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December 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



2016 AGM season review

Shareholder engagement
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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, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. 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. HKICS is a founder member of the Corporate Secretaries International Association (CSIA) which was established in March 2010 in Geneva, Switzerland to give a global voice to corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

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Membership statistics update

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

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Associates: 5,111
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Merry Christmas!

The Council would like to thank members and students for their support over the year and wish you all a merry Christmas and a healthy and prosperous 2017!



Raising our profile

With 2016 drawing to a close and 2017 beckoning just over the horizon, I would like to focus my President's Message this month on a retrospective look at the year behind us and a prospective look at the year ahead.

2016 has been quite a year for the Institute and it may make sense to identify the unifying theme relating to the different developments unfolding over the course of the last 12 months. For me, this is the rising profile of our profession not only here in Hong Kong but also regionally and globally.

The groundwork for this development has been going on for some time of course. In Hong Kong, we have a valued voice on issues related to corporate governance and company secretarial practice through our publications and advocacy efforts. We have established a very popular and well-respected CPD programme, and we have been very successful in reaching out to potential students and building the reputation of the Chartered Secretarial profession.

2016 has seen interest in corporate secretaryship, and in particular the corporate governance benefits of having a properly qualified person in this role, expand more widely in the region. We have seen, for example, the profession gain a higher profile in Asian jurisdictions not traditionally

included in the Chartered Secretarial family. Earlier this year, our Institute joined the ASEAN Corporate Secretaries Associations Network, and this affiliation has helped us to forge closer links with, in addition to the ICSA divisions in Singapore and Malaysia, peer associations in Indonesia and Thailand. In the year ahead, we also look forward to working with the emerging association of corporate secretaries in Taiwan.

Our main area of work outside Hong Kong has, of course, been Mainland China, and this anniversary year (2016 marks the 20th anniversary of the establishment of our Beijing Representative Office) has seen our standing in the Mainland reach new heights. Our education and CPD services are much in demand, and I believe these services will continue to be the best advertisement for our profession and what we stand for. In addition, we have also been able to strengthen our cooperative work with key stakeholders in the Mainland. For example, we signed a Memorandum of Understanding (MoU) with the Shenzhen Stock Exchange on 30 March 2016. This builds on the MoU agreements we already have with the Shanghai Stock Exchange, the Insurance Association of China and the China Association for Public Companies.

So where will these trends take us in the year, and indeed the years, ahead? Predicting the future is not easy, events have a well-known tendency to spring surprises on us, but I am confident that the profile of our profession still has further upward mobility. This will be partly driven by the long-term historical trend for increased reliance on the corporate secretary to deliver better governance in listed companies. In addition, we will continue our work in conjunction with peer institutes and associations to promote better governance and company secretaryship.

Is it too early to declare a new unity of purpose in the profession to address our strategic goals at both the local and global levels? Perhaps not. In addition to the closer ties among Asian bodies I have referred to above, we have a newly restructured ICSA currently enhancing the quality and relevance of the International Qualifying Scheme to bring it up to date and make it more relevant to a wider range of professionals. We also have the Corporate Secretaries International Association, of which our Institute is a founder member, providing a global voice for corporate secretaries and governance professionals.

In this context 2017 looks set to be an interesting year, and I look forward to seeing how the trends I have discussed above develop over the next 12 months and beyond. Before I go, however, I would like to remind readers that the increased profile of the profession comes with higher expectations of the professional standards and integrity of company secretarial practitioners. It will be incumbent on all of us to rise to this challenge; and we at the Institute certainly intend to promote higher standards for the benefit of all members.

In conclusion, I would like to thank everyone both inside and outside our Institute who have helped further our work over the last year. I wish you all a happy Christmas and look forward to seeing you at our annual dinner on 19 January 2017.

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

Ivan Tam FCIS FCS

提升形象

2016年已近尾声，2017年在望，本文将集中回顾过去一年的工作，并展望未来。

公会在2016年经历了繁忙的一年，在过去的12个月有多方面的发展，可以整理出一以贯之的主题。对本人来说，今年是专业特许秘书提升形象的一年，不仅在香港如此，在亚太区和全球层面的形象也有所提升。

当然，这项发展的基础工作，已经展开一段日子。在香港，公会透过出版刊物和倡导工作，就企业管治和公司秘书实务事宜提出宝贵意见。公会的持续专业发展计划极受欢迎，而且深受尊崇；而接触潜在学员、为特许秘书专业建立声誉的工作，也相当成功。

东南亚地区对公司秘书专业的关注，特别是对合格特许秘书能为企业管治带来的好处，在2016年继续加深。例如在传统上一向不属于特许秘书大家庭一份子的亚洲地区，专业特许秘书的形象也有所提升。今年较早时，公会加入了东南亚国家联盟公司秘书协会网络，使我们除了原有与特许秘书及行政人员公会新加坡和马来西亚分部建立的联系外，也可加强与印尼和泰国的同业组织的联系。来年，我们亦期望与台湾崭露头角的公司秘书协会合作。

我们在香港以外的工作，当然主要还是集中在中国内地。2016年恰是公会北京代表处成立20周年，公会在内地的地位也迈向新高峰。内地对公会的教育及持续专业发展服务的需求很大，我相信这些服务作为特许秘书专业及其特质最佳宣传的角色将会继续维持。此外，我们亦加强了与内地主要持份者的合作。在先后与上海证券交易所、中国保险行业协会和中国上市公司协会签署谅解备忘录的基础上，我们在2016年3月30日亦与深圳证券交易所签署谅解备忘录。

在这形势下，公会来年以至未来数年将有何新发展？预测未来不是易事，事情的发展总是会让人始料不及，但我深信专业特许秘书的形象仍有提升空间。从长期发展趋势来看，上市公司会日渐倚赖公司秘书提升企业管治水平；而且我们亦将继续与同业协会及组织合作，提倡良好企业管治及公司秘书实务。

假如现在宣称本地和全球特许秘书已经齐心协力，向共同的策略性目标进发，是否言之过早？这也未必。除了上文提到与亚洲组织加强联系外，特许秘书及行政人员公会亦已重组，目前正致力提升国际专业知识评审考试的质量，使之与时俱进，切合更多不同专业的需要。

此外，公会为创会成员之一的公司秘书国际联合会，亦为公司秘书及管治专业人士在全球发声。

由此观之，2017年将是有意思的一年，本人期望看到上文讨论的趋势在来年甚至往后的新发展。最后，我想提醒大家，随着特许秘书形象有所提升，人们对从业员的专业水平和行为操守的期望也必有所提高。我们大家都有义务接受这项挑战，而公会当然亦会提倡更高标准，让所有会员得益。

对于过去一年协助公会推展工作的成员及其他人士，本人谨致以谢意。祝大家圣诞快乐，并期望在2017年1月19日的周年晚宴与大家见面。

谭国荣先生 FCIS FCS

2016 AGM season review

Lucy Newcombe, Director, Global Corporate Communications, Computershare, reports on another busy and intriguing AGM season around the globe.



Hong Kong/China

Five years may seem like a relatively short period of time in the grand scheme of things, a mere blip in the centuries-old existence of Asian culture. Does a lot change in five years? It appears that in the local AGM world, it definitely does! I first wrote this feature in 2012, not long after having been seconded by Computershare to Hong Kong for a two-year stint. Since that first article, we've seen a remarkable change in several features of the Asian AGM.

Bucking the trend in several other countries around the globe (in Australia, attendance has declined 25% over the past five years), retail shareholders' attendance at AGMs in Hong Kong has sky-rocketed:

- the percentage of meetings with more than 100 attendees has increased by 15.4%, and
- overall attendance at meetings has continued to climb – up by 99.4% from 2012.

Bank of China Ltd has held firm at the top of the attendance charts – the company had 2,308 guests at its AGM in 2012, the highest in Hong Kong; and set a new record with 5,053 attendees in 2016 – a phenomenal 119% increase over the five-year period. The top three attended AGMs were all in financial services this year:

- Bank of China Ltd (5,053 attendees)
- Industrial and Commercial Bank of China (4,981 attendees), and
- China Construction Bank Corporation (4,933 attendees).

So why is this happening? Over the period of a week, we asked shareholders visiting our counter in Wan Chai whether they attended AGMs and, if so, why. The top five reasons were as follows.

1. To ask questions about the running of the company. Shareholders feel that over recent years, retail investors have become more aware of their responsibilities and of the opportunity to ask questions and hear from management at AGMs.
2. Due to them having spare time. Shareholders over 50 were far more likely to indicate that time was a reason for their attendance.
3. To take advantage of the food/souvenirs/gifts provided by companies.
4. Due to the AGM venue being conveniently located for them. Shareholders were far more likely to attend if a venue was close by or had easy transport links.
5. Due to them holding a significant amount of shares in a particular company.

'There is no denying that some retail shareholders see the gifts being handed out at meetings as a good dividend enhancement,' says James Wong, CEO of Computershare in Asia. 'With the new Companies Ordinance now allowing more than two proxies, this means that shareholders can appoint more proxies and take more souvenirs, therefore generating a growing attendance at shareholder meetings. In addition to attending to collect souvenirs, shareholders are now paying more attention to the investee companies' affairs, and institutional investors are now encouraged to get more actively engaged. It is getting increasingly important for companies to find out more about their investors' profiles, and actively reach out to them to improve communication and understanding.'

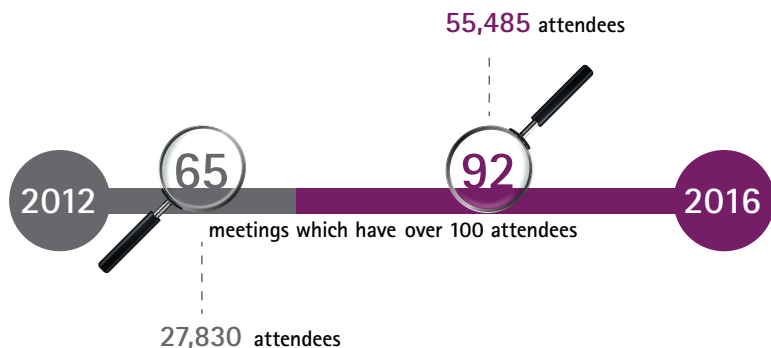
The implications for companies

While it is not yet legal to hold a virtual AGM under Hong Kong's Companies Ordinance, with the increase in attendance showing no sign of slowing down, companies are going to be increasingly challenged to find a venue to cope with their requirements. There are a limited number of hotels and conference centres that can accommodate the logistics for an AGM – and with such a

Highlights

- the 2016 AGM season in Hong Kong/China was characterised by higher retail shareholder attendance levels, together with higher levels of shareholder dissent
- increased shareholder scrutiny of companies' affairs is adding to the importance for better shareholder profiling and engagement
- digitised meetings communications and virtual AGMs will continue to impact the nature of AGMs globally in the future

Meetings with over 100 attendees



Figures are for the meetings Computershare manages which have more than 100 attendees (Computershare serves as an independent scrutineer in approximately 60% of AGMs across Hong Kong and China) from April to June 2016.

tight season, this is going to continue to be squeezed in coming years, forcing a hard look at whether virtual attendance will simply become necessary due to volume. On 27 May this year, there were at least 50 separate AGMs held in Hong Kong – each requiring a venue and logistics. The 7 June was even more challenging, however – while there were only 20 separate meetings, these included Bank of China and Hong Kong and China Gas – both meetings with very high turnout. Of course, the decision about how to get the ever popular souvenirs to virtual attendees will be one for discussion!

Additionally, the rise in attendees is inevitably increasing venue costs for companies.

Rejected resolutions

In addition to the rising attendance levels, shareholder dissent also appears to be on the rise in Hong Kong/China. A total of 31 resolutions were voted down at meetings in 2016 – with the number of failed resolutions continuing to rise, year on year.

The signals are being hung out high and clear for companies across Hong Kong and China – gone are the days when corporate secretaries had absolute certainty that their AGM would be nothing more than a pleasant discussion of what happened over the previous year with maybe some customer service issues or enquiries about energy prices constituting the bulk of the Q&As. Instead, we are in a time of people power, social media and shareholder activism, both at an institutional and retail shareholder level, with the result that important resolutions are being rejected.

Earlier this year, The Hong Kong Institute of Chartered Secretaries issued its research report *Shareholder Communications for Listed Issuers – Five Imperatives to Break the Monologue* (available on the Institute’s website: www.hkics.org.hk), which focuses on five things companies can do to engage with institutional investors. Judging by the trends over the past five years, the core advice from this report is very timely:

1. develop an investor relations strategy within the corporate strategy

2. know and regularly review the shareholder base
3. formulate and regularly review shareholder communications policies
4. formulate and regularly review shareholder engagement policies, and
5. review the responsibility and accountability for investor relations.

‘Knowing the make-up of its shareholder base is the first step for a company to engage with its shareholders,’ says Ying-Ci, Managing Director of Business Development for Computershare across Asia. ‘We have seen more companies starting to realise the importance of having a clear picture of their shareholder base and trying to maintain an ongoing dialogue with shareholders. Companies who devote more to shareholder engagement enjoy smoother shareholder communications and subsequently a more satisfactory meeting outcome.’

What’s happening in other countries?

Around the globe, Computershare works on more than 6,000 AGMs each year. Of those meetings, the table below shows the total number of meetings we worked on in each country and whether, in general, shareholder attendance rose, fell, or stayed the same in comparison to the previous year.

In the UK, 2016 resulted in arguably the most contentious AGM season since the notorious ‘Shareholder Spring’ of 2012. From shareholders physically cornering Sports Direct founder Mike Ashley, to BP and Smith and Nephew both having their remuneration reports rejected outright; it was a busy time.

“ we are in a time of people power, social media and shareholder activism, both at an institutional and retail shareholder level, with the result that important resolutions are being rejected ”

12 FTSE 100 companies received less than 80% support on their remuneration reports, compared to only six during the 2015 AGM season. Additionally, two FTSE 100 companies received less than 80% support on their remuneration policies, compared to none during the 2015 AGM season. Among the 30 biggest listed companies, the proportion that secured at least 95% shareholder backing across all resolutions halved in 2016, to 26%, compared with 52% in 2015.

In the FTSE 250, four companies (Weir Group, SVG Capital, Renewables Infrastructure Group and Paysafe Group) saw a board-proposed resolution rejected by shareholders during the 2016 AGM season.

Attendance and shareholder participation, both at the meeting and through votes lodged in advance, remained consistent with recent years, though there has been a small increase in retail shareholder attendance at AGMs, in particular those who have embraced paperless electronic communication and who arrive with an electronic attendance card via their

Type of voted down resolutions (%)



Figures are for meetings Computershare managed in Hong Kong and China in 2016.

smartphone. The best attended AGM run by Computershare was for Celtic PLC, with 591 shareholders showing up. HSBC had the second highest attendance with 350 people.

Questions posed at larger PLCs continue to grow in number and technicality, with shareholder action groups attending to hold companies to account on employee

rights, management remuneration and environmental issues. In some cases, orchestrated groups of activist attendees are posing the same point or question to the board on multiple occasions during the Q&A session.

On top of the shareholder dissent around pay, the UK also saw its first 'electronic' or 'virtual AGM' in 2016. Jimmy Choo offered

Shareholder attendance

Country	Meetings	Increase/Decrease
HK/China	542	Up
Canada	1,868	Slightly up
US	1,770	Same
AUS	543	Slightly down
UK	853	Same
South Africa	259	Same
Denmark	246	Same
Germany	300	Up
Italy	280	Slightly down
Total	6,661	

Figures are for meetings Computershare managed globally in 2016 (decrease relative to 2015).



“
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”

shareholders the ability to dial in to the meeting, while at the same time they were able to vote using a secure mobile app. The company's global management team also dialled in, removing logistics costs compared to their previous meeting.

Germany also experienced a volatile season, with shareholder attendance increasing across the board – both for companies hit by scandal during the year, but also for other big names, perhaps as a result of shareholders wanting to get a personal impression of the management of the company. For example, more than 6,500 shareholders attended the BMW AGM, a 20% increase over the previous year. The average quorum at the AGMs of DAX companies increased from 54.88% in 2015 to 59.85% in 2016, while the average shareholder vote participation level at the AGMs of MDAX companies increased from 67.99% in 2015 to 71.68% in 2016.

Remarkable events in Germany included Volkswagen's (VW) AGM – having lost more than 50% of its market capitalisation, the company had a dramatic show-down with shareholders due to the diesel scandal

which was felt around the globe. The AGM ran almost until midnight, dealing with all of the shareholder queries – and could take longer next year as VW faces hundreds of claims from aggrieved shareholders during the coming period.

STADA AG was forced to postpone its scheduled AGM due to differences with their second largest investor, Active Ownership Capital (AOC). The rescheduled AGM ran until midnight, with AOC triumphing in their proposal to dismiss the head of the company's supervisory board, an unprecedented event in Germany.

Deutsche Bank felt the wrath of its shareholders, who voted down its proposed remuneration plan for top personnel with 51.9% opposing the scheme in a non-binding vote. TAG Immobilien AG, an MDAX company, had two board-proposed resolutions rejected outright by shareholders.

All in all, say on pay was a much more crucial issue than in previous years, with the average approval rate dropping from above 90% to 72%.

Although there was another slight decrease in personal attendance at AGMs, Australia saw an increase in the amount of issued capital voted – with an average of 48% across all companies. This was the highest participation rate in six years. We believe this continued rise is driven by increased voting from offshore institutional investors, with initiatives and policies such as the Shareholder Rights Directive in the European Union and the increasing importance placed on investor stewardship influencing global investors to vote. It will be interesting to see if a similar rise is experienced in Hong Kong in coming years due to increasing emphasis on institutional shareholder engagement.

To help companies better balance the cost of running their AGM along with the changing preferences of investors, Computershare is participating in regulatory reform in Australia to digitise all meetings communications, as well as investing in technologies that reduce the cost of the AGM per shareholder. We're hoping to be able to offer the option of virtual AGMs in the next AGM seasons in Australia and the US.

With the introduction of virtual AGMs in some countries, we're on the verge of an innovative technology change which will undoubtedly have ramifications further around the globe in due course. Continued fluctuations in the capital and currency markets, and of course the negotiations as the UK proceeds to leave the European Union, are all likely to have an impact in the coming year, and will be felt in the 2017 AGM season.

Lucy Newcombe

Director, Global Corporate Communications, Computershare



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HKICS Annual Dinner 2017

Eye on the future

Guest of Honour

Carlson Tong, SBS, JP

Chairman

Securities and Futures Commission

Thursday,
19 January 2017

6.30pm Cocktail reception
7.30pm Dinner

Ballroom,
JW Marriott Hotel
Hong Kong

Fees: HK\$600 per student ■ HK\$890 per member/graduate ■ HK\$980 per non-member
HK\$10,680 per table of 12 seats

Attire: Lounge suit

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For enquiries, please contact Vicky Lui at 2830 6088 or Vincy Wong at 2830 6048 or member@hkics.org.hk.

Know your investors

Cas Sydorowitz, Chief Executive Officer of Computershare's proxy business in Europe, shares some advice on how companies in Asia can prepare themselves for the rising tide of shareholder activism in the region.

Hong Kong-listed companies have a history of surprising their shareholders. Take the example of Boto International, a family-owned firm that had a steady, cash-generating, if unglamorous business making artificial Christmas trees – until the day it decided to take a leap into Hollywood film animation. David Webb, an independent governance activist, waged a battle to stop this radical overhaul of the business model, but to no avail. The reinvented company, Imagi International has changed business directions many times since, and has suffered a string of losses in the past 14 years.

The Boto case demonstrates why investors should challenge board decisions, but it also illustrates the obstacles to doing so. Many companies are closely held, with tight family or connected-party control of voting shares. This makes it difficult to secure enough votes to veto board decisions. The same is true in many other Asian financial centres.

Nevertheless, investor activism is on the rise in Asia. Buoyed by successes in Wall Street and elsewhere, activist investors have been on the hunt for undervalued companies in Asia; they buy up chunky stakes of 5% to 10%, then try to unite with other minority shareholders to push for performance-enhancing management changes.



“ company secretaries need to know their shareholders and understand who votes and who does not vote at shareholder meetings

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In a high-profile case last year, Elliott Management Corporation, run by the American billionaire Paul Singer, launched an aggressive campaign to prevent a merger aimed at consolidating family control of one of Korea's biggest and influential companies, Samsung Electronics.

Samsung executives fought back hard, resorting to a range of tactics including hand-delivering watermelons to individual investors' homes to curry favour. In the end, the conglomerate was able to secure the vote necessary for a successful transaction – but only just barely. If Elliott had managed to get votes representing just an additional 2% of shareholders, the deal would have been torpedoed.

Do near-successes like this point to a new trend aimed at breaking up dynastic control of regional companies? Cas Sydorowitz, an advisor in the realm of investor activism, thinks the answer is likely no. 'I'm not sure we're going to see increased activism in Asia in terms of the Elliotts going after the Samsungs,' says Sydorowitz, Chief Executive Officer of Computershare's proxy solicitation and corporate advisory business in Europe. 'But we are going to see a lot more active engagement. Investors want an open door.'

Engagement vs activism

Sydorowitz, originally from the US, moved to London 14 years ago as activism was spreading from Wall Street into other global financial centres. He has been running Computershare's proxy solicitation and corporate advisory business for Europe since then, and is also supporting Asia, as companies seek advice on how to deal with the rising tide of activism.

'I happen to sit in London but look after northern Europe and parts of Asia, including Hong Kong and Singapore,' said Sydorowitz, who was a speaker at the recent Hong Kong Institute of Chartered Secretaries' 10th Biennial Corporate Governance Conference 2016.

The proxy solicitation and corporate advisory team focuses on three core activities. The first is helping companies prepare for their annual general meetings, so that executives have a good understanding of what shareholders will do and how they will vote in advance of AGMs. The second is helping companies in merger and acquisition situations, including improving knowledge exchanges between a bidder and target company.

It is the third area of specialisation that is keeping Sydorowitz's team increasingly busy: and that is helping companies defend themselves against activist investors. This includes 'helping them understand who the activist is, what type of tactics they employ, what type of campaigns they run, and if there are any other shareholders likely to support their campaign,' explains Sydorowitz.

As a sign of the trend, he points to Singapore, where two listed companies are currently facing down activist campaigns by hedge fund shareholders. The retailer Metro Holdings is under high-profile pressure to increase its dividends in light of excess cash on the balance sheet, while investors in Geo Energy Resources want the company to overhaul its capital structure to improve valuations.

Activist investors are not the only ones seeking deeper engagement, however. Institutional investors are doing the same, and some so-called 'passive' investors are generating activist campaigns. BlackRock, for example, is the world's biggest institutional investor with some US\$5 trillion of assets under management, a good portion of it in index-tracking funds, which are passive in nature. Yet BlackRock led an aggressive campaign in Hong Kong this year to stop a business overhaul whose radical nature harkens back to the Boto case. In this more recent case,

Highlights

- companies need to be prepared for the growing trend towards shareholder activism in the region
- know, understand and engage with your investors on an ongoing basis – not only when their votes are needed
- in Hong Kong nearly half of all resolutions that have seen opposition from minority shareholders concern the election or re-election of directors

the company in question, G Resources, operated a large gold mine, and one day announced that it planned to sell this key asset and use the proceeds to transform into a financial services firm.

With an 8% stake in G Resources, not only did BlackRock use its own voting rights to help influence management, but led a campaign to unite with other minority shareholders to oppose the deal. In fact, BlackRock created a website resource page for interested parties to read and react to its opposition plan, including a section titled, 'Why shareholders should vote no'. On this same webpage, BlackRock reviewed prior value-destructive behaviour of the company. The now decommissioned webpage also gave an email link for shareholders to get in touch with BlackRock's campaign.

While BlackRock was not able to stop the plan from going forward, it did manage to alter the terms of the deal, returning more of the cash of the mine sale to investors, rather than investing it all in the new business.

This high-profile and remarkable case received a lot of attention – in part because a rare partial victory was extracted. That said, most of the activist activities in Hong Kong focus on more pedestrian issues. According to research by Proxy Insight, a company that tracks the voting behaviour of global shareholders, in Hong Kong nearly half of all resolutions that have seen opposition from minority shareholders concern the election or re-election of directors. Investors will seek more information on a director, or vote against his/her nomination, in cases where the background or contribution to the company is unclear, where relationships with connected companies are concerning or fuzzy, or in cases where the directors have too many other directorships to be reasonably expected to fulfil their responsibilities to the board.

Fundraising is the other key issue leading to no votes by minority shareholders in Hong Kong listed companies. Changes in the capital base, particularly cases where private placements at discounted prices have diluted the stakes of existing minority shareholders, have made up roughly half of the opposition votes since January 2015.

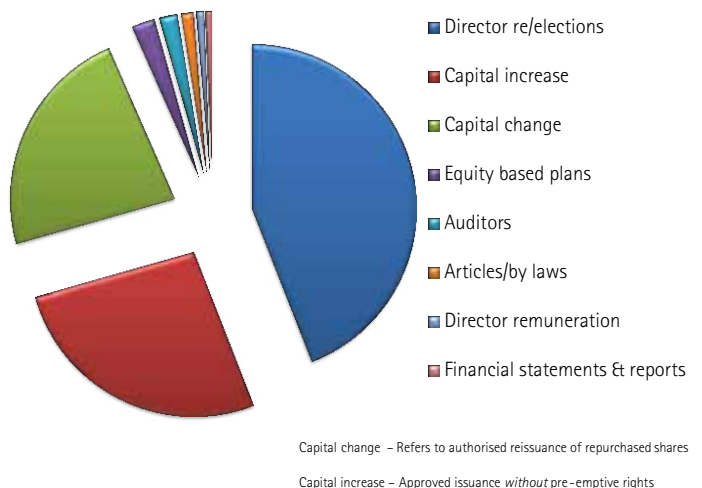
This year has witnessed a headline-garnering lawsuit from Elliott Investors, which is suing Bank of East Asia (BEA) for diluting Elliott's stake in the Hong Kong-headquartered bank via a private placement of new shares to Japan's Sumitomo Mitsui Banking

Corp. It was also fighting similar arrangements with Spain's Criteria Caixa. Elliott says these arrangements were made to protect BEA from a takeover bid and thus keep the company in the control of the founding Li family. This protection against a potential takeover is not in the interest of other shareholders, according to Elliott, which had a 7% stake at the time it filed its lawsuit over the summer. The Li family has vowed to vigorously defend its right to seek alliances with Criteria Caixa and Sumitomo.

While Sydorowitz does not expect such dramatic showdowns to be all that frequent, he does expect investor engagement to continue to deepen in the region. Companies need to do more to confront this reality – and by doing so, may lower the odds of ending up in a battle with activist campaigns. Sydorowitz's suggestions to corporate clients include the following.

- **Enhance engagement.** 'Activists are shareholders so you should treat them like you treat other shareholders; talk to them,' says Sydorowitz. 'As a shareholder, they have a specific view and most know the companies they invest in far better than some of the big investors.... They often pick a company because they believe there is unlocked value.'

Resolution types that have received the most frequent opposition in Hong Kong since 1 January 2015



Source: www.proxyinsight.com

- **Undertake due diligence.** 'Do your own due diligence on the activist. Understand what materials they use to form their thesis,' says Sydorowitz, adding that while most activist investors tend to be savvy and knowledgeable, the fact is they are outside the company, and do not have at hand as much information and insight as management does.
- **Study the tactics.** Understand the type of campaigns the activists are running – do they use the media as a stalking horse or speak to management behind the scenes, for instance.
- **Develop and maintain a relationship throughout the year.** 'That sounds obvious, sounds like motherhood and apple pie, but too often companies don't have a regular engagement with investors, and only go to them on a transaction-by-transaction basis,' says Sydorowitz.

Sydorowitz notes that the company secretary plays a pivotal role in preparing companies for AGMs and other engagements with investors. 'They have all the components to make sure there is a good event,' he says, adding that besides engaging with clients they need to maintain good relations with other client-facing agents of the business, such as investor relations. 'The last thing you want is three or four entities reaching out to investors and telling them different things,' he said.

Company secretaries need to know their shareholders and understand who votes and who does not vote at shareholder meetings, and be ready to answer queries concerning everything from the earnings forecast spread amongst the analysts to the company's performance relative to peers.

A new type of tyranny?

Aware as he is that passive investors are increasingly engaging in activist activity, Sydorowitz read with interest a much-shared opinion piece that ran in the *Wall Street Journal* (www.wsj.com) in October this year, regarding the 'tyranny of the passive investor'. The article, 'Meet the new corporate power brokers: passive investors', quoted Daniel O'Keefe, an active manager, as saying: 'The tyranny of passivity is you have large pools of money that are unengaged in their investments,' which he argues is 'a far greater risk than the tyranny of activism'.

This is a change of perspective. Activist investors, such as Paul Singer or Carl Icahn, have long struck fear in the hearts of

“investors want an open-door engagement with management”

companies and have sometimes been described as bullies. If executives or board members saw such investors take stakes in their firms, often it meant trouble was on the horizon. However, passive investors own a lot more of the listed universe than the niche of activist investors. With these stakes come voting power, so companies like Vanguard and BlackRock have appointed employees who focus exclusively on governance issues. As Vanguard's Glenn Booraem was quoted as saying in the *Wall Street Journal* piece: 'We're riding in a car we can't get out of. Governance is the seat belt and air bag'.

Interestingly, passive investors sometimes use their clout to unite with corporate management – and fend off campaigns by activist investors. On Wall Street, one of the world's biggest passive investors – the index-fund firm Vanguard – voted against a move by the activist Jeffrey Osher to remove the chief executive officer of Green Dot Corp, a California-based prepaid-card company.

This serves as a reminder as to why engagement with investors is crucial for companies. Not only might such engagement help head off unwanted activist campaigns, but could also help listed companies to find allies among institutional investors in defending against such campaigns. 'Once you spot the activist investor, it's too late,' says Sydorowitz. 'Investors want an open-door engagement with management, and we're seeing more of it'.

This is partly driven by the increasing number of institutional investor guidelines promoting shareholder/issuer engagement, such as the Stewardship Code published by the UK's Financial Reporting Council in 2010.

'Investors are encouraged to engage with other investors. They're asking their peers in the market what they own and why. Companies need to be aware of that and be engaged in that,' says Sydorowitz.

Cathy O'Connell
Journalist

Demystifying shareholder engagement

Christine Chow, Associate Director, Hermes EOS, Hermes Investment Management, answers questions on shareholder engagement raised by attendees at the recent HKICS Corporate Governance Conference 2016.



At the 10th biennial Corporate Governance Conference (CGC 2016) hosted by The Hong Kong Institute of Chartered Secretaries (HKICS) in September 2016, a number of questions were posted to panel speakers on shareholder engagement. As one of those panel speakers, I am glad to have been offered an opportunity to 'demystify' shareholder engagement. The purpose of this article is to share my answers to some of the questions raised at the CGC 2016 with the readers of *CSj*.

How does Hermes adjust yourself between the ideal stage you want the company to achieve and the never-ending stage the company can achieve? Is it a better solution to push the regulators for a better standardised framework than to push companies?

'May I ask if any of you in the audience enjoy playing music or participate in sports training? A good golf practice in the morning perhaps, or on the weekend? [About half of the audience raised their hands]. At Hermes, we do not believe that there is an ideal stage of a company and we do not expect companies to fit into any particular 'ideal' form of governance. I asked if you like music or sports because I wanted to highlight the point that there is no ideal form but only principles in what we do, in anything we do, as in any practices that aim to improve skills and understanding.

Companies have different shareholding structures, and different markets and sectors that they operate in. What matters is what works, and that we want to understand why it works. We are always trying to improve ourselves – as individuals and as teams, are we not? The perception of never-ending demand, if considered through a different lens,

provides insights into the upcoming trends of stakeholder interests. For some companies that I engage with, we discuss issues on cybersecurity, digital solutions, access to finance and information, as ways to encourage an integrated approach towards sustainable value creation. If you ask them, they see us as a free resource for information and advice.

You might argue that many global investors and western asset owners are accustomed to a particular type of governance, which might be the reason why you think there is an "ideal" type of company. It is precisely this potential misconception which makes shareholder communications and engagement important in Asia, including Hong Kong, where there are many family-controlled and state-controlled companies that seem to deviate from the 'widely held institutional' ownership model. The HKICS shareholder communications survey report (see end note) has made a case for board-level engagement and dialogue. It is a way to make ourselves better understood – and when I say ourselves, I mean global investors as well as companies. Global investors have much to learn about the different family-business culture. Many of them have dealt with European family businesses, but they are different too. What we seek is the opportunity to have a dialogue so we can better understand each other.

On the matter of whether it is better to engage with regulators for a standardised framework – I agree with you that it is an important pillar in engagement. In fact, both compliance and proactivity allow us to differentiate the better managed companies from others. We do have regular conversations with the regulators – both the Securities and Futures Commission (SFC) and the Stock Exchange – on investor concerns and global ESG (environmental, social and governance) issues. Most recently, we have been discussing matters such as capital efficiency, directors' remuneration, the definition of independence, human and labour rights practices and supply chain management. It is an ongoing process. Our objective on public policy engagement is to support the regulators in improving the quality of the funding platform.'

Do institutional investors care about wealth/income disparity? If so, what do they want investee companies to do besides making charitable donations?

'As Dr Kelvin Wong, Executive Director and Deputy Managing Director, COSCO SHIPPING Ports Ltd [also a panellist at the CGC 2016], articulated very well in his speech at this corporate governance conference, investors encourage the integration of material ESG issues into the core business model rather than

Highlights

- review your shareholder base and try to identify who the ultimate asset owners are so that you have a complete understanding of who you should be engaging with
- at Hermes we do not expect companies to fit into any particular 'ideal' form of governance
- global investors have much to learn about family business culture

“ what we seek is the opportunity to have a dialogue so we can better understand each other ”

CSR (corporate social responsibility) as a standalone effort. I will give you an example. An Asian insurance company initially developed a health insurance product bundled with gym membership and discounts on health food as a CSR initiative. Over time, they realised that the product enabled them to gain a better understanding of the lifestyle of their customers, and therefore to tailor-make more suitable individual policies. The product is now a mainstream business offering. I understand that in other markets, such as in South Africa, these products are also popular. Global investors appreciate the innovative thinking that goes into sustainable and responsible product offering.

Charitable donations is a discretionary effort for companies to establish their "licence to operate" within a community, over and beyond that objective, shareholders should have the discretion to decide which organisation to support.'

In some markets, institutional investors who collaborate on engagement are deterred by the accusation of 'acting in concert'. What is your view?

'In 2013, the European Securities and Markets Authority (ESMA) published a statement which clarifies the extent to which investors may cooperate on corporate governance issues without being regarded as "acting in concert"

and therefore running the risk of triggering an obligation to make a mandatory offer under the Takeover Directive. In Japan and Korea, the matter is currently being discussed by regulators and investors, especially under the Japan Stewardship Code and the draft Korean Stewardship Code.

In Hong Kong, the Takeovers Code provides that shareholders collectively voting together on a particular resolution would not normally lead to an offer obligation although that circumstance may be taken into account as an indication that the shareholders are acting in concert. The SFC has published a Practice Note (PN21) to provide further information on this matter.

In markets where there isn't an explicit list of tasks that are considered acceptable, investors tend to follow the "white list" put forward by ESMA:

- entering into discussions with each other about possible matters to be raised with the company's board
- making representations to the company's board about company policies, practices or particular actions
- other than in relation to board appointments, exercising shareholders' statutory rights in relation to general meetings, for example the right to call a general meeting, adding items to the agenda and tabling draft resolutions, and
- other than in relation to board appointments, and insofar as such a resolution is provided for under national company law, agreeing to vote the same way on a resolution put to a general meeting, for example to

approve/reject a proposal relating to directors' remuneration or rejecting a related-party transaction.

These investors must, however, be able to defend that they have no intention of acquiring or exercising control over the company, otherwise they could be considered as acting in concert.'

What should companies be doing to enhance communications with shareholders and understand shareholders' needs?

'Review your shareholder base and try to identify who the ultimate asset owners are – beyond their appointed investment managers – so that you have a complete understanding of who you should be engaging with. Many pension funds have engagement representatives. Hermes' engagement team – Hermes Equity Ownership Services – is one example. We speak on behalf of long-term investors and asset owners who have entrusted us to engage with companies on material ESG issues that have an impact on long-term shareholder value creation. Our engagement programme, the themes we engage on – from climate change, human and labour rights practices, accounting and tax, to cybersecurity, waste and pollution and shareholder rights protection – are themes developed based on intensive feedback and guidance from long-term asset owners.

Christine Chow

*Associate Director, Hermes EOS,
Hermes Investment Management*

*The HKICS research report
'Shareholder Communications for
Listed Issuers – Five Imperatives
to Break the Monologue' is
available on the HKICS website:
www.hkics.org.hk*



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Understanding competition

A new HKICS guidance note suggests that, despite its reputation as a fiendishly complex and technical piece of legislation, Hong Kong's new Competition Ordinance can be best understood with an appreciation of the nature of, and the benefits of, competition.

Hong Kong's new Competition Ordinance, which came into effect in 2015, presents compliance and governance professionals, company secretaries in particular, with a tough challenge. Following the new trend in legislation in Hong Kong, the new law takes a largely principles-based approach to preventing anti-competitive behaviour. The prohibitions of the first and second conduct rules, for example, focus on behaviour 'which prevents, restricts or distorts competition'.

Since the Competition Ordinance was enacted in 2012, the market has been clamouring for guidance on how the new law will be interpreted. The Competition Commission has produced different sets of guidance in relation to various aspects of the law (available on the Commission's website: www.compcomm.hk), but this month a new HKICS guidance note has become available giving guidance tailored to company secretaries and governance professionals.

The new guidance note is the work of the HKICS Competition Law Interest Group (see 'The HKICS Interest Groups' below), and it aims to provide an overview of the ordinance. 'In future guidance,' the guidance states, 'we will dwell upon the Competition Commission's guidelines and policy documents along with other analysis relevant to the company secretary and business undertakings. But at this juncture, and as an introduction a valid question is what, as a practical matter, does the competition law mean?'

What does the competition law mean?

The Competition Ordinance imposes new obligations on companies which, in many cases, will require a change to existing commercial practice in Hong

Kong. Businesses often share information, for example, and sometimes this has no anti-competitive impact. Businesses need to be aware, however, that some forms of information exchange – in particular the sharing of pricing or bidding information among competitors – may be caught under the law.

As mentioned above, the law takes a largely principles-based approach, prohibiting behaviour which compromises underlying competitive market forces. 'The focus is on competition as a process itself, rather than merely on outcomes (prices)', the guidance states. 'Another way to consider the nature of anti-competitive activity is that it prevents or otherwise limits outcomes that should be happening naturally through the forces of competitive response. A group of firms may be able to set prices or terms for its members because the group can exclude renegade members or non-group members from favourable opportunities. Such agreements distort market forces so as to provide an advantage to some at the expense of other actual or potential competitors and ultimately of consumers.'

Relevance for company secretaries

In addition to looking at the meaning of the new law, the guidance investigates its relevance for company secretaries. It

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In a competitive market, even the most successful are at risk of losing their advantage to a smarter, faster, or more innovative alternative. This tension is what keeps markets dynamic.

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points out, for example, that company secretaries need to ensure competition compliance receives board-level attention.

'If it is understood that, like technological risks, competition law issues are yet another set of risk factors for enterprises, then similar issues such as board composition to take into account competition law skill sets; having a regular board agenda item for risk management, including competition law implications, as appropriate; having adequate board oversight, competition-related internal controls; and proper procedures for handling classified information, personal data, audit plan, incident response and disclosure obligations, as referred under the Technology Guidance Note, where

Highlights

- successful compliance with the Competition Ordinance should start with an understanding of the rationale behind the law
- the focus is on competition as a process itself, rather than merely on outcomes
- another way to consider the nature of anti-competitive activity is that it prevents or otherwise limits outcomes that should be happening naturally through the forces of competitive response

The HKICS Interest Groups

The HKICS Competition Law Interest Group is one of seven groups set up earlier this year under the Technical Consultation Panel to look into key areas of corporate governance and company secretarial practice with a view to producing guidance to HKICS members and the wider profession and community.

The Competition Law Interest Group comprises:

- David Simmonds (Chairman), Member of the Company Secretaries Panel and Technical Consultation Panel, HKICS, and Group General Counsel & Company Secretary, CLP Holdings Ltd
- Brian Kennelly QC, Blackstone Chambers
- James Wilkinson, Senior Associate, King & Wood Mallesons
- Professor Mark Williams, Member of the Technical Consultation Panel, HKICS, and University of Melbourne Law School
- Mike Thomas, Partner, The Lantau Group
- Neil Carabine, Partner, King & Wood Mallesons, and
- Mohan Datwani FCIS FCS(PE) (Secretary), Senior Director and Head of Technical & Research, HKICS

The six other Interest Groups cover the following areas:

- company law
- ethics, bribery and corruption
- public governance
- securities law and regulation
- takeovers, mergers and acquisitions, and
- technology.

Two previous Interest Group guidance notes (the public governance and technology guidance notes, published in August and November this year respectively) are available from the Publications section of the HKICS website: www.hkics.org.hk. The next guidance note in this series, on takeovers, mergers and acquisitions, is scheduled to be published in early 2017.

Suggestions on topics relevant to the HKICS Interest Groups are welcome. Please contact Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, HKICS, at: mohan.datwani@hkics.org.hk.

appropriate; could be considered; the guidance states.

Company secretaries will also need to advise directors of the new liabilities they face as a consequence of the Competition Ordinance. The law empowers the Competition Commission to seek a disqualification order against directors of companies that have infringed the law, if:

- the director's conduct contributed to the infringement, or
- the director should have been aware of the infringement.

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

Liability also extends to individual employees (including company secretaries) who can be prosecuted for obstructing the Commission's exercise of its investigatory powers, with a maximum sentence of two years' imprisonment. Examples of obstruction include:

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

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

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The point is that both the first and second conduct rules have a common objective at their core to protect the integrity of competition itself. An understanding of this will help the company secretary better articulate and analyse any given situation calling for an analysis.

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Conclusion

Hong Kong's competition law principles 'are at their infancy', the new HKICS guidance points out. There are, for example, some glaring gaps in the coverage of the new law, notably the lack of merger controls. 'Hong Kong only regulates, through the Communications Authority and the Competition Commission, mergers of telecoms licencees. This effectively allows for undertakings to merger to buy their way out of competition,' the guidance points out.

The new law does, however, serve a very real purpose. 'In a competitive market, even the most successful are at risk of losing their advantage to a smarter, faster, or more innovative alternative. This tension is what keeps markets dynamic,' the guidance states. 'Some companies whose names formerly lit up the Hong Kong nighttime skyline no longer exist. Competition laws aim to ensure that this process of creative destruction is unfettered by actions that confer

secret advantages, obstruct competitive response, limit market access, or otherwise prevent markets from working as they should. Competitors, after all, are supposed to compete!'

The key message of the guidance is that compliance with the Competition Ordinance will not only require a detailed knowledge of the letter of the law, but also an understanding of the nature of competition and a judgement as to whether a particular course of action will have the effect of harming competition. This judgement may of course require an assessment of highly complex issues. For example, determining 'abuse of market power' will require an in depth assessment of the market in which the business operates. Moreover, this judgement must be made in the absence of any enforcement record of the new law – there remains uncertainty as to how the Competition Commission and the Competition Tribunal will interpret the law.

The HKICS Competition Law Interest Group promises further guidance on these complexities, but its first guidance seeks to highlight the fact that successful compliance with the Competition Ordinance should start with an understanding of the rationale behind the law. 'The point is that both the first and second conduct rules have a common objective at their core to protect the integrity of competition itself. An understanding of this will help the company secretary better articulate and analyse any given situation calling for an analysis,' the guidance states.

The Competition Ordinance Guidance Note is available from the Publications section of the HKICS website: www.hkics.org.hk. Look out for a review of the next HKICS Interest Group guidance note on mergers and acquisitions in next month's journal.

China's new Cybersecurity Law



Gabriela Kennedy, Partner, and Xiaoyan Zhang, Counsel, Mayer Brown JSM, look at the implications of China's newly passed Cybersecurity Law.

On 7 November 2016, the Standing Committee of the National People's Congress of China passed the controversial Cybersecurity Law (the CSL). The CSL has gone through three readings since the release of the first draft on 6 July 2015 and will take effect in June 2017. As China's first comprehensive privacy and security regulation in the cyberspace, the CSL enhances data protection in many aspects while bringing in compliance challenges for the international community at the same time.

Applicability

The CSL adopts a tiered approach and imposes different obligations and duties to Critical Information Infrastructures (CIIs) and network operators. 'Network operators' are defined to include operators

of basic telecommunication networks, internet information service providers, and key information systems. The definition of CII has adopted an earlier version that makes specific reference to a few key sectors such as finance and transportation while retaining the broad catch-all phrase from the second draft to cover 'infrastructure that, in the event of damage, loss of function, or data leak, might seriously endanger national security, the national welfare, the livelihoods of the people or the public interest'. Both the second and third drafts stated that the exact scope of CIIs would be determined separately by the State Council, leaving the government with considerable leeway to bring industries not specifically singled out in the definition into the scope of the legislation

at a later stage. Some of the heightened requirements, such as data localisation and cross-border transfer restrictions, apply to CIIs only.

Data localisation and cross-border transfers

Under perhaps one of the most controversial provisions of the CSL, operators of a CII are required to store within China 'citizens' personal information and important data' collected or generated during business operations in China. If, for legitimate business reasons, the data must be provided to a foreign entity outside China, the operators must complete a 'security assessment' jointly formulated by the National Cyberspace Administration and State Council. Notably, the initial draft applied the localisation requirement to 'citizens' personal information and other important data' while the later draft revised this to 'citizens' personal information and important data'. The second draft also narrowed the scope of data subject to localisation to only data collected or generated within China. While the first draft seemed to allow operators to 'store abroad such data or provide it' to an entity or individual located abroad provided that it passes a security assessment, the later draft removed the overseas storage option. The terms

Highlights

- all Chinese citizens' personal data and transaction data collected or generated within China may be required to be stored in China
- the CSL provides that Chinese authorities can require network operators to provide necessary assistance and support to accommodate national security and criminal investigation needs without specifying any limit on such power
- the new law could have a significant impact on multinational companies doing business in China which inevitably need to share data internally and across borders on a daily basis

'security assessment' and 'important data' remain undefined.

Upon a narrow interpretation of this localisation requirement, all Chinese citizens' personal data and transaction data collected or generated within China may be required to be stored in China. This in essence would mean a segregation of the global information system into one distinct system for China and one for the rest of the world. This could have a significant impact on multinational companies doing business in China which inevitably need to share data internally and across borders on a daily basis. No exemptions seem to be envisaged by the new law except for the security assessment channel which appears even more stringent than what data privacy regimes such as the European Union have always had (be they by way of express consents, internal corporate contractual arrangements sanctioned by regulators, model clauses or other such mechanisms). Even Russia's data localisation rules, which have made headlines, are limited to operators processing personal data concerning Russian citizens that are physically located in Russia or own a website targeting Russia. However, the rules do not prohibit remote access of a database physically located in Russia that processes personal data of Russian citizens. By contrast, under the literal reading of the Chinese law, CILs must undergo a security assessment with the Chinese authority if cross-border remote access is considered 'provision' abroad.

Increased penalties for data breaches and violations

The CSL provides that Chinese authorities can require network operators to provide necessary assistance and support to accommodate national security and

criminal investigation needs without specifying any limit on such power. It also provides penalties for non-compliance with its provisions by business entities or responsible individuals, including warnings, rectification orders, fines, or confiscation of illegal gains, and suspension of business operations or the revocation of the entity's business licence. In the case of a network security incident, Chinese authorities may have the power to compel an interview of network operators. The CSL further provides that violations of the CSL should be included in the credit history of violating entities and individuals and can be made public. Additionally, individuals punished for endangering network security could be prohibited for life from taking on jobs related to network security management or other key posts related to network operation in China. Finally, overseas entities or individuals that attack, compromise, interfere with or destroy Chinese CILs will be subject to legal liability and sanctions including assets-freezing pursuant to a provision added in the third draft.

Enhanced privacy protection for individuals

Although many of the privacy and security obligations imposed upon network operators and CILs have appeared in other sector-based regulations and guidelines, the CSL makes progress by addressing many specific privacy aspects such as access, data retention, breach notification, mobile privacy, online fraud, and the protection of the privacy of minors. For example, individuals, for the first time, are given the right to request the deletion of their personal data. All network operators are required to preserve network logs for at least six months, and to report upon discovery any security defect, loophole, or other security risks found in their products or

services to the relevant authorities and affected individuals. Instant messaging service providers, like any other traditional network service providers, must require users to register using their real identity information. Individuals and organisations are prohibited from establishing 'websites or communication groups used to carry out fraud, to pass on criminal methods, to produce or sell contraband or controlled items and to engage in any other illegal criminal activities', or to publish information relating to such activities online. General principles have been added in the third draft for the protection of minors online, serving as a basis for developing further laws and regulations.

While we are expecting additional guidelines to be issued or precedents to develop to clarify some of the key requirements such as the scope of the CILs, data localisation and cross-border transfers, for now in-house counsel are advised to take a proactive approach by conducting a compliance risk assessment with the aid of qualified privacy professionals, and possibly a comprehensive privacy and security audit of their Chinese operations to determine the best way to stay 'within the law'. China is now clearly becoming a jurisdiction that will require extra resources to devise the right solutions that do not jeopardise the day-to-day operations of international business with a presence there.

Gabriela Kennedy

Partner, Head of Asia IP & TMT Group, Mayer Brown JSM

Xiaoyan Zhang

Counsel, IP & TMT Group, Mayer Brown JSM

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Hong Kong gets tough on bid-rigging

Implications of the Garden Vista case



Following the first successful conviction resulting from the ICAC's investigations into bid-rigging in a renovation project in Sha Tin, Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries, looks at the new determination of regulators and the courts in Hong Kong to crack down on bid-rigging.

Property investment has traditionally been a source of wealth creation for many Hong Kong people. It is a highly emotive topic as it carries with it the hopes and aspirations to provide for loved ones and future generations, in addition to providing immediate shelter and comfort. Many Hong Kong people work all their lives to own the property they live in.

Eventually, of course, the need arises to renovate and maintain the common parts of buildings. Given the fact that multi-storey buildings are the main form of property developments in Hong Kong, the challenges for renovations of the common areas become complex as many owners are involved. Seldom can decisions to renovate and maintain the common parts of a building be left to individual choice, but rather these become a complex process of negotiation between owners. In many instances, renovation is a prolonged process and involves the need for individual owners to contribute substantial sums of money.

Building renovation projects, which can run from tens to hundreds of millions of dollars in value, have become a prime breeding ground for corrupt and unethical practices. The reality is that not everyone is trained like the Chartered Secretary to adhere to the highest standards of ethical behaviour and best governance practices. Building renovations are often run by part-time volunteers, and the lack of control

systems can lead to those with greedy fingers colluding with others to profit themselves at the expense of the owners.

A malfeasance that is no stranger to building renovations in Hong Kong is 'bid-rigging'. This involves contractors coming together to secure building renovations at high prices and thereby maximising profit for themselves. This can take a variety of forms. For example, contractors who are able to bid for projects may agree on which contractor should bid for which renovation project. They may also collude together and allow a high price bid to look attractive by putting in even higher bids, or submitting lower bids and then pulling out at the last minute without those organising the bid knowing such arrangements.

In various instances, unscrupulous contractors are able to engage in bid-rigging with the help of 'insiders'. Garden Vista is one such case.

The Garden Vista case

In 2010, the Incorporated Owners (IO), which represents all owners, obtained approval from the owners for the renovation of Garden Vista in Sha Tin in 2010. It took a number of years to organise the tender and documents for the renovation works. Disputes between certain owners and the IO then ensued. By June 2015, certain owners were already taking the IO to court in relation to the amount that they should contribute to the renovation works.

This sequence of events is not unusual where trust falls apart between owners during a renovation project, but in this case it eventually transpired that the chairman of the IO and others were on the take with others such as Yau Shui-tin, a former engineering boss and his cronies. In 2016, the ICAC took Yau Shui-tin to the District Court, with pending cases and investigations of the others involved still going on.

Highlights

- Yau Shui-tin has been sentenced to 35 months' imprisonment for paying bribes that amounted to HK\$45 million for projects relating to Garden Vista and two other projects
- the District Court judge in the case noted that bid-rigging was a common practice in Hong Kong
- the Competition Commission has welcomed the successful prosecution and urges participants in building renovation and maintenance projects to steer clear of bid manipulation practices

“
the District Court judge said that the practice of bid-rigging was ‘rampant’ and people need to be more aware of it
 ”

In September 2016, Yau Shui-tin pleaded guilty to four counts of conspiracy to offer an advantage. As there was a guilty plea, there was little information as to the details of the case, but the ICAC issued a press release on the matter which shows that the case is significant. The following is reconstructed from the press release and media reports as to the central issue of bid-rigging.

Reportedly, this is the first case that the ICAC has taken on in relation to bid-rigging over renovations, and in any event this is the biggest case involving rigging. The amount relating to the renovation works for Garden Vista was some HK\$260 million. The bribes that Mr Yau and his co-conspirator paid amounted to some HK\$45 million for projects relating to Garden Vista and two other projects. The District Court also sentenced Mr Yau to what is regarded as a steep sentence of 35 months' imprisonment. From the media reports, the bribes were paid to the chairman of the IO and a senior executive of a property management company, as well as another property manager.

The legal provisions that the ICAC used were Section 9(2)(a) of the Prevention of Bribery Ordinance and Section 159A of the Crimes Ordinance. Section 9(2)(a) says that

'any person who, without lawful authority or reasonable excuse, offers any advantage to any agent', to do or forebear to do something in relation to the principal's affairs or business shall be guilty of an offence. Section 159A extends this to the conspiracy to commit such an offence.

The ICAC honed in on the irregularities relating to the tender process, where owners of Garden Vista were presented with a HK\$260 million renovation contract, requiring each of the about 800 households to pay around HK\$350,000. It was also reported that some of those that refused to pay received death threats. About 10 people were arrested by the ICAC over the case, and, in addition to the Yau Shui-tin case, the investigations are continuing.

The implications of the judgment

The District Court judge in the case, Josiah Lam Wai-kuen noted that bid-rigging was a common practice in Hong Kong, albeit that Mr Yau was the first person to be convicted. If we pause for a moment, we can refer to the Competition Ordinance for a definition of bid-rigging.

According to Section 2(2) of the Ordinance, bid-rigging refers to an agreement that is made between or among two or more undertakings (like contractors) whereby 'one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request'. The important point is that all these agreements must 'not be known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement

or by an entity controlled by any one or more of the parties to the agreement'.

Under the Ordinance, bid-rigging also extends to 'a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement that is made between or among two or more undertakings and that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement'.

The District Court judge said that the practice of bid-rigging was 'rampant' and people need to be more aware of it. Also, he pointed out that the government could consider setting up a statutory body to regulate building renovations because of the lack of professionalism of owners and their inability to determine when certain renovations are necessary or not, and issues as to costs. While the Development Bureau praised the judge's ruling for its future deterrent power, it said that there is no intention to set up a new statutory body as there would be regulatory overlap with the current regulator's authority. The bureau added, however, that it will study the judgment to find ways to provide more assistance to property owners.

The view of the Competition Commission

Immediately following the Garden Vista case, the Competition Commission (the Commission) issued a press release in which it stressed that 'bid-rigging is a matter of grave public concern and the Garden Vista case has been closely followed. The successful prosecution of the defendant drives home the message

that participants in building renovation and maintenance projects should steer clear of bid manipulation practices'. It went on to explain that 'under the Competition Ordinance, bid-rigging is considered to be a serious anti-competitive conduct and combating bid-rigging cartels is an enforcement priority for the Commission'.

It further explained that the 'Commission undertook a study into certain aspects of this market and released the findings in May 2016. The overall result of the study is consistent with the widespread concern that bid-manipulation practices were prevalent in the local residential building renovation and maintenance market in the recent past. The results enabled the

Commission to better understand the market and inform the Commission's enforcement actions'.

The Commission then went on to call 'upon market participants to bid for projects on a competitive basis. Those contemplating rigging a bid should desist, while those already involved in rigging bids should consider approaching the Commission for leniency. Members of the public should also be alert and they are encouraged to report any potential bid-rigging to the Commission. Bid-rigging is a complex issue and it may sometimes involve elements that contravene different areas of law. The Commission will work closely with other relevant law enforcement agencies such

as the ICAC and the police to ensure a coordinated and effective approach to tackling this problem'.

Mohan Datwani FCIS FCS(PE)

Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries

The Competition Commission's 'Report on study into aspects of the market for residential building renovation and maintenance' (May 2016) is available on the Commission's website (www.compcomm.hk – see 'Media, Publicity & Publications/Research Reports').

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Professional Development

Seminars: October – November 2016

18 October

Company secretarial practical training series: investor relations and shareholder communication



Chair: Jerry Tong FCIS FCS, Institute Membership Committee and Education Committee Member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd

Speaker: Dr Eva Chan FCIS FCS(PE), Institute Treasurer and Membership Committee Chairman, Chairman of Hong Kong Investor Relations Association, and Head of Investor Relations, C C Land Holdings Ltd

25 October

Company secretarial practical training series: regular financial reporting preparation (re-run)



Chair: Edmond Chiu FCIS FCS, Institute Membership Committee Member, and Head of Corporate Services, Vistra Hong Kong

Speaker: Sharon Leung FCIS FCS, Vice-President, SW Corporate Services Group Ltd

27 October

SFC means enforcement business (re-run)



Chair: Duffy Wong FCIS FCS JP, Institute Past President, and Senior Partner, Ho, Wong & Wong, Solicitors & Notaries

Speaker: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical & Research

28 October

Updates on the Hong Kong listing rules and IPO practice



Chair: Polly Wong FCIS FCS(PE), Institute Education Committee Vice-Chairman and Audit Committee Member, and Company Secretary and Financial Controller, Dynamic Holdings Ltd

Speaker: Anthony Wan, Partner, King & Wood Mallesons

1 November

Company secretarial practical training series: ESG reporting



Chair: Richard Law FCIS FCS, Company Secretary, Global Brands Group Holding Ltd

Speaker: April Chan FCIS FCS, Institute Past President and Technical Consultation Panel Chairman

Corrections:

The title of Richard Law was misstated in the 'Seminars: September – October 2016' of Institute News (page 34, November 2016 edition, CSj). His correct title is: Richard Law FCIS FCS, Company Secretary, Global Brands Group Holding Ltd.

The membership details of Douglas Charles Oxley in the 'Obituary – Douglas Charles Oxley' of Institute News (page 44, November 2016 edition, CSj) was misstated. The correct information is: Mr Oxley became a member of the Institute of Chartered Secretaries and Administrators in 1961 and has been a member in Hong Kong since 1974.

New online CPD seminars

HKICS has launched an online series of CPD seminars in collaboration with The Open University of Hong Kong (OUHK). Through the online learning platform of OUHK, members, graduates and students are able to easily access selected video-recorded seminars with any smart devices anytime, anywhere. The Institute's online CPD seminars enable members, graduates and students to schedule their professional learning more flexibly.

Details and registration are available at the CPD courses section of the OUHK website: <http://ecentre.ouhk.edu.hk>. For enquiries, please contact the Professional Development Department at: 2830 6011, or email: ecpd@hkics.org.hk.

MCPD requirements

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

CPD year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Declaration deadline
2016/2017	1 January 1995 - 31 July 2016	13.5* (at least 2.5 ECPD points)	30 June 2017	31 July 2017
2017/2018	On or before 30 June 2017	15 (at least 3 ECPD points)	30 June 2018	31 July 2018

*pro-rata for 2016/2017 as a result of the Institute's year-end date change.

Key update on the revised MCPD policy (effective from 1 August 2016)

Revised MCPD Policy (effective from 2016/2017 CPD year)	
Extended coverage of CPD activities	<ol style="list-style-type: none"> participation in Institute activities as a mentor/coach for the Institute or other professional associations or institutions being an external examiner/assessor for the Institute or other professional associations or institutions for the promotion of education or professionalism in the key areas of learning participation in committees of the Institute other than technical committees of the Institute or committees of other professional associations or institutions for the promotion of education or professionalism in the key areas of learning <p>A maximum of five CPD points in each CPD year can be earned in each category under (a)-(c), excluding activities of members/graduates' own occupation.</p>
Full exemption from MCPD compliance	<p>Full exemption from the MCPD requirements would be granted for the following reasons:</p> <ul style="list-style-type: none"> long-term illness pregnancy period of unemployment for over six months, or retirement. <p>Applications, with proof, should be submitted to the Institute by 31 July each year.</p>

Professional Development (continued)

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
20 Dec 2016	10.00am – 12.00nn	Global development of Islamic banking and bonds (SUKUK) (session 1)	2
20 Dec 2016	2.00pm – 4.00pm	A bird's eye view of the international arbitral process (session 2)	2
11 Jan 2017	6.45pm – 8.15pm	Think tax – key to Hong Kong and China tax cases	1.5
13 Jan 2017	3.00pm – 5.30pm	Importance of governance: Hong Kong's experiences/challenges in the One Belt, One Road economies	2
23 Jan 2017	4.00pm – 5.30pm	Managing third-party rights – controlling, reducing and avoiding future legal risk	1.5

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

Seminar fee discount offers to the Institute's registered students

Effective from 1 January 2017, registered students of the Institute will enjoy a 30% fee discount to the Institute's regular ECPD seminars.

For details, please visit the ECPD section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Sharon Yip at: 2830 6070, or email: ecpd@hkics.org.hk.

Seminar duration	Regular seminar rate	Discounted rate for registered students
1.5 hours	HK\$320	HK\$230
2 hours	HK\$400	HK\$280
2.5 hours	HK\$480	HK\$340

Advocacy

HKUST students visit the Institute

On 4 November 2016, a group of students from the Marketing Students' Society of The Hong Kong University of Science and Technology (HKUST) Students' Union visited the HKICS office. Institute Chief Executive Samantha Suen FCIS FCS(PE) introduced the role of company secretary and the Chartered Secretarial profession to the students and secretariat staff explained the daily operations of the Institute.



HKUST students visiting the Institute

Advocacy (continued)

CSIA council meeting

Institute Past President and Chairman of the Technical Consultation Panel April Chan FCIS FCS and Chief Executive Samantha Suen FCIS FCS(PE) attended the Corporate Secretaries International Association (CSIA) Council meeting in Bangkok on 27 and 28 October 2016.

A roundtable meeting, hosted by the Thai Listed Companies Association (TLCA), was organised on 27 October 2016. Delegates from 11 member countries of CSIA including TLCA; officials from the Thai Securities and Exchange Commission and the Thai Stock Exchange; as well as representatives of the Thai Institute of Directors (IOD) and the Thai Company Secretary Club shared

knowledge and experiences on corporate governance trends and key challenges for corporate secretaries in promoting corporate governance in organisations. A dinner seminar titled 'Ten practical guidelines to improving board communication' hosted by Thai IOD and sponsored by PricewaterhouseCoopers and Diligent, which was attended by over 100 participants, was arranged after the roundtable meeting.

On 28 October 2016, a visit was arranged to the Thai Stock Exchange for the CSIA delegates.



At the CSIA council meeting



At the CSIA roundtable discussion



At the dinner seminar



Visit to the Thai Stock Exchange

Advocacy (continued)

HKICS Academic Advisory Panel luncheon

The Institute held its Academic Advisory Panel (AAP) lunch meeting on 2 November 2016. Institute Council member and Education Committee Chairman David Fu FCIS FCS(PE); Education Committee Vice-Chairman Polly Wong FCIS FCS(PE); Education Committee member Jerry Tong FCIS FCS; Chief Executive Samantha Suen FCIS FCS(PE); and Education and Examinations Director Candy Wong attended the meeting with the AAP members, who are academics from local universities. The meeting provided a platform for discussion on collaboration opportunities on educational matters and enabled the HKICS attendees to share information on the Institute's recent developments.

Guests (listed by surname in alphabetical order)

Dr Helen Han, Senior Lecturer, Department of Accountancy, Lingnan University

Professor Robin Huang, Professor, Faculty of Law, The Chinese University of Hong Kong

Dr Shirley Kan, Director, Professional Accountancy (PACC) Programme, School of Accountancy, The Chinese University of Hong Kong

Professor Ip Yiu Keung, Associate Vice-President (Academic Support & External Links), President's Office, The Open University of Hong Kong

Dr Kelvin Mak, Lecturer, Department of Accounting, The Hong Kong University of Science and Technology

Dr Mark Ng, Associate Head, Department of Business Administration, Hong Kong Shue Yan University

Dr Sunny Sun, Assistant Professor, School of Accounting and Finance, The Hong Kong Polytechnic University

Dr Claire Wilson, Associate Head, Department of Law and Business, Hong Kong Shue Yan University

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



Group photo with AAP members

H-share Training Programme 2016

The Institute's H-share Training Programme 2016 was held in Hong Kong between 8 and 11 November 2016 and was attended by over 50 board secretaries and senior executives from H-share, A+H share and red-chip companies. Speakers from Hong Kong Exchanges and Clearing Ltd (HKEX), the Securities and Futures Commission as well as experienced market practitioners and professionals shared their professional knowledge and hands-on experience on a range of topics, including the latest regulatory developments, financial reporting standards, shareholder communications, connected transactions, risk management and internal control systems. Participants also visited CLP Holdings Ltd (CLP) and HKEX.

The Institute would like to thank the speakers, participants, CLP and HKEX for their support, and Clifford Chance for sponsoring the event.



Visiting CLP



Visiting HKEX



At the seminar

Advocacy (continued)

HKICS Beijing Representative Office (BRO) 20th anniversary dinner

This year marks the 20th anniversary of the establishment of the Institute's Representative Office in Beijing (BRO) in 1996. To celebrate two decades of close collaboration with our Mainland peers, a dinner was held on 18 November 2016 at The Westin Beijing Financial Street Hotel, Beijing. The dinner was attended by representatives from regulatory and professional bodies, board secretaries of H-share listed companies, as well as Council members, members, students and Affiliated Persons of the Institute. Edwin Ing FCIS FCS, Institute Past President who officiated the opening of the BRO office in 1996 also attended the celebration dinner.

The anniversary leaflet is available at the Publications section of the Institute's website: www.hkics.org.hk. See next month's journal for the speech by Institute President Ivan Tam FCIS FCS at the anniversary dinner.



HKICS President's official visit to Beijing

On 17–18 November 2016, HKICS President Ivan Tam FCIS FCS visited Insurance Association of China (IAC), State-owned Assets Supervision and Administration Commission of the State Council (SASAC), Ministry of Finance (MoF) and China Association of Public Companies (CAPCO). The HKICS representatives who joined these visits were Immediate Past President Dr Maurice Ngai FCIS FCS(PE); Treasurer Dr Eva Chan FCIS FCS(PE); Council Member Bernard Wu FCIS FCS; Chief Executive Samantha Suen FCIS FCS(PE) and Chief Representative of the Beijing Representative Office Kenneth Jiang FCIS FCS(PE).

At the meeting with Wang Min, Vice-Secretary General of IAC, and Chai Yue, Deputy director of Training Department of IAC, both parties discussed the plan for the joint training programmes for IAC members in 2017 and possible collaboration in designing the IAC's Corporate Governance Professionals Qualifying Programme in the future.

At SASAC, the HKICS delegation met with Li Bing, Director-General of Bureau of Capital, SASAC, and Xie Hui, Deputy Division Chief, Second Division of Bureau of Foreign Affairs, SASAC and provided an update on the Institute's latest developments in Hong

Kong, Mainland China and internationally. In-depth discussion was carried out on the positioning and professionalisation of board secretaries, as well as potential cooperation opportunities in enhancing corporate governance practices and knowledge for board secretaries and INEDs through training.

At the meeting with Shao Min, Deputy Director General of Accounting Regulatory Department, and Wan Wenxiang, Director of General Office of Accounting Regulatory Department of MoF, both parties explored potential cooperation opportunities in offering trainings in corporate governance, internal control and risk management to Chinese accountants.

At the meeting with Yao Feng, Vice-President of CAPCO, and Yang Zhiying, Deputy Secretary-General of CAPCO, both parties had a fruitful discussion on consolidating plans for further cooperation in the near future under the Memorandum of Understanding signed between the Institute and CAPCO in 2015.

The Institute would like to thank the officials from IAC, SASAC, MoF, and CAPCO for their work with the Institute during the visit.



At IAC



At SASAC



At MoF



At CAPCO

Advocacy (continued)

HKICS 2016 Annual General Meeting

Wednesday 14 December 2016 at 6.30pm

The 2016 Annual General Meeting of the Institute will be held on Wednesday 14 December 2016 at 6.30pm at Theatre A, 22/F, United Centre, 95 Queensway, Hong Kong. The 2016 Annual Report/ Annual General Meeting Notice and related documents are available at the News section of the Institute's website: www.hkics.org.hk.

HKICS President interviewed by NNA Japan

On 4 November 2016, Institute President Ivan Tam FCIS FCS was invited by NNA Japan to share views on problems with bank account opening in Hong Kong following the release of the bank account opening survey conducted by the Institute in September 2016.

As widely reported, Hong Kong businesses are having difficulties in opening bank accounts because of AML/CFT concerns during the banks' customer onboarding process which affects Hong Kong's ease of doing business. Chartered Secretaries, as recognised intermediaries for AML/CFT due diligence by banks, should be able to provide relevant assistance in this area.

To download the Institute's AML/CFT Guidelines and bank account opening survey report, please visit the Publications section of the Institute's website: www.hkics.org.hk.

HKICS President interviewed by Metro Finance Radio

Institute President Ivan Tam FCIS FCS was invited by Metro Finance Radio to an interview to introduce the Institute and the Chartered Secretarial profession, on the 'My Inc' (我的事務所) programme on 22 November 2016.

To archive the MP3 audio file of the interview, please visit the News section of the Institute's website: www.hkics.org.hk.



At the interview

HKCPS celebration dinner

On 13 November 2016, the Hong Kong Coalition of Professional Services (HKCPS) held a dinner to celebrate its 15th anniversary, and to mark the 67th anniversary of the founding of The People's Republic of China. Institute President Ivan Tam FCIS FCS; Immediate Past President Dr Maurice Ngai FCIS FCS(PE); Past President and Senior Vice-President of the Institute of Chartered Secretaries and Administrators (ICSA) Edith Shih FCIS FCS(PE);

Past President Edwin Ing FCIS FCS; Past President Natalia Seng FCIS FCS(PE); Past President and Chairman of the Technical Consultation Panel April Chan FCIS FCS; Council members Ernest Lee FCIS FCS(PE), Stella Lo FCIS FCS and Wendy Yung FCIS FCS; Chief Executive Samantha Suen FCIS FCS(PE); and other Institute members joined the celebration dinner.



At the celebration dinner

HKBU 60th anniversary gala dinner

Institute Chief Executive Samantha Suen FCIS FCS(PE) and Education and Examinations Director Candy Wong attended the gala dinner organised by the Hong Kong Baptist University (HKBU) on 4 October 2016 in celebration of the 60th anniversary of the establishment of HKBU.



At the dinner

Advocacy (continued)

The 6th Golden Bauhinia Hong Kong summit and award ceremony

The Institute participated in the 6th Golden Bauhinia Hong Kong Summit and Awards Presentation Ceremony organised by Ta Kung Pao on 23 November 2016 as one of the joint organisers. Institute President Ivan Tam FCIS FCS was one of the officiating guests at the award presentation ceremony and attended with Chief Executive Samantha Suen FCIS FCS(PE).

Congratulations to the following Institute Affiliated Persons who received the 'Best Board Secretaries of Listed Companies' awards (listed by surname in alphabetical order):

Du Daming, Huaneng Power International, Inc

Guo Xiangdong, Guangshen Railway Company Ltd

Huang Wensheng, China Petroleum & Chemical Corporation

Wang Ligang, Zhaojin Mining Industry Company Ltd

Wei Qiyang, China General Nuclear Power Corporation



Ivan Tam at the ceremony

Yu Tengqun, China Railway Group Ltd

Yu Xingxi, China Railway Construction Corporation Ltd

Zhai Feng, China Aluminum International Engineering Corporation Ltd



Group photo with award winning Affiliated Persons

Membership

Reaching out to major employers and members

The Institute continues to enhance its communications with stakeholders. Five networking events with major employers of the Institute's members were organised in October and November 2016. Institute Membership Committee members together with secretariat staff visited the companies and met with around 150 members, graduates, registered students and interested parties. At the visits, Institute representatives shared the latest developments of the Institute, and highlighted the career opportunities for Chartered Secretaries.



At TMF on 14 October 2016



At Ernst & Young on 25 October 2016



At PricewaterhouseCoopers on 26 October 2016



At Tricor on 3 November 2016



At Alter Domus on 4 November 2016

New graduates

Congratulations to our new graduates listed below.

Chan Cheuk Wing, Cherrie
Chan Kam Chuen
Chan Sheung Nga
Cheung Ka Ming
Choi Shuk Yin

Fu Mei Yan
Huang Yishan
Jiang Yang
Kwong Wing Yan
Lai Wing Yin

Leung Lai Yan, Charles
Lin Guoxin
Ling Shing Ping
Mak Hiu Yan
Ng Cheuk Ming

Ng Wing Yu
See Hiu Fung
Shum Cheuk Pui
Tse Kar Keung
Wong Shun Ling

Wu Shuang
Yeung Chor Pui

Membership (continued)

Members' activities highlights: October – November 2016

10 October
Community
Service – pink
walk for breast
health



The walkathon team, consisting of 15 members, graduates, registered students and secretariat staff, raised HK\$28,470 for the '2016 Pink Walk for Breast Health'

23 October
The Institute's
Dragon Boat
Team – Repulse
Bay Races



Our Dragon Boat Team won the champion of the women's golden plate race and the 2nd runner-up of the mixed team silver plate race

29 October
Members'
Networking –
visit to Tsz Shan
Monastery



At Tsz Shan Monastery

5 November
Community
Service –
cookies baking
workshop
(collaborated
with SAHK
香港耀能协会)



Members and children with disabilities learning to bake cookies together

12 November
Community
Service –
movie screening
(少年滋味) with
secondary school
students



Over 60 secondary school students attended the event



Members and students at the networking lunch after the event

Forthcoming membership activities

Date	Time	Event
6 December 2016	6.30pm – 8.30pm	Chartered Secretary Mentorship Programme – closing ceremony for 2016 and launch of programme 2017 (by invitation only)
10 December 2016	8.30am – 4.00pm	Members' Networking – day-tour to Hong Kong UNESCO Global Geopark
7 January 2017	10.45am – 2.30pm	Fellows Only – Ping Shan Heritage trail walk with poon choi (盆菜) lunch
14 January 2017	9.45am – 11.30am	Chartered Secretary Mentorship Training – The art of listening and providing feedback (by invitation only)

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

Correction

The Disciplinary Tribunal (DT) Order for the Respondent, Wong Po Ling Pauline ACIS ACS (the Respondent) in the 'Members' discipline' item of Institute News (page 42, November 2016 edition, CSj) was not stated in full. The correct DT Order is as follows:

Disciplinary Tribunal (DT) hearing date: 16 August 2016

Findings and order handed down

Having taken into account of the admission of the Respondent and the circumstances of the case, pursuant to ICSA Bye-law 25.1 and HKICS Article 27 the DT ORDERED that

- a. the Respondent's membership shall be suspended for 12 months from the date of this Order
- b. the Respondent shall pay a fine of HK\$25,000, and
- c. the Respondent shall be publicly reprimanded, and this Decision shall be published publicly via the Institute's journal, website and/or other official channels.

International Qualifying Scheme (IQS) examinations

December 2016 diet reminders

Examination postponement application

Candidates who are absent from a scheduled International Qualifying Scheme (IQS) examination due to illness must submit a satisfactory medical certificate to apply for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the December examination diet, that is, on or before Friday 30 December 2016.

Amendment of 'Instruction to Candidates'

Clause D – 'Candidates must bring along their admission slip and Hong Kong identity card or other proper identity documents (for example, PRC identity cards) at each sitting for identification purpose. Candidates who fail to provide the identity documents may not be permitted to attempt the examination. Candidates MUST NOT WRITE anything on the admission slip.'

June 2017 diet schedule

	Tuesday 6 June 2017	Wednesday 7 June 2017	Thursday 8 June 2017	Friday 9 June 2017
9.30am – 12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2.00pm – 5.00pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Please enrol between 1 and 31 March 2017.

Study packs – Go Green

In support of environmental protection, the Institute is planning to switch to online versions of the four IQS study packs. The print copy of the study packs will not be available for purchase once the online version is available. The Institute will make further announcements about the detailed arrangements.

Studentship

HKICS professional seminar

The Institute organised a professional seminar at The Open University of Hong Kong (OUHK) to introduce the Chartered Secretarial profession to undergraduates on 25 October 2016. Institute member Dr Brian Lo FCIS FCS and Education Committee member Winnie Li ACIS ACS gave presentations to the students on the attributes of company secretaries and career opportunities in professional services firms.



Souvenirs presented by Dr Susana Yuen ACIS ACS, Associated Professor, OUHK to Dr Brian Lo (left) and Winnie Li (right)

Studentship (continued)

Passing the Torch project 2016/2017

The Institute has partnered with the Centre for Holistic Teaching and Learning of the Hong Kong Baptist University (HKBU) to run the 'Passing the Torch' project for 2016/2017. This project aims to promote better knowledge of business ethics and corporate governance among undergraduates of HKBU.

On 13 October 2016, a lecture was delivered by two fellows of the Institute to HKBU 'Business ethics and Corporate Social Responsibility' course students. The presenters were Dr Davy Lee FCIS FCS(PE), Institute Past President and Group Corporate

Secretary, Lippo Group, and Jerry Tong FCIS FCS, Institute Education Committee member and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd. During the lecture, actual practices and cases in maintaining ethical standards at both individual and corporate levels were shared with students. Following the usual 'Passing the Torch' process, the Institute will arrange for selected HKBU students to visit different secondary schools and pass on their knowledge of business ethics and governance to secondary school students.



Dr Davy Lee



Jerry Tong

Student Ambassadors Programme – visit to the SFC

The Institute organised a visit to the Securities and Futures Commission (SFC) for student ambassadors on 26 October 2016.

The Institute would like to thank SFC for their continued support of the programme.



At the SFC

Policy – payment reminder

Studentship renewal

Students whose studentship expired in October 2016 are reminded to settle the renewal payment by Thursday 29 December 2016.

Exemption fees

Students whose exemption was approved via confirmation letter on September 2016 are reminded to settle the exemption fee by Saturday 17 December 2016.

Bulletin Board

Shenzhen Connect goes live

The Shenzhen-Hong Kong Stock Connect (Shenzhen Connect), a mutual market access programme of the Hong Kong and Shenzhen stock markets, commenced operation on 5 December 2016. The necessary trading and clearing rules and other relevant rules, the daily quota mechanism and other regulatory and operational arrangements were finalised last month. The stock exchanges and clearing houses have also completed a series of market rehearsals with participants in both markets, and reported that systems are ready and contingency plans are in place. Market training and investor education programmes have also been conducted.

The China Securities Regulatory Commission (CSRC) and the Securities and Futures Commission (SFC) have agreed on the principles and arrangements for cross-boundary regulatory and enforcement cooperation relating to Shenzhen Connect and have signed a memorandum of understanding on regulatory and enforcement cooperation. This strengthens the enforcement

cooperation between the CSRC and the SFC and signifies their joint commitment to take effective action against cross-boundary illegal activities and market misconduct to maintain an orderly market and protect investors.

In addition, the CSRC and the SFC have established arrangements and procedures for cross-boundary liaison and cooperation on any contingency or major event that affects the mutual trading access and for referring and handling investors' complaints.

Also, the Mainland's Investor Protection Bureau and Hong Kong's Investor Education Centre have established an arrangement to cooperate on investor education relating to Shenzhen Connect.

Further information on Shenzhen Connect is available on the SFC and Hong Kong Exchanges and Clearing Ltd websites: www.sfc.hk and www.hkex.com.hk.

Late disclosure of inside information

Last month the Market Misconduct Tribunal (MMT) found AcrossAsia Ltd, its CEO and former chairman culpable of late disclosure of inside information. The case, which was brought by the Securities and Futures Commission (SFC), found that Albert Saychuan Cheok, the former chairman of AcrossAsia, and Vicente Binalhay Ang, Chief Executive Officer, AcrossAsia, failed to disclose inside information as soon as reasonably practicable as required under the Securities and Futures Ordinance.

This is the first time the MMT has made a finding of breaches of the new disclosure obligations imposed on listed companies since they became effective on 1 January 2013. AcrossAsia, Cheok and Ang admitted that they had been late in disclosing inside information about a petition filed by AcrossAsia's subsidiary and major creditor, PT First Media Tbk, against AcrossAsia and a related summons. Cheok and Ang also admitted that they had been negligent which resulted in AcrossAsia's breach of the disclosure requirement.

In late December 2012, PT First Media Tbk filed a petition under the Indonesian Law on Bankruptcy and Suspension of Obligation for Payment of Debts against AcrossAsia and the Central Jakarta District Court issued a summons to AcrossAsia. AcrossAsia did not disclose this information until 17 January 2013. The SFC alleged that the failure of AcrossAsia, Cheok and Ang to ensure timely disclosure of these court documents had resulted in the investing public not knowing about the possible insolvency of AcrossAsia and the possible loss of control over its major asset, and consequentially, the material increase in financial risks faced by AcrossAsia at the time.

Further details are available on the SFC website: www.sfc.hk. The MMT's report will be available on its website: www.mmt.gov.hk.

Consultation on Hong Kong's resolution regime

Last month a consultation on regulations for protected arrangements under the Financial Institutions (Resolution) Ordinance was launched. Enacted by the Legislative Council on 22 June 2016, the Ordinance provides the legal basis for the establishment of a cross-sectoral resolution regime for financial institutions in Hong Kong. It will come into operation at the same time that the regulations are put in place and ready to become operational.

The two-month public consultation was launched by the government and three financial regulators, namely: the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA). Under the Ordinance, the HKMA, the SFC and the IA are designated as resolution authorities and are vested with a range of powers necessary to effect the orderly resolution of a non-viable systemically important financial institution for the purpose of maintaining financial stability, while seeking to protect public funds.

The proposed regulations seek to impose some constraints on the resolution authorities in the exercise of their resolution powers to safeguard the economic effect of specific financial arrangements that are vital to the daily functioning of financial markets.

The regulations are designed to meet the international standards set by the Financial Stability Board in its *Key Attributes of Effective Resolution Regimes for Financial Institutions*. In drawing up the proposed regulations, the government and the financial regulators have taken into account the responses to the two consultations on 'An Effective Resolution Regime for Financial Institutions in Hong Kong' launched in January 2014 and January 2015, and made reference to the approaches adopted in overseas jurisdictions.

Subject to the outcome of the public consultation, the government hopes to introduce the regulations as subsidiary legislation under the Ordinance into the Legislative Council for negative vetting in the first half of 2017.

The consultation paper can be downloaded from the Financial Services and the Treasury Bureau website: www.fstb.gov.hk, as well as from the websites of the HKMA (www.hkma.gov.hk), the SFC (www.sfc.hk) and the IA (www.oci.gov.hk). The submission deadline is 21 January 2017.

Bankruptcy (Amendment) Ordinance goes live

The Bankruptcy (Amendment) Ordinance 2016 (the Amendment Ordinance) came into operation last month. The Amendment Ordinance is to amend the Bankruptcy Ordinance (Cap 6) to introduce new arrangements to encourage bankrupts to fulfil their obligations in respect of the administration of bankruptcy estate by the trustee-in-bankruptcy and to better protect the interests of creditors.

Under the new arrangements, the court will have discretionary power to make an order, on application of the trustee, to the effect that the bankruptcy period of a bankrupt should be treated as not commencing to run if it is satisfied that the administration of the bankrupt's estate has been prejudiced due to the bankrupt's failure to attend the initial interview with the trustee or failure to provide all of the information concerning the bankrupt's affairs,

dealings and property as reasonably required by the trustee at the initial interview.

The court will take into account all relevant facts and factors, including any representation made by the bankrupt, in making a determination on whether such an order should be made which shall also specify the terms to be complied with by the bankrupt for the bankruptcy period to commence to run. If such order is made, the automatic discharge of the bankrupt (normally four years for first-time bankrupts and five years for repeated bankrupts) will be delayed.

Further details are available on the website of the Official Receiver's Office (ORO): www.oro.gov.hk. Any further enquiries can be addressed to the ORO's hotline at: 2867 2448.



Company Secretarial Professionals

We are looking for company secretarial professionals to join our Corporate Services Division as Officers / Supervisors / Managers to cope with our fast growing practice.

Requirements:

- ▶ Degree holder;
- ▶ Registered Student or Member of HKICS;
- ▶ At least 4 years' working experience in handling company secretarial matters of Hong Kong-listed companies, preferably with sizeable professional firms or listed companies;
- ▶ Basic knowledge of Hong Kong listing rules and other relevant regulatory requirements for both listed and non-listed companies is essential;
- ▶ Self-motivated, well-organized and detail-minded;
- ▶ Excellent command of spoken and written English with fluent spoken Mandarin;
- ▶ Computer literate. Knowledge in ViewPoint will be an advantage;
- ▶ Candidates with relevant experience will be considered for a position commensurate with experience.

We offer to successful candidates:

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

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

Human Resources Department
Level 54, Hopewell Centre,
183 Queen's Road East, Hong Kong or by
email to: hr@hk.tricorglobal.com or
by fax to 2543-7124.

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

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



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特許秘書



Importance of Governance: Hong Kong's Experiences/Challenges in the One Belt, One Road Economies

The 'One Belt, One Road' initiative brings with it extensive opportunities from basic infrastructural projects to sectoral opportunities such as in trade and investments, financial and other support services from the likes of company secretaries as governance professionals. It also brings along with it challenges from the governance perspective in relation to implementation of strategic objectives for securing projects, project implementation and dispute resolutions. In this seminar, speakers would share their insights and discuss the challenges.

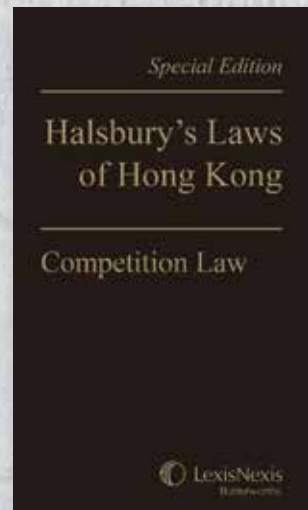
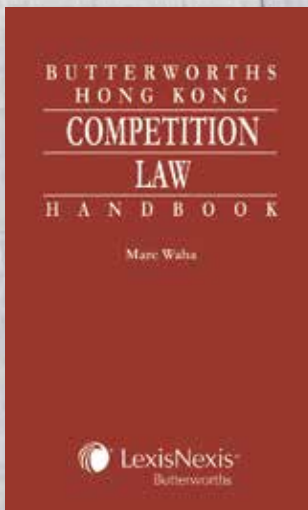
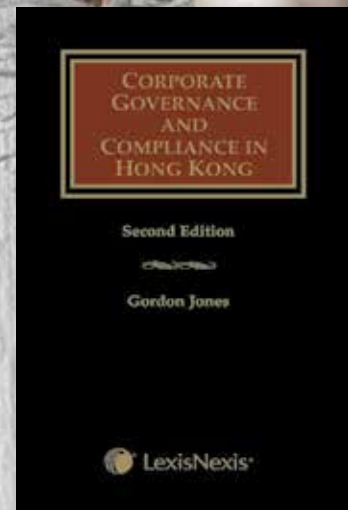
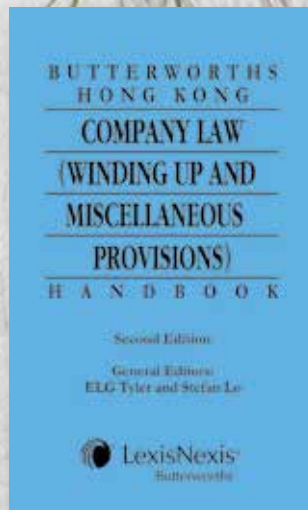
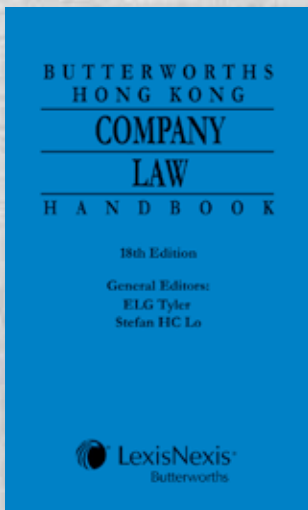
This seminar organised by The Hong Kong Institute of Chartered Secretaries (HKICS), in partnership with the Hong Kong Trade Development Council, is part of the International Financial Week of the Asian Financial Forum 2017 (AFF). Participants of AFF 2017 will enjoy HKICS member's rate in attending this seminar.

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

Date:	Friday, 13 January 2017
Time:	3.00pm – 5.30pm (Registration at 2.30pm; networking at 5.00pm)
Language:	English
Venue:	21/F, PwC Conference Centre, Edinburgh Tower, The Landmark 15 Queen's Road Central, Hong Kong
Fee:	HK\$400 for HKICS members/AFF participants HK\$500 for non-members
Accreditations:	HKICS (2 ECPD points) The Law Society (TBC)

For enquiries, please contact Mr Simon Ng at 2830 6011, or email: ecpd@hkics.org.hk.

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