

CSj

September 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

Corporate Governance Conference 2016

Special Edition

ESG reporting
Listing regulation
Senior Managers Regime



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Good governance comes with membership

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

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Membership statistics update

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September 2016

CSj, the journal of The Hong Kong Institute of Chartered Secretaries, is published 12 times a year by Ninehills Media and is sent to members and students of The Hong Kong Institute of Chartered Secretaries and to certain senior executives in the public and private sectors.

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Circulation: 8,200
Annual subscription: HK\$2600 (US\$340)
To subscribe call: (852) 3796 3060 or
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ISSN 1023-4128

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Corporate Governance Conference 2016 – Special Edition

The Hong Kong Institute of Chartered Secretaries Corporate Governance Conference 2016 'Corporate governance: inside and out – forces shaping the corporate governance landscape', will take place at the JW Marriott Hotel, Pacific Place, Admiralty, Hong Kong on the 23–24 September 2016. This month's special conference edition of *CSj* features a cover story by conference speaker David Graham, Chief Regulatory Officer and Head of Listing at Hong Kong Exchanges and Clearing Ltd. The event programme, together with biographies of all the conference speakers, panellists and event and panel chairs, can be found on the conference website: www.hkics.org.hk/CGC2016.

Look out for the conference review in next month's CSj.



CGC 2016 – final call

Later this month, delegates to our latest Corporate Governance Conference (CGC) will be arriving from all over the world to participate in two days of discussions about the challenges and opportunities facing us now and in the years ahead. I would like to welcome the speakers, event and panel chairs, panellists and attendees from Hong Kong, Mainland China and overseas, who will be participating in this event.

We have been holding our CGCs since 1998, and they have proved their worth as a flagship forum to address the challenges facing our profession and the wider community of governance professionals. This is the highest level debate your Institute hosts, so don't miss this chance to get involved. Make a note of the dates (23–24 September) and sign up to participate if you have not already done so.

Our CGCs are just one of the ways our Institute engages in thought leadership on governance issues. Another high-profile activity in this regard is our research and advocacy initiatives, and this summer has been a very busy time for our efforts in this area. We have conducted surveys on two very topical and important issues of concern in Hong Kong. This month, I would like to focus on our 'Bank Account Opening Survey', which is now available

on our Institute's website. I will talk more about the other survey – which looks at the shareholder communications policies and practices of listed companies in Hong Kong – in next month's President's Message.

By way of background to the survey, our Institute launched its new HKICS AML/CFT Guideline and Charter earlier this year, to provide guidance and an accreditation programme for corporate service providers (CSPs) wishing to demonstrate their compliance with international standards in anti-money laundering and counter financing of terrorism (AML/CFT). One thing to emerge from that exercise was that tougher compliance strictures on banks, particularly in the AML/CFT area, appear to be having a negative impact on the ease with which companies can open bank accounts in Hong Kong.

We deemed this issue to be serious enough for Hong Kong's standing as a place to do business, as well as for our members' work, that we decided to do a survey to assess the extent and nature of the problem. Thanks to your responses to our questionnaire, sent out to all our members in July this year, Hong Kong now has the benefit of some hard data to assess how to respond to this dilemma. In brief, the survey showed near unanimous confirmation that companies are indeed

facing difficulties when trying to open bank accounts in Hong Kong.

Common problems encountered by companies seeking to open accounts are delays in processing submitted documents, a lack of transparency in the approval process and a high number of unexplained rejections. These problems seem to be particularly acute among start-ups and small and medium-sized businesses, and respondents to the survey were very vocal about the potentially dire consequences of this problem if it is not quickly addressed.

Our 'Bank Account Opening Survey' casts some clear light on a problem which has been allowed to continue 'under the radar' for some time, and our Institute hopes that it will lead to action. The HKICS stands ready to offer any assistance possible to ensure that Hong Kong is able to regain its well-deserved reputation as the world's best jurisdiction for doing business.

Ivan Tam FCIS FCS

2016公司治理研讨会 - 最后召集

9月份下旬，来自世界各地的代表将云集香港，在为期两天的公司治理研讨会中，讨论特许秘书目前和未来会面对的挑战和机遇。参与是次盛事的讲者、讨论小组主席和成员、以及其他与会者，来自香港、中国内地和海外，我谨在此表示欢迎。

公司治理研讨会自1998年开始举行，专门讨论特许秘书及其他治理专业人员面临的挑战，是公会的旗舰盛事，深受欢迎。这是公会主办的讨论会中层次最高的一个，万勿错过参与机会。请记住研讨会的日期（9月23至24日），尚未报名者请从速报名。

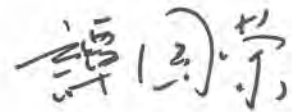
公会一向引领有关治理议题的思考，举办公司治理研讨会只是其中一个途径。另一个重要的途径，就是我们的研究及倡议工作。今年夏天，我们这方面的工作十分繁忙，曾就两项在香港备受广泛讨论和关注的重要议题展开调查。本月份，我想集中讨论公会刚公布的「银行开户调查」结果（报告见公会网站）；而下月的会长的话，则会较详细讨论另一项有关香港上市公司股东沟通政策与实务的调查。

今年较早时，公会推出有关打击洗黑钱与反恐怖分子筹资活动的新指引和约章，为决意遵守相关国际标准的公司秘书服务机构提供指引及认证计划。从这项工作中，我们发现一个现象：对银行作出更严谨的合规要求，特别是有关打击洗黑钱与反恐怖分子筹资活动方面的限制，似乎导致公司在香港银行开户时遇上许多不便。

我们认为这个情况会影响香港作为方便营商地点的地位，也会影响公会会员的工作，值得关注，因此决定展开调查，评估问题的普遍性和性质。我们在7月份向全体会员发出问卷，收集所得的回应，为我们提供了确实的数据，方便研究如何应对这问题。总括而言，调查结果显示，回应者几乎一致同意公司在香港银行开户时，确实遇到困难。

公司开户时普遍遇到的困难，包括提交文件后延误处理、批核过程有欠透明度，以及经常不获批核而又欠缺解释。对于新成立的公司和中小企业来说，这情况似乎特别严重。回应者纷纷指出，这些问题若不迅速解决，可能后果堪虞。

这个已知并已持续一段时间的问题在公会的「银行开户调查」中得到清楚揭示，我们希望藉此敦促有关方面采取行动。公会随时准备提供任何协助，让香港重拾全球最佳营商地点的美誉。



谭国荣先生 FCIS FCS

What ESG reporting brings to the table

David Graham, Chief Regulatory Officer and Head of Listing at Hong Kong Exchanges and Clearing Ltd, and a speaker at the CGC 2016, offers some thoughts on what environmental, social and governance (ESG) reporting can bring to the table for the Stock Exchange of Hong Kong as a regulator, for listed issuers, for investors and for Hong Kong as an international financial centre.



The Stock Exchange of Hong Kong (the Exchange) has a statutory duty under the Securities and Futures Ordinance to ensure, so far as reasonably practicable, an orderly, informed and fair market. In this connection, the Exchange plays a central role in facilitating communication between listed issuers and their investors, with a view to ensuring that investors are given sufficient information to enable them to make properly informed investment decisions.

Increasingly, it is recognised across various sectors of the market that being 'informed' entails having access to both financial and non-financial information. Whilst financial statements are important, investors (as well as other stakeholders) are becoming more aware that they are not necessarily sufficient for a proper, comprehensive assessment of an issuer's access to capital, cost of capital, ESG-related risks and opportunities, and ability to manage and capitalise on these risks and opportunities. Whilst the traditional approach to investment analysis and decision-making may have been largely based on an issuer's track record, investors are increasingly interested in issuers' ability to sustain their performance in the future. ESG reporting can provide investors with insight into the long-term sustainability of an issuer's business.

Despite investors' growing interest in ESG information, there are indications that issuers are not meeting investor expectations in this regard. A 2015 survey of institutional investors around the world conducted by Ernst & Young, found that investors are facing a deficit of the quality and type of ESG information that they want (*Tomorrow's Investment Rules 2.0: Emerging Risk and Stranded Assets Have Investors Looking For More From Non-*

Financial Reporting, October 2015). For example, nearly two-thirds of respondents to the survey said issuers do not adequately disclose ESG risks. The results of this survey suggest that there is a gap between the information that investors require to make informed decisions and the information that companies are currently providing. The Exchange has an important role to play in closing this gap.

Another important role of the Exchange is to promote good corporate governance amongst its listed issuers, as good governance is a key ingredient in the sustainability and long-term performance of companies' businesses. In this regard, the Exchange considers that ESG reporting can help companies improve their corporate governance, particularly in relation to their ability to manage and control risks.

The Exchange also considers it important to continuously review and develop its regulatory framework with a view to aligning it with international best practice. In recent years, a notable global regulatory trend is that governments and regulators in many overseas jurisdictions – including Mainland China, the European Union, the

UK, Australia, the US, South Africa and a number of other Asian countries – are increasingly taking steps to encourage, and even require, listed issuers to report ESG information. According to a 2016 research report (*Carrots and Sticks: Global Trends in Sustainability Reporting Regulation and Policy*, UN Environment Programme, GRI, KPMG and the Centre for Corporate Governance in Africa, May 2016), there are now 400 laws and regulatory standards in 64 countries calling for some aspect of corporate sustainability reporting (versus 180 laws and regulatory standards identified in 44 countries in 2013).

Against this background, the Exchange provides a framework to facilitate ESG reporting by listed issuers. This framework, set out in the *ESG Reporting Guide* (the Guide) under the listing rules, was initially introduced as a recommended (that is, voluntary) practice in 2012. In 2015, the Exchange introduced a revised Guide and related amendments to the listing rules to strengthen listed companies' ESG disclosure obligations. This followed from the Exchange's consultation on proposed changes to upgrade the disclosure obligations of the Guide, which met with strong support from a broad

Highlights

- greater ESG transparency provides investors and other stakeholders with an important window into the quality of a company's management and its ability to manage and capitalise on ESG-related risks and opportunities
- there is a gap between the demand from investors and other stakeholders for ESG information and the level of ESG information that companies are currently providing
- the Stock Exchange of Hong Kong seeks to develop a corporate culture in Hong Kong in which ESG practices and reporting are fully integrated into daily business operations



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ESG reporting can provide investors with insight into the long-term sustainability of an issuer’s business
 ”

range of respondents. Consequently, listed companies are now required to publish ESG reports on an annual basis, in which they must report on the comply or explain provisions of the Guide, or provide considered reasons for not doing so (see 'The Exchange's revised ESG disclosure obligations' below).

Listed issuers

ESG reporting can bring a wide range of benefits to listed issuers' businesses. Numerous studies (see 'Further reading' below) have shown that ESG reporting can help companies:

- improve their corporate governance, and in particular, strengthen their risk management by prompting them to assess ESG-related risks to their businesses, thus preparing them to better manage these risks
- attract investors that incorporate ESG criteria into their decision-making
- enhance their share valuation and secure financing from lenders more easily, thus lowering their cost of capital
- enhance their reputation, in view of greater awareness of ESG issues amongst consumers and the rise of social media, which has brought business practices further into the public spotlight
- save costs by prompting them to review, identify and address any inefficiencies in their consumption of resources such as energy and water
- recognise and capitalise on new business opportunities, which can in turn drive innovation (for example through the development of greener, more resource-efficient products), and
- recruit and retain high-calibre employees, as a company's ESG reputation has increasingly become

an important factor in an employee's choice of employer.

There is mounting evidence that indicates ESG reporting is linked to stronger corporate financial performance. For example, a study conducted by Deutsche Asset & Wealth Management and the University of Hamburg (*ESG and Corporate Financial Performance: Mapping the Global Landscape*, 2015) revealed an overall positive link between embedding ESG criteria into the investment process and improved corporate financial performance.

The positive correlation between ESG reporting and corporate financial performance may be due to numerous factors, but the underlying thread is that ESG reporting reflects management strength and, therefore, the long-term prospects of the company.

Greater transparency

Companies that disclose ESG information are likely to be more transparent in respect

of their financial information as well. ESG performance serves as an important measure for the general openness of management towards investors.

Better responsiveness

Companies with comprehensive and timely data on the ESG-related aspects of their business are likely to have timely and detailed data on their financial and overall business performance as well. As a result, management is in a better position to make timely adjustments to its business planning to respond to any changes that may have an impact on the company.

Long-term performance

Companies that disclose ESG information are likely to have a better understanding of the long-term strategic issues that they face. Management is therefore better able to make the necessary decisions to ensure the success of the business over longer time periods.

Investors

As mentioned above, investors increasingly recognise that whilst financial statements are an important part of assessing a company, business accountability is not based entirely on the balance sheet. Investors, as well as other stakeholders, benefit from greater transparency around a company's ESG practices because (amongst other reasons) they can provide an important window into the quality of a company's management, and its ability to manage and capitalise on ESG-related risks and opportunities. Companies that are able to effectively manage their ESG issues tend to be better at managing all aspects of their business and this improves their long-term prospects.

Investors' growing interest in ESG information is reflected in the results

of the 2015 survey conducted by Ernst & Young referred to above (*Tomorrow's Investment Rules 2.0*). The survey showed significant increases in the number of investors embedding ESG disclosures into their investment decision-making. For example, the percentage of investors who considered ESG reports 'essential' or 'important' when making investment decisions rose from 35% in 2014 to 59% in 2015.

Further evidence of the importance and relevance of ESG disclosure for investors is the significant growth of the responsible investment market in recent years. The Global Sustainable Investment Association found that the global sustainable investment market grew 61% from 2012 to 2014 (*Global Sustainable Investment Review 2014*, February 2015).

The growth of responsible investment is also reflected in the development of initiatives such as:

- the United Nations Principles for Responsible Investment, a global framework for investors to include ESG information into investment

analysis and decisions, now has over 1,500 signatories representing US\$60 trillion in assets

- CDP (formerly the Carbon Disclosure Project), which provides a platform for companies to measure and disclose their environmental information, is backed by more than 827 investors representing over US\$100 trillion in assets, and
- Carbon Action, which calls on the world's highest emitting companies to take specific actions in response to climate change, comprises 304 investors with US\$22 trillion in assets.

Hong Kong as an International Financial Centre

Hong Kong's position as a major international financial centre is widely recognised around the world, as is its highly competitive economy and business environment. Hong Kong has ranked first globally in funds raised from initial public offerings (IPOs) in four of the last seven years (from 2009 to 2011, and in 2015); and has been in

The Exchange's revised ESG disclosure obligations

The 2015 amendments to the Exchange's *ESG Reporting Guide* and related listing rules are being implemented in two phases.

1. The listing rule amendments and upgrade of the 'general disclosures' in the Guide from recommended to comply or explain, as well as the revised recommended disclosures, have already come into effect for financial years commencing on or after 1 January 2016.
2. The upgrade of the 'key performance indicators' in the 'environmental' subject area of the Guide from recommended to comply or explain will come into effect for financial years commencing on or after 1 January 2017.



Further reading

Studies highlighting the benefits of greater ESG transparency include:

- *Corporate Social Responsibility: Beyond Financials*, Grant Thornton, 2014
- *Value of Sustainability Reporting*, Boston College Center for Corporate Citizenship and Ernst & Young, 2013
- *Finding the Value in Environmental, Social, and Governance Performance*, Deloitte, 2013
- *Corporate Social Responsibility and Access to Finance*, Cheng, Ioannou and Serafeim, 19 May 2011, and
- *Why Sustainability Is Now the Key Driver of Innovation*, Harvard Business Review, 2009.

the world's top five in IPO fundraising every year since 2002 (*HKEX Market Statistics 2009-2015*). Also, Hong Kong's asset management market is the largest in Asia, and it has the largest offshore liquidity pool of Renminbi in the world (*Strengthening Hong Kong as a Leading Global International Financial Centre*, Financial Services Development Council, November 2013). Moreover, Hong Kong topped the IMD World Competitiveness Scoreboard 2016 as the world's most competitive economy.

In order for Hong Kong to maintain its competitiveness and consolidate its position as a leading international financial centre, it will be important to continue to draw high-quality companies and investors to Hong Kong. Developing a culture of ESG disclosure amongst Hong Kong listed issuers can benefit the market by potentially attracting listings by other like-minded companies, and capital from the growing pool of investors committed to responsible investment practices (discussed above).

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Final thoughts

In its role as a regulator, the Exchange has sought to encourage ESG reporting through the introduction of listing rules and the Guide. However, the Exchange recognises that a rules-based approach will not, on its own, deliver high-quality ESG reporting amongst listed issuers. Equally important is the development of a corporate culture that recognises the value of ESG reporting.

With this in mind, the Exchange regularly speaks with listed issuers about the benefits of ESG reporting; and has conducted extensive training, and provided various training materials and resources on its website to help guide issuers through the reporting process. Over time, these efforts will hopefully lead to the development of a corporate culture in which ESG practices and reporting are fully integrated into daily business operations, leading to more resilient risk management processes and value creation over the long term.

David Graham

Chief Regulatory Officer and Head of Listing, Listing and Regulatory Affairs

Hong Kong Exchanges and Clearing Ltd

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- Human Resource Consulting
- Fund Administration



Proposed listing regulation reforms

In June, the Securities and Futures Commission (SFC) and Hong Kong Exchanges and Clearing Ltd (HKEX) jointly issued a consultation on proposed enhancements to the existing structure for listing regulation in Hong Kong. Brian Ho, Executive Director; and Megan Tang, Senior Director; Corporate Finance Division of the SFC, discuss the rationale behind the new proposals.

What is the rationale behind the proposals set out in the consultation paper?

Ho: The market landscape in Hong Kong has become more complex, with more Mainland and international enterprises coming to list. In order to maintain Hong Kong's competitiveness, we need to review the listing regulatory structure.

Tang: There are a lot of legacy reasons why the structure is the way it is today. When it was developed 20 years ago, the listing market was mostly made up of Hong Kong-incorporated companies. Directors, management and shareholders were generally based in Hong Kong. Nowadays, we mostly deal with cross-border and overseas companies, and that brings a host of different issues. The proposals are designed to refine the structure to make things work better.

Ho: We haven't changed the listing regulatory structure for 20 years, but the world has moved on, and it is time for a review. As for the objective of the proposals, there are three things we are trying to achieve: better coordination, efficiency and accountability.

For better coordination, that can be best explained by a real-life example. The media is very focused on the Growth Enterprise Market (GEM) at the moment since the share prices of many new listings have fluctuated wildly. If you look at this in a fragmented way, you might say it looks like share price manipulation and the SFC should step in to enforce the rules. On the other hand, is it related to intermediary misconduct? But clearly we need to look at market behaviour in a more holistic way – by looking at the big picture which includes listed companies, directors, shareholders and

intermediaries. That is what we mean by better coordination.

The second objective is better efficiency. Because of the legacy structure, sponsors and applicants in an initial public offering (IPO) now deal with two regulators: the SFC and the Exchange. In addition to dual filing for IPOs, the listing rules require SFC consent for any listing rules waivers, modifications or variations. The proposal aims to put everybody in one platform – the Listing Regulatory Committee.

The third objective is better accountability. In theory, the Listing Department reports to the Listing Committee, but the Listing Committee doesn't appraise the staff of the Listing Department. We propose a formal system where the Listing Policy Committee will appraise the senior staff of the Listing Department. This will improve their accountability, while the proposed structure also makes the decision-making process more transparent.

Tang: When a company submits an application or enquiry which involves a complex, novel or controversial issue, the Listing Department comes to the SFC for approval and also separately consults the Listing Committee. This indirect process is inefficient and the company

may feel it lacks direct access to the relevant decision-maker. The proposed structure would put all decision-makers in one forum. This is more efficient and it also provides more certainty for companies. The proposals don't change the balance of power or the responsibilities of the SFC and the Exchange, they just make things work better within the existing framework.

If you were starting today, what listing regulatory structure would you like to see – should Hong Kong have a single, independent regulatory body like other developed jurisdictions overseas?

Ho: It is hard to look at it that way because we already have many decades of legacy. One of the purposes of this exercise is to cause the minimum disruption to the market while ensuring that our three objectives are achieved.

Nevertheless, do you think the long-term trend is towards a single, independent regulatory body in Hong Kong? Many commentators have pointed out the conflicts of interest inherent for the Exchange as a commercial body.

Ho: The challenge for Hong Kong is how to position ourselves – what strategy should we adopt for the next 10 to

Highlights

- the proposed new listing regulatory structure aims to achieve better coordination, efficiency and accountability
- the reforms aim to cause the minimum disruption to the market while ensuring that their objectives are achieved
- leaving policy proposals entirely to the Exchange, with the SFC only having a veto, does not maximise the interests of the Hong Kong markets

“
the problem at the
moment is that there is
no common platform
for deciding policy
”

Brian Ho, Executive Director,
Corporate Finance Division, SFC



How will the new structure work?

The proposed listing regulatory structure will involve the creation of two new committees, on which the SFC and the Exchange would be equally represented.

- **The Listing Policy Committee** – will initiate, steer and decide listing policy. It comprises representatives from the SFC and the Listing Committee, as well as the Chief Executive of HKEX and the Chairperson of the Takeovers and Mergers Panel
- **The Listing Regulatory Committee** – will handle important or difficult listing decisions that raise suitability issues or have broader policy implications. It comprises representatives from the SFC and the Listing Committee.

The Exchange's Listing Committee, together with the Listing Department, will continue to decide a large majority of initial listing applications and post-listing matters, and will continue to comprise representatives of investors, listed issuers and market practitioners. The Chief Executive of HKEX, however, will cease to be a member of this committee.

The Listing Committee will be able to refer any complex or sensitive cases to the newly formed Listing Regulatory Committee for its decision. The Listing Committee will provide a non-binding view to both the Listing Policy Committee and the Listing Regulatory Committee on their decisions. To establish a clear reporting structure, it is proposed that the Listing Policy Committee will become the body responsible for oversight of the listing function and the Listing Department's performance in listing regulation.

30 years? In the 1990s, Hong Kong connected factories in China with the US and worldwide. It was the container port for everything shipped to and from China until container ports opened up all along the coast of China. Hong Kong now plays the connector role in financial services, but what are we going to do next? We are confident that Hong Kong will maintain its reputation and status as an international financial centre (IFC) because we have world-leading systems – good regulatory infrastructure, quality professionals – but most importantly we should aim to maintain the good quality of our markets. If there are more and more bad apples, Hong Kong's reputation as an IFC will be at stake.

Opponents of the new proposals have said that the current system is working well – Hong Kong is after all consistently the top market for IPO listings – so if it isn't broken why try to fix it?

Ho: As I mentioned earlier, the market landscape is changing and we are facing a much bigger challenge. If we think "this is not broken so don't fix it", then Hong Kong's regulatory regime may become outdated.

In August 2014, the Exchange launched a consultation on whether a weighted voting rights structure would be appropriate for Hong Kong. In June 2015, the SFC issued a statement that did not support the weighted voting rights proposal. Are the current proposals an attempt to prevent a repetition of that very public airing of opposing views?

Ho: The problem at the moment is that there is no common platform for deciding policy. A good policy-making process should take the views



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of different responsible parties into consideration and get everybody together to make policy – that will produce policies which look after Hong Kong's broader and longer-term interests.

The Exchange's interests will not necessarily always be the Hong Kong markets' interests. Leaving policy proposals entirely to the Exchange, with the SFC only having a veto, does not maximise the markets' interests. The proposed restructuring takes a more holistic, big-picture approach to what is good for Hong Kong.

How would you respond to the perception that the current proposals are about shifting power away from the Exchange to the SFC?

Ho: I disagree. There will be no change as to our respective powers.

Tang: Under the statutes, the listing rules and our memorandum of understanding with the Exchange, we already have the power to veto policy and listing rule changes and IPOs. In fact, the proposals will reduce the SFC's role in the large majority of IPOs. The Listing Department will judge whether there is a policy issue involved in particular cases, and only cases with policy implications would go to the Listing Regulatory Committee. Based on past experience, the large majority of cases will not involve policy issues and will be dealt with by the Listing Committee. This is really about using the SFC's resources more efficiently and focusing on those cases that require policy deliberations.

Under the proposed new structure, HKEX's Chief Executive, Charles Li, would no longer sit on the Listing Committee – what is the rationale behind this move?



Ho: It focuses his role on the Listing Policy Committee. The Chief Executive of HKEX will play a role bridging communication between the board of HKEX and the Listing Policy Committee.

Are you confident that the policy decisions of the Listing Policy Committee will reflect a market consensus?

Ho: The Listing Policy Committee will comprise eight members, with three from the SFC. The SFC members would need to present strong reasons to convince the other five members of the committee to take their view. It would not be easy for the SFC to control the committee's decisions. So I am pretty confident the structure will work well.

One final question – what is your best wish for the way this will go?

Ho: We want to see an improvement in real terms. We hope this can lead to a better approach to influencing market behaviour. For example, to address the problems we have seen in the GEM, we can't simply take the current fragmented

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”

Megan Tang, Senior Director, Corporate Finance Division, SFC

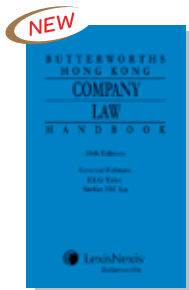
approach and only rely on the SFC for enforcement of the rules, leaving the setting of policy entirely to the Exchange. This is a very fragmented way of looking at things and doesn't help improve behaviour. There are many possible regulatory responses to different aspects of market behaviour and enforcement is only one of them. We need to get the right approach to work things out in the future. 📺

Brian Ho and Megan Tang were interviewed by Kieran Colvert, Editor, CSj, and Mohan Datwani, HKICS Senior Director and Head of Technical & Research.

The consultation document – 'Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Ltd's Decision-Making and Governance Structure for Listing Regulation' – is available for download from the SFC and the Exchange websites: www.sfc.hk and www.hkex.com.hk. The three-month consultation ends on 19 September 2016.



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Professional ethics

Should ethical considerations take precedence over legal requirements? How should professionals address conflicts of interest situations encountered in their work? Dr Brian Lo FCIS FCS, Vice-President and Company Secretary APT Satellite Holdings Ltd, takes a look at the ethical risks and obligations of professionals in Hong Kong.

Philosophers have, over thousands of years, debated the relationship between law and morality. Some have argued that law and morality are distinct from each other, although both may influence each other reciprocally.

Two opposing views of the relationship between law and morality have emerged. One school of thought argues that, as long as a law is formally legislated in accordance with the relevant constitutional requirements, and is recognised by the legal system, such a law must be obeyed by the people in that jurisdiction, regardless of its moral qualities. If the law is immoral, the duty to obey it is not vitiated by its immorality.

In contrast, the 'natural law' legal theory, takes the view that laws can and should be judged by their moral merit. Aquinas, for example, argued that 'an unjust law is no law at all'. In more recent times, natural law legal theory has been further developed by two philosophers- Lon Fuller and John Finnis. In *The Morality of Law* (1964), Fuller looks at the 'inner morality of law', while in *Natural Law and Natural Rights* (1980) Finnis argued that morality and law are strongly interconnected and cannot be separated from each other. Nowadays, it is generally accepted that both morality and law supplement and support one another.

The issues of legal and ethical obligations have a particular relevance for professionals. Most professionals, such as doctors, lawyers, accountants, engineers and Chartered Secretaries, are subject to strict codes of conduct, or professional ethics, which enshrine rigorous ethical and moral obligations. Generally, professional standards of practice and ethics for a particular field are agreed

upon and maintained by the relevant professional bodies or associations because this is critically important to the survival and continuity of the whole profession.

Professional ethics encompass the personal and organisational standards of conduct expected of particular professionals, as well as the public. These tend to be principles-based, such as the requirements for:

- honesty
- integrity
- transparency
- accountability
- confidentiality, and
- objectivity.

Professionals are expected to utilise, as well as rely on, their specialist knowledge and skill. The utilisation of such knowledge and skill when providing services to the public may, from time to time, involve significant scope for discretion or judgement. As such, the conduct of

professionals involves numerous moral issues, and the necessity of regulation, by either externally imposed law or internally imposed professional ethics, is self-evident. Since professional ethics are generally internally driven by professionals themselves and is self-administered by their relevant professional institution, it is considered to be more efficient, as well as incurring less social cost, as compared to regulation by law.

Why ethics matters

Unfortunately, it is virtually impossible to totally prevent unethical practices by a limited few 'black sheep' in any given professional field. The abuses may manifest in various forms, such as taking advantage of clients and failing to act in their best interests.

In serious cases, professionals are reported to have stolen their client's assets in breach of trust. Some doctors have been said to negotiate for a higher service charge with patients as they lie on the table in an operations theatre. Other failures of professional conduct include: failing to conform to professional standards or the code of conduct of the profession; failing to comply with relevant rules, regulations or laws; profiting from

Highlights

- professionals often find themselves in situations where they stand to gain if they are prepared to put personal profit above their fiduciary duties
- family members, peer groups and the culture of the organisations the professionals work for will be critically important in determining how they behave in such circumstances
- the code of conduct enforced by the Hong Kong Institute of Chartered Secretaries expects members to observe the highest standards of professional conduct and ethical behaviour in all their activities

a conflict of interest; and breaching fiduciary duties or the duties of care, skill and diligence.

There are three specific forms of professional abuses:

1. **nonfeasance** – where professionals have ignored, neglected or taken no action despite having a duty to act
2. **misfeasance** – where professionals have fallen below expected professional standards by taking inappropriate or incorrect actions, or have given inappropriate or incorrect advice, and
3. **malfeasance** – where professionals have seriously deviated from expected professional standards.

Ethical risk

Professionals are often working under pressure, especially when they are subject to financial difficulties or family problems. Such difficulties can drive professionals to cross the line. Moreover, they will be likely to frequently encounter opportunities for personal benefit and 'insider dealing'. Some common scenarios testing the ethical standards of professionals include:

- A professional becomes aware that a client is under investigation by the SFC – should he or she tip-off the client?
- The company secretary is asked to issue a press announcement which grossly misstates the fact of the case – should he or she refuse?
- A professional is tipped-off by an executive director about price-sensitive information – should he or

she deal on the basis of the insider information?

Family members, peer groups and the culture of the organisations the professionals work for will be critically important in determining how they behave in such circumstances. For example, fraudulent activities may well be rationalised by peers in an organisation with deficient ethical standards.

The implications for company secretaries

The roles and responsibilities of company secretaries are set out in Section F of Hong Kong's Corporate Governance Code (Appendix 14 of the listing rules). Section F makes it clear that, among other things:

- the company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedure are followed, and
- the company secretary is responsible for advising the board through the chairman and/or the chief executive on governance matters.

An example of the importance of this latter point can be found in a recent Market Misconduct Tribunal (MMT) case. In March 2015, the MMT hearing examined dealings in the shares of Asia Telemedia Ltd (now known as Reorient Group Ltd) in 2007. No market misconduct was identified; however, in the course of the proceedings, the Tribunal commented on the expected roles and duties of Asia Telemedia's company secretary, who is a member of HKICS.

The Tribunal ruled that, although she had no formal role/power in the

decision-making process, she was also a member of senior management. As such, she had a duty to advise the chairman and the board on all matters of good governance, including compliance with statutory and regulatory rules for listed companies.

Company secretaries, like all professionals, also need to consider their fiduciary duties. As set out in *Millett LJ, Bristol and West Building Society v Mothew [1998]*: A fiduciary is someone who has undertaken to act for, or on behalf of, another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty to their beneficiary.

The core liability has several facets:

- fiduciaries must act in good faith
- they must not make a profit out of their trust
- they must not place themselves in a position where their duty and interest may conflict, and
- they may not act for their own benefit or the benefit of a third person without the informed consent of their principal.

In *Boardman v Phipps [1966]*, fiduciary duty is strict and preventative in approach and operation. Fiduciaries may be held to be in breach of their fiduciary duties, even where:

- they have acted in complete good faith and in an attempt to advance their beneficiary's interests

A comparison of morality and law

	Morality	Law
Formation	Originated from primitive society	Enacted in developed society
Enforcement	Public opinion, tribe, family or peer opinion	By public enforcement
Context	Seeks to uphold ethical principles such as fairness, honesty, integrity, etc	Seeks recompense for damage caused to person or property
Scope	Very broad	Restricted and narrow
Characteristics	Blurred	Usually clearly defined and stated
Procedure	Gradually developed and proliferated as part of culture	To be approved by a formal procedure



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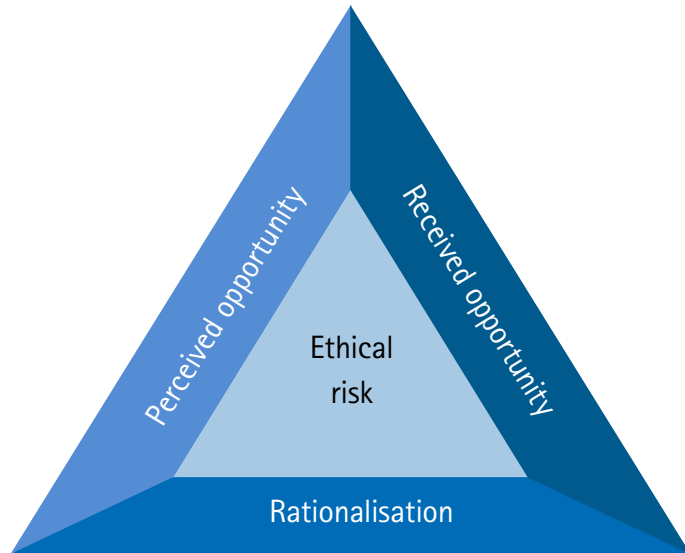
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- There was no actual conflict between their own interests and those of the beneficiary
- The fiduciaries' actions not only caused no loss to the beneficiary but actually benefited them, and
- The gains made by the fiduciaries could not otherwise have been made by or for the beneficiary.

Company secretaries who are Chartered Secretaries are also subject to the code of conduct enforced by the Hong Kong Institute of Chartered Secretaries (HKICS) this code expects members to:

- observe the highest standards of professional conduct and ethical behaviour in all their activities and to uphold the objectives of the Institute
- uphold the Charter and the reputation of the Institute
- maintain good corporate governance and management

- exercise probity, honesty and independence in carrying out their duties and responsibilities
- conduct all business dealings strictly according to all statutory rules and regulations
- respect the confidentiality of information
- avoid conflicts of interest with the company or employer
- exercise due care and diligence in performing their duties, and
- ensure the currency of their knowledge, skills and technical competencies for professional practices.

Conclusion

There are limits to how far legal requirements can achieve ethical behaviour and morality often plays an important part in supplementing legal requirements. If the only reason for

obeying the law is to avoid punishment, the overall social cost of monitoring, investigating, prosecuting and punishing non-compliance is high. Where citizens obey the law as a result of internal self-motivation to be a good citizen and uphold ethical conduct, the overall cost of enforcement for society is relatively low.

Professionals in Hong Kong are expected to adhere to ethical principles, not just as citizens, but as professionals subject to a code of professional conduct. They should:

- uphold the expected standards of their profession
- avoid legal risks, and
- safeguard the public interests of society.

Dr Brian Lo FCIS FCS
*Vice-President and
 Company Secretary APT Satellite
 Holdings Ltd*

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The UK's Senior Managers Regime

The journey from moral bankruptcy to enlightenment



In March this year, the UK implemented its Senior Managers Regime which aims to impose individual accountability for high-level executives in the banking sector. Dr Axel Palmer, Department of Law, The University of the West of England, takes a look at the objectives and the requirements of the new regime.

'Trust goes to the heart of what banking is about,' stated the UK's Parliamentary Commission on Banking Standards' 2013 report – *Changing banking for good* – noting that, in the aftermath of the 2008 financial crisis and the scandal of the manipulation of the London Interbank Offered Rate (LIBOR) in late June 2012, public trust and confidence in UK banks had sunk to new depths. The report concluded that the industry was not just revealed as incompetent, but appeared morally bankrupt.

Too many bankers, especially at the most senior levels, have operated in an environment with insufficient personal responsibility. Top bankers dodged accountability for failings on their watch by claiming ignorance or hiding behind collective decision-making. They then faced little realistic prospect of financial penalties or more serious sanctions commensurate with the severity of the failures with which they were associated. Individual incentives

have not been consistent with high collective standards, often the opposite,' the report stated.

The Parliamentary Commission recognised that the public were angry that senior executives had managed to evade responsibility and their first proposal was making individual responsibility in banking a reality, especially at the most senior levels. In March 2016, this saw daylight as the Senior Managers Regime, introduced by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA).

The driving force behind the new regulatory regime is cultural change. In a speech in July 2015, Martin Wheatley (a former CEO of both the Securities and Futures Commission in Hong Kong and the FCA in the UK) explained that 'at their heart, organisations are simply collections of individuals arranged around a common goal. And the "culture" of these organisations, the rules both spoken and

Highlights

- the 2008 financial crisis demonstrated that too many bankers operated in an environment with insufficient personal responsibility
- the UK's Senior Managers Regime aims to raise standards of governance, increase individual accountability and help restore confidence in the banking sector
- the UK's Financial Conduct Authority, while not technically subject to the regime, has voluntarily decided to apply the fundamental principles to itself



unspoken, are what dictate in reality the behaviours that are acceptable and those that aren't. He further explained that, since corporate actions stem from individual action, then accountability has to start with individuals, in particular recognising the 'tone from the top'.

There are three limbs to the new accountability framework: the Senior Managers Regime, the Certification Regime and the Conduct Rules.

1. under the Senior Managers Regime, 'senior managers', who will be individually approved, are those individuals who hold key roles or have overall responsibility for a whole area of a bank, or systemic investment firm
2. under the Certification Regime, in a change from the previous regime, firms will be able to self-certify that people who have roles such as giving investment advice or administering benchmarks are fit and proper, with an annual confirmation

3. under the Conduct Rules, high-level standards of conduct will apply directly to everyone.

'[The Conduct Rules] seek to make explicit the common sense standards that all staff should already be adhering to. Standards like acting with integrity and observing proper standards of market conduct. They will eventually apply to nearly all staff in banks and the largest investment firms,' Wheatley stated.

To put the changed regime into perspective, the Parliamentary Commission found that in the financial crisis individual bank failures and the recent string of conduct failings were characterised by poor regulation in the UK and in many other countries. Similar issues were faced in the US where Judge Rakoff neatly encapsulated the issue at hand by asking why no high-level executives had been prosecuted. 'The failure of the government to bring to justice those responsible for such colossal frauds bespeaks weaknesses in

our prosecutorial system that need to be addressed,' Rakoff suggested in his article – 'The financial crisis: why have no high-level executives been prosecuted?' – in the *New York Review of Books*.

In September 2015, announcing a new US policy on individual liability in matters of corporate wrongdoing, Deputy Attorney General Sally Quillian Yates, of the US Department of Justice, pointed out the difficulties involved in prosecuting high-level executives. 'In modern corporations, where responsibility is often diffuse, it can be extremely difficult to identify the single person or group of people who possessed the knowledge or criminal intent necessary to establish proof beyond a reasonable doubt. This is particularly true of high-level executives, who are often insulated from the day-to-day activity in which the misconduct occurs,' she said.

The central plank of the Senior Manager Regime is identified as 'responsibility', which represents a change from the previous regime of culpability. In his speech

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 ”

Martin Wheatley, former CEO of the Securities and Futures Commission in Hong Kong and the UK's Financial Conduct Authority

in May this year, ‘Culture in financial services – a regulator’s perspective’, Andrew Bailey, CEO of the FCA, explained that ‘we do want senior managers to feel this responsibility in all that they do, and that includes a responsibility for forming and implementing a positive culture throughout the organisation’. The second element is culture and, in his speech, Bailey recognises that responsibility is an important hook to assist in firms’ shaping their own culture, although he also emphasises that it is not the job of regulators to enforce or to change culture.

The requirements of the new regime

Having established the objectives of the Senior Managers Regime, it is now appropriate to examine in detail the specific requirements. The regime has to be set in the context of firms having to assess their business structures, and allocate and record senior management responsibilities.

The FCA/PRA require firms to ensure that the allocation of responsibilities is clear and without gaps in their coverage and, to

do so, they point to consideration of the concepts of ‘senior management functions’, ‘prescribed responsibilities’ and ‘overall responsibility’. The FCA has identified, in its *Strengthening accountability in banking: final rules*, a number of business activities and functions in order to help firms map management responsibilities.

Senior managers for a UK bank comprises the top layer of executive management and all directors other than an ordinary non-executive director (NED). Collectively, these are known as ‘senior management function’ (SMF) holders, they must be pre-approved by the regulators. A senior manager must prepare a statement of responsibilities setting out his/her duties. The bank must prepare a map of how it links together these responsibilities and describing its governance arrangements. A senior manager must take reasonable steps to prevent a regulatory breach occurring in order to avoid being found guilty of misconduct by the regulator. It should be noted that a senior manager is liable for the criminal offence of causing

a bank to fail. A person guilty of an offence relating to a decision causing a financial institution to fail is liable to imprisonment for a term not exceeding seven years or a fine, or both.

Certified staff who are individuals below the level of a senior manager and who can cause significant harm to the bank or its customers (such as managers of significant business areas, dealers, customer advisers and their managers), will not be individually approved. Instead, the bank is responsible for ensuring and certifying their fitness and propriety. All other staff will be subject to the same first tier conduct rules as certified staff.

The SMF requires the person responsible for performing it to be responsible for managing (meaning taking or participating in taking decisions, so this catches board and committee membership), one or more aspects of the firm’s affairs in relation to it carrying on a regulated activity which do or might involve a risk of serious consequences for the firm or other UK interests.

SMF persons, of which there are 17 categories, are prescribed by both PRA and FCA. PRA controlled functions are: chief executive (role SMF1), chief finance function (SMF 2), chairman function (SMF9). FCA controlled functions are: executive director function (SMF 3), chair of nominations committee (SMF 13), compliance oversight function (SMF16), and money laundering reporting officer (SMF 17).

Furthermore, there are 30 prescribed functions. There are prescribed responsibilities which apply to all firms, such as the responsibility for the firm’s performance of its obligations under the Senior Managers Regime; some to larger firms, such as the responsibility for

“ since corporate actions stem from individual action, then accountability has to start with individuals ”



overseeing the adoption of the firm's culture in the day-to-day management of the firm; those which apply to smaller firms, such as the responsibility for ensuring the governing body is informed of its legal and regulatory obligations; and, those applying in special circumstances, such as if the firm carries out proprietary trading, responsibility for the firm's proprietary trading activities.

The FCA's *Strengthening accountability in banking: final rules* allows firms some flexibility in allocating prescribed responsibilities. It is possible for responsibilities to be allocated to more than one senior manager, but the final rules make it clear that: 'we expect that a firm would not normally split an FCA prescribed responsibility between several senior managers, with each only having responsibility for part, or for them to be allocated to two or more senior managers jointly. The FCA requires that, in such circumstances, firms explain the rationale in their responsibilities map. The PRA has also made it clear that, where the firm allocates responsibilities to more than one senior manager, each of those individuals will, in principle, be deemed wholly responsible for it.

Accountability is important for the regime applies to activities taking place wholly or in part overseas. Furthermore, the regime applies to individual legal entities rather than to, say, a whole banking group. Thus, as part of their decision-making process, firms will need to ensure that they identify the individual who is genuinely accountable in regard to the entity in question, regardless of whether or not he or she is a director or employee of that particular entity. The question of non-executive directors (NEDs) is interesting because in the UK there is no distinction between types of director. In the Senior Managers Regime, only the chairman, senior independent director and chairs of the risk, audit, remuneration and nomination committees require pre-approval by FCA/PRA.

The Senior Managers Regime aims to raise standards of governance, increase individual accountability and help restore confidence in the banking sector. The FCA states that the regime is 'a formal expression of the common sense, good governance practice that any organisation should adhere to'. It is clear, though, that this 'good governance' was not present, hence the need to ensure a clear and

shared understanding that a culture of personal responsibility must be embedded at the heart of financial services.

The FCA states that it is not subject to the regime, but it has voluntarily decided to apply the fundamental principles to itself. In support of this objective, the FCA has published the map of its own governance, including senior management functions, prescribed responsibilities and overall responsibilities, with details of individuals, committees, statements of responsibility and terms of reference. This provides a comprehensive example of the manner in which a firm may implement the regime.

The regime in the context of UK's relationship with the EU

The outcome of the UK Referendum on its relationship with the European Union (EU) was that the British people have decided to leave the EU. While the outcome of the UK negotiations with the EU remain uncertain, this development does put into sharp relief the apprehensions of the Parliamentary Commission on Banking Standards.

The Commission's *Changing banking for good* report voiced concern that 'the UK's ability to make necessary reforms to

financial regulation risks being constrained by the European regulatory process, which is developing rapidly as Eurozone countries move towards banking union. The Commission highlighted a clash of cultures, with the EU rules having a 'prescriptive and box-ticking tendency' as opposed to the 'more judgement-based approach being introduced in the UK in response to past regulatory failures'. The report suggested that some EU regulations may limit the UK's regulatory scope for unilateral action and that this could mean 'moving at the speed of the slowest ship in the convoy'.

Conclusion

The 2008 financial crisis demonstrated

that too many bankers operated in an environment with insufficient personal responsibility. The Senior Managers Regime is intended to ensure that top bankers are accountable and that they face the prospect of financial penalties or more serious sanctions commensurate with the severity of the failures with which they were associated. Thus, in 2016, the framework is in place to ensure senior manager accountability, with the intention of influencing behaviours and culture leading the transition from moral bankruptcy to a more enlightened approach. However, the changed landscape of the relationship of the UK with the EU may have medium-term

consequences, prompting a further review of UK regulations.

Dr Axel Palmer

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The University of the West of
England*

More information on the Senior Managers Regime is available on the FCA website: www.fca.org.uk. The UK's Parliamentary Commission on Banking Standards 2013 report, 'Changing banking for good', is available at: www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf

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Cross-border transfers of data

Gupinder Assi, Counsel; and Kristi Swartz, Managing Partner, Hong Kong; Bryan Cave, look at due diligence measures organisations in Hong Kong should consider ahead of the implementation of Section 33 of the Personal Data (Privacy) Ordinance which imposes restrictions on the transfer of personal data outside of Hong Kong.

The use, disclosure and transfer of personal data is a hot topic globally. Laws in various jurisdictions have been put in place to protect information relating to individuals. Such laws include prohibitions of the transfer of information to jurisdictions that may not have similar provisions relating to the protection of personal data and which may therefore permit individual's fundamental rights with respect to privacy to be infringed. However, it is also important in the global economy to be able to balance such requirements with the need to be able to transfer personal data across borders in connection with the organisation of businesses; the entering into of contracts and other commercial transactions.

The Personal Data (Privacy) Ordinance

In Hong Kong the regulation of the use, disclosure and transfer of personal information is set out in the Personal Data (Privacy) Ordinance (Cap 486) (PDPO) which was enacted in 1995. The PDPO contains a definition of personal data which in summary refers to any information relating to a living individual, other than anonymised data, in whatever form, whether it be employment records, medical records, biometric information or HKID cards.

The PDPO contains a number of data protection principles setting out the manner in which personal data can be used, including the use and transfer of personal data. In particular the PDPO requires that the personal data of individuals be collected lawfully and fairly and for a lawful purpose directly related to a function or activity of the user of such data. Data users have an obligation to inform such individuals of the kind of personal data that they are holding and of the purposes for which it is being

held. This is commonly contained in a privacy policy that may be available on a data user's website, or in their terms and conditions.

Data users must also ensure that personal data is accurate and that it is not retained for a period longer than is necessary for the purposes for which it was originally collected. Other obligations include ensuring that personal data are protected against unauthorised or accidental access, processing, erasure, loss or use.

Section 33 – prohibition of cross-border transfers

The PDPO also contains Section 33 which refers to the prohibition of the transfer of personal data to places outside of Hong Kong unless certain conditions are complied with or an exemption applies. However, Section 33 has not yet come into effect and there is still no indication as to when it will come into force. When Section 33 finally comes into force, it will have an impact on the operations of organisations that transfer personal data outside of Hong Kong. Some examples may include:

- engaging third-party service providers located outside of Hong

Kong to process personal data, such as call centres

- transferring customer's personal data to contractors situated outside of Hong Kong to perform marketing activities
- sharing of personal data with international offices through the use of a centralised database; such as employee data, or customer data, and
- Storing personal data in the cloud if the cloud server is accessible outside of Hong Kong.

Furthermore, the obligations under Section 33 will rest with the data user, the organisation that controls the entire personal data process. Third-party data processors who merely hold, process or use personal data on behalf of, and upon the instructions of the data user, will not be liable under Section 33 of the PDPO and therefore data users will need to ensure that the transfer of personal data to any third-party data processors located outside of Hong Kong meet the provisions of Section 33 when they come into force, either by including specific contractual

Highlights

- Section 33 of the Personal Data (Privacy) Ordinance (PDPO) imposes restrictions on the transfer of personal data to jurisdictions that do not have similar provisions to the PDPO regarding the protection of personal data
- the Privacy Commissioner is taking a stricter approach to the protection of personal data in Hong Kong
- companies should adopt due diligence measures regarding the transfer personal data outside of Hong Kong ahead of the implementation of Section 33 of the PDPO



provisions in their agreements with third parties or otherwise.

Privacy Commissioner's guidance

As a result of a number of recent cases of serious identity theft and data breaches, concerns have been raised over privacy and identity fraud. In particular, in 2010 the cashless payment company Octopus was discovered to have sold customer information to its business partners earning them HK\$44 million and in 2015 VTech, a Hong Kong-based children's technology maker was hacked, exposing data of five million customers. These breaches have made personal data security a priority topic.

As a result of these recent cases, as well as a rise in the number of complaints about breaches of privacy (an increase of 7% between 2014 and 2015) and an increase in awareness about data protection, the Privacy Commissioner is taking a stricter approach to the protection of personal data. This is also demonstrated by the fact that there were six prosecutions in 2015 compared with only one in 2014.

“
 these measures are intended to allow the transfer of personal data to territories outside of Hong Kong whilst continuing to protect the rights of individuals who are the subject of the personal data
 ”

The Privacy Commissioner has also been more active in issuing a number of guidelines to assist organisations in complying with their obligations under the PDPO. In particular, the Privacy Commissioner issued a practical guide – *Guidance on Personal Data Protection in Cross-Border Data Transfer* – which sets out the measures that organisations are encouraged to follow in relation to cross-border transfers of personal data. These measures are based on the provisions set out in Section 33 and are aimed at preparing organisations for its implementation.

These measures can be summarised as follows.

The White List

Data users can transfer personal data to countries included on a 'White List'. The Privacy Commissioner has assessed 50 jurisdictions for inclusion on the list, but this is yet to be published or Gazetted. When finalised, the White List is intended to be a working document that is regularly re-evaluated and updated to stay current with any law changes in different jurisdictions.

Similar laws

The transfer of personal data is permitted to countries which have 'any law which is substantially similar to, or serves the same purposes as' the PDPO. This is intended to address jurisdictions which have not been assessed by the PCPD.

Written consent

Personal data can be transferred outside of Hong Kong if the individual whose data is being transferred has expressly and voluntarily consented in writing and such consent has not been withdrawn.

Avoidance or mitigation of adverse action

Data users can transfer personal data outside of Hong Kong if they have reasonable grounds to believe that the transfer is necessary for the avoidance or mitigation of adverse action against an individual that the data relates to, but it is not practicable to obtain the consent of such individual beforehand. The Privacy Commissioner's guidance states that this exemption will be of narrow application.

Part VIII exemptions

Personal data can be transferred outside of Hong Kong if an exemption applies, which are for:

- domestic purposes
- the provision or detection of a crime
- health purposes
- Hong Kong legal proceedings
- purposes of a news publication
- statistics and research, and
- in the event of an emergency.

Reasonable precautions and due diligence

Data users can transfer personal data outside of Hong Kong if they can show that the personal data concerned will be given the equivalent protection to that provided for by the PDPO. Such protections can be contained in a contract and to assist data users to satisfy this requirement the Privacy Commissioner has prepared a set of model data transfer clauses which can be used and adapted by data users to develop an enforceable contract for their cross-border transfers. Alternatively, data users may also adopt non-contractual means to satisfy this condition, such as intercompany binding corporate rules, or internal policies.

These measures are intended to allow the transfer of personal data to territories outside of Hong Kong whilst continuing to protect the rights of individuals who are the subject of the personal data and to ensure that their personal data continues to be protected when it is transferred to territories that are not subject to the PDPO. Whilst for guidance only, these follow similar principles that are embodied in other global data protection laws, such as the European General Data Protection Regulation that is due to come into force this year. Therefore organisations in Hong Kong which also have affiliates in different jurisdictions and which receive, as well as transfer, personal data to their affiliated companies

would be well advised to adopt such provisions in order to be consistent with international standards on cross-border data protection.

Gupinder Assi, Counsel, and Kristi Swartz, Managing Partner, Hong Kong

Bryan Cave

The authors can be contacted by email at: ggassi@BryanCave.com and kristi.swartz@BryanCave.com.

The Privacy Commissioner's 'Guidance on Personal Data Protection in Cross-border Data Transfer' is available on the PCPD website: www.pcpd.org.hk.


CHARTERED SECRETARIES
 特許秘書

Eye on the future

HKICS Annual Dinner 2017

Ballroom, JW Marriott Hotel Hong Kong

Thursday, 19 January 2017

6.30pm Cocktail reception • 7.30pm Dinner

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SAVE THE DATE

Professional Development

Seminars: July 2016

7 July

Professional ethics and regulatory compliance with case studies



Chair: Alberta Sie FCIS FCS(PE), Institute Education Committee Member, and Company Secretary, Reanda EFA Secretarial Ltd

Speaker: Dr Brian Lo FCIS FCS, Vice-President & Company Secretary, APT Satellite Holdings Ltd

11 July

SFC means enforcement business



Chair: Richard Leung FCIS FCS, Barrister-at-Law, Des Voeux Chambers

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

12 July

Rationalising holding and operating structures – legal and tax considerations



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

Speakers: Wilson Cheng, Partner, Tax & Business Advisory Services; and Sammy Koo, Managing Director, Transaction Advisory Services Restructuring and Insolvency, EY

19 July

Key global enforcement trends in anti-bribery and anti-corruption, and best practices to manage compliance risk



Chair: Grace Wong FCIS FCS(PE), Institute Professional Development Committee Member, and Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd

Speaker: Miang Lee, Partner, Fraud Investigation & Dispute Services, EY

20 July

An overview of intellectual property in Hong Kong and topical issues and misconceptions



Chair: Dr Davy Lee FCIS FCS(PE), Institute Past President, and Group Company Secretary, Lippo Group

Speaker: Jezamine Fewins, Partner, Stephenson Harwood

21 July

营业税改增值税对企业的影响



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

Speaker: Michael Ma, Partner, Reanda Certified Public Accountants

26 July

Tax implications of share awards and share option benefits



Chair: Professor James Pong FCIS FCS, Institute Disciplinary Tribunal Member, and Project Director, Sundart Project Management and Consultancy Ltd

Speakers: Kate Lai, Director; and Wendy Lee, Senior Manager; Global Mobility Services, KPMG

27 July

Competition law – part 1 (re-run)



Chair: Louisa Lau FCIS FCS(PE), Registrar, HKICS

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

28 July

Competition law – part 2 (re-run)



Chair: Louisa Lau FCIS FCS(PE), Registrar, HKICS

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

公会举办境内外上市公司并购与融资专题讲座 监管机构全面解读并购重组问题

为了贯彻落实国务院《关于进一步优化企业兼并重组市场环境的意见》的精神，实施中国证券监督管理委员会（中国证监会）所发布的《上市公司重大资产重组管理办法》，配合境内外上市公司在业务转型升级形势下的并购重组战略，香港特许秘书公会与上海证券交易所依据双方签订的《合作备忘录》，于2016年7月13-15日在北京联合举办题为“境内外上市公司并购与融资”的“中国A+H股公司董事会秘书高级研修班”暨“香港特许秘书公会第四十一期联席成员强化持续专业发展 (ECPD) 讲座”。

是次讲座的内容极为充实，来自监管部门和交易所的人士，介绍了并购重组市场所出现的若干趋势，并全面解读了并购重组的监管法规及市场存在的问题。

民营企业成为并购重组主力

在本期研修班上，中国证监会代表权威解读了上市公司并购重组的最新政策法规。

他指出，近年来中国并购重组市场出现了若干重大趋势：一是民营企业成为主力军。1564家上市公司发生并购重组1628单，占比61%。民营、地方国有、央企上市公司平均每单交易金额分别为人民币5.5亿元、9.7亿元、19亿元。二是创业板公司并购重组活跃。492家创业板公司共发生并购重组535项，占比20%；每家公司平均发生1.09次，高于主板0.9次，低于中小板1.1次的水平，但每单金额较小。三是信息服务业、影视传媒、游戏行业出现并购热潮。从交易次数看，制造业、房地产业、软件和信息技术服务业并购重组分别为1655单、196单、189单，合计单数占比76.43%。

此外，他还介绍了并购重组监管架构及审核规程，而证监会已完善了并购重组的审核机制：一是改进审核模式，由双人审核模式调整为3人固定分组审核模式；二是调整审核重心。坚持以信息披露为中心的审核理念，避免做出实质判断；三是优化内部流程。分交易类型审核，改进审核专题会机制，实施批量上会；四是加强中介机构监管。完善中介机构执业评价体系，强化责任；五是强化事中事后监管，加大内幕交易查处与处罚力度。

并购重组审核分道制于2013年10月8日开始实施，而下一步，将视该等实施的进展情况，不断完善分道制方案，并根据有关部门所确定的方案，推进重点行业的兼并重组，动态调整支持的行业类型。此外，他还介绍了：上市公司的停复

Professional Development (continued)



公会会长谭国荣与联合主办方、协办方代表合影



讲座现场

牌制度；上市公司大股东、董监高减持股份的若干规定；上市公司收购制度；以及上市公司的重大资产重组制度等。

交易所解读并购重组问题

上海证券交易所上市公司的监管代表，向与会嘉宾深入讲解了“互联互通下并购重组审核及其信息披露与内幕交易监控”的主题内容，并重点讲解了交易所在并购重组事后跟踪问询中发现的主要问题。

一是资产重组“双高”现象日益突出。他表示，过高的增值率，可能会引发利益输送、资产虚高、商誉减值等问题，导致上市公司业绩波动，损害中小投资者的权益。

二是业绩承诺不达标表现出一定的普遍性和趋势性，其中20%的重组公司未能完成2015年的业绩承诺。传统行业不达标的情况较为严重，而新兴行业的完成情况则有待观察。补偿义务与业绩完成情况高度相关，部分承诺主体通过变更承诺来减免补偿义务，方式包括将分年或分标的补偿变更为累计补偿；变更或延长业绩补偿期限；变更股份补偿为现金补偿。

此外，“壳”公司的炒作加剧，是受到诸多因素影响，而“壳”公司现已成为违法违规行为的多发地。“失败式”重组的情况有所增加，停牌时间相对较长，平均为83天，最长甚至超过7个月，严重影响投资者的交易权。“转手式重组”存在利益输送的可能，而共性问题在于市盈率和大股东，可能会通过关联交易或隐性关联交易，损害中小股东的合法权益，而某些市盈率也与上市公司高管人员存在利益关联。“溢美式重组”的情况较为普遍，而信息披露的有效性仍需提升。

针对这些问题，交易所对停牌进行了适度监管，其基本处理原则是“申请即办理”，通过定期限、明标准、追责任监管托底，从而扩大停牌规范范围，严格控制停牌时限，细化停牌期间的信息披露和延期复牌程序规定。

未来三年全球并购市场前景乐观

英国史密夫斐尔律师事务所合伙人邹兆麟律师指出，史密夫斐尔与金融时报于2015年末至2016年2月期间，对全球700名高管进行了全球并购调查，并回访了100位受访者。调查发现，尽管全球宏观经济处于逆势，但未来三年的并购市场前景非常乐观。重点不利因素是欧元区不稳定，中国经济减速，以及商品价格低落。2016年一季度，全球并购交易额减少10%。40%受访者表示，并购活动增长幅度最大的地区将是美国，而中国及印度市场的长期增长潜力仍然具有巨大吸引力，分别位居并购活动增长最显著的第二及第三位。中国投资者认为东南亚是最佳投资区域，其次是拉丁美洲和西欧。94%的中国受访者表示目前并不会考虑进行跨领域收购；若考虑收购，目标行业中67%会集中在基础设施领域，而食品、医疗保健、教育和金融服务的地位也正在提升。

投资人日益重视ESG

本次研讨会也就环境、社会和治理(ESG)专题进行了研讨，而台湾证券交易所公司治理部的郑村经理也介绍了台湾交易所的情况。目前台湾的上市公司，已有8家入选世界指数，12家入选新兴市场指数。它们目前已经通过五大计划项目、13项具体措施，以建立公司治理文化，创造共利企业价值。

贝莱德资产管理北亚有限公司的副总裁王芳，则从投资人的角度分享对ESG的看法。她认为ESG是指会影响投资风险和回报的非传统财务指标，但其对公司经营和财务的影响通常

难以量化。投资人对ESG日益重视，原因是如果未能有效管理风险，这可能会对公司的经营发展造成破坏性、甚至毁灭性的打击。对投资人来说，G是排在首位，而出色的ESG风险管理，可反映出公司管理层和董事会具有高素质。

安永华明会计师事务所的气候变化与可持续发展服务主管合伙人唐嘉欣介绍了有关ESG的监管规则要求，而香港联合交易所已经订立了ESG指引，强制规定上市公司必需披露非财务信息；上海证券交易所也订立了相关指引，要求“上证公司治理板块”样本公司、发行境外上市外资股的公司、以及金融类公司必须披露社会责任报告；国资委作为央企大股东，也发布了1号文件，要求央企按时披露非财务信息。他指出，中国发展新进程对企业非财务信息的披露及管理提出了更高的要求。中国政府正推动实现更高质量、更高效率、更加公平、及可持续的发展，而相关的国家战略、政策将会陆续出台。未来，非财务绩效及披露将全面影响企业的表现。因此，企业应当：从战略决策入手，正视非财务信息披露对企业的挑战及机遇；增加更具针对性的信息披露；建立全面绩效管理体系，奠定信息披露基础；鼓励企业董事会对非财务信息的准确性负责；考虑让审计师参与对非财务信息的鉴证，提高信息的可信度。

The 41st Affiliated Persons ECPD seminars

This article reviews the latest AP ECPD seminars held in Beijing and organised jointly by the Institute and the Shanghai Stock Exchange (SSE). The seminars were held between 13 and 15 July 2016 and attracted over 173 participants from H-share, A+H share, red-chip, A-share and to-be-listed companies. Speakers from the China Securities Regulatory Commission (CSRC), SSE and two international law firms delivered speeches on mergers & acquisitions and listed company financing, while two senior board secretaries from Sinopec Oilfield Service Corporation and CRRC Corporation Ltd shared their views and experiences based on their own M&As and major asset restructurings. Speakers from the Taiwan Stock Exchange, BlackRock, China Life Insurance Company Ltd, Ernst & Young CPA, and Computershare Hong Kong Investor Services Ltd, shared their views on environmental, social and governance (ESG) reporting-related regulations and practices.

The Institute would like to thank the speakers, participants, event co-organiser (SSE), associate organisers (Shinewing CPA and Computershare Hong Kong Investor Services Ltd), supporting organisations (Herbert Smith Freehills LLP and Clifford Chance LLP), and the sponsor (Equity Financial Express Ltd), for their support.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
27 Sep 2016	12.00nn – 1.30pm (light lunch will be provided)	Recent legal and regulatory updates in the offshore world	1.5
28 Sep 2016	4.00pm – 5.30pm	Managing third party rights – controlling, reducing and avoiding future legal risk	1.5
29 Sep 2016	6.45pm – 8.15pm	Recent developments in executive compensation and long-term incentives	1.5
4 Oct 2016	4.00pm – 5.30pm	SFC means enforcement business (re-run)	1.5
18 Oct 2016	4.30pm – 6.00pm	Company secretarial practical training series: investor relations and shareholder communication	1.5
19 Oct 2016	6.45pm – 8.15pm	Corporate risk and risk management	1.5
1 Nov 2016	4.30pm – 6.00pm	Company secretarial practical training series: ESG reporting	1.5

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

Professional Development (continued)

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 Memorandum of Articles.

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

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>

A bird's eye view

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

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



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



**CHARTERED
SECRETARIES**
特許秘書

Advocacy



Caroline Wilson (middle right), representatives from UK Trade and Investment, and HKICS representatives

HKICS delegation lunches with British Consul General

On 5 August, Institute President Ivan Tam FCIS FCS, Institute Past President & ICSA Senior Vice-President Edith Shih FCIS FCS(PE), Institute Chief Executive Samantha Suen FCIS FCS(PE) and a number of senior HKICS members, were invited to lunch with the British Consul General in Hong Kong, Caroline Wilson CMG, at her residence. A wide range of topics were discussed including synergies and opportunities for Hong Kong businesses in the UK marketplace. Also joining the lunch were representatives from UK Trade and Investment, Jo Hawley, Andrew Burwell and Eva Yim. The discussions served to raise mutual awareness in the post Brexit era.

President attends MAICSA annual conference in Malaysia

The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) held its 2016 Annual Conference, with the theme 'Sustainability – shaping the future', on 8 and 9 August 2016 in Kuala Lumpur. Institute President Ivan Tam FCIS FCS attended the event and was one of the panellists of the panel discussion on 'Company secretaries – the force awakens!' Institute Chief Executive Samantha Suen FCIS FCS(PE) also joined the conference.



Ivan Tam (middle) at the MAICSA annual conference



Ivan Tam (front left) and Samantha Suen (second from right, back row) with MAICSA President Dato' Heng Ji Keng FCIS (middle), MAICSA Council members and Grace Tan FCIS of SAICSA

Summer internships

The Hong Kong Coalition of Professional Services summer internship programme aims to provide work experience to secondary school students living in Yuen Long/Tin Shui Wai area to broaden their horizons and enhance their self-confidence. An aggregate of 33 internship opportunities were offered by China Aircraft Services Ltd, CLP Holdings Ltd and the Institute.

Under the Institute's Student Ambassadors Programme (SAP), a total of 17 undergraduates received summer internship offers from 12 companies or organisations, namely Angela Wang & Co, Alter Domus Asia Ltd, CK Hutchison Holdings Ltd, Companies Registry, COSCO SHIPPING Ports Ltd, Intertrust Resources Management Ltd, McCabe Secretarial Services Ltd, Reachtop Consulting Ltd, Reanda EFA Secretarial Ltd, Tricor Services Ltd, and Vistra Group. These students are business-major undergraduates from the Caritas Institute of Higher Education, Centennial College (established by HKU), City University of Hong Kong, Hong Kong Shue Yan University, Lingnan University, and the University of Hong Kong (HKU). One of them earned their work experience at

the Institute secretariat. The Institute would like to thank the companies for their support of the programme.

New survey on bank account opening

The Institute conducted a survey of its members on opening bank accounts in Hong Kong from 28 July to 19 August 2016. Media reports have highlighted the difficulties companies are having opening bank accounts in Hong Kong, and concerns have been raised about the implications of this for Hong Kong's ease of doing business. The survey report confirms the existence of the problem and looks at its causes and possible solutions.

The survey report is available on the Institute's website: www.hkics.org.hk. The results of another HKICS survey ('Shareholder Communications – navigating the maze for listed issuers') will be announced later this month.

The Institute would like to thank the respondents who provided their views and insights to the survey.

Student Ambassadors Programme summer interns photo gallery



At Alter Domus Asia Ltd



At CK Hutchison Holdings Ltd



At Companies Registry



At Reanda EFA Secretarial Ltd



At Tricor Services Ltd



At the Institute

More photos are available at the Gallery section of the Institute's website: www.hkics.org.hk

Membership

Concessionary rate subscription applications for year 2016/2017 (reminder)

The Institute continues to offer concessionary subscription rates (retired rate, reduced rate or hardship rate subscriptions) to eligible members for the 2016/2017 financial year. The application deadline for any concessionary rate subscription is Monday 31 October 2016.

For details, please visit the Membership section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Rose Yeung at: 2830 6051, or Melani Au at: 2830 6007, or email: member@hkics.org.hk.

New graduates

Congratulations to our new graduates listed below.

Au Yeung Lai Yee	Li Hoi Tung
Cheung Hei Ming	Li Sin Ting, Esther
Fung Yan Chi, Yammie	Shi Yu
Gao Yuan	Wong Man Wa
Hui Sze Lin	Wong Pui Man
Lam Ka Leung	Wong Sau Pik
Lee Shuk Yin, Rosita	Yeung Yan Ning
Leung Ka Wa	Yu Hong Chai
Leung Suet Wing	Yue Fu Tak

New fellows

The Institute would like to congratulate the following fellow elected in July 2016.

Dr Jin Xiao Bin FCIS FCS



Dr Jin has a doctor's degree in economics and a post-doctoral degree in finance. He is a deputy researcher (professor level); an expert with special allowance from the State Council; member of the Advisory Committee of Information Disclosure of the Shanghai Stock Exchange; a professional evaluation expert of securities

companies in the Securities Association of China; a commissioner of the Culture and Media Committee of the China Association for Public Companies; and the Dean of the Shanghai Times Economic Research Institute. He held various positions in Haitong Securities Company and its subsidiaries, including Chairman and Legal Representative of Haitong New Energy Equity Investment Fund Management Co Ltd; Chairman and Legal Representative of Haitong Jihe Private Equity Investment Fund Management Company; Deputy Director of Haitong Securities Investment Banking Committee; Secretary of Haitong Securities (H-share); Authorised Representative of the company; Vice-President and Assistant to the President; Head of the Research Institute; General Manager of the headquarters of the brokerage business; and General Manager of the M&A Financing Department. He previously served in the People's Liberation Army Navy.

ICSA Annual General Meeting 2016

The 2016 Annual General Meeting of the Institute of Chartered Secretaries and Administrators (ICSA) will be held at the Four Seasons Hotel Sydney, Ballroom 2, 199 George Street, Sydney, NSW 2000, Australia on Wednesday, 14 September 2016 at 17.45hrs (local time). For details, please visit the News section of the Institute's website: www.hkics.org.hk.

Donate as you spend

Starting from 1 August 2016, purchases made with the Chartered Secretaries American Express credit card contribute to the profession.

The HKICS Council has resolved to donate the commission income received from American Express arising from members' spending made through the Chartered Secretaries American Express credit cards to The Chartered Secretaries Foundation Ltd (the Foundation). Members, graduates and students are encouraged to consider signing up for the Chartered Secretaries

American Express credit cards. For details of the credit card and the relevant application forms, please visit the Membership section of the Institute's website: www.hkics.org.hk.

The Foundation, established by HKICS on 5 January 2012, aims to support education and research in company secretarial, legal, accounting, business studies and, in particular, in the area of corporate governance; and to support related charitable activities. We value your contribution to the Foundation.

Members' activities highlights: July and August 2016

10 July
HKICS dragon
boat team–
Tseung Kwan O
Dragon Boat
Races



HKICS Dragon Boat Team received a merit in recognition of the paddlers' effort

30 July
Community
Service –
dialogue in
the dark



Members at the 'see the unseen' experience

12 August
Chartered
Secretary
Mentorship
Programme
– social
gathering



Mentors and mentees sharing their mentoring experiences



At the gathering

Forthcoming membership activities

Date	Time	Event
10 September 2016	2.00pm – 4.30pm	Fellows only – 品茗与茶艺
4 October 2016	6.00pm – 9.00pm	Annual Convocation 2016 (by invitation only)

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

International Qualifying Scheme (IQS) examinations

IQS examination pass rates (June 2016)

Subject	Pass rate
Part I	
Strategic and Operations Management	46%
Hong Kong Financial Accounting	60%
Hong Kong Taxation	35%
Hong Kong Corporate Law	27%
Part II	
Corporate Governance	39%
Corporate Administration	34%
Corporate Secretaryship	23%
Corporate Financial Management	62%

Outstanding students awarded

The Institute is pleased to announce the following awardees of subject prize and merit certificates at the June 2016 examination diet. The subject prizes were awarded by The Chartered Secretaries Foundation Ltd. Congratulations to all awardees.

Subject	Subject prize winners
Hong Kong Taxation	Lee Pui Kei, Kris
Corporate Governance (HK)	Ng Yee Kwan Siu Wing Shan

Subject	Merit certificate awardees
Strategic & Operations Management	Au Ka Yi
Hong Kong Financial Accounting	Tuyen Pui Man Wong Fung Kit
Hong Kong Taxation	Ng Yuen Lam
Hong Kong Corporate Law	Chan Yuen Kwan Chen Zhenting
Corporate Governance (HK)	Ng Kwai Fa Pui, Joanne Wong Hoi Sui Wong Ka Yan
Corporate Administration (HK)	Chan Kai Hong Chan Oi Kuen Tsang Hiu Tung Yau Kar Yi, Grace
Corporate Financial Management	Chan Chiu Wing Ip Yan Pui Leung Kin Yan Leung Yau Man Lo Lok Yiu Tse Kit Ying Wong Ming Sze Wong Yik Ka

December 2016 diet reminders

Examination timetable

	Tuesday 6 December 2016	Wednesday 7 December 2016	Thursday 8 December 2016	Friday 9 December 2016
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

Enrolment period is from 1 to 30 September 2016.

Examination enrolment

The examination enrolment period is between 1 and 30 September 2016. The examination entry form is available on the Studentship section of the Institute's website: www.hkics.org.hk. All entries must be received by the secretariat by 6.00pm on Friday 30 September 2016, and, if by post, with a post-mark on that date. Late applications will not be accepted under any circumstances. To avoid postal errors or delays, students are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre selected after the examination application has been submitted.

IQS study packs

Students can order the study packs for Corporate Administration, Corporate Governance, Corporate Secretaryship and Hong Kong Corporate Law. The order form is available on the Studentship section of the Institute's website: www.hkics.org.hk.

HKICS Examinations Preparatory Programme

The Institute's Examinations Preparatory Programme conducted by HKU SPACE will commence in September 2016. The timetable and enrolment form are available at the Studentship section of the Institute's website: www.hkics.org.hk. For enquiries, please contact HKU SPACE at: 2867 8317, or email: hkics@hkuspace.hku.hk.

Examination technique workshops

The Institute will organise a series of three-hour IQS examination technique workshops from October 2016, which aim to help students improve their examination techniques. The fee for each workshop is HK\$500. The enrolment form is available at the Events section of the Institute's website: www.hkics.org.hk.

Studentship

New students orientation

Date:	Tuesday 14 September 2016
Time:	7.00pm – 8.30pm
Venue:	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road Central, Hong Kong

Students registered since March 2016 are invited to attend an orientation on Wednesday 14 September 2016 to learn more about the Institute and meet with other students. Recent IQS examinations subject prize winners will share examination preparation tips at the event.

The enrolment form is available at the Studentship section of the Institute's website: www.hkics.org.hk. Please email the completed enrolment form to: student@hkics.org.hk. For enquiries, please contact Karin Ng at: 2830 6010, or Jonathan Ng at: 2830 6019.

Student Ambassadors Programme 2016/2017

The Student Ambassadors Programme (SAP) 2016/2017 Tea Reception will take place from 10.00am to 1.00pm on Saturday 8 October 2016 at HKUST Business School Central. Members who are SAP mentors for the year are invited to join the ceremony and meet with their mentees.

For enrolment and enquiries, please contact Jonathan Ng at: 2830 6019, or email: student@hkics.org.hk.

Policy – payment reminder

Studentship Renewal

Students whose studentship expired in July 2016 are reminded to settle the renewal payment by Friday 23 September 2016.

Exemption Fees

Students whose exemption was approved via confirmation letter in June 2016 are reminded to settle the exemption fee by Wednesday 5 October 2016.

Shenzhen-Hong Kong Stock Connect

Last month the China Securities Regulatory Commission (CSRC) and the Securities and Futures Commission (SFC) announced their approval, in principle, of the establishment of mutual stock market access between Shenzhen and Hong Kong. The new trading link – Shenzhen-Hong Kong Stock Connect – will be established by the Shenzhen Stock Exchange (SZSE), The Stock Exchange of Hong Kong Ltd (SEHK), China Securities Depository and Clearing Corporation Ltd (ChinaClear) and Hong Kong Securities Clearing Company Ltd (HKSCC).

Like its precursor, Shanghai-Hong Kong Stock Connect, the link will comprise both northbound and southbound investment opportunities. The northbound trading link refers to investors, through their appointed Hong Kong brokers and a securities trading service company to be established by SEHK in Shenzhen, trading eligible shares under Shenzhen-Hong Kong Stock Connect listed on SZSE by routing orders to SZSE. The southbound trading link refers to investors, through their appointed Mainland securities firms and a securities trading service company established by SZSE in Hong Kong, trading eligible shares under Shenzhen-Hong Kong Stock Connect listed on SEHK by routing orders to SEHK.

The principal arrangements for Shenzhen-Hong Kong Stock Connect will replicate those under Shanghai-Hong Kong Stock Connect. 'Issues such as applicable trading, clearing and listing rules, clearing arrangements, investor eligibility, and cross-boundary regulatory and enforcement cooperation and liaison mechanisms will be dealt with by reference to the joint announcement on Shanghai-Hong Kong Stock Connect dated 10 April 2014,' a CSRC/SFC news release states.

However, the news release also mentions other arrangements as set out below.

Eligible shares

In respect of the northbound trading link, eligible shares refer to any constituent stock of the SZSE Component Index and SZSE Small/Mid Cap Innovation Index which has a market capitalisation of RMB6 billion or above, and all SZSE-listed shares of companies which have issued both A shares and H shares. At the initial stage of the northbound trading link, investors eligible to trade shares that are listed on the ChiNext Board of SZSE will be limited to institutional professional investors as defined in the relevant Hong Kong rules and regulations. Subject to the resolution of related regulatory issues, other investors may subsequently be allowed to trade such shares.

In respect of the southbound trading link, the scope of eligible shares will be the constituent stocks of the Hang Seng Composite LargeCap Index and Hang Seng Composite MidCap Index, any constituent stock of the Hang Seng Composite SmallCap Index which has a market capitalisation of HK\$5 billion or above, and all SEHK-listed shares of companies which have issued both A shares and H shares.

As to the detailed formulas and methods for calculating the above-mentioned market capitalisations, SZSE and SEHK will make separate announcements in due course.

Investment quota

There will be no aggregate quota under Shenzhen-Hong Kong Stock Connect and the aggregate quota under Shanghai-Hong Kong Stock Connect has been abolished.

The Shenzhen-Hong Kong Stock Connect daily quota will be the same as that currently under Shanghai-Hong Kong Stock Connect, that is, a daily quota of RMB13 billion is set for the northbound trading link, and a daily quota of RMB10.5 billion is set for the southbound trading link under Shenzhen-Hong Kong Stock Connect. The investment quota may be adjusted by the parties in light of actual operational performance.

Preparing for Shenzhen-Hong Kong Stock Connect

Stock exchanges and securities registration and clearing organisations in both the Mainland and Hong Kong will formulate and issue or adjust related business rules, actively carry out all preparation work such as the development and testing of technical systems, applications for operational qualifications, and investor education, and will make announcements regarding their progress.

The formal launch of Shenzhen-Hong Kong Stock Connect will only take place after preparation for the relevant trading and clearing rules and systems has been finalised, all regulatory approvals have been granted, market participants have sufficiently adapted their operational and technical systems, and all necessary arrangements for cross-boundary regulatory and enforcement cooperation, as well as investor education, have been in place. The SFC estimates it should take approximately four months to complete the above-mentioned preparations. A separate announcement will be made with respect to the formal launch date.

More information is available on the SFC (www.sfc.hk) and HKEX (www.hkex.com.hk) websites.

HKICS members' alert

The Companies Ordinance now provides that a company secretary is a 'responsible person' with added responsibilities as part of senior management (S.3 Companies Ordinance, Cap 622). In this connection, Chartered Secretaries, as governance professionals, are expected to jealously guard their reputations and professionalism, including relating to complying with the requirements under the Companies Ordinance and other applicable rules and regulations.

In a recent decision (*Hong Wei (Asia) Holdings Company Limited v The Registrar of Companies HCMP 1418/2016*), an application was made to Justice Harris of the High Court for an extension of time for a return of allotment on the basis that the company secretary, because of 'work

commitments' at the time 'overlooked' the requirement to return the allotment under old Section 45 of the Companies Ordinance.

The judge held that there was no evidence that the company secretary, or any other officer of the company, 'took the trouble' to look at the terms of Section 45 and appreciate that, as a result of breach of Section 45, the company and its officers were liable to prosecution. The court commented that if an application to extend time had been made shortly after the time period had expired, it may well have been granted, but it will only be in 'special circumstances' that the court should grant an extension of time after a summons has been issued, as it had been in this case.

The decision of Justice Harris has general application, and evinces the approach of the court to consider extension applications tightly and only for credible reasons within a short timeframe of expiry of any time limit. As such, the Institute reminds members to take compliance with filing and other requirements seriously, as breaches could lead to losses to their employers. In case of egregious breaches of compliance requirements, that may also be ground for disciplinary action.

More information on the professional standards expected of members of the Institute can be found in 'The Essential Company Secretary', available on the Institute's website (www.hkics.org.hk).

Bring your own device: privacy considerations

Hong Kong's Privacy Commissioner for Personal Data issued an information leaflet last month to highlight the personal data privacy risks that an organisation needs to be aware of regarding its 'bring your own device' (BYOD) policy. BYOD, which allows employees to use their own mobile devices to access and work with their employers' organisational information, is a practice that is becoming increasingly popular in organisations.

'In allowing BYOD, organisations are reminded that such BYOD equipment contains private information about employees. Any protective measures implemented by the organisations should also respect such private information. Moreover, even though the organisation-collected personal data is stored on a device owned by the employee, it is important for organisations to realise that they remain fully responsible for compliance with the Personal Data (Privacy) Ordinance in respect of this personal data,' Privacy Commissioner Stephen Kai-yi Wong said.

The leaflet highlights a number of personal data privacy risks that organisations need to be aware of, for example:

- whether there are sufficient reminders to employees not to misuse organisation-collected personal data downloaded to or stored in BYOD equipment, and
- whether sufficient technical measures are in place to enable BYOD equipment for accessing or storing organisation-collected personal data while respecting private information, for example any alternatives, effective control systems and security measures, etc.

The 'BYOD (Bring Your Own Device) Information Leaflet' is available for download at the PCPD website: (www.pcpd.org.hk).



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- Sound leadership, excellent interpersonal skills and abilities to ride on challenges
- Excellent command of both written and spoken English and Chinese

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We are an equal opportunity employer and welcome applications from all qualified candidates. Personal data collected will be treated in strictest confidence and handled confidentially by authorized personnel for recruitment-related purposes within the Group. Applicants not hearing from us within six weeks from the date of advertisement may consider their applications unsuccessful.



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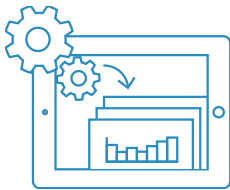
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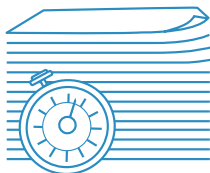
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