duty to decide how to respond to statutory demands or how to deal with the company’s debts.’

The Tribunal responded that: ‘While this statement may be accurate on the surface, it is in reality a reduced (and thereby artificial) description of the true nature and extent of her duties and responsibilities as company secretary of Asia Telemedia. While [she] may have had no ultimate power to make decisions concerning the operations of the company, that power being reserved to the chairman and the board of directors, nevertheless she was a member of senior management with a duty to advise [the chairman] and the board on all matters of good governance including compliance with statutory and regulatory rules applying to Hong Kong listed corporations.’

In this regard, the Tribunal was referred to the October 2013 edition of HKICS publication *The Essential Company Secretary*. Although published after the

employment period of the Asia Telemedia company secretary, the Tribunal stated that it had no reason to doubt that the broad duties outlined in the publication marked the essential role of company secretaries well before the date of publication.

By way of an overview, the publication states that a company secretary is regarded as both an officer and part of the senior management team, and at the centre of the board’s decision-making process. Moreover, company secretaries are expected to use their influence to promote good corporate governance. Accepting that publications of this nature tend to set parameters of perfection, the broad fact remains that, while the Asia Telemedia company secretary’s powers to make operational decisions may have been limited, clearly her ability (and obligation) to give advice to the chairman and the board to ensure that the company complied with all the rules of good corporate governance was central to her responsibilities.

Those, like the Asia Telemedia company secretary, who advise on the correct course to be taken may not exercise full decision making power but they guide it. In this case, the company secretary’s

responsibility to advise on matters of good governance would have been all the more important because the chairman was a Mainland businessman who could not be expected to be as proficient in the dynamics of Hong Kong rules of good governance as a businessman with long experience of working in Hong Kong. Asia Telemedia being a listed company, advising on matters of good governance would also have included advising on all matters relevant to the listing rules and this in turn would have encompassed advising the chairman and the board on matters that should from time to time be reported to the market: such as matters that may constitute price-sensitive information.

Mike Scales FCS FCIS

Mike Scales is Past Chairman of The Institute of Chartered Secretaries and Administrators in Hong Kong Ltd (the precursor of HKICS) and co-author of the 2013 edition of ‘The Essential Company Secretary’.

The Market Misconduct Tribunal report is available on the Tribunal’s website: www.mmt.gov.hk/eng/reports/reports.htm.

Professional Development

Seminars: January and February 2016

15 January
Understanding and mitigating corruption and bribery risks



Chair: Grace Wong FCIS FCS(PE), Institute Professional Development Committee Member, and Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd
Speaker: Jason Wong, Principal, Risk Advisory Service, BDO Ltd

22 January
Spin-offs



Chair: Dr Davy Lee FCIS FCS(PE), Institute Membership Committee Member, and Group Company Secretary, Lippo Group
Speaker: Daniel Wan, Partner, Francis & Co, in association with Addleshaw Goddard (Hong Kong) LLP

4 February
All that you need to know about shareholders' rights



Chair: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Senior Director and Head of Technical & Research, HKICS
Speaker: Paul Kwan, Partner, Deacons

20 January
New reporting exemption for non-public companies and other impacts of the new Companies Ordinance on financial reporting for the non-accountant (re-run)



Chair: Susan Lo FCIS FCS(PE), Institute Professional Development Committee Member, and Executive Director, Director of Corporate Services and Head of Learning & Development, Tricor Services Ltd
Speaker: Catherine Morley, Partner, Department of Professional Practice, KPMG China

26 January
Company secretarial practical training series: annual general meeting – private and listed companies (re-run)



Chair: Edmond Chiu FCIS FCS, Institute Membership Committee Member, and Director, Corporate Services, VISTRA Hong Kong
Speaker: Francis Yuen FCS FCIS, Institute Education Committee Member, Assessment Review Panel Chairman and Director of a consulting company

ECPD

Forthcoming seminars

Date	Time	Topic	ECPD points
15 Mar 2016	6.45pm – 8.45pm	Competition Law – part 1 (re-run)	2
17 Mar 2016	6.45pm – 8.45pm	Competition Law – part 2	2
22 Mar 2016	6.45pm – 8.15pm	Optimising corporate structures for effective cost management – legal entity rationalisation	1.5
6 Apr 2016	2.30pm – 5.45pm	Disclosure of inside information, disclosure of interest and model code (re-run)	3
7 Apr 2016	6.45pm – 8.15pm	Cross-border insolvency and litigation funding	1.5
14 Apr 2016	4.30pm – 6.00pm	Emerging risks in China's new normal	1.5
25 Apr 2016	6.45pm – 8.15pm	Company secretarial practical training series: how to handle corporate changes – such as, company name, officer, auditor, accounting reference date (re-run)	1.5
25 May 2016	6.45pm – 8.45pm	Company secretarial practical training series: annual general meeting – private and listed companies (re-run)	2

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.

Annual Corporate and Regulatory Update (ACRU) 2016

The HKICS Annual Corporate and Regulatory Update (ACRU) seminar brings together regulators and market participants in a direct dialogue about regulatory compliance. This year's ACRU, which is to be held on Friday 20 May 2016, will feature

speakers from the Companies Registry, Hong Kong Exchanges and Clearing Ltd, the Official Receiver's Office, and the Securities and Futures Commission. This signature HKICS event will provide first-hand knowledge about the latest corporate and regulatory developments, as well as emerging trends from leading

regulatory bodies. Don't miss this opportunity to further your professional development.

For details, please refer to page 11 of this month's journal.

Advocacy

Best board secretaries

One Institute member and 14 Affiliated Persons (APs) received 'Best Board Secretary' awards at the 2015 China Financial Market Listed Companies Awards on 26 January 2016. The event was organised by *China Financial Market*, a financial magazine, and co-organised by the Hong Kong Chinese Enterprise Association. Institute Chief Executive Samantha Suen FCIS FCS(PE) presented the Best Board Secretary/Company Secretary awards at the presentation ceremony.

The awarded member and APs are listed below.

- Li Jian FCIS FCS, Company Secretary, CGN New Energy Holdings Co Ltd
- Chen Xiang Ming, Board Secretary, Fuyao Group
- Cheng Fu Xiang, Board Secretary, Qingdao Port International Co Ltd
- Du Da Ming, Board Secretary, Huaneng Power International Inc
- Guo Chuan, Board Secretary, Beijing North Star Co Ltd
- Hu Ai Bin, Board Secretary, China Nonferrous Mining Corporation Ltd
- Huang Qing, Board Secretary, China Shenhua Energy Co Ltd
- Liu Wen Sheng, Board Secretary, China Communications Construction Co Ltd
- Luo Bin Hua, Board Secretary, GF Securities
- Ma Xin, Board Secretary, China Pacific Insurance (group) Co Ltd
- Sun Fei Xia, Board Secretary, Harbin Bank
- Yu Li Na, Board Secretary, YTO Group Corporation
- Yu Xin Xi, Board Secretary, China Railway Construction Corporation Ltd
- Yan Ling Xi, Board Secretary, AviChina Industry & Technology Company Ltd
- Yan Xiao Lei, Board Secretary, BAIC Motor Corporation Ltd



Samantha Suen and awardees

Company Secretaries Panel luncheon

The Company Secretaries Panel (CSP) luncheon was held on 19 February 2016. Ada Chung JP, Registrar of Companies and her colleagues joined the luncheon as guests. Currently chaired by Edith Shih FCIS FCS(PE), the CSP serves an informal platform for regulators to discuss issues of common interest with a group of listed company secretaries, mostly HKICS members.



Ada Chung JP



HKICS Company Secretaries Panel luncheon

CEPA seminar and study tour

Institute Immediate Past President Dr Maurice Ngai FCIS FCS(PE) attended a seminar hosted by the Hong Kong Trade and Industry Department on the liberalisation of trade in services for Hong Kong under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) on 21 January 2016.

On 22 January 2016, the Institute's Young Group members Eric Fung ACIS ACS and Anna Kong ACIS ACS attended a study tour to Hengqin, Zhuhai. The activity was organised by the Hong Kong Representative Office of Hengqin New Area (Zhuhai) Investment Service Center for young professionals in Hong Kong.



At the study tour

HKICS attends conferences on the 'Belt and Road' initiative

The Institute participated in seminars on how to further utilise the 'Belt and Road' initiative of the Chinese authorities. Institute Immediate Past President Dr Maurice Ngai FCIS FCS(PE) and Institute Chief Executive Samantha Suen FCIS FCS(PE) attended the conferences hosted by the Maritime Silk Road Society respectively on 23 January and 27 February 2016.

On 29 January 2016, Institute Treasurer Dr Eva Chan FCIS FCS(PE) and Council member Bernard Wu FCIS FCS attended the Belt and Road International Forum 2016 organised by the Hong Kong WTO Research Institute and the Hong Kong Commerce and Industry Associations.

HKICS supports Family-Friendly Employers Award Scheme

Institute Chief Executive Samantha Suen FCIS FCS(PE) once again represented the Hong Kong Coalition of Professional Services as a member of the Family-Friendly Employers Award Scheme (the Award Scheme) Organising Committee for the year of 2015/2016. The third biennial Award Scheme was launched by the Home Affairs Bureau and the Family Council on 15 December 2015. The deadlines for employees' nominations and employers' applications are 14 March 2016 and 14 April 2016 respectively.

For more information, please visit: www.familycouncil.gov.hk/english/ffcas/index_new.htm.

Secretariat staff donate blood

In line with the Institute's policy to promote social responsibility, the secretariat has set up an Environmental and Social



The HKICS secretariat Community and Social Responsibility Working Group and colleagues

Responsibility Working Group to encourage staff to give back to society. In 2016, the activities will be related to three major areas: go green, give care and gain balance. The working group arranged a blood donation activity to kick-off this '3G project' on 26 February 2016.

External appointments

Institute member Natalia Seng FCIS FCS(PE) has been appointed as a member of the Standing Committee on Company Law Reform (SCCLR) for a term of two years starting from 1 February 2016. Institute Council member Wendy Yung FCIS FCS is also a member of the SCCLR.

Institute member Toe Wai-hung ACIS ACS has been appointed as a member of the Board of Review (Inland Revenue Ordinance). Institute members Richard Leung FCIS FCS, Professor Paul Lo Chin-fai ACIS ACS, Dr Ben KF Wong ACIS ACS and Mohan Datwani FCIS FCS(PE) currently also serve on the board.

Membership

New graduates

Congratulations to our new graduates listed below.

Chan Ka Ying	Ho Tin Sang, Sylvian	Ma Yun Lam, Christy
Chan Tsz Wun	Hung Man Wing	Wong Ka Man
Chan Yee Wa, Eva	Kong Mei Yee, Joyce	Wong Tsz Yan
Cheung Fan	Lam Chi Fai	Wun So Fan
Cheung Man Yee	Leung Lai Yee	Yang Chi Ting
Fan Chui Lin	Liu Hong Ting	Yau Ting Nga

Earth Hour 2016

The WWF Earth Hour 2016 will take place at 8.30pm on 19 March 2016. The Institute supports the promotion of environmental responsibility and care for our planet. As pledged, the secretariat offices in Hong Kong and Beijing will switch off all lights in the office for the designated hour. Members and students are invited to support the event and switch lights off for one hour.

Membership activities

Fellows only – visit to Jao Tsung-I Academy (饶宗颐文化馆)

On 30 January 2016, 24 fellows joined a cultural and historical visit to the Jao Tsung-I Academy and had lunch at Gingko House (银杏馆), which is a social enterprise that supports employment of the elderly. Fellows enjoyed the Chinese art works of Jao Tsung-I and the restored historical architecture of the Academy.

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



Group photo at the lotus pool

Membership removal due to non-payment of 2015/2016 subscription fee

The subscription fee for the year 2015/2016 was due on 31 January 2016. Under the Bye-law 13 of ICSA's byelaws and Article 20 of the Articles of Association of the Institute, any member failing to pay the subscription within six months of the date fixed for payment (that is, on or before 31 January 2016) will be removed from membership and his/her name will be removed from both membership registers of ICSA and HKICS. For the year 2015/2016, 166 members and graduates were removed from the membership registers of ICSA and HKICS. Ex-members are required to apply for re-election and settle the outstanding subscription plus a re-election fee should they wish to reinstate their membership with ICSA and HKICS.

Members' discipline

Ensuring members comply with the highest standards of professional conduct and Institute regulations is crucial for the Institute and its membership. The Investigation Group, Disciplinary Tribunal and Appeal Tribunal are the disciplinary bodies stipulated in the ICSA byelaws and the Articles of Association of the

Institute. For the year 2014/2015, four complaints were received and referred to the Investigation Group. Of these, two were closed as no *prima facie* case was established and the other two cases are still under investigation. The Disciplinary Tribunal concluded five cases during the year. No appeals against Disciplinary Tribunal decisions were made to the Appeal Tribunal.

MCPD non-compliance

As of 2 February 2016, a total of 35 members have been subject to disciplinary proceedings for MCPD non-compliance.

Year	Number of members involved in MCPD non-compliances
2011/2012	2
2012/2013	1
2011/2012 and 2012/2013	3
2013/2014	29
Total	35

Members' benefits and services

Various merchants have agreed to offer benefits and services for our members, graduates and students. Upon presenting your member/graduate/student card to the merchants, you are entitled to enjoy privileged benefits and services. For details, please visit 'Benefits and Services' under the Membership section of the Institute website: www.hkics.org.hk.

Consequences of MCPD non-compliance

Breaches of the MCPD compliance requirements may be regarded by the Council as professional misconduct. Mitigating factors may be taken into account in assessing individual cases. Non-compliance cases will first be referred to the Investigation Group and if they are found to be serious, they shall then be referred to the Disciplinary Tribunal (DT). Sanctions by the DT may involve the imposition of a fine, censure or other forms of penalty and, in severe cases, removal from the member and/or graduate register(s).

Pursuant to the Royal Charter and byelaws of ICSA and the Articles of Association of the Institute, where disciplinary action is being considered against a member or graduate, his/her membership shall not lapse until the procedure is completed.

Important reminders

1. If a MCPD non-compliance case is already under disciplinary proceedings:
 - i. no voluntary resignation from membership can be processed. Application to resign from membership can only be processed upon settlement of all outstanding payments and fulfilment of MCPD requirements
 - ii. the member or graduate concerned shall update and report to the secretariat on a quarterly basis to demonstrate his/her effort in fulfilling the MCPD requirements, and
 - iii. attendance at a disciplinary hearing will be required if the member or graduate concerned fails to rectify his/her alleged contravention.
2. The DT has decided to impose the following progressive disciplinary penalties effective since 10 June 2015:
 - i. a fine payable by the member or graduate (HK\$3,000 per year of MCPD non-compliance)
 - ii. suspension of all rights of membership until such time as he or she is able to demonstrate fulfilment of outstanding MCPD points, and
 - iii. removal from the registers of membership.

International Qualifying Scheme (IQS) examinations

June 2016 examination diet

A. Examination timetable

	Tuesday 31 May 2016	Wednesday 1 June 2016	Thursday 2 June 2016	Friday 3 June 2016
9.30am - 12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2pm - 5pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

B. Examination enrolment

The examination enrolment period is from 1 to 31 March 2016. The Examination Entry Form can be downloaded from the Studentship section of the Institute's website: www.hkics.org.hk. All entries must be received by the secretariat by 6pm on Thursday 31 March 2016, and, if by post, with a post-mark on that date. Late application will not be accepted under any circumstances. To avoid postal errors or delays, students are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre selected after the examination application has been submitted.

C. HKICS examination technique workshops

The Institute will organise a series of three-hour IQS examination technique workshops from late April 2016. These workshops aim to help students improve their examination techniques. The workshop fee is HK\$500 each. Students may download the enrolment form from the Studentship section of the Institute's website: www.hkics.org.hk.

D. New topic for examination – Competition Ordinance

The Competition Ordinance Cap 619, which was enacted in December 2015, will be included in the syllabus of Corporate Administration from the **December 2016 examination onwards**.

IQS information session

At the recent IQS information session held on 20 January 2016, Anna Kong ACIS ACS, Company Secretary of Tsit Wing Coffee Company Ltd, shared her experiences in her professional work and her studies for the Master of Corporate Governance programme with the attendees interested in pursuing a career in the Chartered Secretarial profession. Information on the IQS examination and career prospects for Chartered Secretaries was also provided.



Anna Kong sharing her experience

IQS examination pass rates (December 2015)

Subject	Pass rate
Part I	
Strategic and Operations Management	30%
Hong Kong Financial Accounting	44%
Hong Kong Taxation	28%
Hong Kong Corporate Law	20%
Part II	
Corporate Governance	29%
Corporate Administration	31%
Corporate Secretaryship	23%
Corporate Financial Management	28%

Subject prize and merit certificate awardees

The Institute is pleased to announce the following awardees of subject prizes and merit certificates for the December 2015 examination diet. The subject prizes were awarded by The Chartered Secretaries Foundation Ltd. Congratulations to all awardees!

Subject	Subject prize winners
Hong Kong Financial Accounting	Leow Ka Lee, Cally
	Wong Mei Yan
Hong Kong Corporate Law	Ho Mei Yi
	Joanne Pui
Corporate Secretaryship	Kong Wing Hung

Subject	Merit certificate awardees
Hong Kong Financial Accounting	Chan Yim Shan
	Chung Fung Ha
	Li Hung
	Tse Kit Ying
	Wan Sau Kwan
	Yu Aifen
Hong Kong Taxation	Zhao Hanqing
	Yu Ching Sum
Hong Kong Corporate Law	Chan Cheuk Fai
	Chan Tsz Yeung
	Ho Sze Ting
	Tsang Mei Ying
	Feng Meijuan
Corporate Administration	Mok Pui Man
	Cheung Wai Yin, Clarice
Corporate Governance	Chan Tung Yi
	Ma Ching Fung
	Yau Kar Yi, Grace
Corporate Financial Management	Li Wancheng
	Wong Mei Yan

Studentship

New students orientation

Students who have registered since September 2015 are invited to attend a new students orientation on Tuesday 15 March 2016. This event aims to provide new students with the opportunity to learn about the Institute and meet with other students. The IQS examinations subject prize winners will also share their examination preparation tips at the event.

The enrolment form is available at the Studentship section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Karin Ng at: 2830 6010, or email: student@hkics.org.hk.

Dates:	Tuesday 15 March 2016
Time:	7pm – 8.30pm
Venue:	Joint Professional Centre Unit 1, G/F, The Center, 99 Queen's Road Central, Hong Kong

Student Ambassadors Programme

Summer Internship Programme 2016

The Institute invites companies and organisations to offer summer internship positions to local undergraduates under its Student Ambassadors Programme, with the aim to promote the Chartered Secretarial profession to the younger generation in Hong Kong. The internship period will be for a maximum of eight weeks from June to August 2016.

Interested members please contact Carmen Wong at: 2830 6019, or email: student@hkics.org.hk.

Payment reminders

Studentship renewal

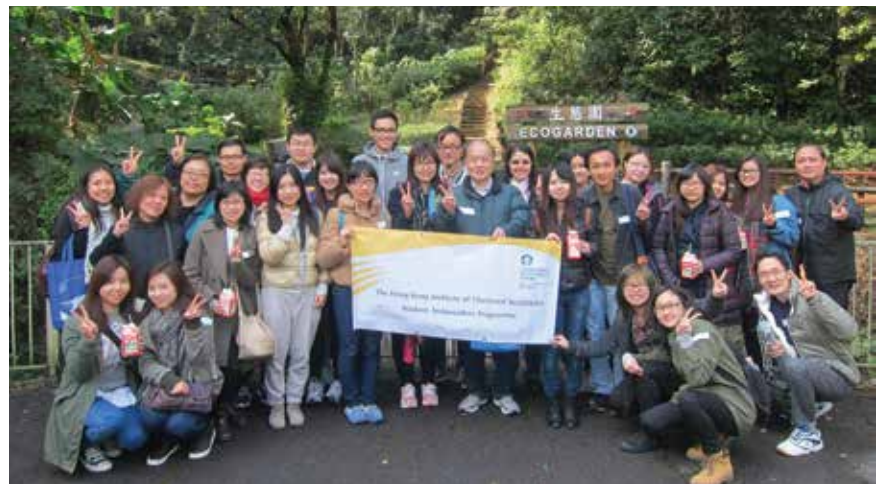
Students whose studentship expired in January 2016 are reminded to settle the renewal payment by Tuesday 22 March 2016.

Exemption fees

Students whose exemption was approved via confirmation letter on 14 December 2015 are reminded to settle the exemption fee by Monday 14 March 2016.

Outing to Yuen Long

The Institute organised an outing to Yuen Long under the Student Ambassadors Programme on 16 January 2016. A total of 28 student ambassadors, mentors and registered students participated.



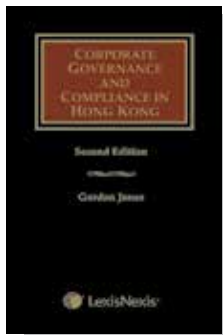
Group photo at Yuen Long



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

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