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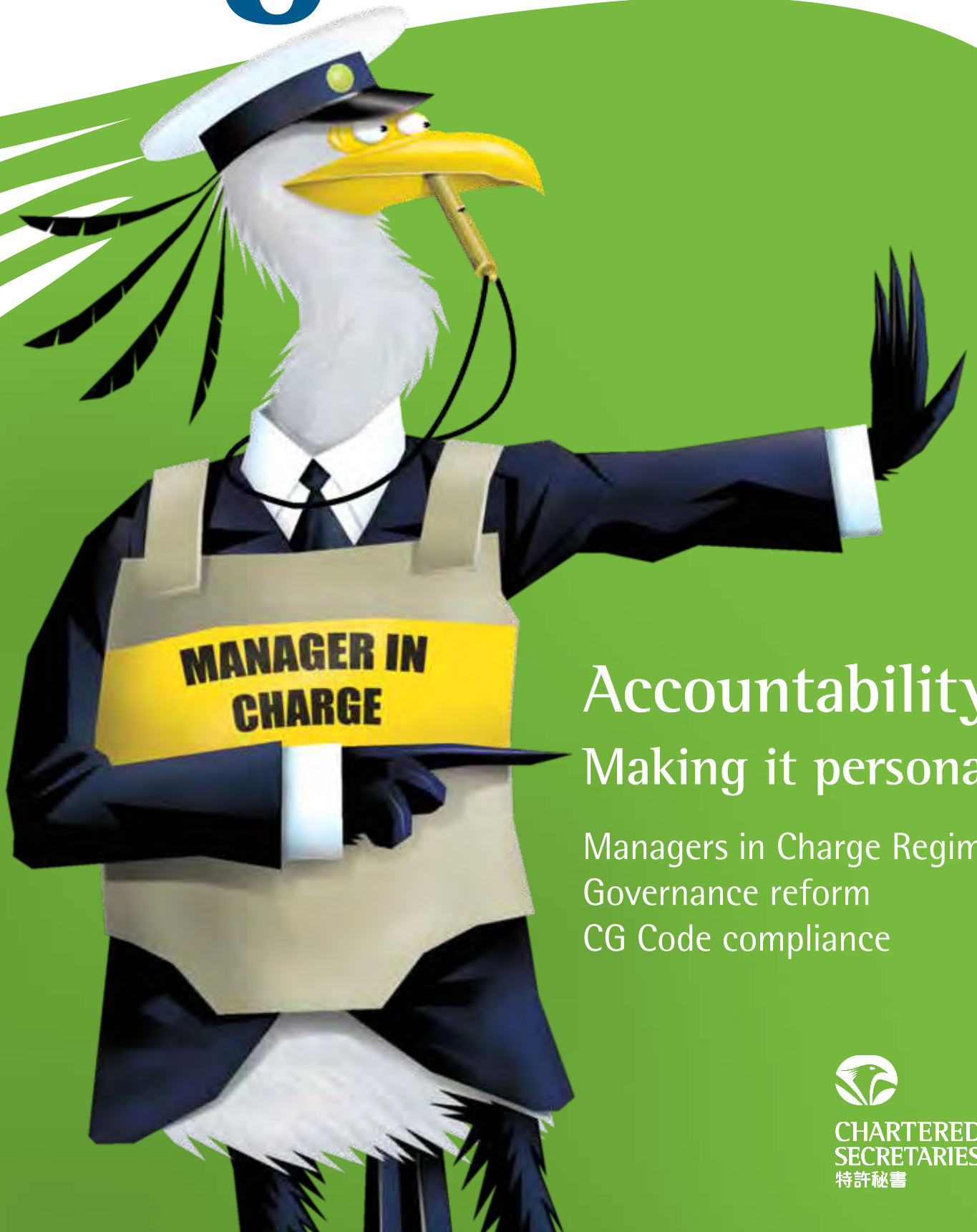
April 2017

Chartered Secretaries.
More than meets the eye.

特許秘書. 潛能. 超越所見.

The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Accountability Making it personal

Managers in Charge Regime
Governance reform
CG Code compliance



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SECRETARIES
特許秘書

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行政人員文憑《中國企業管理》有四個單元，學員只要成功完成單元一至單元四，並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國企業管理》。學生如成功完成單元一（中國公司行政）及其他任何一個單元，並在持續評估中的個案分析取得合格成績，將獲發行政人員證書《中國企業管理》。具體如下：

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單元二 中國公司治理 Corporate Governance in PRC 單元四 中國公司法律 Corporate Law in PRC

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香港特許秘書公會合辦
有關國內公司治理的課程

最新
單元

中國公司行政

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課程為期一個月
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上課時間：週六14:00 – 17:00及18:00 – 21:00
授課地點：港島區其中一所教學中心

授課日期

2017年6月3日、6月10日、6月17日及6月24日（校方保留更改及調動課堂時間之權利）

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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, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994. HKICS is a founder member of the Corporate Secretaries International Association (CSIA) which was established in March 2010 in Geneva, Switzerland to give a global voice to corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

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This month's *CSj* addresses the global trend towards enforcing personal accountability for senior managers. In my President's Message this month, however, I would like to focus on some important developments regarding the Institute of Chartered Secretaries and Administrators (ICSA) and to update you on some of the initiatives we have in the pipeline for the year ahead.

As mentioned in the report of the Council of ICSA dated 16 August 2016, the Council of ICSA has been evaluating a number of strategic changes to ensure that ICSA can be a healthy, growing and sustainable professional institute into the future. As you may know, one of the important developments is that ICSA has been reviewing the International Qualifying Scheme to ensure it is fit for purpose in the changing business landscape. At the ICSA Council Meeting held last month in Johannesburg, South Africa, a decision was taken to expand the qualification into two streams – Chartered Secretaries and Chartered Governance Professionals. ICSA also proposes to create a new entry-level category of membership to attract younger and aspiring professionals to be called Affiliated Members. Any ICSA Division wishing to offer Affiliated Membership, or to register Affiliated Members, must first apply for, and receive, authorisation from ICSA Council. ICSA will seek member approval of both strategic changes at its upcoming Annual General Meeting tentatively to be held in early October 2017.

These developments will have significant implications for our members here in

The year ahead

Hong Kong and were at the top of the agenda of our Council strategy meeting held in February this year. Our priority at the moment is to ensure that you have all the information you need to make your own decision on the way forward. ICSA will be sending out information relating to these strategic changes in the coming months and we also plan to organise a series of forums and meetings to inform members and stakeholders of these strategic changes.

Turning to other initiatives for the year ahead, we will be seeking to maintain the momentum of our social responsibility initiatives by focusing on specific social issues, including community economic development, education, environment and employee well-being. We at the HKICS believe strongly in caring for our local community with the knowledge that 'to give is more blessing than to receive'. This year, we are working towards obtaining the 2017/2018 Caring Organisation Logo organised by the Hong Kong Council of Social Services in recognition of our work with several NGOs, such as the Hong Kong Breast Cancer Foundation, Ocean Conservancy and the World Wildlife Fund.

Another focus of our work in the year ahead will be to closely monitor social media trends and shift our communication channels to social media platforms to encourage more interaction and engagement with our students, members and the general public.

I would also like to update you on our use of financial resources. We are currently in a strong financial position and therefore have the ability to expand our funding of priority areas of our work. These will include projects to provide further assistance to our students. We have been providing online study packs free of charge since January 2017, but we would like to put more resources into aiding our students with their studies.

We also intend to make more use of digital platforms to reach out to our members, stakeholders and potential students. This will involve upgrading our IT database system to enable it to provide more efficient services to our members. We created a mobile app

for conferences and seminars in 2016 and will seek to enhance the app further.

Finally, we also intend to put more resources into developing the profession in Mainland China. We currently have 183 registered students, 38 members and 163 Affiliated Persons (AP) from H share, A+H share, A share and red chip companies on our register. I believe we can expand our AP programme, our student numbers and our membership base in Mainland China, but to do this we would need to expand our teams working in the Mainland.

There are many potential areas where we could enhance our work. For example, the Institute worked with the Open University of Hong Kong to launch the Postgraduate Programme in Corporate Governance in Shanghai in 2016. This successful launch was a milestone for the Institute's Mainland professional development and 29 students are now registered with this programme. I would like to see more collaboration with universities in the Mainland offering corporate governance courses.

Another proposal is to form local committees in the Mainland to address the local issues of relevance to board secretaries in their work. The Institute has five Regional Board Secretary Panels (RBSPs) in Beijing, Shanghai, Guangzhou, Shenzhen and Chongqing which serve as local hubs for APs working and living in those regions. We will continue to engage conveners and members of these RBSPs and consider setting up other relevant local committees, panels or working groups to further enhance our work and services in the Mainland.

I believe these developments will not only benefit our members and APs in the Mainland but also our members here in Hong Kong since it will open up insights into Mainland professional development issues.

A handwritten signature in black ink, appearing to read 'Ivan Tam'. The signature is stylized and written in a cursive-like font.

Ivan Tam FCIS FCS

来年展望

本期月刊的主题，是全球各地推行高级管理人员个人问责的趋势。不过，本文拟集中报告特许秘书及行政人员公会（ICSA）的一些重要发展，以及公会来年的一些工作计划。

正如ICSA理事会2016年8月16日的报告所指，ICSA理事会一直考虑进行一些策略性改变，务求让ICSA健全发展，稳步成长，成为可持续的专业机构。正如大家所知，当中一项重要发展，是检讨国际专业知识评审考试，确保课程能配合转变中的商业社会的需要。上月在南非约翰内斯堡举行的会议中，ICSA理事会决定把有关会员专业资格分为特许秘书及特许管治专业人员两个组别。ICSA同时建议新增入门水平的会籍，取名为联席会员，以吸引较年轻及有志发展的专业人士。ICSA分部如欲提供联席会员类别，或登记联席会员，须事先向ICSA理事会申请并获批准。ICSA将在下次周年会员大会把这两项策略性改变提交会员通过，大会初步订于2017年10月初举行。

这些发展对香港会员影响深远，是公会理事会2月份策略会议的重要讨论项目。公会此刻的首要工作，是让会员掌握一切所需资料，决定个人取向。在未来数月，ICSA将提供有关这些策略性改变的资料；我们亦计划举办一系列论坛和会议，向会员及持份者说明这些改变。

至于来年的其他工作，我们将继续推动企业社会责任方面的项目，集中关注特定的社会事务，包括社区经济发

展、教育、环境及雇员健康生活。公会秉持关怀社区的信念，深信「施比受更有福」。今年，我们将凭藉与香港乳癌基金会、海洋保育协会和世界自然基金会等志愿机构的合作，寻求获得香港社会服务联会的2017/2018同心展关怀标志。

来年的另一工作重点，是密切留意社交媒体的发展趋势，转移以社交媒体平台作为沟通途径，以加强与学员、会员和公众人士的互动，鼓励他们参与公会事务。

另一项为大家报告的事项，是公会财务资源的运用。公会目前财务状况稳健，可投入更多资金开展重点工作。当中包括多个项目，为学员提供进一步协助。自2017年1月起，我们已开始在网上免费提供学习工具包；未来将投入更多资源，协助学员学习。

我们也计划多利用数码平台接触会员、持份者和潜在学员，这需要提升我们的资料库系统，以便为会员提供更有效率的服务。2016年，我们推出了研讨会及讲座流动應用程式，来年将再提升这程式。

最后，我们亦拟投入更多资源，推动特许秘书专业在中国内地的发展。公会目前有183名注册学员、38名会员及163名联席成员来自H股公司、A+H股公司、A股公司及红筹公司。我相信我们可扩展联席成员计划，增加内地学员数目，扩大内地会员的基础；但要做到这些工作，则需要扩充我们内地的团队。

我们亦有许多方面的工作可以加强。例如公会与香港公开大学合作，于2016年在上海推出高级企业管治研修课程，十分成功，是公会内地专业发展的里程碑，现有29名学员注册修读这课程。我乐见公会与内地大学进行更多合作项目，提供公司治理课程。

另一项建议，是在内地成立地区委员会，处理与当地董事会秘书工作息息相关的课题。公会设有北京、上海、广州、深圳及重庆五个地区董事会秘书小组，凝聚在这些地区工作和居住的联席成员。我们将与董事会秘书小组的召集人和成员保持紧密联系，并考虑成立其他有关的地区委员会、专责小组或工作小组，以加强公会在内地的工作和服务。

我相信这些发展不仅对内地会员和联席成员有所帮助，香港会员也可从中得益，加深对内地专业发展事务的认识。

谭国荣 FCIS FCS



Senior management accountability and enforcement

The SFC's 'Managers
in Charge Regime'

This month sees the implementation of the Securities and Futures Commission's (SFC's) 'Managers in Charge Regime' (MICR) for all licensed corporations. Veronique Marquis and Catriona Kellas, of Eversheds, look at the compliance implications for organisations caught by the MICR and the wider implications of the SFC's intention to strengthen senior management accountability in Hong Kong.

On 16 December 2016 the SFC published a circular and FAQ document introducing measures designed to heighten the accountability of senior managers in licensed corporations. The circular clarifies the existing liability of senior managers, and introduces new corporate governance requirements which apply to all licensed corporations. The MICR will come into effect on 18 April 2017 and there is a hard deadline of 17 July 2017 for compliance with the key aspects of the regime. It is expected that corporations will need to dedicate resources immediately in order to meet the SFC's challenging deadlines.

The SFC has made governance and accountability a priority in terms of ongoing supervision and enforcement. The new MICR serves to emphasise that this focus is unwavering and heralds an era of increased personal accountability for management in Hong Kong. The regime echoes the similar UK Senior Managers Regime which came into force in March 2016, and the sharp focus on individual accountability in the US.

Key elements of the new regime

The regime requires licensed corporations to appoint at least one 'manager in charge' (MIC) in respect of each of the eight new 'core functions' (see graphic below).

MICs need to be fit and proper under pre-existing rules, and to have the

relevant seniority and authority to properly supervise the relevant function and report to the board of the licensed corporation. MICs are personally accountable for their relevant functions. Potential sanctions include disciplinary action and civil and criminal penalties.

For most core functions, MICs are not required to be 'responsible officers' (ROs). There are two exceptions: MICs in respect of the 'overall management oversight' and 'key business line' functions will need to be (or to become) ROs. To the extent that managers occupying these two core functions are not currently ROs, licensed corporations have until 16 October 2017 to apply for RO status in respect of those individuals.

One of the key components of the new regime is the requirement for the board to adopt a formal document setting out the management structure of the corporation. This formal document

should include information as to reporting lines, responsibilities, and the roles and accountability of senior management personnel. Whilst this document does not need to be formally submitted to the SFC, the SFC may request sight of it at any time.

Licensed corporations must submit details of all MICs and an organisational structure chart showing certain prescribed details on the SFC online portal by 17 July 2017. The information must be regularly reviewed and kept up to date.

The regime also requires that MICs formally acknowledge their appointment, and the scope of their roles and responsibilities.

Timeline

The SFC has prescribed a short period of time for licensed corporations to satisfy the new regime, with a three-month window from 18 April to 17 July 2017

Highlights

- the SFC's new Managers in Charge Regime is part of a global trend towards enforcing personal accountability
- the principal deliverable of the new regime is a chart setting out which senior manager is responsible for each of the eight core functions specified by the regime
- senior managers should note that disciplinary sanctions available to the SFC are both civil and criminal in nature

to satisfy the mandatory requirement to submit information as to management structure (see table below).

Licensed corporations who need to apply for their newly appointed MICs to become ROs will benefit from a three-month grace period to submit their application in that respect to 16 October 2017. Still, this compressed timeline is expected to present a challenge for many licensed corporations.

Various factors can complicate compliance with the regime. Corporations that are parts of larger groups of companies, where back or middle office functions are discharged by other corporate entities within the group, need to prepare the terrain and start a dialogue with any non-employees that they believe are fulfilling core functions, and to ensure that the relevant individuals will be prepared to formally acknowledge their appointment. In many cases, specific training will be required to ensure new MICs understand their role and discharge their duties under the regime.

Even more challenging is the scenario where core functions, such as IT, are fully outsourced to external service providers, and where no senior manager currently has the required degree of oversight over that function. While the SFC has left the door open to outsourced MICs, it has not waived the requirements that all MICs, including any outsourced ones, must have seniority, authority, and a direct reporting line to the board. In practice, few outsourcing scenarios will lend themselves to the outsourcing of MIC responsibilities.

The most difficult part of the regime will likely be the demarcation of responsibilities between various MICs. For corporations that operate on matrix management models, with various dotted reporting lines, or where key business lines are overseen by multiple managers, there will need to be clarity over each MIC's scope of responsibility, with no grey areas remaining. Such an exercise requires careful planning and meticulous execution, as well as stakeholder engagement from an early stage.

Corporations that have gone through the similar Senior Managers Regime in the UK, which provided inspiration for the MICR, will remember all too well that the drawing of responsibilities maps can be fraught and require sensitive management.

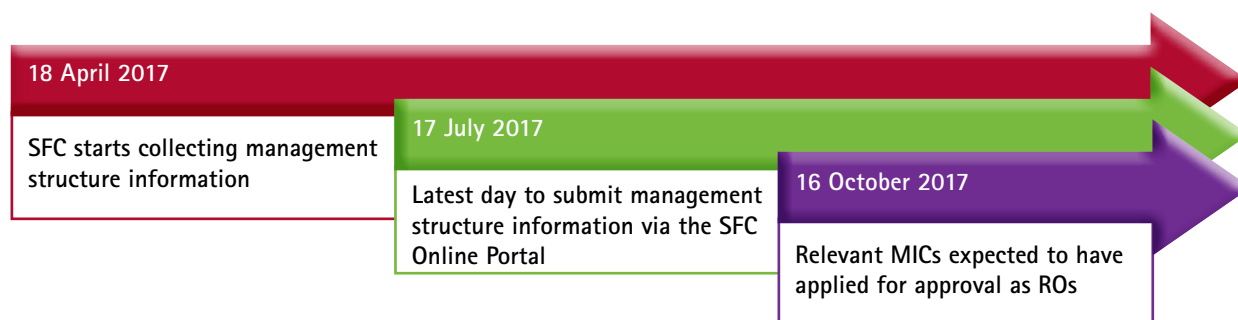
Enforcement: impact of the regime on senior management accountability

The SFC has made it clear that it wants to strengthen the corporate governance of licensed corporations. The personal responsibility element of the MICR is the cornerstone of this approach, and is mirrored in the SFC's enforcement priorities. In its Enforcement Reporter published on 8 December 2016, the SFC gave a warning shot, requiring corporations to ensure that 'senior management (whether or not licensed by us) are fully aware that they are accountable for the misconduct of their firms'. Clearly the SFC hopes that a combination of the new regime and the SFC's existing enforcement powers, will help to drive the financial services industry

The eight 'core functions' and examples of who can be appointed as MICs

Core function	Relevant MIC
Overall management oversight	Chief Executive Officer, President
Key business line	Chief Investment Officer, Head of Equity, Head of Corporate Finance, Chief Rating Analyst, Head of Fund Marketing
Operational control and review	Chief Operating Officer, Head of Operations, Head of Internal Audit
Risk management	Chief Risk Officer, Head of Risk Management
Finance and accounting	Chief Finance Officer, Financial Controller, Finance Director
Information technology	Chief Information Officer, Head of Information Technology
Compliance	Chief Compliance Officer, Head of Legal and Compliance
AML and CTF	Head of Financial Crime Prevention, Head of Compliance

Countdown to compliance



in Hong Kong further towards attaining an exemplary standard of responsible conduct and investor protection.

Despite this, the SFC has made it clear that it considers the MICR to be within the ambit of its existing powers, and that no new regulation or legislation is required for its implementation. This is particularly interesting considering that the MICR turns the spotlight on middle and back office functions, such as IT and compliance, which have not traditionally been associated with senior accountability. It is fair to say that, although the SFC may have had the ability to pursue enforcement action against personnel in those functions, historically their focus has been trained on the front office. However, the SFC's decision to predicate the MICR on the basis of their power to pursue regulated persons (see 'The underlying regulatory regime', below), regardless of whether the relevant individuals are licensed or not, signals that the pool of those who may be held to account could be dramatically expanded. It is expected that enforcement action will follow an upward curve.

As ever, it is difficult to be definitive as to the circumstances in which the SFC will seek to take enforcement action against

individuals under the MICR. No new guidance has been provided, and the SFC has reiterated that each scenario will be analysed on its individual facts. The SFC will be looking to establish where responsibility for breaches lie, and the degree of responsibility borne by each member of senior management. Various factors will be taken into account, including:

- the extent of each individual manager's authority in the firm's business
- the individual's level of responsibility within the licensed corporation concerned, including any supervisory duties he or she may perform, and
- the level of control or knowledge he or she may have concerning any failure by the licensed corporation or persons under his or her supervision, to follow the Code of Conduct.

Regulators have long decried the difficulty to ascertain and allocate responsibility in the event of a breach. Since the principal deliverable of the MICR is an organisation and responsibility chart, in the future, the SFC should find it much easier to exercise disciplinary powers against individuals who will be unable to claim

that they were not aware of the extent of their responsibility. In that sense, the MICR provides a roadmap to enforcement against senior managers.

Five things you need to know

1. The new regime applies to all licensed corporations.
2. The deadline for complying is 17 July 2017.
3. The new regime highlights personal accountability and liability for front office, middle office and back office managers.
4. Implementing the new regime may require significant resources, particularly for groups of companies, corporations operating in multiple jurisdictions and organisations which adopt matrix management (with multiple or dotted reporting lines).
5. Potential civil and criminal sanctions can apply to personnel who may not previously have considered themselves to be within the SFC's enforcement remit.

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The underlying regulatory regime: what are the penalties?

Under Part 9 of the Securities and Futures Ordinance (SFO), the SFC may exercise its disciplinary powers to sanction a 'regulated person' if the person is guilty of misconduct or is considered not fit and proper 'to be or to remain the same kind of regulated person' (see Section 194 of the SFO). Importantly, the term 'regulated person' means:

- a licensed person
- a responsible officer of a licensed person, or
- a person involved in the management of the business of a licensed person (regardless of whether he or she is licensed). As MICs are, by definition, involved in the management of a licensed corporation, they automatically fall within the ambit of 'regulated persons'.

Under Section 193(2) of the SFO, where a licensed corporation is found guilty of misconduct, managers may

also be guilty of misconduct if the misconduct arose through their conduct, or with their consent or connivance, or as a result of their negligence. 'Misconduct' in this context includes an act or omission relating to the carrying on of any regulated activity, which is or is likely to be prejudicial to the interest of the investing public or to the public interest.

Outside of these statutory powers, it is worth bearing in mind that a failure to ensure compliance with the MICR may in itself call into question an MIC's own fitness and propriety.

Senior managers should note that disciplinary sanctions available to the SFC are both civil and criminal in nature.

Civil liability under Part 9 of the SFO is set out in Section 194 of the SFO and includes the following disciplinary sanctions:

- fines not exceeding HK\$10 million or three times the amount of the profit gained or loss avoided by the regulated person as a result of the misconduct
- revocation or suspension of the licence
- revocation or suspension of approval to be an RO
- prohibition of a regulated person from applying for licences or registration, becoming an RO, executive officer or relevant individual, and
- public or private reprimand.

In addition, where a corporation has been found guilty of an offence under parts XIII

and XIV of the SFO (such as false trading, price rigging, market manipulation and disclosure of misleading information), the SFC may seek to extend criminal liability to any of the corporation's officers, or partners in a partnership, where the offence is committed with their consent, connivance or otherwise attributable to their recklessness. The criminal liability of officers in such cases carries a sanction of a maximum 10 years imprisonment and fines of up to HK\$10 million (Section 390 SFO). 'Officers' includes directors, managers, company secretaries, or any person involved in the management of the corporation – which, again, would presumably include all MICs.

Extra-territoriality

The disciplinary powers under Part 9 of the SFO apply to all regulated persons. Importantly, these powers do not differentiate between regulated persons caught within the SFO definition wherever they are located. Enforcement risk therefore applies equally to MICs located abroad and who may, in practice, have had – so far – very little exposure to or awareness of the SFC's regulatory regime. This will have to change, as the regime requires MICs to formally acknowledge their appointment and role definition.

How can licensed firms look to support their senior managers?

Some licensed corporations will want to review the insurance coverage in place for directors and officers, and consider whether additional cover is needed for MICs. Typically, directors and officers will already be covered for civil liability, including the costs of legal representation. However, this cover may not extend to the often problematic early stages of a regulatory investigation, before any claim is made. The costs of

securing independent legal advice for senior managers, which is often needed in those early stages, can be substantial. Some policies only offer a capped cover, or will cover only if the individual is specifically identified as the target of the investigation. If several managers share the sub-limit, cover can quickly prove inadequate.

Licensed corporations will also need to consider rolling out training and enhancing their compliance infrastructure. Implementing the new regime will mean casting a fresh eye on employment contracts, HR and

supervision policies and compliance manuals, among other documents.

What next?

With the implementation of the SFC's MICR, Hong Kong becomes the first Asian jurisdiction to adopt a senior management regime and becomes part of a global trend towards personal accountability. Concerns have been expressed that the industry will struggle with implementing the regime within the given timeframe and to find the additional resources that need to be allocated to compliance. Time will tell whether the regime will prove successful

in enhancing stability and confidence in Hong Kong as a financial market.

Veronique Marquis

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For more on the UK's Senior Managers Regime see the International Report article in CSj September 2016 (pages 24–29).



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The Environmental, Social and Governance (ESG) reporting obligations are "comply or explain", and the upgrade of the Key Performance Indicators (KPIs) under "Subject Area A: Environmental" of the ESG Reporting Guide to "comply or explain" will come into effect for issuers' financial years beginning on or after 1 January 2017.



Keeping companies honest

The essential ingredients of a good governance regime

The winner of the HKICS Prize 2016, Gordon Jones FCIS FCS BBS, Hong Kong's former Registrar of Companies, was closely involved in putting in place Hong Kong's current statutory and regulatory infrastructure. In this interview with CSj, he points out that writing the rule book is only the beginning of the long journey to good governance.

Congratulations on receiving the HKICS Prize. You have been closely involved in building Hong Kong's corporate governance infrastructure, particularly in your work on the rewrite of the Companies Ordinance – are you happy with the results of the rewrite exercise?

'I was pleased that the ordinance was passed by LegCo in July 2012 and implemented in March 2014 – in the present political climate it would be very difficult to get approval for such a major legislative reform.

I think the new Companies Ordinance is a huge improvement on the previous Cap 32. We now have a modernised Companies Ordinance which focuses on core company law. All the myriad provisions regarding corporate administration and management, which were previously crammed into Part IV of the ordinance, have now been separated so we now have separate parts on directors, company administration and procedure, accounts and auditing, shareholder remedies etc. The law has also in many ways been brought up to speed in terms of company law and corporate governance developments in other comparable jurisdictions, so I think it is a huge improvement in terms of structure and content.

One of my principal concerns, however, is that, although there was a commitment to prepare the legislation using the plain English principle, in many places the wording of the new ordinance is anything but plain English. In some places, in particular the accounting and auditing provisions, it is possibly even more complex than the previous Cap 32, and you need to read the relevant provisions several times before you really understand precisely what they are trying to say.

Another area of concern is that the new Companies Ordinance doesn't cover a number of issues which were strongly supported by the various advisory groups involved in the rewrite exercise. These

were incorporated into the draft legislation but, for whatever reason, were deleted before the new Companies Ordinance became law. One of these is the statutory disclosure of directors' remuneration which was strongly supported by the joint Working Group the government set up with the Hong Kong Institute of Certified Public Accountants. It appeared in the first drafts of the new Companies Bill, but at a later stage the Financial Services and the Treasury Bureau recommended, in the context of a public consultation exercise, that it should be deleted. I think the reasons for this were completely erroneous, particularly as it would not have imposed an unreasonable burden on listed companies. This is something which I think we should revisit quickly because directors' remuneration is a hot topic and there is no reason for not making this as transparent as possible.

Other deleted recommendations were the disclosure of directors' substantial property transactions and allowing the inspection of directors' service contracts by shareholders which were in the White Bill that was vetted by ExCo before the final Blue Bill went before LegCo. Although these provisions have been part of UK law ever since the 1985 Companies Act, they were deleted from the version which was debated by LegCo and I have no idea why this was the case'

Do you think Hong Kong's regulatory infrastructure is basically sound?

'I think we have basically got the right mix. First and foremost, we've got the Companies Ordinance providing the statutory provisions applicable to all companies as the base of the structure followed by, at a second level, the non-statutory listing rules with additional provisions for listed companies and, at a third level, the Corporate Governance Code, which, following the UK model, sets out principles-

Highlights

- corporate governance depends more on the people running companies than the various structures and processes you have in place
- following best practices in corporate governance depends on the key ethical values of decency, fairness, honesty and integrity
- company secretaries have to have the courage and ability to speak candidly to the board if they feel that the board is doing something that goes against good corporate governance practice

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based corporate governance provisions applicable to listed companies subject to the comply or explain principle.'

Do you think the principles-based approach is right for Hong Kong and, if so, do you think Hong Kong should move further in this direction?

'Yes, I think so. In fact, if you look at the Corporate Governance Code, as a result of reforms over the past few years, most of the recommendations are code provisions as opposed to recommended best practices, and therefore, subject to comply or explain. Companies have to comply or have to state their reasons for non-compliance. There are very few recommendations that are still only recommended best practices and I think that is a move in the right direction.

At the end of the day, corporate governance depends more on the quality of the people running companies than the various structures and processes you have in place, although these are important. It is possible, for example, to have less than optimal governance structures and processes but good people on the board and still have good corporate governance, but I don't think you will have good governance where you have good structures and processes but bad people. In the case of Enron, they ticked all the boxes in terms of good governance practices – for example, the company had audit committees and independent directors – but many of the directors were crooks. So I think principles-based corporate governance is the way to proceed since it requires that you have good people with sound ethical core principles running companies.'

Do you think the principles-based approach is working in Hong Kong – some have argued that Hong Kong doesn't have a sufficiently active and independent shareholder lobby to ensure that the comply or explain mechanism works?

'I think that is a valid point because, traditionally, corporate



governance reform is driven by shareholder pressure, but in Hong Kong it tends to be driven by regulatory pressure. This is partly a cultural issue because, unlike the US, which has a well-established and sometimes aggressive investor and minority shareholder culture, Hong Kong has no culture of minority shareholder activism. That is a major obstacle to having significant corporate governance reform in this particular jurisdiction. Whether or not this vacuum can be filled by institutional shareholder activism remains to be seen.'

Looking beyond the rulebook, how important do you think it is to have an effective civil society infrastructure in place – in particular an independent judiciary and an active and free media – to keep companies honest?

'There is no point in having a good law if it cannot be enforced fairly and without fear or favour, so you need to have an independent and robust judiciary. Corporate governance doesn't exist in a vacuum as the governance of companies is influenced by the governance of the host society. In fact, there are a myriad number of factors that influence it – cultural, economic, environmental, legal, political and social. There are certain basic things that have to be in place for good corporate governance to take root. For example, as you have mentioned, you need to have an effective regulatory and legal infrastructure; you need to have a good independent and robust judiciary which can administer and enforce the law without fear or favour; and, when things go wrong, you need to have a free and independent media to report on these abuses.'

There has been concern that Hong Kong's independent judiciary and free media are under threat – do you think they can still provide the checks and balances you mention to ensure good corporate and political governance?

'At the moment, my answer is yes, but this is something we need to monitor carefully. The two key principles of good corporate governance are accountability and transparency, and these can't

exist in a totalitarian society. There are clear challenges and threats to the continued existence of an independent judiciary and media in Hong Kong. In the case of media, one obvious concern is the risk of self-censorship as journalists don't want to offend Mainland Chinese interests or, closer to home, strong vested Hong Kong interests.'

How important is the element of personal ethics in terms of underpinning good corporate governance?

'Ethics are of critical importance to good corporate governance. The law lays down the basic minimum standards, but companies should be doing more than the law requires. Following best practices in corporate governance is very much a question of your corporate culture, mindset and education. It depends on the key ethical values of decency, fairness, honesty and integrity. Now, you cannot legislate for these values – the law can provide an appropriate punishment for wrongdoers but cannot create "goodness" and "good-doers". This goes back to my earlier point of why it is so important to have good people in key corporate governance roles in a company because they are so fundamentally important to the adoption of good corporate governance by the company. This will always be a work in progress because you are always going to have bad apples somewhere.'

Can we look at where these issues will be heading in the future? What do you think will be the major governance issues both in Hong Kong and globally in the future?

'I think one of the big areas for development will be corporate social responsibility. This brings into focus the increasing role played by stakeholders in the corporate governance process. Traditionally, companies were accountable to their shareholders, but increasingly companies have to pay far more attention to key constituents such as suppliers, employees, customers and the community within which they operate. Another area will be the issue of weighted voting rights (WVR) which challenges the long-established principle of one-share-one-vote and linking economic power with voting rights. We have already had a long-running debate in Hong Kong about whether or not companies with WVR structures should be listed, and this is not going to go away.'

Do you think that this stakeholder focus is rewriting the social contract under which companies operate?

'If you have a situation where a company is accountable to different sets of constituents, then basically it will not be accountable to anyone since many of these constituents will have conflicting interests. So I would re-formulate it as a situation

where the company is still legally accountable to its shareholders, that is fundamentally important, but has to take account of these other very important constituents like suppliers, customers, employees and the community. I don't think you can legislate that a company has to be accountable to all of its stakeholders, but it certainly has to take account of their interests. At the end of the day, it is a question of balancing a whole lot of competing and possibly conflicting interests.'

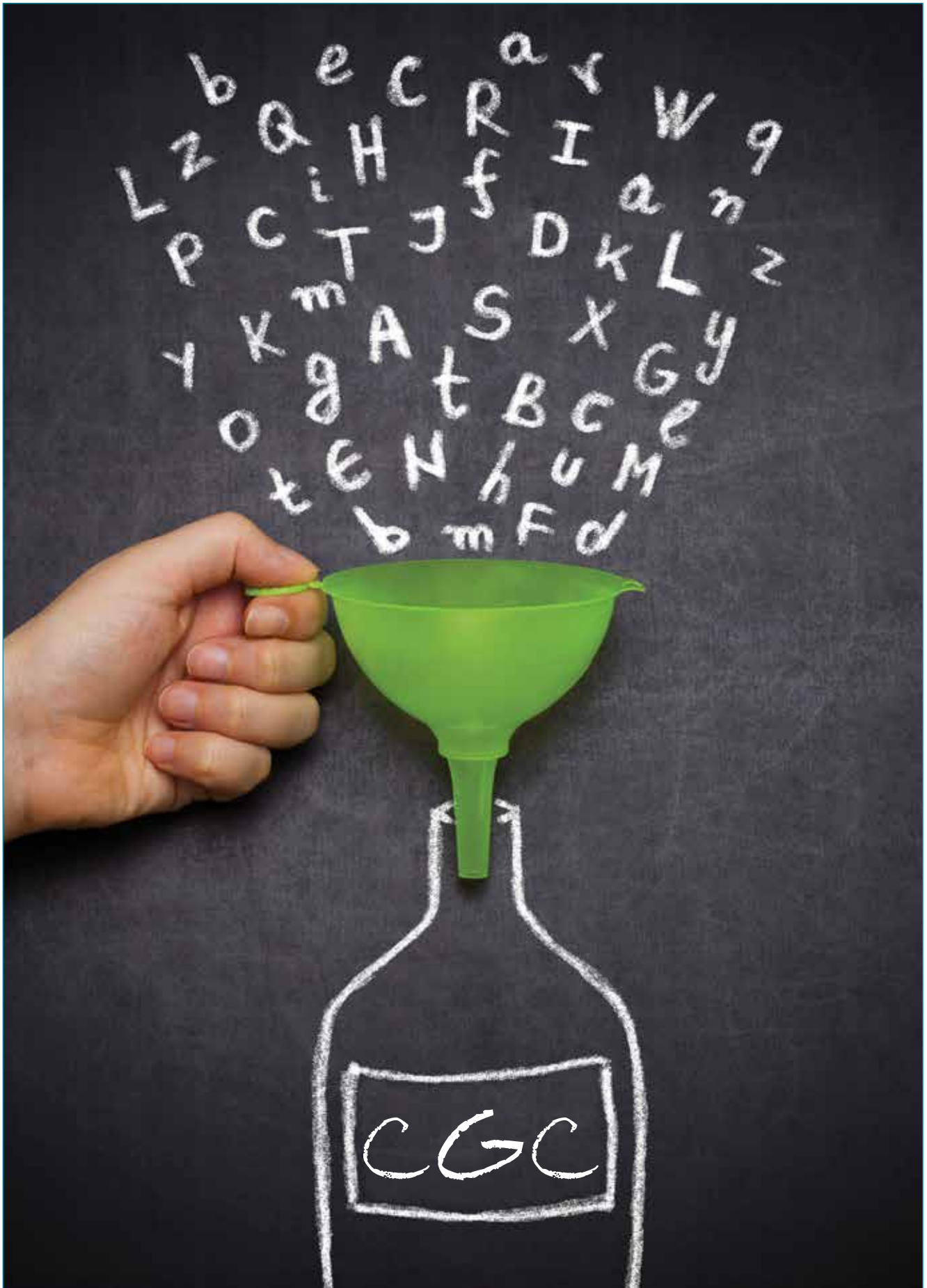
Could we turn to the role of the company secretary? Do you think Hong Kong made the right decision when it opted to retain the mandatory requirement for all companies to have a company secretary? After all, there are not many jurisdictions globally which have this requirement.

'Hong Kong is rather unusual in terms of making it a mandatory requirement for companies to have a company secretary, but the point is that, even if you don't have a formal company secretary position, you still have to have somebody in the company who is doing the work of a company secretary, whatever title you give to this role. So, given this, I see no problem with our approach, and I think there is a lot of clarity in having a specific statutory post called the company secretary which has to be filled by a professionally qualified person. This is a good rule as far as corporate governance is concerned.'

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

'The way that the Chartered Secretarial profession and corporate governance have developed over the last couple of decades indicates that this is going to be a very interesting and challenging career for any young graduate interested in helping companies improve their corporate governance culture. It is important that people going into the Chartered Secretarial profession realise that they are the company's conscience and must, at all times, maintain a high degree of independence and an unbiased approach so that they are equally trusted by both the board and management. They have to have the courage and ability to speak candidly to the board if they feel that the board is doing something that goes against good corporate governance practice. They need to have the courage to speak up if they find that there are regulatory or legal deficiencies that need to be remedied. That's not easy if you are faced with experienced executive directors who are used to doing things in a certain way.'

Gordon Jones was interviewed by Kieran Colvert, Editor, CSj



Cracking the Corporate Governance Code

How ready are Hong Kong listed companies to meet the new requirements?

There have been numerous changes to Hong Kong's Corporate Governance Code that require companies to adapt quickly. Kanus Yue, Risk Assurance Partner, PwC Hong Kong, highlights the findings of a recent PwC study designed to assist listed companies to comply with the new requirements of the code.

Companies face an increasing array of challenges. From the rapid pace of technological adoption to amplified industry competition and the recruitment and retention of talent, the number of critical issues increases daily. The shifting regulatory environment adds even greater complexity – companies must not only spend extensive time and effort understanding new regulations, but also understand how the playing field might evolve in the future.

In order to understand the state of Hong Kong listed companies' adoption of the new requirements of Hong Kong's Corporate Governance Code (CG code), we have studied the Corporate Governance Reports (CG reports) of 230 companies in the Hang Seng Index and Hang Seng Chinese Enterprises Index.

This study has two main goals. First, the report provides directors, executives and managers with a comprehensive analysis of how ready listed companies are to respond to the new requirements of the revised CG code. The analysis

is also diverse – we have included companies from the broader Hang Seng Index (HSI) and the Hang Seng China Enterprises Index (HSCEI), as well as across four industries (financial services, real estate, retail and technology). It provides a baseline of listed company adoption practices in the key areas of risk management and internal controls.

Second, the study allows companies to think more deeply and creatively about compliance with the CG code as a value-adding activity. Often times, new regulations and compliance can turn into a 'box-ticking' activity rather than

one that enables companies to unlock value in key areas that will enhance management accountability, strengthen internal control and risk management systems, and improve performance and efficiency. With our experience in helping companies navigate the new requirements of the CG code, we have seen examples of how companies have used this exercise to make themselves more nimble and responsive.

Market trends

From reviewing risk management and internal controls disclosures in over 200 CG reports, some key market trends can

Highlights

- the revised Corporate Governance Code highlights the board's ongoing responsibility to oversee risk management and internal control systems
- the PwC study illustrates diverging patterns of adoption among companies in different sectors, particularly in the area of risk management practices
- establishing robust systems and proper processes to deal with the changing regulations will increase competitiveness and improve relations with investors

be identified and categorised into the following five areas:

1. annual review of risk management and internal control systems
2. risk management system
3. internal audit function
4. management confirmation to the board on systems effectiveness, and
5. other disclosures in CG reports.

1. Annual review of risk management and internal control systems

The revised CG code highlights the board's ongoing responsibility to oversee risk management and internal control systems. The old version of Code Provision C2.1 required that 'directors of an issuer should at least annually conduct a review of the effectiveness of the issuer's and its subsidiaries' internal control systems and report to the shareholders.'

Amended code provision C2.1 puts forth new requirements that:

- the board should oversee the issuer's risk management and internal control systems on an ongoing basis, and
- the board should also ensure that a review of the issuer's and subsidiaries' risk management and internal control systems has been conducted at least annually, and report to shareholders that it has done so in the corporate governance report.

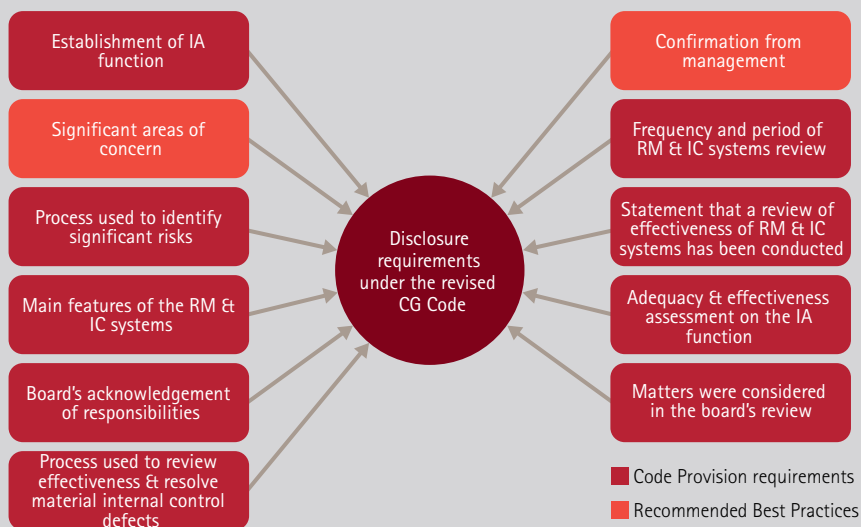
Our study revealed that a majority of the companies (69%) were early adopters for the disclosure of review for both

internal control and risk management systems. By index, early adoption was greater among companies in the HSI (86%) compared to the HSCEI (60%). For examined sectors, financial services (80%) and real estate (75%) illustrated high levels of early adoption compared

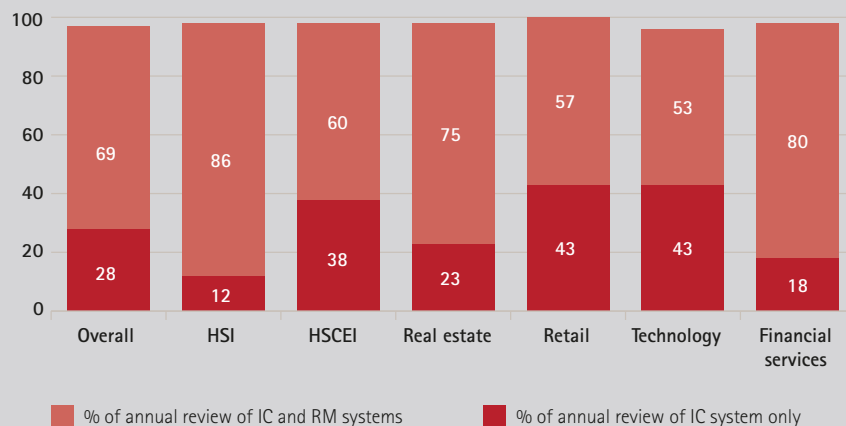
to retail (57%) and technology (53%). While there were some variances in the sample of companies analysed, it appeared that a majority of companies have developed a process/approach to look at internal control and risk management systems.

Summary of the disclosure requirements under the revised CG code

IA – internal audit, IC – internal control, RM – risk management



Disclosure of the annual review of the IC and RM systems

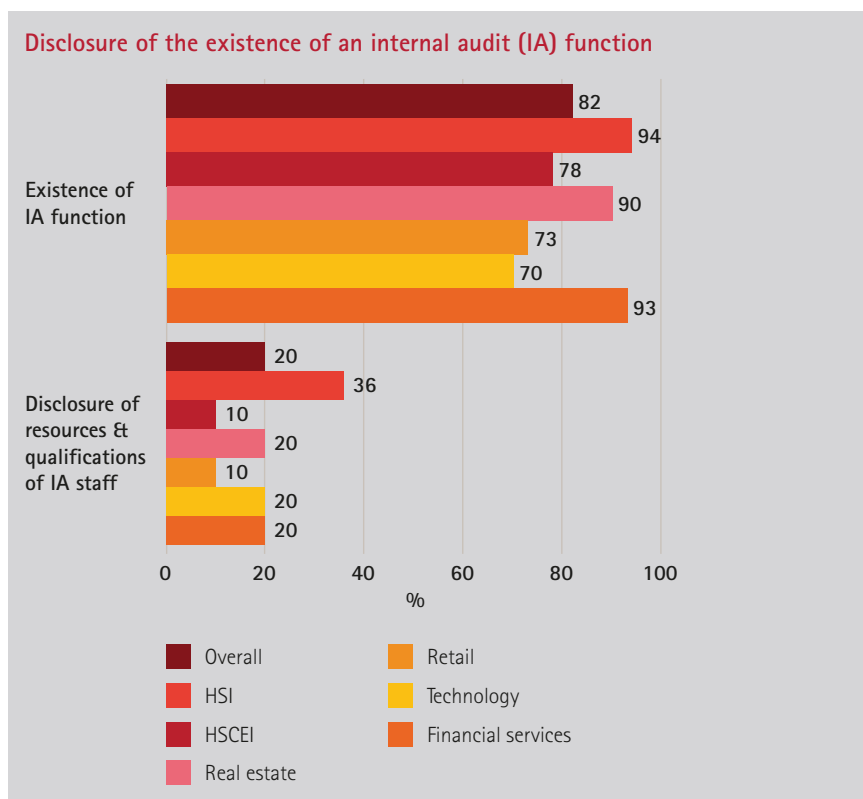


One of the reasons that HSI constituents perform better is because substantial emphasis and resources are put into risk management and internal control areas to respond to market expectations and regulatory changes. The majority of HSI constituents have made an effort to increase their voluntary disclosure beyond the level of mere compliance. This greater transparency and the additional information disclosed helps investors to analyse the overall risk profiles of the companies and facilitates more informed investment decisions.

2. Risk management system

The latest CG code puts a new emphasis on risk management. Listed companies are required to develop processes to identify, evaluate and manage significant risks, and to determine the main features of risk management (RM) and internal control (IC) systems. Some companies have already been using corporate governance reports as a public platform to detail what type of RM processes are currently in place; to provide a description of the key risks they face; and to include mitigation measures they use to address these risks. Boards are also given an important responsibility – they are tasked with overseeing management in the design, implementation and monitoring of the RM and IC systems, and ensure that effective systems are established and maintained.

Our study found that 45% of the companies disclosed the process used to identify, evaluate and manage significant risks. Among indices, HSI companies were clearly ahead of the curve: 64% of HSI companies disclosed their risk management practices, while only 23% of HSCEI companies did. From a sector perspective, a greater variance was



observed in disclosure rates: financial services companies (63%) topped the list, followed by real estate (58%), technology (33%) and retail (13%) companies.

3. Internal audit function

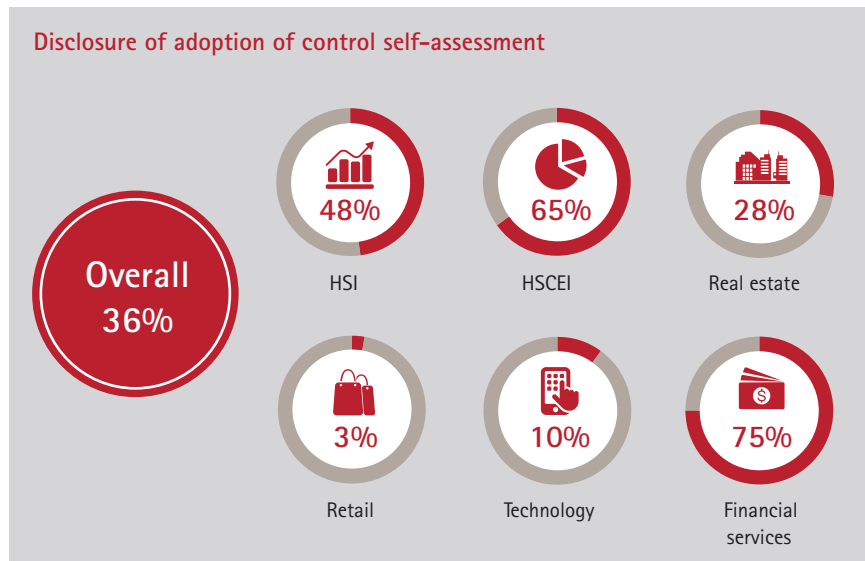
Another area of key changes in the CG Code was to highlight the importance of the internal audit (IA) function. Previously, an IA function was a Recommended Best Practice; this is now a Code Provision. As a result, companies are required to establish an IA function and to assess the effectiveness of the IA function on a regular basis.

The three major revisions to the CG Code for the IA function are summarised below.

1. Upgraded from Recommended Best Practice C.2.6 to Code Provision C.2.5,

issuers should have an IA function, and those who don't should review the need for it on an annual basis and disclose the reasons for its absence in the corporate governance report.

2. New Code Provision C.2.5 states that the IA function carries out analysis and independent appraisal of the adequacy and effectiveness of the risk management and internal control systems.
3. Amended Code Provision C.2.2 states that the board's annual review should ensure the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's IA function (in addition to its accounting and financial reporting functions).



Our study revealed that 82% of companies disclosed that they had an IA function in CG reports, with almost all HSI companies (94%) and 78% of HSCEI companies making the disclosure. By sector, financial services (93%) and real estate (90%) companies had the highest rates of disclosure.

A wider gap emerged among companies that provide detail on the resources and qualifications of IA staff. Only 20% of analysed companies covered the IA function in their annual review to assess and ensure the adequacy of resources, qualifications and experience, training programmes, and the budget of their IA function. While companies in the HSI boasted a disclosure rate (36%) significantly higher than the average, both the HSCEI and retail sector were below the average at 10%.

4. Management confirmation to the board on systems effectiveness

Establishing and maintaining strong risk management and internal controls is critical for the success of any

organisation. Regulations also require that companies disclose in their CG reports that their RM and IC systems are operating effectively. In this connection, management is expected to provide a 'confirmation' to the board on the RM and IC systems' effectiveness.

For management to provide such 'confirmation', many leading organisations have implemented a control self-assessment (CSA) framework. This allows management to verify that controls are working as expected. By linking key risks to controls, management can carry out periodic testing to form an in-house assessment of their existing ('as is') controls that address their key risks, identify weaknesses in internal controls and facilitate the formulation of action plans to address any identified weaknesses.

A CSA programme also helps to reinforce control ownership and awareness to line managers. The CSA can be conducted through a variety of different means, such as questionnaires or checklists. The process can be reviewed by internal auditors and

form part of the board's assessment of control effectiveness.

Our study found that 36% of the companies adopted CSA to assess their internal controls by management. There was significant divergence across indices and sectors on using CSA. This was one of the areas in the study where the adoption rate among HSCEI companies (65%) surpassed that of HSI companies (48%). However, only 3% of the directors of these HSCEI companies said they received management confirmation of their RM and IC systems' effectiveness. HSI companies evidenced a much smaller disclosure gap between the number of companies adopting the CSA practice (48%) and directors of those companies receiving management confirmation (32%).

5. Other disclosures in CG reports

PwC's study found that 43% of companies have disclosures related to handling inside information in their CG reports. The level of disclosure is higher among HSI companies (58%) than HSCEI companies (30%). From a sector perspective, companies in real estate (63%) and financial services (55%) are early adopters and have met inside information disclosure requirements. Disclosure was marginally lower among companies in retail and technology, at 23% each.

The way forward

As this study has shown, there have been numerous changes to the CG code that require companies to adapt quickly. The study has also illustrated diverging patterns of adoption among companies in different sectors, particularly in the area of risk management practices. Companies may be at different stages of adoption and need assistance in different areas. Based on the findings of the study, we

have identified six key areas for the way forward, where companies may have questions or need further information to help assess their current progress.

1. Perform a gap analysis against the revised CG code

- Benchmark current practices against the revised CG code requirements.
- Identify the gap and work out a plan to remediate it.

2. Formalise and enhance your risk management system

- Enhance/set up a robust risk management system.
- Develop a proper risk management structure, policy and procedures.
- Perform a risk assessment, and identify key risks faced by the company, the risk owners and risk mitigating actions.
- Report results to management and the board/audit committee.

3. Develop a control self-assessment framework

- Develop a CSA mechanism (for example via the use of CSA questionnaire and/or on-site visit) to facilitate management assessment of internal controls at the issuer and subsidiaries level.
- Summarise the results of CSA and report to management and the board/audit committee.
- Rectify any control gaps identified and enhance the internal control system.

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the study allows companies to think more deeply and creatively about compliance with the Corporate Governance Code as a value-adding activity

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4. Assess your internal audit function

- Conduct a quality assessment review to assess the adequacy and effectiveness of the IA function.
- Areas under review include, but are not limited to: IA's roles and responsibilities, authority, structure, resources, staff qualifications and experience, training programmes and budget.
- Report results to management and the board/audit committee; and agree and implement the action plan for IA function enhancement.

5. Review compliance to Section C.2 of the CG code

- Establish a robust and comprehensive review mechanism to ensure that the company complies with Code Provision C.2.
- Summarise the review results and report to the board on the effectiveness of the risk management and internal control systems.
- Review listing rules compliance process, for example inside information regulations.

6. Strengthen CG report disclosure

- Understand market expectations and best practices in corporate governance disclosure.
- Determine corporate governance report disclosure strategy in relation to risk management and internal control.
- Draft the disclosure and submit for management and the board/audit committee review.

At the end of the day, 'cracking the code' is not a one-off effort. However, once a company has established robust systems and proper processes to deal with changing regulations, many find that being ahead of the curve affords them advantages that increase their competitiveness and improve relations with investors.

Kanus Yue

*Risk Assurance Partner,
PwC Hong Kong*

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New governance standards for authorised insurers

Tow Lu Lim and Sara Or, partners of Mayer Brown JSM in Hong Kong, assess the implications of the new guidance note issued by the Office of the Commissioner of Insurance (OCI) imposing more stringent corporate governance standards on authorised insurers in Hong Kong.



2017 brings a new and modernised set of corporate governance standards to authorised insurers in Hong Kong. The revised edition of the Office of the Commissioner of Insurance (OCI)'s *Guidance Note on the Corporate Governance of Authorised Insurers* (Revised GN10), which sets out the minimum standards of corporate governance expected of authorised insurers, came into effect on 1 January 2017, retiring the original guidance note.

Modelled upon the 'insurance core principles' of the International Association of Insurance Supervisors, the Revised GN10 seeks to raise corporate governance standards of insurers in Hong Kong. It requires insurers to more clearly define responsibilities within senior management and control functions, as well as the implementation of effective risk management and internal controls ensuring stronger checks and balances.

What's New?

The key changes introduced by the Revised GN10 are set out below.

The board and its composition

The board must comprise a suitable number of directors that enables it to carry out its functions effectively and efficiently. The Revised GN10 provides that there should be a minimum of five directors (for small authorised insurers, the minimum number of directors should be three). It is also mandated that the board should have sufficient knowledge and relevant experience of insurance business to guide the authorised insurer and oversee its activities effectively. As such, the Revised GN10 provides that at least one-third of the directors should possess such knowledge and experience.

Further, the Revised GN10 provides that more rigorous standards are now expected of individuals filling the role of independent non-executive directors (INEDs). Where previously only the insurer's controllers or associates of the insurer's controller or director were considered to be not sufficiently independent to become INEDs, directors or controllers of a corporation having significant financial interests with the insurer are now unlikely to meet the criteria under the Revised GN10. Nor is an individual who has been an employee with the insurer within the last three years likely to be accepted as an INED (whereas previously only current employees were excluded).

To maintain checks and balances against the influence of management and controllers, the Revised GN10 also sets out the requirement that a minimum of one-third of the board should be made up of INEDs, up from the previous one-fifth ratio required. However, one INED would be sufficient for small insurers with a smaller board of less than five directors.

Other than expertise in finance and investment, the Revised GN10 advises that the board be made up of a greater diversity of expertise, which may include areas such as underwriting, claims and actuarial as well.

Roles and responsibilities of the board

The roles and responsibilities of the board have been fleshed out in the Revised GN10. It specifies that the pivotal role of the board in setting the strategic plan and policy of the insurer requires the board to take into account the long-term financial soundness of the insurer, the legitimate interests of its stakeholders and fair treatment of policy holders.

Furthermore, greater accountability is now expected of the board, which is tasked with the express responsibilities of managing risks appropriately and establish clear and transparent internal policies. They include:

- setting an appropriate risk appetite and strategy for the insurer
- providing appropriate risk management and internal control systems
- providing a reliable and transparent financial reporting system
- establishing adequate policies and procedures for the appointment of external auditors, and
- promoting transparency on governance overall with timely

Highlights

- the new guidance note issued by the insurance regulator became effective on 1 January 2017, but many of the substantive new requirements will not take effect until 1 January 2018
- authorised insurers will need to review their existing policies and internal control systems in light of the new governance requirements
- among other things, the new guidance note requires insurers to more clearly define the responsibilities within senior management and control functions

“ with this raising of the bar for corporate governance standards, insurers will have to make governance a key priority ”



disclosure of accurate and useful information to the public and within the company.

Committees

While ultimate responsibility lies with the board as a whole, activities or tasks can be delegated to designated committees within the board, provided it is done in a clear and well-defined manner, with appropriate allocation of powers and effective monitoring from the board. To avoid undue concentration of powers in a director, the Revised GN10 suggests rotation of membership.

The Revised GN10 requires that, save for small insurers, a risk committee be set up in addition to the mandatory audit committee and any other optional specialised committees that are established to assist in its work. Guidance on how each optional committee, including committees for investment, nomination, remuneration, underwriting, claims settlement, and reinsurance, should operate is also set out in the Revised

GN10. Insurers may set up committees with combined functions, as long as it does not compromise the integrity or effectiveness of the functions.

The remuneration committee should include INEDs and should be chaired by an INED; while the nomination committee should be comprised of at least one INED.

An insurer that is part of a group of companies may rely on group committees, including a group risk committee and a group audit committee, so long as they abide by the principles set out in the Revised GN10 and take into account of the insurer's matters.

Board meetings

The Revised GN10 confirms that the minimum of four board meetings expected to be held annually, as set out in the old GN10, should be held at approximately quarterly intervals. Each director should attend at least two of these meetings. Where required, the Revised GN10 allows board meetings

to be held by electronic means such as telephone or video conferencing.

Fiduciary and general duties of individual directors

The Revised GN10 deems it important for directors to avoid actual, potential and perceived conflicts of interest. If such conflict is inevitable, there should be clear and well-defined procedures in place to effectively manage them, through for example disclosure to the board, abstention and prior approval of the board or shareholders.

Specific provisions on the fiduciary duties and general duties of care and skill each individual director owes to the insurer have been set out to include:

- to act in good faith, honestly and reasonably
- to exercise due care and diligence
- to act in the best interests of both the insurer and policy holders

- to exercise independent judgement and maintain objectivity in the decision making and
- to refrain from using his or her position to gain undue personal advantage or causing any detriment to the insurer.

Directors, particularly those with other directorships, are expected to dedicate sufficient time and attention in carrying out their duties, including attending board meetings.

Senior management

The Revised GN 10 sets out a new section of provisions regarding senior management which includes the chief executive.

Senior management is to be held accountable for the carrying out of the insurer's day-to-day operations and implementation of systems and controls in accordance with the business strategies, policies and procedures set out by the board.

Individuals appointed to senior management should be authorised by the board, with their roles and responsibilities clearly defined and formally documented. An appropriate reporting line between senior management and the board should also be established, with adequate control systems in place to allow the board to assess their performance against the objectives set out.

The two roles of chief executive and the chairman would not be assumed by the same person, and an appointed actuary cannot assume either role.

Key persons in control functions

The Revised GN10 also introduces the

concept of 'key persons in control functions', who are defined by the Insurance Companies (Amendment) Ordinance (Amendment Ordinance) and the Revised GN10, as individuals responsible for control functions, namely in the areas of actuarial, financial control, internal audit, compliance, risk management and intermediary management (and other functions the Financial Secretary specifies by notice). Appointment of such key persons are mandated by the Amendment Ordinance to require approval by the Independent Insurance Authority, the insurance industry regulator, which is set to replace the OCI this year.

Strengthening of risk management and the internal control systems of insurers is a core area of amendment in the Revised GN10, and control functions play a big role in providing additional checks and balances and supporting the board with its oversight duties. Appropriate authority and independence are therefore to be given to each control function, with adequate reporting lines to the board set up appropriately to prevent conflict of interests.

Remuneration

The Revised GN10 introduces a new section of provisions requiring a prudent and effective written remuneration policy to be established for not only general directors and senior management, but also INEDs, key persons in control functions and employees authorised to make decisions on material risks (such as those authorised to decide on underwriting or investment activities). The policy should not induce them to take inappropriate or excessive risks and should demonstrate a clear relationship between performance and remuneration.

For INEDs in particular, remuneration should be set at a level that does not compromise their independence.

Best practices for remuneration, including setting up a remuneration structure comprising of both fixed and variable components, measuring performance and making severance payments, are also detailed.

Evaluation of the board and board committees

Directors are expected to review the performance of the board at least once a year to address any inadequacies and implement appropriate measures for improvement. They should also review its committees annually to ensure that the delegated responsibilities are being carried out effectively.

Servicing of customers

The Revised GN10 highlights fair treatment of customers as an important concept to incorporate into the insurer's business culture, strategies and internal controls, and for which the board is ultimately responsible. It provides more elaborate guidance on providing policy information to customers and handling their complaints.

Other changes

The Revised GN10 also incorporates new sections on the issues set out below.

- **Proper books and records** – insurers should properly record all of their transactions such that they can be sufficiently exhibited and explained to the insurance regulator, and implement adequate documentation to demonstrate compliance of regulations and guidelines.

- **Cybersecurity** – insurers should put in place policies and procedures to defend themselves against cyber security threats, including designing response plans and mitigation measures should there be a breach.
- **Business continuity planning** – insurers are required to plan against plausible disruptions to their businesses by taking precautionary measures or designing and maintaining business continuity plans (BCPs) that allow them to continue and restore business activities when disruptive events take place. If an insurer needs to activate its BCP, it must notify the regulator promptly with detailed information of the identified disruptions, actions taken, potential impacts and the recovery target timeline, and is expected to continue submitting progress reports until business resumes to normal.

Certain provisions to take effect at a later date

To allow time for transition, the more substantive changes requiring a minimum number of INED on the board, establishment of a risk committee, as well as requirements on remuneration matters will not take effect until 1 January 2018.

Insurers are also given more time to establish clear and adequate policies concerning key persons in control functions, as the requirements of the Revised GN10 will only take place when Section 13AE of the Amendment Ordinance comes into operation upon further notice from the Financial Services and the Treasury Bureau.

Takeaway

With this raising of the bar for corporate



governance standards, insurers will have to make governance a key priority. The crux of the changes in the Revised GN10 requires new systems and policies to be established and existing ones to be closely reviewed to ascertain if they meet the more stringent criteria.

The legal and compliance divisions of insurers are likely to be heavily involved in designing and implementing their business strategies and operations. As such, the changes will increase the compliance burden for insurers in Hong Kong and this will result in recruitment of more resources and engagement of external service providers.

While there will be some pain for insurers, the introduction of Revised GN10 is a step in the right direction. It will bring Hong Kong in line with standards of corporate governance already expected of insurers

internationally and it clearly sets out what exactly is expected of insurers doing business in Hong Kong. The increased regulatory requirements on insurers is similar to what the banking industry is experiencing and there is more change on the horizon for insurers in Hong Kong.

Interestingly, the Revised GN10 also seeks to introduce the concept of fair treatment of customers into the insurer's business philosophy. This gives rise to questions whether insurers should reconsider the application of stringent policy terms and conditions (for example, breach of warranty and conditions precedent to liability clauses) that exists in certain policies.

Tow Lu Lim and Sara Or

Partners of Mayer Brown JSM

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HKICS ACRU 2017

Annual Corporate and Regulatory Update

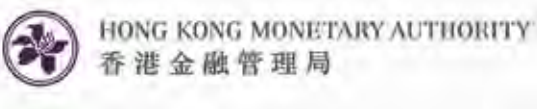
Date: Friday, 2 June 2017
Time: 8.45am - 6.20pm
Venue: Hall 5G, Hong Kong
Convention and
Exhibition Centre,
Wan Chai, Hong Kong

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Price-sensitive information and the Market Misconduct Tribunal

A primer for listed companies and their directors



The Securities and Futures Commission (SFC) has prioritised listed company malfeasance for enforcement action. As a result, listed companies and their directors will come under increasing scrutiny as to how they manage price-sensitive information. Timothy Loh, Managing Partner, Timothy Loh LLP, provides guidance to listed companies and their directors on how to respond if the SFC targets them for enforcement action.

Tom Atkinson, the new Executive Director of the SFC responsible for the Enforcement Division, recently confirmed that listed company malfeasance, including insider dealing and market abuse, is at the top of the Enforcement Division's priority list. The confirmation is consistent with the empirical evidence – the SFC is increasingly taking action against listed companies and their directors on the basis that they have failed to disclose non-public, price-sensitive information in a timely or accurate manner or traded whilst in possession of such information.

In some cases, this enforcement action may result in proceedings before the Market Misconduct Tribunal (MMT). MMT proceedings can result in significant reputational damage and financial liability, both for the directors and the listed companies concerned. A finding of liability by the MMT can trigger further action by the SFC to compensate investors and can form the basis of statutory actions by investors to recover losses, with the finding of the MMT being admissible as proof of wrongdoing. In the case of Tiger Asia, the SFC sought compensation orders of over HK\$45 million from the hedge fund and its officers. Similarly, in the Du Jun and Tsoi Bun cases, the SFC sought compensation orders of over HK\$23 million and HK\$13 million respectively.

A director found liable by the MMT may be disqualified from serving as a director,

and may be banned from trading in the market, for up to five years. A director may also face monetary penalties including orders to account for any profit gained or loss avoided, to pay a regulatory fine, or to pay the government and the SFC any costs reasonably incurred by them as a result of the misconduct. The costs can be relatively high, with figures in the HK\$3 million to HK\$7 million range not being unusual.

Directors and officers liability insurance may not provide adequate coverage. Though not yet settled, even where policy language covers regulatory fines, case law suggests that even a finding of a negligent breach of regulatory requirements may be sufficient to bar indemnity.

Investigation

Proceedings before the MMT are invariably foreshadowed by an SFC investigation. The investigation typically includes a demand for production of documents and interviews with persons who may be able

to assist in the investigation, as well as persons who are under investigation.

The SFC's powers of investigation are draconian. The SFC may require a person to answer a question even if the answer may tend to self-incriminate. Whilst an answer cannot, if an appropriate claim is made, generally be used in criminal proceedings against the person, MMT proceedings are not criminal. As a result, a person may be required to give evidence which would tend to establish his own liability in any subsequent MMT proceedings.

Significance of the investigation stage

The investigation stage is arguably the most critical stage of the enforcement process. It is at this stage that the SFC will decide whether or not to prosecute. Thus, whilst some lawyers prefer to advise clients to remain as tight-lipped as possible and to wait for their day in court, we often advise clients to present their story as forcefully as possible at

Highlights

- Market Misconduct Tribunal (MMT) proceedings can result in significant reputational damage and financial liability
- a director found liable by the MMT may be disqualified from serving as a director and may be banned from trading in the market for up to five years
- directors may also face significant monetary penalties, and directors and officers liability insurance may not provide coverage

this stage. The story should emphasise the legal and human elements which would most persuasively argue against prosecution and should, naturally, reflect conduct consistent with the regulatory framework.

At the same time, the investigation stage lays down the evidential foundation for any subsequent MMT or other proceedings. Any future statement in such proceedings will be measured against any statement or other evidence tendered earlier during the investigation stage. An inconsistent story may damage credibility.

Legal professional privilege

If legal advice has been obtained in relation to the handling of price-sensitive information which has become the subject of an investigation, companies will need to consider at the investigation stage whether or not they can and should insist upon legal professional privilege to shield such advice from production. Producing such advice may help to characterise the company as being cooperative and may lay the groundwork for an argument of the reasonableness of the conduct of the company and its directors. If this approach is taken, the company will need to further consider the risk of loss of confidentiality over all the legal advice given, even if only some of the advice is disclosed. Refusing to produce such advice may frustrate the ability to tell the story and hence, justify conduct. In the case of a director, the consequence of such frustration however, may be to lay the groundwork for a defence by the director that he does not have a reasonable opportunity to be heard. In this regard, as a matter of natural justice, the MMT has no jurisdiction to make a finding against a director who has not had such an opportunity to be heard.

Prosecution and other options

Following at least an initial investigation, the SFC may decide to prosecute or take remedial action or both. Prosecution options vary depending on the type of alleged misconduct.

Market manipulation and insider dealing

If the way that price-sensitive information was handled is classified as market manipulation or insider dealing and the SFC chooses to prosecute, it can generally do so by initiating either criminal proceedings or proceedings before the MMT.

Proceedings before the MMT are civil rather than criminal in nature. Nevertheless, in addition to reputational consequences, such proceedings can result in a range of penalties including:

- a disqualification order, meaning for a director that he or she will be disqualified from being a director for a period of up to five years
- a cold shoulder order, meaning that the company or a director will be prohibited from dealing in any securities for a period of up to five years
- a cease and desist order, meaning that the company or a director will be prohibited from perpetrating the conduct that constitutes market misconduct and may commit a criminal offence if the company or the director is found by the MMT in the future to have failed to comply with this prohibition
- a cost order, meaning that the company must pay the costs incurred by the government or the SFC in pursuing the market misconduct, and

- a disgorgement order, meaning that the company or a director must pay an amount not exceeding the amount of profit gained or loss avoided as a result of the market misconduct.

MMT proceedings differ from criminal proceedings in two significant ways. First, criminal proceedings may result in jail time whereas MMT proceedings cannot. Jail time in criminal proceedings for an offence committed by a director or a listed company of which he or she is a director can be as high as 10 years. Secondly, the rules of evidence and the standard of proof are higher in criminal proceedings compared to MMT proceedings. For example, in a criminal proceeding, the prosecution must prove its case beyond reasonable doubt. In contrast, in an MMT proceeding, liability will be established if it is simply more probable than not that the specified person engaged in market misconduct (that is on a civil standard of proof).

As a general principle, a person cannot be subjected to both criminal proceedings and MMT proceedings for the same conduct in reliance of the market misconduct provisions of the Securities and Futures Ordinance (SFO) governing insider dealing and market manipulation. In other words, the initiation of criminal proceedings for particular conduct will preclude MMT proceedings for the same conduct. Conversely, the institution of MMT proceedings for particular conduct will preclude criminal proceedings for the same conduct.

This is not to say that there is no risk of prosecution both through criminal and MMT proceedings. For example, although there is no precedent, there is a theoretical possibility that insider dealing may be prosecuted both through the MMT under the market misconduct provisions

“
in an MMT proceeding, liability will be established if it is simply more probable than not that the specified person engaged in market misconduct (that is on a civil standard of proof)
 ”

governing insider dealing and through the criminal courts relying on the anti-fraud provisions of the SFO as these anti-fraud provisions are not *per se* market misconduct provisions.

Non-disclosure of inside information

The failure to disclose non-public price-sensitive information in a timely or accurate manner may result in a breach of the requirement for a listed company and its directors to disclose inside information. If the failure is so classified (as opposed to being classified as market manipulation), it may be prosecuted only through MMT proceedings. There are no statutory provisions establishing criminal offences for this type of breach.

MMT proceedings for this type of breach may result in a fine of up to HK\$8 million (but not an order for disgorgement). At the same time, on a finding of a breach, the MMT may order that the listed company appoint an independent professional adviser to advise on compliance or that the directors undergo compliance training. As with market manipulation and insider dealing, directors may face a disqualification order, a cease and desist order and a cold shoulder order as well

as orders to pay the SFC's costs in the investigation and proceedings.

Remedial action

Separate from prosecution, the SFC may seek remedial action even before any liability has been established by the MMT or a criminal court. For example, the SFC can apply to court to freeze the assets in Hong Kong of suspected wrongdoers with the idea that the frozen assets may later be applied to compensate investors for losses arising from the misconduct.

Such remedial action is sought before a judge in the High Court of Hong Kong rather than through the MMT. Remedial court orders can result in financial consequences that may well exceed the maximum fine that could be ordered by the MMT itself. This is because the loss to investors arising from the mishandling of price-sensitive information can run very high and there is no statutory limit on the amount of compensation the court may order to be paid for such loss.

Market Misconduct Tribunal

The MMT is an administrative body akin to a court. It is chaired by a judge and assisted by two lay members. The lay members are

typically academics in finance or business studies or members of the finance industry. Their presence is intended to provide greater market expertise to the tribunal.

In theory, the MMT is an inquisitorial tribunal, meaning that its function is to investigate and report on what happened. In practice, the MMT assumes a role similar to a court in an adversarial proceeding, with the defendants, called specified persons, squaring off against a prosecutor, called the presenting officer, appointed by the SFC. The specified persons will normally be represented by both their solicitors and counsel. The presenting officer will typically be a senior member of the bar instructed by the SFC's legal department.

Proceedings before the MMT are generally open to the public. This means, for example, that journalists can attend MMT hearings and report on the proceedings as they unfold. In the past, the news media has given substantial profile to certain cases. Accordingly, a listed company and its directors who are subjected to MMT proceedings may be exposed to risk of reputational damage even before the MMT makes any adverse finding or determination.

Timothy Loh

Managing Partner, Timothy Loh LLP

The author gratefully acknowledges the assistance of Francis Comtois, a Partner at Timothy Loh LLP, and Gigi Ma, a trainee solicitor at Timothy Loh LLP. This article is not and should not be relied upon as legal advice. Timothy Loh LLP and its partners disclaim any liability to any person so relying upon this article as such.

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Professional Development

Seminars: February to March 2017

10 February
China's new
cybersecurity law



Chair: Richard Leung FCIS FCS, Institute Past President, and Barrister-at-Law, Des Voeux Chambers
Speakers: Gabriela Kennedy, Partner, Head of Asia IP & TMT Group; and Xiaoyan Zhang, Counsel (New York, USA); Mayer Brown JSM

16 February
Anti-money laundering:
essential training for
service providers



Chair: Alberta Sie FCIS FCS(PE), Institute Professional Services Panel Member, and Company Secretary & Director, Reanda EFA Secretarial Ltd
Speakers: Vincent To, Senior Partner; But Sun Wai, Partner, Criminal and Civil Litigation; and Ronald To, Senior Associate, Litigation & Dispute Resolution; W K To & Co

22 February
Tax considerations when
undertaking a group
reorganisation in Hong Kong
(re-run)



Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel Member, and Senior Manager, Global Compliance & Reporting – Corporate Secretarial Services, Ernst & Young Company Secretarial Services Ltd
Speakers: Gwenda Ho, Partner, Tax Services; Bruce Lee, Director, Global Mobility Services; Yan Yeung, Senior Manager, Tax Services; and Kevin Chiu, Senior Manager, Tax Services; PricewaterhouseCoopers Hong Kong

24 February
The Hong Kong Code on
Takeovers and Mergers



Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel Member, and Senior Manager, Global Compliance & Reporting – Corporate Secretarial Services, Ernst & Young Company Secretarial Services Ltd
Speaker: Anthony Wan, Partner, King & Wood Mallesons

27 February
Trusts for family and
corporate planning (re-run)



Chair: Terry Wan FCIS FCS(PE), Institute Membership Committee Member, and Group Company Secretary, Li & Fung Ltd
Speaker: Katherine Chiu FCIS FCS, Director, Sino Corporate Services Ltd

1 March
Insights drawn from recently
suspended Hong Kong listed
companies – from a financial
investigation perspective



Chair: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical & Research
Speaker: Barry Tong, Partner, Advisory Services, Grant Thornton Hong Kong Ltd

2 March

Beyond reporting: practical guide on effective ESG governance and risk management



Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd

Speaker: Brian Ho, China Sustainability Leader, Climate Change and Sustainability Services, EY

3 March

Company secretarial practical training series: non-Hong Kong companies under the new Companies Ordinance (re-run)



Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel Member, and Senior Manager, Global Compliance & Reporting – Corporate Secretarial Services, Ernst & Young Company Secretarial Services Ltd

Speaker: Ella Wong ACIS ACS(PE), Senior Manager, Corporate Services, Tricor Services Ltd

15 March

From approval to filing: a new era for China's foreign investment laws



Chair: Richard Law FCIS FCS, Institute Education Committee Member, and Company Secretary, Global Brands Group Holding Ltd

Speaker: Alan Xu, Partner, Zhong Lun Law Firm

Online CPD (e-CPD) seminars

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

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

Seminar fee discount for HKICS registered students

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

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

Professional Development (continued)

Key update on the revised MCPD policy

Revised MCPD Policy (effective from 2016/2017 CPD year)	
Extended coverage of CPD activities	<p>a. participation in Institute activities as a mentor/coach for the Institute or other professional associations or institutions</p> <p>b. 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</p> <p>c. 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> <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>

MCPD requirements

Members are reminded to observe the MCPD deadlines set out below. Failing to comply with the MCPD requirements may constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's Articles of Association. Graduates who acquired graduate status before 1 August 2016 are required to comply with the Institute's MCPD requirements.

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

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
24 April 2017	6.45pm – 8.15pm	中国公司法和证券法实务	1.5
26 April 2017	6.45pm – 8.45pm	Opportunities and challenges for China outbound investment	2
8 May 2017	6.45pm – 8.15pm	Challenges of shareholder activism and disputes	1.5
11 May 2017	4.00pm – 5.30pm	Internal audit – expect more	1.5
15 May 2017	6.45pm – 8.15pm	2017 ESG reporting: KPI disclosure	1.5
17 May 2017	4.30pm – 6.00pm	Cybersecurity: solutions for the digital age	1.5
19 May 2017	6.45pm – 8.15pm	Company secretarial practical training series: steps to effective board evaluations	1.5

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

Membership

CSj goes green

The Council, in support of preserving the environment, has offered HKICS members, graduates and students the option to receive CSj electronically and from the Institute's website: www.hkics.org.hk from August 2015 onwards. The Institute is pleased to let you know that 1,362 members, graduates and students have opted for the electronic version (eCSj) as of 30 June 2016.

If you are currently receiving the print copy but would like to switch to the eCSj, or if you are currently receiving eCSj but would like to switch to the print copy, please complete and return the reply form to the Secretariat on or before 31 May 2017. The change will take effect from 1 July 2017. If the Institute does not hear alternative instructions from those who opted for eCSj in 2016, we will continue to forward the eCSj to you in the 2017/2018 financial year.

You may change your means of receiving CSj once a year from 1 April to 31 May.

New graduates

Congratulations to our new graduates listed below.

Chan Kam Yin	Lee Lap To, Aric	Tang Pui Yan
Chan Shun Cheong	Leung Hau Yan, Wendy	To Wing Tung
Chan Siu Tak	Leung Wai Han	Tsang Wing Sze
Chan Wai Chun	Li Kin Tung	Tse Chi Cheung
Chan Wan Yee	Li Sin Ching	Wong Chi Kwong
Chau Yuet Man	Liu Pui Ching	Wong Fung Ki
Cheng Shing Yan	Lo Chu Wing	Wong Kit Yan
Cheng Tsz Mei	Lo Wing Han	Wong Ting Yan
Cheung Sin Kei	Ma Yim Hung	Wong Yan
Chung Fung Ha	Mok Pui Man	Wong Yik Ka
Feng Meijuan	Ng Pui Yan, Carman	Woo Man Yi
Ho Mei Yi	Ngai Fong Hung	Wu Chun Pong
Kwok Suk Han	Pang Hing Ting, Stella	Yip Shui Man
Lau Kai Fan, Leonard	Pui Joanne	Yu Wan Chi
Lau Kin Tat, Terry	Qiu Minghao	Yuen Hiu Fung
Lau Wing Man	So Suk Ying	Yung Yuen Ting
Law Wai Yi	Suen Mei Kwan	
Lee Hoi Lam	Sum Suet Yi	

Membership (continued)

Application for concessionary subscription rate for 2017/2018

As a professional body established by members and for members, the Institute continues to offer concessionary subscription rates to members who satisfy the criteria listed below.

1. Retired rate

This applies to members who:

- are retirees and are not contributing to the Mandatory Provident Fund Scheme; and
 - o have reached the age of 55 before the beginning of the financial year (1 July 2017) and who have been a paid-up member of the Institute for at least 25 years, or
 - o retirees who have reached the age of 60 before the beginning of the financial year (1 July 2017) may be exempted from the 25-year membership requirement at the discretion of the Membership Committee.

2. Reduced rate

This applies to members who:

- have been unemployed for a minimum of six months prior to their application; or
- have ceased to receive income and/or remuneration due to health conditions for a minimum of three months prior to their application; or

- have encountered circumstances which, in the judgement of the Membership Committee, warrant the reduced rate.

3. Hardship rate

This applies to members who have ceased to receive income and/or remuneration due to health conditions for over two years prior to application or other circumstances which, in the judgement of the Membership Committee, warrant the hardship rate.

Notes to applicants:

- The application deadline for any concessionary subscription rates for the 2017/2018 financial year is Monday 31 July 2017.
- All applications must be approved by the Membership Committee, the decision of which is final.
- Retired rate applications should only be made once. However, such members should keep the Institute informed immediately of any change in circumstances which may affect their entitlement to the retired rate.
- Reduced rate and hardship rate applications are approved on an annual basis.

The application forms for the concessionary subscription rates can be downloaded from the Membership section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Rose Yeung at: 2830 6051, or Vicky Lui at: 2830 6088, or email: member@hkics.org.hk.

Forthcoming membership activities

Date	Time	Event
22 April 2017	9.00am – 2.30pm	Community Service – beach cleaning on Earth Day

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

Members' activities highlights: February – March 2017

22 February
Employer
reachout –
Vistra Corporate
Services (HK) Ltd



At Vistra

14 March
Networking skills
training: how to
break the ice



Dr Eva Chan FCIS FCS(PE), Membership Committee Chairman, presenting a souvenir to Mary Cheung, well-known host and trainer

4 March
HKICS dragon
boat team – first
training session at
Tuen Mun River



HKICS paddlers showing great team spirit



Trainer sharing practical techniques on establishing relationships with others

Advocacy

HKCPS luncheon talk with the Financial Secretary

On 8 March 2017, a luncheon talk themed 'To spend or not to spend?' was organised by the Hong Kong Coalition of Professional Services (HKCPS) with Chan Mo-Po, Paul FCIS FCS GBS MH JP, the Financial Secretary of the Government of the HKSAR, as the Guest of Honour. The Institute has been a member of the HKCPS since 2011. Institute Treasurer Dr Eva Chan FCIS FCS(PE); Council members David Fu FCIS FCS(PE); Ernest Lee FCIS FCS(PE); and Bernard Wu FCIS FCS; Past Chairman Duffy Wong FCIS FCS; Past Presidents April Chan FCIS FCS; Rebecca Chow FCIS FCS; and Dr Maurice Ngai FCIS FCS(PE); Chief Executive Samantha Suen FCIS FCS(PE); and other Institute members and secretariat attended the event.



Institute representatives with the Financial Secretary

Advocacy (continued)

External appointment

Institute President Ivan Tam FCIS FCS has been appointed as the International Consultant of the 'Thousand Talent Programme of China Insurance Industry' (Thousand Talent Programme) for the year 2017. The Thousand Talent Programme, launched in 2014 by the Insurance Association of China, aims to build up a top talent pool and to promote the continuous healthy development of the insurance industry in Mainland China. As the International Consultant, Mr Tam is responsible for contributing constructive opinions to ensure the smooth operation of the Programme.

International Women's Day 2017

On 8 March 2017, Institute President Ivan Tam FCIS FCS and Vice-President Paul Stafford FCIS FCS(PE) attended a cocktail reception organised by the Women's Commission of the Government of the HKSAR in celebration of the International Women's Day 2017.

Corporate Governance Roundtable

On 13 March 2017, Institute President Ivan Tam FCIS FCS and Past President Natalia Seng FCIS FCS(PE) presented at the Corporate Governance Roundtable organised by the Hong Kong Companies Registry. The Institute is a supporting organisation of the event. Insights on effective board leadership, the Panama Papers and corporate transparency were discussed during interactive sessions with the participants for promoting and enhancing good governance in the management of companies.



Ada Chung JP, Registrar of Companies, presenting a souvenir to Ivan Tam

HKICS supports public governance initiative

The Institute, being a partner organisation of the 'NGOs Governance Platform' project of The Hong Kong Council of Social Service (HKCSS), was invited to speak to the NGO board members and senior management on the compliance with the Companies Ordinance (Cap 622) (CO). On 17 March 2017, Institute Professional Development Committee Member Susan Lo FCIS FCS(PE) represented the Institute to speak at the forum. The enthusiastic participants were highly active in seeking professional advice during the Q&A session. Most enquiries were focused on NGO compliance obligations under the CO.



At the seminar



HKCSS representative presenting a souvenir to Susan Lo

ICSA Council Meeting in Johannesburg, South Africa

The Institute of Chartered Secretaries and Administrators (ICSA) held its Council Meeting on 17 and 18 March 2017 at the offices of Chartered Secretaries Southern Africa (CSSA) in Johannesburg, South Africa. Institute Past President and ICSA Senior Vice-President, Edith Shih FCS FCIS(PE), and Institute Chief Executive, Samantha Suen FCS FCIS(PE), attended the meeting.

As mentioned in the report of the Council of ICSA dated 16 August 2016, the Council of ICSA has been evaluating a number of strategic changes to ensure that ICSA can be a healthy, growing and sustainable professional institute into the future. At the March meeting, the ICSA Council concluded the review of the International Qualifying Scheme which resulted in a decision to expand the scheme into two streams – Chartered Secretaries and Chartered Governance Professionals – and to introduce a new entry-level category of membership to attract younger and aspiring professionals to be called Affiliated Members. ICSA and its divisions will communicate information relating to these strategic changes with its members and stakeholders regularly in the coming months and ICSA will seek member approval of these changes at its upcoming Annual General Meeting.

On 18 March 2017, ICSA President David Venus FCS presented an honorary fellowship to Professor Mervyn King of South Africa to recognise his immense contribution to corporate governance.

CSSA International perspectives on corporate governance seminar

On 16 March 2017, Chartered Secretaries Southern Africa (CSSA) organised a seminar themed 'International perspectives on corporate governance' at the Killarney Country Club, South Africa, for over 100 Chartered Secretaries and governance professionals locally and around the world. ICSA President, David Venus FCS, and Alwyn Fouchee, Head: Regulatory Compliance, Issuer Regulation Division, Johannesburg Stock Exchange Ltd, were the keynote speakers. Institute Past President and ICSA Senior Vice-President, Edith Shih FCS FCIS(PE) participated in the discussions as a panellist sharing insights on ethics, corruption, culture, diversity, board composition and remuneration.



At the ICSA Council Meeting



ICSA Council members, Divisional Chief Executives and Professor Mervyn King

Advocacy (continued)

CSIA Council Meetings in Johannesburg, South Africa

The Corporate Secretaries International Association (CSIA) held its Council Meetings on 15 and 16 March 2017 at the offices of Chartered Secretaries Southern Africa (CSSA) in Johannesburg, South Africa. Institute Chief Executive Samantha Suen attended. Due to strategic reasons, CSIA will be 're-domiciled' from Geneva, Switzerland, to Hong Kong in 2017. Honorary Officers of the newly incorporated Hong Kong company 'Corporate Secretaries International Association Ltd' have been elected as follows:

President – Grace Tan (Singapore)

Vice-President – Chua Siew Chuan (Malaysia)

Honorary Treasurer – Alan Evens (Australia)

Honorary Secretary – Dr Shyam Agrawal (India)



At the CSIA Council Meeting

HKICS conference with HKICPA and the Law Society of Hong Kong on money laundering – now and the good old days

The Institute, in collaboration with the Hong Kong Institute of Certified Public Accountants and the Law Society of Hong Kong, organised an anti-money laundering (AML) conference on 18 March 2017. The conference attracted over 120 participants from the industry and was moderated by Professor CK Low FCIS FCS, Associate Professor in Corporate Law, CUHK Business School, The Chinese University of Hong Kong. It featured an impressive line-up of expert speakers in the field of AML compliance, with top legal eagles and a past convicted money launderer sharing their different perspectives on the topic.



Speakers and the moderator of the joint conference



Paul Moyes giving his opening remarks



Ian Robinson sharing his expertise on AML

The first speaker, Mohan Datwani FCIS FCS(PE), HKICS Senior Director and Head of Technical & Research, looked at the long history of money laundering – from ancient times when individuals needed to hide their wealth from rulers, to the emergence of the first global frameworks in the 1970s and 1980s designed to crack down on the laundering of the proceeds of drug trafficking.

He was followed onto the podium by Will Giles, Partner of Hart Giles, Solicitors & Notaries, who discussed some of the lessons he believes need to be learned from the conviction of Hong Kong businessman Carson Yeung in March 2014 for money laundering. Mr Giles suggested that Hong Kong is at variance with the rest of the common law world in shifting the onus of proof away from the prosecution. The prosecution, he said, did not have to prove that the monies in question were the proceeds of crime. Mr Yeung is currently serving a six years' jail sentence following his conviction.

The next speaker, Kevin Egan, Barrister, Baskerville Chambers, shared his experience of defending clients in Hong Kong money laundering cases, and painted a similarly bleak picture of the chances of success. He suggested that the dice is loaded against

the defence in such trials, partly due to the shifting of the onus of proof away from the prosecution, but also due to the fact that most of the successful prosecutions to date have been heard in the lower courts where defendants did not have the right to a jury trial. He suggested that, while the judges of the lower courts in Hong Kong are well-intentioned and diligent defenders of justice, their career path means that they often have no experience of the defence side of criminal proceedings. Their experience is usually as a prosecutor for the Department of Justice before they decide to become a magistrate. This, he said, explains why the conviction rate in the lower courts in Hong Kong is so high.

Other speakers at the conference included Bruce Aitken, author of *The Cleaner*, who shared his experience as a past convicted money launderer; Kyran McCarthy, Partner, Forensic/Hong Kong & Asia-Pacific Head of AML & Sanctions Services, KPMG China; and Ian Robinson, Director, Robinson Management Ltd, who shared his experience in the long running trial of the Carrion Group in the 1980s in Hong Kong.

The Institute would like to thank KPMG China for sponsoring the venue and the lunch for the conference.

International Qualifying Scheme (IQS) examinations

June 2017 diet schedule

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

Please enrol between 1 and 31 March 2017.

IQS study packs go green

The Institute launched an online version of four IQS study packs on 9 January 2017. This new service, which is free to all registered students, is to enable students to schedule their professional learning and studies more flexibly, economically and in an environment-friendly manner. Detailed arrangements have been sent to students for information via email.

For further questions regarding the online study packs, please contact Karin Ng at: 2830 6010, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk. For technical questions regarding

the PrimeLaw account, please contact Wolter Kluwer's customer service: HK-Prime@wolterskluwer.com

HKICS examination technique workshops

The Institute will organise a series of three-hour IQS examination technique workshops from late April 2017. These workshops aim to help students improve their examination techniques. The workshop fee is HK\$500 each. Students may download the enrolment form from the Studentship section of the Institute's website: www.hkics.org.hk.

IQS seminar on Hong Kong Corporate Law

The Institute will organise an IQS seminar on Hong Kong Corporate Law for registered students on Thursday 27 April 2017. Dr Davy Wu, Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University, will be the speaker. The workshop will explain the rationale and compare the key provisions of the Companies Ordinance (Cap 622) and also discuss the implications of the related listing rule changes. Students may download the enrolment form from the Studentship section of the Institute's website: www.hkics.org.hk.

Tips from subject prize awardees

Subject prize awardees from the December 2016 IQS examination diet share their study experiences and tips on preparing for the IQS examinations.

Lam Kwan Yee, Queenie (subject prize awardee, Hong Kong Corporate Law)

Ms Yee graduated with a BBA in professional accountancy from The Chinese University of Hong Kong. She is currently working in a big four audit firm.

Ms Yee was encouraged by a friend to study for the Chartered Secretarial qualification as a good opportunity to equip herself with professional knowledge and advance her career development.

This was her first attempt at the Hong Kong Corporate Law paper and her strategy for preparing for the examination was to concentrate on learning the study pack together with the notes prepared by herself outlining the study focus of each chapter. She also reviewed the past examination papers and jotted notes from past legal cases to better understand the trend of examination questions. She found the Institute's study materials very useful covering the relevant fundamental knowledge of the subject area. She also mentioned the importance of having a study partner who can collaborate on notes preparation and discussion of examination techniques.

Yip Shui Man (subject prize awardee, Hong Kong Corporate Law)

Ms Yip graduated with a bachelor's degree in professional accountancy from The Chinese University of Hong Kong. She is currently working as a Financial Controller and Company Secretary in a GEM-listed company in the telecommunications industry in Hong Kong.

Ms Yip chose to study for the Chartered Secretarial qualification to add value to her current work as a company secretary in a listed company. A good knowledge of the topics covered by the IQS examinations – including corporate governance, the listing rules, the Companies Ordinance etc – is essential to her daily work.

This was her first attempt at the Hong Kong Corporate Law paper. For examination preparation, she studied all the past examination papers available and the court cases on relevant topics to reinforce her memory. She also took the examination preparatory course and found the course notes very useful. She suggests that candidates should read the examiners' reports to get more familiar with the application of relevant court cases in different scenarios.

Ms Yip points out that the IQS examinations cover a wide range of technical topics, including rules and regulations, which are essential to anyone involved in compliance work. Furthermore, the role of company secretary in providing independent and technical advice to the board of directors is better recognised nowadays. Attaining the Chartered Secretarial qualification will therefore enable her to broaden her career perspectives and advance her career development.

Siu Wing Shan, Stephanie (subject prize awardee, Hong Kong Corporate Law)

Ms Siu graduated with a bachelor's degree in accountancy from the City University of Hong Kong. She is currently working as an accountant in a commercial firm.

Ms Siu was encouraged by her boss to attain the Chartered Secretarial qualification following the rapid expansion of her company and the increasing demand for qualified company secretarial work. Her study strategy was to focus on learning the whole study pack and the past five years of examination papers. She reviewed the past examination questions on relevant topics.

This was her first attempt taking the Hong Kong Corporate Law paper and she found the Institute's study materials useful. Thanks to her in-depth study of the reference materials, she was able to work out the answers more easily during the examination. She also points out that candidates with relevant working experience will find it easier to prepare for the examination – in particular in terms of their familiarity with the roles of the chairman, directors and committees.

Studentship

'Passing the Torch' project 2017

The Institute partnered with the Hong Kong University of Science and Technology (HKUST) and the Centre for Holistic Teaching and Learning of the Hong Kong Baptist University (HKBU) to run the 'Passing the Torch' project for 2017. This project, sponsored by The Hong Kong Institute of Chartered Secretaries Foundation (the Foundation), aims to promote better knowledge of business ethics and corporate governance among undergraduates.



Dr Brian Lo



Paul Yeung



Polly Wong

1. At HKUST

On 15 February, 22 February and 1 March 2017, Institute fellow Dr Brian Lo FCIS FCS; Paul Yeung, Commission Secretary, Commission Secretariat, the Securities and Futures Commission; and Institute Education Committee Vice-Chairman Polly Wong FCIS FCS(PE), Company Secretary and Financial Controller, Dynamic Holdings Ltd; delivered three lectures on real-life cases and best practice recommendations to over 140 HKUST students to enhance their knowledge of ethical standards at both the individual and corporate levels.



At the ceremony

2. Award Presentation Ceremony 2017 at HKBU

Four selected student groups, comprising 25 HKBU students under the 'Passing the Torch' project, visited different secondary schools to pass on their knowledge gained from the project to secondary school students with designed scenarios via mobile app in February 2017.

On 1 March 2017, HKBU students gave a presentation about their school visit experience at the 'Passing the Torch' Award Presentation Ceremony at the HKBU campus to the Institute Council and Committee members, as well as Dr Albert Chau, Vice-President for Teaching and Learning; Dr Henry Fock, Head and Associate Professor, Department of

Marketing; and Dr Eva Wong, Director of Centre for Holistic Teaching and Learning of HKBU. Institute Council member and Education Committee Chairman David Fu FCIS FCS(PE) also presented the participation certificates and awarded honorariums, issued by the Foundation to these four HKBU student groups in the project.

Joint Professional Career Day 2017

On 11 March 2017, a Professional Career Day was jointly organised by the Young Coalition Professional Group of the Hong Kong Coalition of Professional Services (HKCPS) and Education Bureau of the Government of the HKSAR at Belilios Public School, with Eric Ma Siu Cheung JP, Development Secretary of the Government of the HKSAR as the Guest of Honour.

About 200 secondary school students participated in the career sharing sessions arranged by the professional bodies under HKCPS. The Institute introduced the Chartered Secretarial profession and career path to the students via an interactive session conducted by Institute members Cavan Cheung ACIS ACS, Eric Fung ACIS ACS, May Lam ACIS ACS and Rachel Ng ACIS ACS. Institute Past President and a director of HKCPS Dr Maurice Ngai FCIS FCS(PE) also attended the opening ceremony of the event.



From left to right: Rachel Ng, Candy Wong, Dr Maurice Ngai, Eric Ma Siu Cheung, May Lam, Cavan Cheung, Eric Fung

HKICS/HKU SPACE programme series: Corporate Administration in PRC (new module)

The HKICS/HKU SPACE programme series in PRC corporate practices offers a new module – 'Corporate Administration in PRC'. Up to 18 HKICS ECPD points will be awarded to participants who attain 75% or more attendance.

For more information, please contact HKU SPACE at: 2867 8317, or email: prcprogramme@hkuspace.hku.hk

Date and Time:	3, 10, 17, 24 June 2017 (Saturdays) 2.00pm – 5.00pm and 6.00pm – 9.00pm
Venue:	HKU SPACE Learning Centre on Hong Kong Island (to be confirmed)
Speaker:	Dr Liu Juan (刘娟博士) Associate Professor, College of Public Management, South China Agricultural University

Studentship (continued)

Student Ambassadors Programme

A. Summer Internship

The Institute invites companies and organisations to offer summer internship positions to local undergraduates under its Student Ambassadors Programme, with the aim to promote the Chartered Secretarial profession to the younger generation in Hong Kong. The internship period will last for a maximum of eight weeks from June to August 2017.

Members who are interested in offering summer internship positions this year, please visit the Events section of the institute's website: www.hkics.org.hk. For details, please contact Jonathan Ng at: 2830 6019, or email: student@hkics.org.hk.



HKICS student ambassadors at Vistra Corporate Services (HK) Ltd

B. Visit to Vistra Corporate Services (HK) Ltd

The Institute organised a visit to Vistra Corporate Services (HK) Ltd for its student ambassadors on 2 March 2017. The students learned about corporate services, company formation services and career opportunities at Vistra during the visit.

The Institute would like to thank Vistra for its support of the programme.

HKICS professional seminar

The Institute organised a professional seminar for students of The Chinese University of Hong Kong to promote the Chartered Secretarial profession on 6 March 2017. Institute Council member and Education Committee Chairman David Fu FCIS FCS(PE) gave a presentation to the students on the role of the company secretary and corporate governance.



David Fu presenting to students at The Chinese University of Hong Kong

Policy – payment reminder

Studentship renewal

Students whose studentship expired in February 2017 are reminded to settle the renewal payment by Wednesday 26 April 2017.

Exemption fees

Students whose exemption was approved via confirmation letter in February 2017 are reminded to settle the exemption fee by Saturday 20 May 2017.

HKICS responds to new AML/CFT proposals

The Institute has made submissions to the two government consultations on legislative proposals to enhance the anti-money laundering and counter-terrorist financing (AML/CFT) regime in Hong Kong.

Licensing of corporate service providers

The *Proposal on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions* consultation sought views on a proposal to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615) to, among other things, improve the supervision of designated non-financial businesses and professions (DNFBPs).

The Institute's submission states that it supports the need for licensing of corporate service providers (CSPs), as a class of DNFBPs, with the Companies Registry being the lead regulator in this respect. The Institute believes that the

Companies Registry is in a better position than the current regulator (the Narcotics Division), to understand CSP practices and should be the lead AML/CFT regulator for the CSP sector.

The Institute makes a number of recommendations in response to the consultation proposals, principally raising a caveat concerning the mechanism for licensing CSPs. The Institute has reservations with the proposal to allow any natural person over 18, who is not an undischarged bankrupt and not having committed certain offences, to be licensed as a CSP. The submission argues in favour of the imposition of fit and proper requirements for individuals wishing to be licensed as CSPs.

Enhancing the transparency of beneficial ownership

The *Proposal on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies* consultation sought views

on a proposal to amend the Companies Ordinance (Cap 622) to, among other things, improve the transparency of beneficial ownership of companies incorporated in Hong Kong.

The Institute's submission supports the establishment of an ultimate beneficial ownership register in respect of Hong Kong companies. Its principal recommendation in response to the consultation proposals concerns the question of whether to make the register of persons with significant control (PSC) available for public inspection. The Institute believes that the PSC register should only be accessible to competent authorities, that is, local law enforcement agencies.

The Institute's submissions are available on the Institute's website: www.hkics.org.hk. The government consultation documents are available on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk.

The Exchange updates its enforcement strategy

The Stock Exchange of Hong Kong Ltd (the Exchange), has announced revised themes for enforcement of the listing rules and published a revised policy statement on its approach to enforcement. In 2013, the Exchange adopted five themes for its enforcement activity to focus resources on particular areas of concern. Following a review, the Exchange's Listing Committee has approved a modification and expansion of this enforcement strategy.

Directors' performance of fiduciary duties, and failure of issuers and directors

to cooperate with the Exchange's investigation, remain as themes.

The initial themes concerning late financial reporting resulting from internal control deficiencies and 'heavily' qualified accounts have now been merged and expanded to become financial reporting – delays, or internal controls and corporate governance issues. As for the initial theme concerning failure of issuers (subject to prolonged trading suspension) and their directors to address the Exchange's concerns in a timely manner to procure trading resumption as

soon as possible, it has now been expanded to become delayed trading resumption which also covers prolonged trading halts.

Inaccurate, incomplete and/or misleading disclosure in corporate communications; failure to comply with procedural requirements in respect of notifiable/connected transactions; and repeated breaches of the listing rules have been introduced as new themes.

More information is available on the Exchange website: www.hkex.com.hk.

Mandatory electronic filing of disclosure of interests notifications and reports

The Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2017 was gazetted last month. The Commencement Notice aims to bring into effect on 3 July 2017 Part 4 of the Securities and Futures (Amendment) Ordinance 2014, which mandates disclosure of interests notifications and reports by corporate insiders and substantial shareholders of listed corporations to the Stock Exchange of Hong Kong under Part XV of the Securities and Futures Ordinance to be filed electronically.

This new e-filing requirement is designed to improve the timeliness of the publication of such information on the website of Hong Kong Exchanges and Clearing Ltd. Currently, disclosure of interests notifications and reports may be filed by hand, by post, by fax or by email. Also, corporate insiders and substantial shareholders of listed corporations will no longer be required to submit notifications of their interests and short positions to the relevant listed corporation. The Stock Exchange will provide the notifications it receives to the relevant listed corporation.

To facilitate the filing of the notifications and reports, the Securities and Futures Commission is refining the filing forms, and plans to publish them in April 2017. There will be no change in the scope of information required to be filed under the existing law.

More information is available on the website of the Financial Services and the Treasury Bureau: www.fstb.gov.hk.

Hong Kong to join the Asian Infrastructure Investment Bank

The Asian Infrastructure Investment Bank (AIIB), a multinational development bank designed to provide financial support for infrastructure development and regional connectivity in Asia, announced last month that Hong Kong will become a new member upon deposit of the first instalment of capital subscription with the bank. At the end of 2016, the AIIB advised that Hong Kong might apply to join the bank with a subscription of 7,651 of its shares, of which 1,530 shall be paid-in

shares (amounting to about \$1.2 billion, payable over five years) and 6,121 shall be callable shares.

The government hopes that Hong Kong's participation in the AIIB can create new opportunities for relevant sectors and can further reinforce Hong Kong's position as a premier international financial centre. It briefed the Panel on Financial Affairs of the Legislative Council on 16 March 2017 on the relevant details of the membership

application. The Panel is supportive of the government's plan to seek funding approval from the Finance Committee (FC) in the second quarter of 2017. Once the FC's approval is obtained and the first instalment paid, Hong Kong will formally become a new member of the AIIB.

More information is available on the website of the Financial Services and the Treasury Bureau: www.fstb.gov.hk.

Companies Registry launches mobile app

The Companies Registry (CR) has launched its 'CR eFiling' mobile application to facilitate registered users of the e-Registry to submit commonly filed specified forms using smartphones and mobile devices.

More information is available on the CR website: www.cr.gov.hk.



Company Secretarial Professionals

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

Requirements:

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

We offer to successful candidates:

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

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

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

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

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



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- Management Consulting
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