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July 2017

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Captains of governance

ACRU 2017
review

Mervyn King interview
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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

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

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Membership statistics update

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Associates: 5,139

Fellows: 586

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Join our online community

Please follow us on Facebook and join our professional network on LinkedIn to help us build a strong Institute together. The Institute's official Facebook and LinkedIn pages can be browsed by searching for the Institute's full name: 'The Hong Kong Institute of Chartered Secretaries' on either of these social media channels.



Captains of governance

Our Annual Corporate and Regulatory Update (ACRU) seminar was held in the Hong Kong Convention and Exhibition Centre (HKCEC) last month. As you can imagine, I have attended quite a number of ACRU seminars over the years, and I believe that this year's event was the culmination of everything that this seminar was supposed to achieve.

Firstly, ACRU 2017 set a new record as the largest-scale event our Institute has ever organised – Hall 5G of the HKCEC was filled to capacity with over 1,800 attendees. But ACRU's success should not just be measured in terms of quantity – it is of course the quality of the event that really matters and ACRU 2017 showed just how far this seminar has come over the 18 years of its existence.

There were five sessions, the first three were devoted to our ACRU 'regulars' – Hong Kong Exchanges and Clearing Ltd (the Exchange), Securities and Futures Commission and Companies Registry – while the last two sessions of the day were devoted to the Office of the Privacy Commissioner for Personal Data and the Hong Kong Monetary Authority. The quality of presentations and the scope of issues addressed made this a perfect example of what ACRU was designed to achieve – a one stop shop for attendees

to catch up on all the issues at the top of the governance and compliance agendas in Hong Kong.

This month's journal provides a useful summary of the major topics discussed and lessons to be learned. The top-level theme was the critical role of the board in ensuring that good governance standards are maintained and the company secretary's role in supporting the board.

In the first session of the day, Katherine Ng, Senior Vice-President and Head of Policy, Listing, the Exchange, devoted her presentation entirely to our board support role. I am pleased to see that Katherine elaborates on her ACRU presentation theme in this month's first cover story (see pages 6–11). I particularly liked her comment that 'Company secretaries now have a much more dominant role as the corporate governance "captains" of their companies and of the market generally'.

This comment, and the level of attention given to our role in ACRU 2017 is indicative of the level of importance regulators now attach to having a fully qualified and effective company secretary on board in Hong Kong companies to ensure that governance and compliance get the attention they deserve. While the ultimate responsibility for good

governance rests with directors, their effectiveness in their roles depends to a very large degree upon the quality of the work done by members of our profession, both in arranging the practical modalities of board meetings – distributing the board papers, taking the minutes, etc – and in the higher level provision of training and advice.

So I leave you to an armchair tour of our latest ACRU seminar courtesy of CSj. Before I go, I would like to thank everyone who contributed to making this year's ACRU the success it was, including the speakers, sponsors, supporting organisations, our team at the Institute's secretariat and external helpers and partners who organised the event, and, last but not least, all of you who attended the event. I look forward to seeing you next year for the next chapter in the ACRU success story.

A handwritten signature in black ink, appearing to read 'Ivan Tam'. The signature is stylized and fluid.

Ivan Tam FCIS FCS

管治队长

公会一年一度的公司规管最新发展研讨会(ACRU)，上月于香港会议展览中心举行。本人历年来参加过多次ACRU，觉得今年办得最成功，能达到这个研讨会应达到的所有目标。

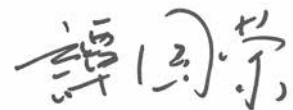
首先，ACRU 2017是公会有史以来最大规模的盛事，香港会议展览中心5G展厅当天座无虚席，出席人数超过1,800人，刷新以往的纪录。不过，ACRU成功与否，不应只以数量来衡量，质量才是真正重要的；ACRU 2017正好显示其举办18年以来的进步。研讨会分为五个环节，首三个环节由ACRU的「常客」主讲，他们是香港交易及结算有限公司(港交所)、证券及期货事务监察委员会及公司注册处；最后两个环节则由个人资料私隐专员公署及香港金融管理局主讲。是次研讨会的讲解水平极高，涵盖的课题广泛，正好完美展示了ACRU期望达到的效果：让参与者一次过获得香港企业管治及合规方面重要事宜的最新资料。

本刊今期刊载有用的摘要，概述当天讨论的主要课题，以及值得学习的经验教训。最重要的主题，是董事会在确保维持良好管治水平方面的关键角色，以及公司秘书支援董事会的角色。

当天的第一个环节，由港交所上市部高级副总裁及政策主管伍洁璇集中讲解公司秘书支援董事会的角色。我乐见伍女士于本期第一个封面故事（见第6至11页）详尽说明她在ACRU所讲述的主题。我特别喜欢她以下的见解：「公司秘书现在有着更重要的角色：他们是所任职公司以至整体市场的企业管治『队长』。」伍女士的意见，以及ACRU 2017对公司秘书角色的关注，显示监管机构现时十分重视香港公司有否聘用完全符合资格、办事妥当的公司秘书，以确保管治及合规方面的事宜得到应有的关注。良好管治的责任终须由董事承担，但董事的角色是否能有效发挥，很大程度上系于公司秘书的工作素质，包括董事会会议的具体安排（例如发出会

议文件、准备会议纪录等），以及提供培训与意见等较高层的工作。

现在就请大家安坐，透过CSj的文章，回顾刚举行的ACRU。最后，今年的ACRU得以成功举办，我谨向各方致谢，包括讲者、赞助机构、支持机构、公会秘书处同事、协助筹备的合作伙伴及外界工作人员，当然还有当天出席的各位会员。期望明年与大家再见，共同见证ACRU成功故事的新一章。



谭国荣 FCIS FCS

How company secretaries can support directors

Katherine Ng, Senior Vice-President and Head of Policy, Listing, Hong Kong Exchanges and Clearing Ltd (the Exchange), and a speaker at the Institute's latest Annual Corporate and Regulatory Update seminar held last month at the Hong Kong Convention and Exhibition Centre, offers some tips on how to enhance the effectiveness of the company secretary's role in supporting the board.



The work of company secretaries has increased in volume and complexity over the years. This can be attributed to heightened expectations for better corporate governance and greater transparency in corporate affairs. The regulatory landscape has also become more elaborate, as physical borders disappear through the increasing use of the internet. In this context, the role of the company secretary has become more critical than ever.

Duties and responsibilities of company secretaries

A company secretary performs two main functions – the secretarial function and the corporate governance function. The

secretarial function covers mostly administrative duties such as regulatory filings, organising meetings and keeping corporate records required under laws and regulations. This was historically the dominant function of a company secretary, but times have changed and the company secretary is now increasingly relied upon as a trusted adviser to the board – particularly on regulatory and governance matters.

This governance function of the company secretary is enshrined in Hong Kong's Corporate Governance Code (CG Code), which sets out the company secretary's responsibility to advise the board on corporate governance matters and ensure that board policy and procedures are followed. Under the CG Code the

Highlights

- heightened expectations for better corporate governance and greater transparency in corporate affairs has led to increasing reliance on the work of company secretaries
- Hong Kong's Corporate Governance Code states that all directors should have access to the advice and services of the company secretary
- company secretaries should be prepared to challenge the board where good corporate governance standards are at risk

company secretary is also responsible for facilitating good information flow and the professional development of directors.

Company secretaries now have a much more dominant role as the corporate governance 'captains' of their companies and of the market generally.

Advising on governance and ensuring regulatory compliance

While the ultimate responsibility for corporate governance and ensuring an issuer's compliance with laws and regulations, including the listing rules, rests with the board, the board can and

will look to company secretaries for advice and comfort.

Section F.1.4 of the CG Code states that all directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable laws, rules and regulations are followed. This access should be straightforward, unobstructed and sufficiently regular and timely.

To achieve this, close involvement of the company secretary in the board's decision-making is required. The board should be able to seek the company

secretary's advice during the deliberation process and the company secretary can keep a close eye on any corporate governance or compliance issues.

Acting as the conscience of the company

Company secretaries are expected to act as the conscience of the issuer. That means guiding the issuer in making the right decisions and being ready to ask questions and advise and challenge the board – especially when faced with proposals which do not sit well with good governance practices.

As the company's 'conscience', a company secretary's role goes beyond ticking the compliance boxes. It is not just about doing the task or transaction lawfully and in accordance with the listing rules, but also whether it is the conscionable choice for the issuer.

Maintaining information flows

The company secretary acts as a key conduit between the board and the management and external parties by ensuring a good information flow between them.

Internal communication – taking a board meeting as an example, the company secretary can help the chairman set the agenda and gather information for the board. Furthermore, the company secretary should ensure that the background information provided by management to the board is presented in a succinct manner that is easily understood by the directors. Should the directors have questions or require further information prior to the board meeting, the company secretary should be their first point of call. This is particularly important for non-executive directors,

Are you effective in your role?

Hong Kong's Corporate Governance Code states that all directors should have access to the advice and services of the company secretary, but in practice the level of reliance placed on the company secretary's shoulders varies significantly from company to company. The following questions are designed to help company secretaries assess how effective they are in their roles.

- Are your directors relying on you for advice especially on listing rule compliance?
- Are you closely following the board's discussions and decision-making process?
- Are you prepared to challenge the board where good corporate governance standards are at risk?
- Are you actively maintaining a dialogue between board and management and between your company and external stakeholders?
- Are you actively engaged in facilitating directors' training – both in terms of induction and ongoing training?
- Do you assist directors in their oversight of the company's internal control and risk management systems?
- Are you actively engaged in ensuring that proper procedures are followed when managing conflict of interests and connected transactions?
- Are you involved in preparing corporate governance reports and environmental, social and governance reports?



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 ”

who, unlike executive directors, may not be as familiar with the structure and personnel of the issuer and are not physically in the office every day.

External communication – for listed companies, external communication is equally important. Company secretaries can play a very important role in maintaining an ongoing dialogue with shareholders and external stakeholders. They are often the best persons to manage relations with institutional investors especially on corporate governance matters. One of the ways to do this is through the implementation of a holistic shareholder communications policy.

Shareholders should be provided with up-to-date and relevant information relating to the issuer through general meetings and other corporate communications.

Communication is a two-way process – as well as ensuring good information flow to stakeholders, there must be a channel provided to stakeholders to give their feedback or raise enquiries. These enquiries and feedback must be documented, followed up in a timely manner, and brought to the attention of the board where appropriate.

Facilitating the professional development of directors

A good company secretary keeps under

close review all regulatory and corporate governance developments and informs the board of any major changes that may affect the issuer’s operations.

Company secretaries should also arrange formal training for directors. For new directors, induction training is essential for directors to understand the issuer’s operations, as well as their duties and responsibilities under applicable laws and regulations. For incumbent directors, refreshers can keep directors informed of the latest developments.

The Exchange’s new series of directors’ training webcasts (see Directors’

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 board’s operations, the company
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 first persons to learn of new
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 affecting the company
 ”



training webcasts' below) can assist company secretaries in their directors' training function.

Key areas where company secretaries provide support

The board of directors of an issuer is collectively responsible for its management and operations. The Exchange expects directors to, both collectively and individually, fulfil their fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.

Conflict of interests and connected transactions

There are many family-controlled

companies in Hong Kong. Conflict of interests and connected transactions are common issues faced by these companies every day. Under the Companies Ordinance, directors have an obligation to declare the nature and extent of their interests in any transaction, arrangement or contract to the board. Rule 3.08 of the listing rules requires directors to:

- act honestly and in good faith in the interests of the company as a whole
- act for proper purpose
- be answerable to the issuer for the application or misapplication of its assets

- avoid actual and potential conflicts of interest and duty
- disclose fully and fairly their interests in contracts with the issuer, and
- apply such degree of skill, care and diligence as may reasonably be expected of a person of their knowledge and experience and holding their office within the issuer.

Chapter 14A of the listing rules also prescribes stringent disclosure and shareholder approval requirements for connected transactions.

The first step is identifying and disclosing the conflict. Some conflicts may be apparent, but others may not be as straightforward. Whilst directors are ultimately responsible for disclosing any potential conflicts, they should reach out to the company secretary for advice and a second opinion if they are in doubt. The next step is ensuring that documents are not distributed to an interested director and that he or she refrains from taking part in the board discussion and voting on the conflicted issue.

Directors’ training webcasts

The Exchange recently launched a new series of directors' training webcasts. The first webcast (in March 2017) focused on directors' duties and board committees. A webcast in June this year discussed risk management, internal control and environmental, social and governance reporting. Two more webcasts are scheduled for the second half of 2017 on company secretaries and other support available to directors, and the Exchange's expectations of directors for IPOs.

Company secretaries are encouraged to watch the webcasts available on the Exchange's website: www.hkex.com.hk.

Under Code Provision A.1.7 of the CG Code, if a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should be dealt with by a physical board meeting rather than a written resolution. Independent non-executive directors who, and whose close associates, have no material interest in the transaction should be present at the board meeting.

All declarations of conflicts should also be recorded in the minutes of the meeting. The company secretary will need to ensure that proper board procedures and shareholder approval procedures are followed.

Dealing in the issuer's securities

It is important that directors wishing to deal in any securities in an issuer must first have regard to the insider dealing and market misconduct provisions of the Securities and Futures Ordinance (SFO), as well as the Model Code for Securities Transactions under the listing rules.

The company secretary can help to establish necessary policies and procedures regarding dealings in the issuer's shares. This may involve reminding directors of blackout periods and prohibitions on dealings, keeping records of dealings by directors and assisting with the subsequent disclosure of interests as required under the SFO.

Risk management and internal control

Risk management and internal control is an important part of good corporate governance. The board is responsible for defining the risk appetite by reference to the issuer's strategy, ensuring appropriate internal controls are implemented to manage the risks and

reviewing the effectiveness of internal control systems on a regular basis.

Company secretaries can assist directors in their oversight of the issuer's internal control systems and risk management efforts by:

- reminding the chairman to include risk management considerations on the board's agenda
- acting as a conduit between the management and the board to ensure that the board is kept informed of any changes to major risks faced by the issuer
- assisting the board in preparing corporate governance reports and environmental, social and governance reports by gathering the relevant information from operation teams and meeting with stakeholders etc.

Inside information

Sitting at the centre of the board's operations, the company secretary is often one of the first persons to learn of new transactions or material changes affecting the company. Such transactions or changes could constitute inside information within the meaning of the SFO.

The company secretary should help to establish procedures for monitoring and escalating potential inside information to the board, and provide timely advice to the board as to whether there is inside information. Once inside information has been identified, the company secretary should take reasonable precautions to preserve its confidentiality. This includes reminding directors and employees who have access to such information of their confidentiality obligations.

During the material time, the company secretary should also pay close attention to the media and consider whether confidentiality has been breached.

Where a disclosure obligation has arisen, the company secretary may need to arrange a public announcement to be made in connection with the inside information. Such announcement should be clear, comprehensible and provide sufficient background information so that investors can make well-informed decisions.

External service providers

It is not uncommon for companies to engage external professional firms as company secretaries, but there may be some inherent difficulties which need to be overcome by external company secretaries in order to perform their duties. For example, if they are not physically in the offices of the company every day, they need to ensure that clear internal processes are implemented so that they are kept informed of the issuers' activities at all times.

Conclusion

Good corporate governance cannot be achieved by a box ticking exercise. It is important to recognise that the 'comply or explain' regime under the CG Code is designed to cater for greater flexibility for a reason. Issuers should consider whether an alternative framework is more suitable to its needs and give a full explanation of the reasons behind it. The best corporate governance practice would be one that is tailor-made for an issuer after considering the issuer's businesses and circumstances from all angles.

Katherine Ng, Senior Vice-President and Head of Policy, Listing

Hong Kong Exchanges and Clearing Ltd



Cultivating independence of mind

ACRU 2017 review: part one





The importance of cultivating an independent mindset for both independent non-executive directors and the company secretary emerged as a central theme of this year's Annual Corporate and Regulatory Update seminar, held last month at the Hong Kong Convention and Exhibition Centre.

Every year, the Institute's Annual Corporate and Regulatory Update (ACRU) seminar provides an ideal opportunity for practitioners, senior managers and directors to enter into a direct dialogue with Hong Kong's major regulatory bodies about the issues at the top of both regulators' and regulatees' agendas.

The 18th ACRU, held on 2 June at the Hong Kong Convention and Exhibition Centre, did not disappoint. Our review of the event will first focus on the main themes to emerge from the presentations and Q&A discussions, and then turn (see the following cover story on pages 18–22) to look in more detail at the specific governance and compliance issues that regulators highlighted at the event.

The role of the board

'Issues are run by people,' Kenneth Chan, Senior Vice-President, Compliance and Monitoring, Listing, Hong Kong Exchanges

and Clearing Ltd (the Exchange), pointed out in his ACRU presentation, 'and we expect them to have a good character, integrity and competence, and we expect them to fulfil their duties of skill, care and diligence. In short, we have high expectations of directors.'

Kenneth Chan's presentation focused on 'directors' suitability' – the need for the individuals in these roles to have the requisite integrity and skills. He cited a recent case where the Exchange opposed the appointment of a director to a company listed on the Exchange since he had, only one year previously, been found to be actively involved in market manipulation activities and sanctioned with a heavy fine by an overseas securities regulator.

Stephen Jamieson, Senior Vice-President, Head of Enforcement, Listing, the Exchange, focused his ACRU presentation on the need for directors to understand

Highlights

- company secretaries should be prepared to resign and state why they are resigning if their attempts to alert the board to fraud or breaches of the rules go unheeded
- company secretaries should not be intimidated by overbearing or dominant directors trying to push something through
- independent non-executive directors need to have an independence of mind and a willingness to challenge management

“ we don’t expect company secretaries to be saints, but we do expect you to fulfil your obligations and that includes the duty to speak up if breaches of the rules have been discovered

”

Eugène Goyne, Senior Director, Enforcement, SFC



and fulfil their duties. 'It is quite surprising the number of cases where directors do not understand their obligations to comply with the listing rules,' Mr Jamieson said. In fact, directors' duties has been the single most common theme of the Exchange's enforcement activities over the last year (see 'Top enforcement themes for the Exchange' on page 17).

As an example he cited the case of Mei Ping, former Executive Director of China Nonferrous Metals Company Ltd. Mr Mei executed a number of guarantees as a legal representative of the issuer's subsidiaries for loans borrowed by another company of which he, together with his brother, were directors and substantial shareholders. The guarantees therefore constituted a major and connected transaction, but Mr Mei did not inform the board of the transaction, nor did he obtain board approval. His actions contravened almost every GEM listing rule relating to directors' duties, failing to:

- act honestly in good faith in the interests of the issuer as a whole and for proper purpose

- properly apply the issuer's assets
- avoid conflict of interest and duty
- fully disclose his interest, and
- apply the skill, care and diligence expected of him given his knowledge, experience and his role as compliance officer of the issuer.

Speakers from both the Exchange and the Securities and Futures Commission (SFC) emphasised that directors will be held personally liable for any failure to fulfil their duties. 'We will hold directors personally liable for any loss they cause their companies by breaching their duties,' Eugène Goyne, Senior Director, Enforcement, SFC, stated.

Mr Goyne discussed the SFC's new enforcement priorities, pointing out that listed company corporate fraud and director misconduct are priority areas of focus. The SFC now has two specialised teams focused on these areas. The teams will be focusing on high-impact cases and grouping cases together to assess multiple

breaches within the same corporate group as a whole. This new approach by the SFC to enforcement is mirrored at the Exchange. Stephen Jamieson explained that the Exchange will be focusing resources on pursuing the most blatant and serious misconduct in order to get the maximum regulatory effect from their existing resources.

The role of INEDs

Corporate governance systems around the world, including in Hong Kong, have been vesting increasing importance in the role of independent non-executive directors (INEDs) on boards as a way to bring objectivity and a wider perspective to board discussions. Trevor Keen, Head, Financial Market Infrastructure Oversight & Licensing, and Sarah Kwok, Head, Banking Conduct, at the Hong Kong Monetary Authority (HKMA), addressed the theme of 'INED empowerment and bank culture' in their ACUR presentations.

The HKMA has been promoting best practice for INEDs for some time, working closely with banks in Hong Kong to ensure that individuals taking up INED

roles have the right combination of skills and qualities. Ms Kwok stressed that, in addition to the appropriate experience and expertise, INEDs need to have integrity and the right personal qualities for the role. These qualities are essentially an independence of mind and a willingness to challenge management. 'INEDs need to constructively challenge management,' she said. 'They also need to have the ability to exercise objective, independent judgement after fair consideration of all relevant information and views, without undue influence from executives or from external parties.'

She added that this 'independence of mind' is crucial since INEDs need to protect the interests of all shareholders, depositors and customers and ensure that the company conducts its business in the wider public interest.

Mr Keen discussed the time commitment required for an INED position. The INED role is demanding, Mr Keen pointed out, and prospective INEDs may underestimate the time they will have to commit. 'Board and committee meetings, reading and preparation, understanding the business of the bank, keeping up with regulatory and industry developments all take time, especially for non-bankers,' he said.

Stephanie Lau, Senior Vice-President, Compliance and Monitoring, Listing, the Exchange, focused on the critical role played by INEDs in ensuring that connected transactions are conducted in compliance with the listing rules. 'The Exchange is concerned that INEDs all too often simply rely on information supplied by management when performing their connected transaction reviews,' she said, 'and that some issuers fail to provide reliable information on the fairness and

reasonableness of connected transactions to their INEDs.'

The Exchange recommends INEDs to exercise independent and objective judgement and recommends issuers to provide their INEDs with better quality information in order for them to monitor and perform their review of connected transactions.

The role of the company secretary

This year's ACRU saw an increased focus on the role of the company secretary, in particular the company secretary's role in providing governance advice and board support. 'How company secretaries can support directors' was the theme of the presentation by Katherine Ng, Senior Vice-President and Head of Policy, Listing,

the Exchange, in the first session of the day (see pages 6–11 of this month's journal for her insights on this topic).

Her colleague at the Exchange, Stephen Jamieson, made the point that company secretaries should not neglect their critical role in advising directors on their obligations under the listing rules and their obligation to cooperate with the Exchange's investigations.

Eugene Goynes of the SFC pointed out that the new focus of regulators in Hong Kong on enforcing individual accountability of both directors and senior management will be particularly relevant to company secretaries, not only due to their own

Keeping the dialogue open

Many speakers at ACRU 2017 commented on the usefulness of the ACRU seminar as a means for regulators to get the governance message out to the market. Both Hong Kong Exchanges and Clearing Ltd (the Exchange) and the Securities and Futures Commission (SFC) speakers emphasised the need for regulators to improve communication with market participants to ensure the governance message is heard and understood and thereby head off potential future governance and compliance problems.

'We tend to come in when the dead bodies are already on the floor,' said Eugène Goynes, Senior Director, Enforcement, SFC, 'but we recognise that we cannot rely on enforcement alone.' He added that companies can expect to see more preventative interventions in the future to achieve better governance and compliance outcomes. 'You can expect to see a much more active SFC getting involved at an earlier stage,' he said.

This approach, which has been dubbed 'front-loaded' regulation by SFC Chairman Carlson Tong SBS JP, will also mean a more extensive use of existing communication channels (for example via the SFC's *Enforcement Reporter*), and early warnings of enforcement priorities. The new approach will also involve a closer collaboration between different SFC divisions – aiming to achieve a better integration of the supervisory and enforcement sides of the SFC's work.

higher liability, but as a highly persuasive tool they can use to get the governance message across to board directors.

The presentations by Trevor Keen and Sarah Kwok of the HKMA also provided useful insights into the board support role of company secretaries. They made the point that one of the key factors in improving the effectiveness of directors generally, and INEDs in particular, is the level of support they receive from the company secretary.

Since INEDs will rarely have the same level of knowledge as executive directors of the company's business, Ms Kwok stressed that the induction and ongoing training facilitated by the company secretary is a crucial part of making INEDs effective members of the board. She recommended that company secretaries provide regular briefings on operations and risk management, as well as briefings on

“
independent non-executive directors need to have the ability to exercise objective, independent judgement after fair consideration of all relevant information and views, without undue influence from executives or from external parties
 ”

Sarah Kwok, Head, Banking Conduct, Hong Kong Monetary Authority

wider developments in the industry and regulatory requirements.

Mr Keen stressed the importance of good practices in the management of board meetings, such as:

- planning meeting schedules well

ahead and avoiding making changes unless really necessary

- providing clear board papers that avoid overly technical language
- providing briefings ahead of meetings where required
- facilitating tele- or video-conferencing where physical attendance is impossible
- facilitating access to professional advice, and
- ensuring that board and individual evaluations are carried out at least once a year.

He also emphasised the importance of preparing proper minutes. This issue surfaced in the Q&A at the end of the HKMA session. The chair of the session, Paul Stafford FCIS FCS(PE), Institute Vice-President and Chairman of the Professional Development Committee, asked what would be the appropriate level of detail in the minutes. Mr Keen said that, while they should not be verbatim, they should cover what was said. Most

ACRU in quotation

'if you detect fraud, please come forward – without the cooperation of the people in this room our job is more difficult'

Eugène Goyne, Senior Director, Enforcement, SFC

'the Exchange is concerned that INEDs all too often simply rely on information supplied by management when performing their connected transaction reviews'

Stephanie Lau, Senior Vice-President, Compliance and Monitoring, Listing, the Exchange

'issuers are run by people, we expect them to have a good character, integrity and competence, and we expect them to fulfil their duties of skill, care and diligence'

Kenneth Chan, Senior Vice-President, Compliance and Monitoring, Listing, the Exchange

'it is quite surprising the number of cases where directors do not understand their obligations to comply with the listing rules'

Stephen Jamieson, Senior Vice-President, Head of Enforcement, Listing, the Exchange



importantly, the minutes should name who said what. 'If I held a dissenting view, I would want that noted,' he said.

The Q&A at the end of the SFC session raised another important issue for company secretaries – what should they do if their advice against a proposal that would, in their view, compromise governance or ethical standards was not heeded by the board. Eugene Goyne

said that company secretaries should be prepared to resign and state why they are resigning if their attempts to alert the board to fraud or breaches of the rules go unheeded.

The chair of the SFC session, Gillian Meller FCIS FCS, Institute Council member, asked whether the resignation should only be the last resort – that is, company secretaries should try to work with INEDs

to remedy the situation first before considering resigning. 'We recognise that you are in a difficult position,' said Mr Goyne, 'and we don't expect company secretaries to be saints, but we do expect you to fulfil your obligations and that includes the duty to speak up if breaches of the rules have been discovered. I urge you not to be intimidated by excessively overbearing or dominant directors trying to push something through.'

He added that company secretaries should also be prepared to report criminal behaviour to the SFC. 'If you detect fraud, please come forward – without the cooperation of the people in this room our job is more difficult. Your identity will be kept confidential. Often coming to us may be the best thing you can do.'

The 18th Annual Corporate and Regulatory Update (ACRU) took place at the Hong Kong Convention and Exhibition Centre, Hong Kong on 2 June 2017.

Top enforcement themes for the Exchange

	MB	GEM	TOTAL
CORE THEMES			
(1) Directors' duties	15	2	17
(2) Failure to cooperate with the Exchange's investigation	4	0	4
(3) Delayed trading resumption	1	0	1
(4) Financial reporting – delays, internal controls and corporate governance issues	1	0	1
(5) Inaccurate, incomplete and/or misleading disclosure in corporate communication	1	0	1
(6) Failure to comply with procedural requirements in respect of notifiable/connected transactions	6	1	7
(7) Repeated breaches of the listing rules	-	-	-
MULTIPLE THEMES	23	10	33
OTHERS: not falling into the scope of any themes	6	1	7

Compliance update

ACRU 2017 review: part two

CSj highlights the main compliance issues raised by regulators at the Institute's latest Annual Corporate and Regulatory Update.

The Institute's Annual Corporate and Regulatory Update (ACRU) provides attendees with first-hand knowledge of the emerging trends and areas of concern for Hong Kong's leading regulatory bodies. There was no shortage of compliance and governance issues to be discussed in the latest ACRU.

Listed company governance issues were the focus of the Hong Kong Exchanges and Clearing Ltd (the Exchange) and Securities and Futures Commission (SFC) sessions. The Companies Registry session was devoted to the government's proposed new legislative amendments designed to upgrade Hong Kong's anti-money laundering and counter-terrorism financing (AML/CTF) regime, as well as an introduction to the Registry's electronic services. The Privacy Commissioner for Personal Data discussed effective privacy management and, in the final session of the day, the Hong Kong Monetary Authority addressed the empowerment of independent non-executive directors and improving governance culture.

Regulation of trust and company service providers

Ellen Chan, Deputy Principal Solicitor, Companies Registry, addressed a topic highly relevant to the company secretaries in the ACRU audience – the government's proposed licensing regime

for trust or company service providers (TCSPs). She gave an account of how the Companies Registry, which will be the regulator responsible for implementing the new regime, intends to enforce the new requirements.

Under the licensing scheme, TCSPs will be required to apply for a licence from the Registrar of Companies (the Registrar) before they can carry on a trust or company service business in Hong Kong. 'A person who carries on a trust or company service business without a licence commits an offence, and is liable to a fine and imprisonment. The Registrar will keep a register of all TCSP licensees, which will be open for public inspection,' Ms Chan said.

This is designed to fulfil the requirements of the Financial Action Task Force (FATF). FATF recommends that 'designated non-financial businesses and professions' (DNFBPs), which includes TCSPs, should be subject to effective systems for monitoring to ensure their compliance with AML/CFT requirements.

FATF also requires DNFBPs to be subject to customer due diligence (CDD) and record-keeping requirements. Currently, these are only prescribed for financial institutions (as set out in Schedule 2 of the Anti-Money Laundering and



Counter-Terrorist Financing (Financial Institutions) Ordinance). The government proposes to extend Schedule 2 of the Ordinance to cover, among others, TCSP licensees.

This would mean TCSPs would need to, among other things: verify their customers' identities and identify any beneficial owners. They would also be required to keep, in relation to each transaction and each customer, the original or a copy of the documents and a record of the data and information obtained (such as identification data, account files, business correspondence and records of transactions) for a period of six years.

The Registrar will be empowered to carry out inspections for the purposes of ascertaining whether a TCSP licensee is complying with the licensing and statutory CDD/record-keeping requirements. A TCSP licensee in contravention of the statutory requirements, or any conditions of the



licence, may be disciplined and subject to a range of civil sanctions, including: a public reprimand, a remedial order to remedy the contravention, and payment of a pecuniary penalty.

There will be a review tribunal to which any person aggrieved by the Registrar's decisions in implementing the licensing and disciplinary regime for TCSPs may appeal.

Beneficial ownership disclosure

FATF also requires member jurisdictions, which includes Hong Kong, to take measures to prevent the misuse of legal structures for money laundering and terrorist financing by ensuring that adequate and accurate information on the beneficial owners and control of such structures can be obtained or accessed in a timely fashion by competent authorities. Accordingly, the government's proposes to amend the Companies Ordinance to require disclosure of beneficial ownership information by Hong Kong companies.

Francis Mok, Senior Solicitor, Companies Registry, highlighted the main components of the new beneficial ownership regime in Hong Kong for the ACRU audience. He pointed out that the Companies Ordinance currently has no requirement for the disclosure of beneficial ownership information. Under the Securities and Futures Ordinance (SFO), however, listed corporations are required to keep a register of those individuals or entities owning 5% or

more interests in any class of shares (including any beneficial owner of such shares). Listed companies will therefore be exempted from the new regime since they are subject to a more stringent disclosure requirement under the SFO.

Under the proposed new beneficial ownership regime, companies incorporated in Hong Kong would be required to:

- maintain a register of people with significant control (PSC register) over the company, containing required particulars of their identities, and
- take reasonable steps to ascertain the individuals who (and legal entities which) have significant control over a company, give notice to them, and obtain accurate and up-to-date information about their identities.

The PSC register should contain required particulars of registrable persons (that is natural persons) who ultimately have a controlling ownership interest in a company, or who are exercising control of the company through other means,

Highlights

- directors contemplating rights issues and open offers must act in the best interests of the company as a whole – meaning in the best interests of all of the shareholders
- the Registrar of Companies will be empowered to carry out inspections of trust and company service provider licensees to ensure that they are complying with their licensing and statutory requirements
- directors should not accept blindly or unquestioningly the facts or assumptions made in valuation reports – they have a duty to take all reasonable steps to check the accuracy of those facts or assumptions

“
A person who carries on a trust or company service business without a licence commits an offence, and is liable to a fine and imprisonment. The Registrar will keep a register of all TCSP licensees, which will be open for public inspection.
”

Ellen Chan, Deputy Principal Solicitor, Companies Registry



and registrable legal entities with significant control over the company to facilitate identification of PSC in a chain of ownership.

The PSC register must also include the name and contact details of a person designated by the company as its representative to provide assistance relating to the PSC register to a law enforcement officer. The designated representative must be a natural person resident in Hong Kong, or a DNFBP, that is an accountant, legal professional or a licensed trust or company service provider.

Persons whose names are entered in the register are entitled, on request made in the prescribed manner and without charge, to inspect the PSC register and to be provided with copies of the register (on payment of a prescribed fee). Law enforcement officers are also entitled, for the purposes of performing their functions under Hong Kong law, to inspect the PSC register at the place at

which it is kept and make copies of the whole or part of the register.

Rights issues

Since late last year, both the SFC and the Exchange have been closely monitoring rights issues and open offers that substantially dilute the interests of non-subscribing minority shareholders. A joint statement on highly dilutive rights issues and open offers was issued by both regulators in December 2016.

Stephanie Lau, Senior Vice-President, Compliance and Monitoring, Listing, the Exchange, raised this issue in her ACRU presentation. She warned that the Exchange will not grant approval to share issues where they would undermine minority shareholders' interest. 'We expect directors to act in the best interests of the company,' she said, 'and this means acting in the best interests of all of the shareholders.'

Ms Lau highlighted the factors considered by the Exchange when assessing rights

issues and open offers. These include the price discount; the dilution impact on the interests of non-participating shareholders; whether there has been any recent similar corporate actions; and whether there is a genuine funding need for the rights issue. Ms Lau emphasised that listed companies should be able to show that there is such a need and that the terms of the proposed fundraising are the best terms available.

Backdoor listings and shell activities

Stephanie Lau also discussed the Exchange's current review of its regulations relating to backdoor listing activities. She warned that the Exchange will intervene where the use of reverse takeover and shell activities are designed to circumvent the requirements for IPO applicants and avoid the IPO vetting process. She emphasised that, among the factors considered by the Exchange, would be whether there has been any fundamental change in the issuer's principal business, and other events and transactions (historical, proposed or intended) which, together with the

acquisition, form a series of arrangements to circumvent the reverse takeover rules.

Kenneth Chan, Senior Vice-President, Compliance and Monitoring, Listing, the Exchange, also looked at this issue in his presentation. He focused on the approach of the Exchange to shell activities, emphasising that a listed company needs to have a sufficient level of operations, or have tangible or intangible assets of sufficient value, to demonstrate to the Exchange that it is a viable concern. He urged attendees to look at the Exchange's published guidance on continuing listing criteria and how companies should comply with Rule 13.24 which requires sufficiency of operation. He also pointed out that, while issuers are normally given an opportunity to take remedial action, the Exchange may suspend the trading in the securities or cancel the listing of an issuer where it does not have a sufficient level of operations or assets under Rule 13.24.

Valuations

Another compliance issue that has been on regulators' radars over the last year is the due diligence needed when the board considers valuation reports in the

context of asset purchases or transfers. Mike Knight, Director, Corporate Finance, SFC, pointed out that directors are the guardians of listed company assets and they therefore must act in the interests of the company as a whole and exercise due care and skill when considering valuation reports.

He emphasised that directors need to exercise independent due diligence, rather than simply focusing on the bare minimum compliance with the approval process. 'Don't accept blindly or unquestioningly the facts or assumptions made in valuation reports,' he said. 'You need to take all reasonable steps to check the accuracy of those facts or assumptions.'

In the Q&A concluding the SFC's session, a question was raised as to whether directors can rely on information supplied by others to whom they have delegated the task of assessing the valuation. 'You can delegate the technical aspects of the valuation,' Mr Knight said, 'but you can't delegate responsibility.'

These points were backed up by Eugène Goyne, Senior Director, Enforcement, SFC,

in his ACRU presentation. 'The message is very clear,' he said, 'directors have a duty to do all reasonable due diligence particularly if the valuation comes from the vendor, who obviously wants the best price,' he said.

Takeovers

The fair and equal treatment of all shareholders was a recurring theme throughout ACRU 2017. In her update on the takeovers regime in Hong Kong, Zarina Curreem, Director, Corporate Finance, SFC, emphasised that this is the most important principle to bear in mind in takeovers activities.

'The Takeovers Executive is not concerned with the commercial advantages of any proposed offer,' she said, 'this is for shareholders to decide. The Takeovers Executive is concerned to ensure the preservation of a fair market.'

In practical terms, this means that the SFC looks to ensure that there has been a full and timely disclosure of information. Ms Curreem reminded ACRU attendees that all documents related to takeover activities, except those designated for post-vetting, must be filed with Takeovers Executive for comment prior to release. Nevertheless, issuers have the ultimate responsibility for information disclosed and for compliance with the takeovers rules. Her final word of advice was to consult Takeovers Executive if in doubt.

Privacy management

Privacy management has been an issue of increasing concern for boards in Hong Kong as the regulations relating to privacy, both locally and overseas, have become more complex. Professor Stephen Kai-yi Wong, Privacy Commissioner for Personal Data, gave some practical and

The mobile registry

Wendy Ma, Deputy Registry Manager, Companies Registry, gave ACRU participants an update on the latest developments relating to the Companies Registry's electronic services. In 2015, the Registry launched its full-scale electronic filing service and last year it introduced its 'Company Search Mobile Service' which enables users to conduct company searches using smartphone and mobile devices. Ms Ma explained that this year the Registry is rolling out its 'eFiling Mobile App' which allows users to file an increasing number of forms with the Registry via smartphones and mobile devices. Stage one was launched on 6 February 2017, stage two is now available for a pilot run, and stage three is expected to be available by the end of the year.

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Privacy issues should be discussed in the board room. Organisations need to embrace personal data privacy protection as part of their corporate governance responsibilities and apply it as a top-down business imperative throughout the organisation.
 ”

Professor Stephen Kai-yi Wong, Privacy Commissioner for Personal Data

useful tips to the ACRU audience on how to design and implement an effective privacy management programme.

He started his presentation with a look at the paradigm shift in privacy management from a purely compliance approach to one based on accountability (see 'Privacy management'). He pointed out that the 'accountability principle' under the *OECD Privacy Guideline*, for example, requires a data user to

be accountable for complying with measures which give effect to the data protection principles. Moreover, the EU General Data Protection Regulation (GDPR), due to be implemented in 2018, makes accountability a legal requirement.

Mr Wong emphasised that the key to successful privacy management is to ensure that privacy issues are handled by the board. 'Privacy issues should be discussed in the board room,' he



said. 'Organisations need to embrace personal data privacy protection as part of their corporate governance responsibilities and apply it as a top-down business imperative throughout the organisation.' He added that company secretaries can assist here by securing the buy-in from the board and top management.

He also urged all organisations in Hong Kong to adopt a formal privacy management programme, adding that organisations can make use of the *PMP Best Practice Guide* issued by the Office of the Privacy Commissioner for Personal Data, which provides direct guidance for compliance with specific provisions of the Personal Data (Privacy) Ordinance.

Privacy management

There has been a paradigm shift in privacy management from a compliance to accountability approach.

Compliance approach

- passive
- reactive
- remedial
- problem-based
- handled by the compliance team
- achieving the minimum legal requirement
- bottom-up

Accountability approach

- active
- proactive
- preventative
- based on customer expectations
- directed by top-management
- focused on reputation building
- top-down

The 18th Annual Corporate and Regulatory Update (ACRU) took place in the Hong Kong Convention and Exhibition Centre, Hong Kong, on 2 June 2017.

The SFC Takeovers Executive can be reached via email: cmailbox@sfc.hk, or via phone: 2231 1210.

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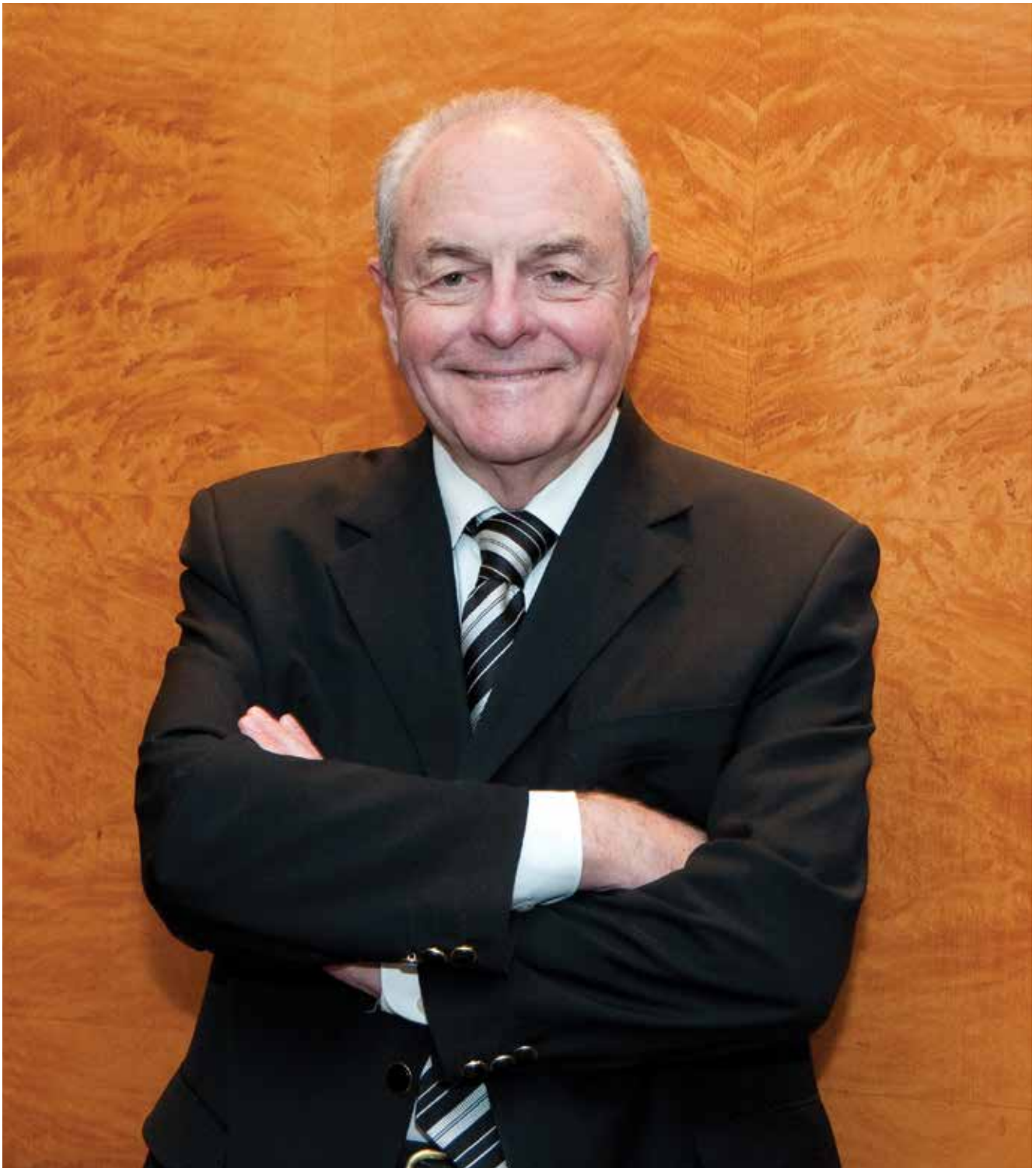
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act now!



The future of governance

Since the 1990s, South Africa's King Reports on Corporate Governance have consistently been at the leading edge of governance best practice. Mervyn King, Chairman of both the King Committee on Corporate Governance in South Africa, and the International Integrated Reporting Council, tells *CSj* about the rationale behind the Report's latest update – King IV.

Many thanks for giving us this interview – could we start by discussing what is different about King IV?

'Certainly. As you may know, compliance with the King Report is a listing requirement of the Johannesburg Stock Exchange. Now what was happening was that listed companies wishing to do a rights issue, or companies applying for a listing, were being asked to complete an application register which listed the 75 principles of King III and required the company to disclose whether it was in compliance with each principle. If it was not in compliance, the company had to explain why. As you can imagine, these application registers were quickly becoming quite thick documents.

I came to the conclusion that this had become a mindless checklist approach to governance which is exactly what I didn't want. Being the chairman of the International Integrated Reporting Council (IIRC), I had very much uppermost in my mind the outcomes-based approach we took with the IIRC Framework. That document focuses on the process of moving from inputs to outputs. The question being asked was – how did the company make its money in the past and how will the company make its money in the future? Will it be a value-creation process in a sustainable manner?

So adopting that thinking, I turned my mind to the King III Report and asked, what is it we are trying to achieve? I and the other members of the committee concluded that we were to trying to achieve four outcomes, namely that the companies adopting these principles and practices would have:

1. an ethical culture with effective leadership
2. effective controls/oversight
3. a sustainable value-creation process, and
4. the trust and confidence of their stakeholders and legitimacy of operation.

So working from those outcomes we came up with 16 basic principles that, if adopted, would lead to the achievement of the desired outcomes. Then working with those principles we came up with practices which, if adopted, would lead to the achievement of the principles. Companies, whether they are SMEs, large listed companies or state-owned entities, should be adopting the 16 basic principles and therefore achieving

good corporate governance, but the practices we left very flexible. These are international best practices in governance, for example requiring an audit committee, but we recognise that not all of these practices will be apposite for all businesses. So companies don't have to adopt the practices but they do have to explain how they intend to achieve the relevant principle. The reader of the explanations should be able to draw a reasonable conclusion as to whether or not the organisation is achieving those four outcomes.

So we turned the fourth iteration of the Report into a very mindful approach. There is a need for the board to apply its collective mind to these principles and to achieve the outcomes. That would be a huge added value for the company because anybody reading the report of a company that is achieving those outcomes would be able to see that it has the trust and confidence of the community in which it operates, that it has effective leadership and can therefore draw the inference that it is practising quality governance.'

Stakeholder inclusivity has been one of the defining characteristics of the King Reports ever since the publication of King I in 1994 – could we discuss your thinking on this issue?

'The primacy of the shareholder is a myth that has been debunked, but there is an interesting history to this. In the middle of the 19th century, wealthy families were contributing risk capital to ventures without any limits on their liabilities, and the governments of the day wanted them to contribute more money because they wanted to create more jobs as they promised

Highlights

- King IV is outcomes based – its structure and principles are designed to evade the risk of tick-box compliance
- among the desired outcomes of King IV are the need for adopters to have an ethical culture with effective leadership, effective controls/oversight and a sustainable value-creation process
- the underpinning philosophies of King IV are integrated thinking, corporate citizenship, stakeholder inclusivity and the organisation as an integral part of society



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 So we turned the fourth iteration of the Report into a very mindful approach. There is a need for the board to apply its collective mind to these principles and to achieve the outcomes.
 ”

their voters, as they still promise their voters today. The wealthy families were reluctant to do so because they were liable for the claims of creditors, employees and service providers, etc.

So that led to the creation by statute of an artificial person – the limited liability company. The suppliers of capital became shareholders and the capital they put in became equity capital. These companies started trading and built up their own working capital through borrowings, for which their shareholders were not be liable, and profits. If the liquidity of the company was adequate, shareholders could receive dividends, but their equity capital was the limit of their liability.

Moving from the 19th to the 20th century, the notion persisted that shareholders were the primary stakeholders and the owners of the company despite the fact that no one can own a company – it is a person in its own right. One can't say that directors must act in the best interests of the shareholders since that would be contrary to their duty of care, skill and diligence, clearly at common law all over the world, to act in the best interests of the company, of which they become the heart, mind and soul because the company has no heart, mind and soul of its own!

The compliance mechanism adopted by King IV – the move from 'apply or explain' to 'apply and explain' – has gained a lot of attention around the world, including here in Hong Kong. What was the reasoning behind this?

'King IV is made up of 16 basic principles and they are very basic. As I mentioned, under those principles we added international best practices on how to achieve the principles. We accept that we can't create a one-size-fits-all expectation for every SME or large business in different jurisdictions around the world, so we came up with the 'apply and explain' model – companies have to apply the principles and explain their practices. They can choose not to adopt a particular practice,

but they need to show how they are applying the relevant principle and therefore practising good governance.'

Would you like to see corporate governance codes globally adopt the 'apply and explain' model and an outcomes-based approach?

'Yes I would. The very reason I did this was that I had come to the conclusion that codes around the world had become a mindless tick-box exercise. The board needs to apply its mind to these basic corporate governance issues.'

Have you had any early indications of whether the outcomes-based approach of King IV is working?

'I have. The Report is being spoken about around the world but it has only been adopted so far in South Africa. Since it was implemented, you cannot believe the level of interest I have received from companies on the basic principles of King IV. I think there is a much wider recognition now that achieving the four outcomes we discussed earlier will be of huge value to companies. If you are involved in any kind of corporate transaction, you are going to want your share price to keep going up. Research has shown that 70% of the value of the company is made up of intangible assets which don't have to be added to the balance sheet according to international financial reporting standards. The 16 basic principles of King IV deal with tangible assets but they deal mainly with intangible assets, such as ethical culture and effective leadership. I think companies are recognising that if they achieve the outcomes of King IV, that is, if they create value in a sustainable manner and have a positive impact on society and the environment, they will gain more trust and confidence in the company which in turn will make the value of the company go up.'

King IV advocates integrated reporting (IR) – are you frustrated with the pace of the adoption of IR globally?

Here in Hong Kong fewer than 10 companies are producing integrated reports and I believe the latest figures suggest that around 1,500 companies have adopted IR globally.

'Let me say this, there are probably a million companies around the world thinking on an integrated basis. They have come to realise that operating in silos is what I call 'operating in silence' because HR doesn't talk to finance and finance doesn't talk to sustainability.

Integrated thinking is sweeping the world due to the realisation, and the empirical evidence to back it up, that integrated thinking reduces your costs and results in a better articulation of strategy. Integrated thinking means that everyone, from the chairman to the tea lady, understand where the company is going, what the company is trying to do and they can all make a contribution.

Career notes

In addition to chairing the committee that has taken his name – the King Committee on Corporate Governance in South Africa – Mervyn King plays a high-profile global role in governance, sustainability and corporate reporting. He is perhaps best known as the Chairman of the International Integrated Reporting Council, the Chairman Emeritus of the Global Reporting Initiative and as a member of the Private Sector Advisory Group to the World Bank on Corporate Governance.

He has been a chairman, director and chief executive of several companies listed on the London, Luxembourg and Johannesburg stock exchanges. In South Africa, he is the first Vice-President of the Institute of Directors; a Senior Counsel and former Judge of the Supreme Court of South Africa; Professor Extraordinaire at the University of South Africa on Corporate Citizenship; Honorary Professor at the University of Pretoria; and Visiting Professor at Rhodes University.

Professor King has consulted, advised and spoken on legal, business, advertising, sustainability and corporate governance issues in 53 countries and has received many awards. He is also the author of four books on governance and sustainability and sits as an arbitrator and mediator internationally.

Once you've adopted that mindset you can move almost seamlessly to doing an integrated report, but integrated thinking is much more important to me than the number of companies doing integrated reports according to the IIRC Framework.

Having said that, in the last two months the Securities and Exchange Board of India has directed the top 500 companies on the Bombay Stock Exchange to do integrated reports. Two weeks ago Malaysia changed its corporate governance code to recommend integrated reporting and the Tokyo Stock Exchange is also now encouraging people to do integrated reporting.

If you look at the IIRC membership, you can see that all the major world accounting and financial reporting bodies are represented, including the International Accounting Standards Board; the International Federation of Accountants; the Association of Chartered Certified Accountants; the Chartered Institute of Management Accountants (CIMA) and many more. They are now recommending integrated reporting because they recognise that most financial reports have become incomprehensible to the majority of people. Companies have a duty to be accountable to the providers of capital and should be talking in clear comprehensible language to them!

What role can or should the corporate secretary play in implementing IR and raising corporate governance standards?

'The company secretary has a critical role to play to ensure that the board, on a collective basis, applies its mind to ensuring good corporate governance. This means more than just having the chairman check with the company secretary during a board meeting whether the company is in compliance with all the relevant laws and regulations. The company secretary needs to ensure that the company takes an outcomes-based approach to governance – then you are achieving something.

But I would go further. Companies have to understand the needs, interests and expectations of their stakeholders so that when management is developing strategy it does so on a more informed basis. Also at each board meeting there should be a report to the board and an agenda item on stakeholder relationships – the board needs to know the relationship between the company and its stakeholders. Now company secretaries can really drive this because they have a view right across all the departments in the company. So maybe its time for the company secretaries to take on the role of the corporate stakeholder relationship officer.

The King reports: a brief tour

In 1993, the Institute of Directors in South Africa asked retired Supreme Court of South Africa Judge Mervyn King to chair its newly created committee on corporate governance. A year later that committee published the first 'King Report on Corporate Governance'. King I was not the first, nor even the best known of the codes of corporate governance that were starting to appear globally, but over the two and a half decades of its existence it has consistently been at the leading edge of governance best practice.

Back in the 1990s, the nascent governance codes tended to offer a fairly basic set of recommendations on the desired behaviour and structure of the board of directors, but the King Reports have taken a broader view – addressing the philosophies and core ethical issues underpinning the governance debate. King I, for example, stressed that boards of directors need to take account of the legitimate needs, interests and expectations of the stakeholders of the company. This was in contrast to the Cadbury Code in the UK, the best known governance code at that time, which still gave primacy to shareholders.

Subsequent King reports have pioneered many of the key concepts that make up 'best practice' in governance today.

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the King reports have always been
a reliable indication of where
governance sensibilities are headed
”

King II, for example, recommended sustainability reporting using the G2 Global Reporting Initiative guidelines when it came out in 2002. King III, published in 2009, pioneered integrated reporting. King IV, as described in this interview, puts its emphasis on an outcomes-based approach to governance and pioneers the 'apply and explain' compliance mechanism.

It is too early to say whether these innovations will be widely adopted by governance codes around the world, but certainly, based on their track record, the King reports have always been a reliable indication of where governance sensibilities are headed. As Sir Adrian Cadbury of the UK put it in his comments on King III: 'Governance yesterday focused on raising standards of board effectiveness; governance today on the role of business in society; and the course for governance tomorrow is set by King III!'

Just to illustrate how the thinking about the company secretary role is changing, I've just returned from a visit to Australia where I spoke with Tim Sheehy FCIS FGIA, Director General of the Institute of Chartered Secretaries and Administrators (ICSA). He was the Chief Executive of the Australian division of ICSA which became the first ICSA division to adopt the term 'governance' as part of its name – it is now the Governance Institute of Australia. He is now on a mission to get better recognition globally for the governance role of the company secretary and I heartily support this because, as I have said, the role of the company secretary is critical.

King IV assumes that, if your organisation doesn't have a company secretary, in some jurisdictions company law doesn't require this officer, then you should appoint a governance officer to deal with these issues.'

In your article in the October 2010 edition of CSj, you warned: 'We have a window of approximately five to 10 years before the critical situation on planet earth becomes terminal.' Seven years on, how critical a position are we in today?

'We are in the fourth industrial revolution. We have nanotechnology, biotechnology, 3D-printing, many extraordinary things that we wouldn't have talked about seven years ago. I believe that IT is really going to help to make life on earth sustainable. It is quite clear that it is not an option to carry on business as usual because we have reached that ecological overshoot of using natural assets faster than nature is regenerating them, so we have to think differently. But if you look at great companies, they are thinking differently. They are aware that they cannot keep adding to the monetary bottom line at a cost to society and/or the environment. If they are, they are not adding value they are destroying value.'

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 critical role to play to ensure that
 the board, on a collective basis,
 applies its mind to ensuring good
 corporate governance
 ”

So I think IT will come to our rescue and I think that companies will need to pay a lot more attention to technological developments. In my foreword to King IV, I recommend three items that should always be on the agenda of the board:

1. stakeholder relationships

2. considering inputs to outcomes and thinking on an integrated basis, and
3. IT governance and security, because cybersecurity has become a critical issue!

Are you optimistic about the future – particularly in the context of the current political climate with the rise of populist politicians advocating policies antagonistic to sustainability and governance reform?

'I'm quietly optimistic but it is a matter of shame that the private sector has moved ahead of political leaders. I believe our private sector leaders are thinking with greater clarity than our political leaders!'

Mervyn King was interviewed by Kieran Colvert, Editor, CSj.

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All hacked out

Gabriela Kennedy, Partner; and Karen HF Lee, Senior Associate; Mayer Brown JSM, assess the latest proposals by the Securities and Futures Commission to reduce hacking risks among licensed corporations.

On 8 May 2017, the Hong Kong Securities and Futures Commission (SFC) issued a consultation paper inviting comments on its latest proposal (Proposal) aimed at reducing the risks of cyber attacks in relation to internet trading. The consultation period ended on 7 July 2017.

Plugging the hole

Since the beginning of 2016, at least 12 licensed corporations in Hong Kong have reported 27 cybersecurity incidents, which resulted in losses to investors worth HK\$110 million. In January 2017, the police informed the SFC that several securities brokers had been victims of distributed denial of service (DDoS) attacks.

Over the past few years, the SFC has issued several circulars and recommendations to licensed corporations in an attempt to reduce the continuing surge of cyber

attacks and to encourage the proactive implementation of robust cybersecurity measures. Licensed corporations are encouraged not to take a back seat and be reactive when it comes to their cybersecurity. Instead, they are asked to take responsibility at a managerial level and regularly review and test their systems, and address any risks identified.

In a recent circular issued on 26 January 2017, *Alert for Cybersecurity Threats*, the SFC reminded licensed corporations that they need to implement appropriate safeguards without delay in order to protect themselves against cybersecurity threats. Licensed corporations were also reminded that any material cybersecurity incidents must be promptly reported to the SFC. Other related circulars include *Cybersecurity* dated 23 March 2016 and the *Tips on Protection of Online Trading Accounts*, dated 29 January 2016.

Highlights

- a review carried out by the Securities and Futures Commission (SFC) at the end of 2016 revealed that licensed corporations were still vulnerable to attacks
- the SFC proposes to revise its Code of Conduct for Persons Licensed by or Registered with the SFC and introduce a new set of guidelines consolidating its existing requirements and recommendations relating to cybersecurity risk
- licensed corporations will need to review and test their cybersecurity defences and address any risks identified



The SFC is not the only regulator that is expending time and effort to tackle cyber attacks. The Hong Kong Monetary Authority launched the Cybersecurity Fortification Initiative on 24 May 2016, which introduced a cyber risk assessment framework, rolled out training to ensure a greater pool of qualified cybersecurity professionals, and set up a cyber intelligence platform for banks.

The Proposal is the latest in a stream of efforts by financial regulators in Hong Kong to tackle the increasing risk of cyber attacks. Following a review of the cybersecurity preparedness, compliance and resilience of brokers' internet and mobile trading systems, conducted by the SFC at the end of 2016, the SFC identified several cybersecurity measures



to help reduce the risk of cyber attacks. Whilst most of these measures have already been set out by the SFC in its Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) and in previous circulars, the SFC's intention is to consolidate them into a single guideline that provides further elaboration on existing recommendations. This culminated in the issuance of the Proposal and the launch of the consultation.

The Proposal

Under the Proposal, the SFC recommends the introduction of the draft *Guidelines for Reducing and Mitigating Hacking Risks Associated with Internet Trading* (Guidelines). The Guidelines are divided into three different categories of

requirements, which cover:

1. the protection of clients' internet trading accounts
2. infrastructure security management, and
3. cybersecurity management and supervision.

The Guidelines do not introduce any surprising requirements – they are largely consistent with the existing requirements and recommendations of the SFC to date.

The key proposals of the SFC are as set out below.

1. The SFC intends the Guidelines to

form baseline requirements that internet brokers must comply with, and will also form an entry requirement for future internet brokers.

2. The SFC wishes to extend the scope of application of Paragraph 18 of Schedule 7 of the Code of Conduct to cover internet trading of securities that are not listed or traded on an exchange. Currently, Paragraph 18 of Schedule 7 of the Code of Conduct only applies to securities dealers, futures dealers, leveraged foreign exchange traders and fund managers that conduct electronic trading of securities and futures contracts that are listed or traded on an exchange. However, some internet brokers may conduct internet trading through systems that are not listed or traded on an exchange, and would still be subject to the same hacking risks.

3. Under the Guidelines, the SFC intends to make two-factor authentication mandatory as a security measure for logging onto customers' internet trading accounts. Two-factor authentication involves a combination of two different types of authentication measures (for example a combination of a password, a hardware or software token or biometric data), and is generally accepted as an effective means to reduce the risk of hacking. The Guidelines will not state exactly what type of two-factor authentication must be implemented, and brokers will have the flexibility to choose which method they deem appropriate.

4. The proposed baseline requirements will require brokers to use a secure

network infrastructure through network segmentation, to monitor and assess security patches or hotfixes issued by service providers and implement them within one month, and to promptly update anti-virus and anti-malware solutions. Measures will also need to be implemented to prevent unauthorised installation of hardware and software and unauthorised access to the system and related servers or hardware (for example physical security controls). Only personnel who have a need to access the internal system should be granted such access rights, and remote access should be strictly limited on a need-to-have basis. Access lists will need to be reviewed on an annual basis to ensure that they are up-to-date.

5. The SFC recognised that encrypting the brokers' entire database would have an adverse effect on the functioning of their internet trading systems. As such, the SFC clarified that only customer login passwords stored on the brokers' systems will need to be encrypted, as well as sensitive information (for example trade data) during their transmission.
6. Under the Guidelines, brokers will need to have in place robust password policies for their customers, in order to minimise any unauthorised access. For example, minimum password lengths, a requirement that passwords be changed on a regular basis, etc. Session time out controls should also be implemented. During the activation of a customer's internet trading account or any password resets, the password should be

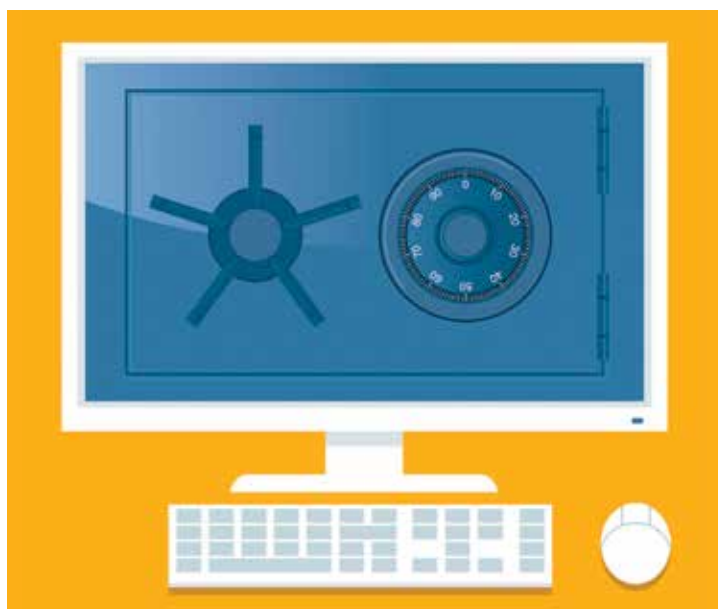
transmitted to the customer in a secure manner to avoid interception.

7. The SFC has decided not to make it mandatory for brokers to monitor suspicious trading patterns on their customers' internet trading accounts, and will only suggest it as an example of good practice. Due to the large volume of data being transmitted, manual and automatic monitoring would be impractical. However, the SFC still expects brokers to have in place appropriate monitoring and surveillance mechanisms that will detect any unauthorised access to a customer's internet trading account.
8. The SFC has included customer notification requirements in the draft Guidelines, as prompt notifications concerning activities on their internet trading accounts (for example notifying them when someone has logged onto their account or when a transaction has been executed) can be an effective means of identifying and stopping hackers, since customers will be alerted to any unauthorised access or transaction. Due to the large volume of trade executions that a customer may carry out, the SFC proposes to allow customers to opt out of receiving trade execution notifications (but they cannot opt out of receiving other notifications, for example login or password changes).
9. The SFC has emphasised the need for brokers to implement a cybersecurity risk management framework, with the board or senior management having clear ownership and accountability for cybersecurity. Responsible and executive officers

who are tasked with the overall management and supervision of the brokerage internet trading system will be responsible for establishing the cybersecurity risk management framework, including the major roles and responsibilities, with the overall accountability resting with them.

10. The Guidelines will require brokers to implement written policies and procedures setting out how a cybersecurity incident should be reported and escalated (both internally and externally, for example to the SFC).
11. The Guidelines will require brokers to ensure their records and documents are backed up on an off-line medium on a daily basis, and to exercise reasonable efforts to ensure that their business continuity plan and crisis management procedures deal with different potential cybersecurity incidents. However, the SFC has decided not to make it mandatory for brokers to acquire DDoS solutions despite the recent spate of DDoS attacks, in light of the cost and the effectiveness of more affordable options.
12. Under the Guidelines, brokers will need to provide annual internal cybersecurity training, which should include recent cybersecurity regulations and threats. The SFC's 2016 review revealed that, despite staff playing a crucial role in minimising cyber attacks, many brokers had never provided internal cybersecurity awareness training or had only provided it irregularly on an *ad hoc* basis. The Guidelines also emphasise the need for brokers to

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licensed corporations... need to implement appropriate safeguards without delay in order to protect themselves against cybersecurity threats
 ”



take all reasonable steps to remind customers of potential cybersecurity risks and provide recommended measures to help customers protect themselves when using the internet trading system.

13. It is common for internet trading systems to be provided by third-party service providers, rather than being internally developed and maintained by brokers. Consistent with previous circulars issued by the SFC, the Guidelines will require brokers that outsource any activities to a third-party service provider to enter into a written agreement with them that sets out the terms of service and their responsibilities. These agreements should be regularly reviewed and amended, and should provide a sufficient level of maintenance and technical support, which can be quantitatively measured (for example specific service levels). It is important that the services and obligations of the service provider will ensure that the brokers will be compliant with the relevant regulatory requirements. However, under the Proposal, the SFC asks those in the industry to provide feedback on whether the current service levels provided by their service

provider will enable them to comply with the Guidelines, and whether they anticipate any difficulty in obtaining a higher service level from their service providers (for example 99.9% service uptime).

Conclusion

The review carried out by the SFC at the end of 2016 revealed that despite various cautions and guidelines in circulars issued by them so far on the subject of cybersecurity, brokers were still vulnerable to attacks. The main issues identified are: poor password policies; limited customer awareness of cybersecurity risks; inadequate monitoring and surveillance to detect unauthorised access or transactions; and insufficient resources deployed to boost cybersecurity. The draft Guidelines seek to introduce comprehensive and strict requirements and obligations on licensed corporations, the most important of which is clear ownership and accountability of cybersecurity management at the board or business management level.

Given the uptake in cloud and other outsourced services, brokers are advised to review such arrangements now in order to ensure that their service providers are

willing to work with them to meet the requirements set out in the Guidelines. Many service providers may operate on standard terms and conditions, and may be reluctant to tailor their methods of operation and security measures to meet the needs of individual clients. Regardless of the expediency of the procurement of popular services, given that accountability for cybersecurity management will rest with executive officers, all existing contractual arrangements for the provision of internet trading systems will need to be revisited.

The SFC aims to finalise the revised Code of Conduct and new Guidelines by September/October 2017. Brokers will be given a grace period of six months from the date of publication of the final Guidelines in order to implement the baseline requirements.

Gabriela Kennedy, Partner
Karen HF Lee, Senior Associate
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Professional Development

Seminars: May 2017

11 May

Internal audit – expect more



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

Speakers: Eric Yeung, Partner; and Hok Fan, Senior Manager; Risk Assurance Practice, PwC Hong Kong

15 May

2017 ESG reporting:
KPI disclosure



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

Speaker: Ir Coleman Ng, Director, Business Reporting and Sustainability, KPMG

17 May

Cybersecurity: solutions
for the digital age



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

Speakers: Kirstin McCracken, Consultant; and Duncan Watt, Consultant; Eversheds

19 May

Company secretarial practical
training series: steps to
effective board evaluations



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

Speaker: Alice Au, Leader, Financial Services Practice, Spencer Stuart Hong Kong

22 May

Roles of the company
secretary and the board in
AML compliance



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: Dominic Wai, Partner, ONC Lawyers

23 May

Practical tips for privacy
compliance and the impact
of GDPR



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

Speaker: Carolyn Bigg, Of Counsel, DLA Piper Hong Kong

25 May

The Competition Ordinance – what we've learned so far and what's next



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

Speakers: Alastair Mordaunt, Partner, Head of Hong Kong Competition Practice; and Joy Wong, Associate, Antitrust and Competition Practice; Freshfields Bruckhaus Deringer LLP

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 device 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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
24 July 2017	4.00pm – 5.30pm	Update on the Hong Kong Corporate Governance Code – sharing of market trends	1.5
27 July 2017	6.45pm – 8.45pm	How corporate insolvency and restructuring are relevant to company secretaries and business executives, and practical sharing on several popular cases	2
2 August 2017	6.45pm – 8.15pm	The Hong Kong Code on Takeovers and Mergers (re-run)	1.5
7 August 2017	6.45pm – 8.15pm	China's tightened control on capital outflows and its implications for cross-border financing	1.5
10 August 2017	6.45pm – 8.15pm	Corporate rescue, insolvent trading and corporate governance	1.5
17 August 2017	6.45pm – 8.15pm	Company secretarial practical training series: how to review financial statements and MD&A (re-run)	1.5

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

Professional Development (continued)

MCPD requirements

Members are reminded to observe the MCPD deadlines set out below. Failing to comply with the MCPD requirements may constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's 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 from the Institute's ECPD seminars)	30 June 2018	31 July 2018

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

Key update on the revised CPD policy (effective from 1 July 2017)

Revised CPD Policy	
Basic CPD requirements	All members/graduates are required to fulfil the minimum CPD requirements of at least 15 CPD hours per CPD year, at least 3 ECPD hours should be from the Institute's ECPD seminars.
Accredited providers of ECPD seminars	<p>The following are the accredited providers of ECPD seminars</p> <ul style="list-style-type: none"> • Companies Registry • Hong Kong Exchanges and Clearing Ltd • Hong Kong Institute of Certified Public Accountants • Hong Kong Monetary Authority • Independent Commission Against Corruption • Official Receiver's Office • Security Bureau • The Law Society of Hong Kong • The Securities and Futures Commission
Administrative penalty	<p>Where a relevant person:</p> <ol style="list-style-type: none"> a. fails to file the declaration under Clause 6.2 of the CPD Policy within one month of the end of the previous CPD year; and/or b. fails to supply to the Institute's satisfaction the requisite information required under any random check referred to under Clause 6.3 of the CPD Policy with the declaration; and/or c. fails based on other grounds identified by the Institute as otherwise not having complied with this Policy; <p>the relevant person shall incur an administrative penalty of HK\$3,000 payable upon the Institute's demand should the failure subsist as at the end of 90 days from the end of the previous CPD year, without prejudice to the right of the Institute to refer the matter to the Institute's Investigation Group in accordance with Clause 3 of the CPD Policy for commencement of discipline.</p>

For details of the revised CPD Policy, please visit CPD Policy under the CPD section of Institute's website: www.hkics.org.hk.

Membership

Membership/graduateship renewal for 2017/2018

The membership/graduateship renewal notice for the 2017/2018 financial year, together with the demand note, will be posted to members and graduates in July 2017. Members and graduates should settle the subscription payment, as well as complete and return the personal data update form to the Institute as soon as possible, but no later than Saturday 30 September 2017. Failure to pay by the deadline will constitute a ground for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

Members and graduates who have not received the renewal notice by the end of July 2017 should contact the Institute's Membership section at: 2881 6177, or email: member@hkics.org.hk. For details of the fee structure for the 2017/2018 financial year, please refer to the May edition of CSj (pages 42-43) or visit the Membership section of the Institute's website: www.hkics.org.hk.

Application for concessionary subscription rate for 2017/2018

The Institute continues to offer concessionary subscription rates (retired, reduced and hardship) to members who satisfy the necessary criteria and have made an application to the Institute. All applications must be approved by the Membership Committee, the decision of which is final. The application deadline for these concessionary rates is Monday 31 July 2017.

For details of the concessionary subscription rates, please refer to the April edition of CSj (page 36) or visit the Membership section of the Institute's website: www.hkics.org.hk.

Donate as you spend with Chartered Secretaries AMEX credit card

Institute members, graduates and students are encouraged to apply for the Chartered Secretaries AMEX credit card to enjoy a range of exclusive privileges. In addition, purchases made with the Chartered Secretaries AMEX credit card will have a positive contribution to The Hong Kong Institute of Chartered Secretaries Foundation Ltd, which was established by the Institute in 2012.

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

HKICS joins HKCOV as a member organisation

The Institute joined the Hong Kong Council of Volunteering (HKCOV) as a member organisation in June 2017. Council member Stella Lo FCIS FCS has been appointed as the representative of the Institute in HKCOV. HKCOV is a joint committee established in 2004 by the Agency for Volunteer Service in Hong Kong, aiming to build up a cross-sectoral exchange and collaboration platform for cultivating broader participation in volunteering.

The Institute is committed to allocate more resources to community services. Members, graduates and students who are interested to join the Institute's community service team, please contact Louisa Lau at: 2830 6008, or email: member@hkics.org.hk.

Forthcoming membership activities

Date	Time	Event
7 July 2017	6.30pm – 8.30pm	Members' Networking – dining etiquette workshop
29 July 2017	11.00am – 1.00pm	Young Group – introduction workshop on perfume making
15 & 22 July and 5 & 12 August 2017	11.00am – 1.00pm	Young Group – bowling interest group (four sessions)

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

Membership (continued)

Members' activities highlights: May and June 2017

17 May

Welcome drinks for new graduates and associates 2016/2017



20 May

Mentorship Training – appropriate language in the workplace



26 May

Young Group – flower art arrangement



6 June

Community Service – knowing breast cancer: early detection saves lives



13 June

Members' Networking – 办公室健康管理



Advocacy

Institute members and students gathering in Shanghai

On 22 May 2017, Institute Chief Executive Samantha Suen FCIS FCS(PE) hosted a dinner for Institute members and students in Shanghai. The dinner was an ideal opportunity for members and students to discuss issues relevant to the profession in Mainland China and to learn more about the latest developments of the Institute and those relating to The Institute of Chartered Secretaries and Administrators.



Institute representatives and Shanghai members and students

HKICS and OUHK joint information session in Shanghai

On 23 May 2017, the Institute and The Open University of Hong Kong (OUHK) jointly organised an information session to introduce the Postgraduate Programme in Corporate Governance (PGPCG) offered by OUHK at the East China University of Science and Technology (ECUST/上海华东理工大学) in Shanghai. Institute Chief Executive Samantha Suen FCIS FCS(PE) introduced the Chartered Secretarial profession and the Institute to the attendees. This was followed by a briefing by Institute Education & Examinations Director Candy Wong on the route to

membership of the Institute, including its exemption policies. PGPCG Programme Leader Dr Nigel Leung; Senior Lecturer of Lee Shau Kee School of Business and Administration Anna Sum FCIS FCS; of OUHK, and Gao Jianbao of the ECUST, explained the requirements and application procedures of the programme.

The information session ended with a sharing session by Institute member Charlotte Xiao FCIS FCS and Institute student Tsang Chi Ka who are working in the Mainland. They shared their study experiences and discussed the career prospects of Chartered Secretaries in Mainland China.



At the information session

Nominations for the HKICS Prize 2017

Nominations are now open for the HKICS Prize 2017. This is an opportunity to recognise individuals who have made significant contributions to the Institute and the Chartered Secretarial profession over their careers. Members are invited to submit nominations. The nomination deadline is Saturday 30 September 2017.

For details of the Prize and nomination, please visit the News section of the Institute's website: www.hkics.org.hk.

Advocacy (continued)

Institute representatives visit HKETO and HKTDC in Shanghai

On 22 and 23 May 2017, Institute Chief Executive Samantha Suen FCIS FCS(PE) and Senior Manager, Marketing & Communications Lawrence Wong, paid a courtesy visit to top executives of the Hong Kong Economic Trade Office (HKETO) and Hong Kong Trade Development Council (HKTDC) in Shanghai to promote the Chartered Secretarial profession and to strengthen communication ties with these organisations. Ms Suen discussed corporate governance standards and practices in Hong Kong and Mainland China with Victoria Tang, Director of HKETO, and Jacky Chung, Regional Director, Eastern & Central China of HKTDC. They also explored potential areas of collaboration going forward.

Chief Executive as a judging member for TIHK Tax Debate Competition 2017

Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited by The Taxation Institute of Hong Kong (TIHK) to be a member of the judging panel for the Tax Debate Competition on 27 and 28 May 2017. The Honourable Paul Chan Mo-po GBS MH JP FCIS FCS, Financial Secretary of the Government of the HKSAR, was the Guest of Honour of this function.



At the debate

HKCPS Yuen Long District Secondary School Students Internship Programme 2017 – launching ceremony

On 3 June 2017, Institute President Ivan Tam FCIS FCS, Chief Executive Samantha Suen FCIS FCS(PE), together with representatives from other member bodies of The Hong Kong Coalition of Professional

Services (HKCPS), attended a ceremony to launch HKCPS's Yuen Long District Secondary School Students Internship Programme 2017. The Honourable CY Leung GBM GBS JP, Chief Executive of the Government of the HKSAR was the Guest of Honour. The Programme, which was jointly organised by HKCPS and the Yuen Long District Secondary School

Heads Association, aims to provide work experience to the Form 5 students from the Yuen Long District to broaden their horizons and enhance their self-confidence. The Institute, which has been a member of HKCPS since 2011, also invited its members and their companies to provide two-week internship opportunities in July 2017 in support of the Programme.



At the ceremony

The 43rd Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars

The Institute held the 43rd Affiliated Persons ECPD seminars on 'Risk management and systematic corporate governance practice for conglomerates' in Hangzhou between 24 and 27 May 2017. The seminars attracted over 150 participants from H-share, A+H share, red-chip, A-share and to-be-listed companies.

Institute Past President Dr Maurice Ngai FCIS FCS(PE) shared the findings of the survey *Shareholder Communications for Listed Issuers: Five Imperatives to Break the Monologue*, jointly conducted by the Institute and KPMG China. Other speakers from the Shanghai Stock Exchange, senior professionals and board secretaries also shared their knowledge and experience on a wide range of topics including: information disclosure regulations for listed companies in Mainland China and Hong Kong; risk management and corporate governance for conglomerates; corporate governance responsibilities and practices among

directors, committees, senior executives and company secretaries; effective board operations; trading suspension and resumption for listed companies in Hong Kong; and environmental, social and governance reporting. Small group discussions of these topics were also arranged during the seminars.

Vice-President Dr Gao Wei FCIS FCS(PE), Council member Bernard Wu FCIS FCS, Chief Executive Samantha Suen FCIS FCS(PE) and Beijing Representative Office's Chief Representative Kenneth Jiang FCIS FCS(PE), chaired different sessions at the seminars.

The Institute would like to thank the speakers, participants, event associate organiser (Shinewing CPA), supporting organisations (Computershare Hong Kong Investor Services Ltd, Clifford Chance LLP and Tricor Services Ltd) and sponsor (Equity Financial Printing Ltd), for their support.



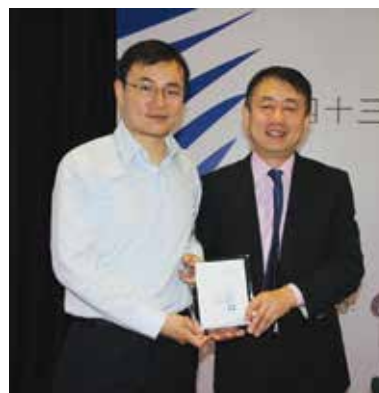
At the seminar



Participants discussing in small groups



Dr Maurice Ngai sharing survey findings with the speakers



Dr Gao Wei presenting a souvenir to seminar speaker Chang Le, Head of Information Disclosure Supervision Group, and Senior Manager, Listed Companies Administrative Department 1, Shanghai Stock Exchange

Advocacy (continued)

IBGC study tour to Hong Kong

The Brazilian Institute of Corporate Governance (IBGC), a non-profit organisation and the main centre for the development of best corporate governance practices in Brazil, organised a study tour to Singapore and Hong Kong from 30 May to 7 June 2017. IBGC invited the Institute to discuss the 'Significance of the company secretary of listed issuers in Hong Kong' to 42 IBGC participants on 6 June 2017. Institute President Ivan Tam FCIS FCS delivered welcoming remarks to the participants, and Past President April Chan FCIS FCS, senior members Bill Wang FCIS FCS and Eric Mok FCIS FCS shared their knowledge and insights on governance topics from Hong Kong, Mainland China and international perspectives with the IBGC participants. They received an enthusiastic response from the participants and many interesting questions were raised throughout the seminar. Institute Chief Executive Samantha Suen FCIS FCS(PE), and Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE) (the moderator), also attended the seminar.



At the seminar



Group photo

Stakeholders networking luncheon with employers

The Institute held a stakeholders networking luncheon with over 20 employers and senior members on 8 June 2017. The luncheon, the third in the series, aimed to strengthen relationships with employers as major stakeholders of the Institute. Participants discussed their insights into recruitment of Chartered Secretarial professionals, as well as possible collaboration opportunities with the Institute. Institute Chief Executive Samantha Suen FCIS FCS(PE) also discussed the new initiatives of The Institute of Chartered Secretaries and Administrators (ICSA) relating to the profession.

See the item 'ICSA's new initiatives forum' below for more details on the latest ICSA developments.



President Ivan Tam delivering his opening remarks



Samantha Suen introducing the ICSA's new initiatives



Group photo

Chief Executive talks at AML and CG forum in Taipei

Institute Chief Executive Samantha Suen FCIS FCS(PE) was a speaker at the Anti-Money Laundering (AML) and Corporate Governance (CG) forum in Taipei on 14 June 2017. Ms Suen was invited to speak by the College of Law and the Center for Corporate and Financial Law, National Taiwan University, as well as the College of Law, National Chengchi University. The forum provided a platform for regulators and financial and Chartered Secretarial professionals to discuss the latest AML requirements and practices with over 100 attendees. Ms Suen focused on the role of the company secretary in AML issues from the Hong Kong perspective and the latest AML/CFT initiatives of the Institute.



At the forum

Photo credit: ETNEWS 新闻云 / 记者陈鼎元摄

Congratulatory lunch for Hong Kong's Chief Executive-elect

Institute Past President Dr Maurice Ngai FCIS FCS(PE) attended the congratulatory lunch for the Honourable Carrie Lam GBM GBS JP, Chief Executive-elect of the Government of the HKSAR, on her appointment as the fifth-term Chief Executive of the Government of the HKSAR on 19 June 2017. This congratulatory lunch was jointly organised by the Federation of Hong Kong Industries; The Chinese Manufacturers' Association of Hong Kong; The Hong Kong Chinese Enterprises Association; The Hong Kong Chinese Importers' & Exporters' Association; The Hong Kong Coalition of Professional Services, of which the Institute has been a member since 2011; The Hong Kong General Chamber of Commerce; and The Real Estate Developers Association of Hong Kong.



At the event

Stock Connect Corporate Access Day

On 15 and 16 June 2017, the Institute jointly organised the Stock Connect Onshore Corporate Access Day (掘金港股通 – 港股企业与内地研究所交流会) in Shanghai with New Fortune, The Hong Kong Investor Relations Association, The Chamber of Hong Kong Listed Companies and the Listed Companies Council of the Hong Kong Chinese Enterprises Association. The objectives were manifold, including to strengthen the understanding of Hong Kong listed companies by Mainland investors; to encourage further research relevant to the Mainland and Hong Kong markets; and to promote a better investor relations culture. Hong Kong Exchanges and Clearing Ltd and the Hong Kong Economic and Trade Office in Shanghai of the Government of the HKSAR were the supporters of this event.



At the event

Advocacy


Forum on ICSA's new initiatives


On 15 June 2017, the Institute's Council held a forum for members of its committees, panels and working groups on the new initiatives of The Institute of Chartered Secretaries and Administrators (ICSA). Institute President Ivan Tam FCIS FCS, Institute Past President and ICSA Senior Vice-President Edith Shih FCIS FCS(PE) and Institute Chief Executive Samantha Suen FCIS FCS(PE), discussed the ICSA proposals to introduce an intermediate grade of membership for 'Affiliated Members', and the creation of a new designation of 'Chartered Governance Professional' that would rank alongside that of 'Chartered Secretary'. They also discussed the Institute's position on the new ICSA proposals and the Institute's plan going forward. The participants shared their views on the proposed changes.

The Institute will be holding several members' fora to discuss the implications of these changes with members in August 2017. Invitations to these members' fora will be sent to all members soon.

Please also refer to the message from the ICSA President on this page and ICSA's website: <http://www.icsaglobal.org/proposed-charter-byelaw-changes/>.







Evolve for the Future

A message from the President

New strategic initiatives: proposed Charter & byelaw changes

As I mentioned in my President's report from April this year, your Council has developed two strategies to enable your Institute to take advantage of the worldwide focus on governance. The Council has now resolved to seek your approval to these initiatives that will position the Institute to evolve and grow sustainably by enhancing its reputation and reach.

The first initiative is an intermediate grade of membership that will not be Chartered but will allow graduates to call themselves Affiliated Members. This will appeal to those who for various reasons do not wish to complete the full Chartered examinations but do wish to benefit from membership of the professional body that will represent them best.

The second initiative is a new designation to be called Chartered Governance Professional that will rank alongside Chartered Secretary and will provide a home for individuals that have a role in delivering good governance but do not necessarily act or see themselves as company secretaries.


Whilst more people have governance responsibilities this has not translated into an increasing number of professionals joining the Institute. Whilst the Institute is the leading qualifying organisation for company secretaries and for those who value the practice of good governance, the wider business world and not-for-profit community may not fully appreciate the relevance of our training and qualification to the governance challenges they face. These two initiatives are designed to address this.

A meeting of members will be held in London on 4 October 2017 to seek approval of the Affiliated Member proposal and the Chartered Governance Professional proposal.

A formal Notice of Meeting will be distributed in early August that will detail the changes. In the meantime, you can read more about these initiatives on the Institute's website at www.icsaglobal.org.

I urge you to consider this information carefully. The future is in your hands and your Council recommends that you vote in favour of these important initiatives.

David Venus FCIS
President



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International Qualifying Scheme (IQS) examinations

December 2017 diet schedule

	Tuesday 5 December 2017	Wednesday 6 December 2017	Thursday 7 December 2017	Friday 8 December 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 30 September 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. Students are highly encouraged to activate their online account and obtain access to the study packs for examination revision as soon as possible. Detailed arrangements have been sent to students for information via email.

For further information 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.

Studentship

IQS information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute will share valuable experience on the career prospects of Chartered Secretaries. This seminar is open to the public. Members and students are welcome to recommend this seminar to colleagues and friends interested in learning more about the Chartered Secretarial profession.

Date:	Monday 24 July 2017
Time:	7.00pm – 8.30pm
Venue:	School of Continuing and Professional Education (SCOPE), 8/F, United Centre, Admiralty, Hong Kong
Guest speaker:	Rebecca Yu FCIS FCS(PE), Company Secretarial and Legal Affairs Manager, Hop Hing Oil Group

Studentship (continued)

'Passing the Torch' project 2017 – closing ceremony

This year's 'Passing the Torch' project with The Hong Kong University of Science and Technology (HKUST) came to a close with a ceremony held at the HKUST campus on 1 June 2017. This project, sponsored by The Hong Kong Institute of Chartered Secretaries Foundation Ltd (the Foundation), aims to promote better knowledge of business ethics and corporate governance among undergraduates and secondary school students. Details of the activities organised under the project this year were covered in the April and June 2017 editions of *CSj*.

At the closing ceremony, five groups of selected HKUST students, who gained knowledge in ethical standards and corporate governance from Institute fellows, shared with the attendees

their 'knowledge-passing' experiences during their visits to four secondary schools and an educational institution in April 2017. Institute President Ivan Tam FCIS FCS and Chief Executive Samantha Suen FCIS FCS(PE) presented scholarship cheques, sponsored by the Foundation, and certificates to the HKUST students for their participation in the project.

Guests at the closing ceremony also included: Dr Dennis Chan, Associate Professor of Business Education; Dr Kelvin Mak, Lecturer of the HKUST Business School; as well as other secretariat staff and a senior Institute member involved in this project.



Ivan Tam delivering his opening remarks



Group photo



At the closing ceremony

Policy – payment reminder

Studentship renewal

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

Exemption fees

Students whose exemption was approved via confirmation letter in April 2017 are reminded to settle the exemption fee by Saturday 29 July 2017.

HKEX consults on proposed new listing infrastructure

Hong Kong Exchanges and Clearing Ltd (HKEX) has launched a two-month consultation to seek public feedback on a package of proposals to broaden capital market access in Hong Kong and strengthen Hong Kong's listing regime. The deadline for responses is Friday 18 August 2017. The consultation comprises the two separate papers described below.

1. New board concept paper

The proposals contained in the new board concept paper are designed to enhance Hong Kong's ability to attract companies from 'new economy' sectors. A number of Mainland and other high-growth companies from new economy sectors have chosen to list on venues other than Hong Kong where Hong Kong's listing requirements have presented obstacles to them.

The new board would be divided into two segments to enable the calibration of shareholder protection standards based on the level of perceived risk in each segment. 'New Board PREMIUM' would be open to retail investor participation and, accordingly, a regulatory approach similar to that of the main board would apply. 'New Board PRO' would be open to professional investors only and would provide a 'lighter touch' approach to initial listing requirements. The new board would feature an accelerated delisting mechanism for both segments to help ensure ongoing quality.

2. Review of GEM

HKEX also proposes changes to the current listing rules for the Growth Enterprise Market (GEM). The proposals seek to address recent market and regulatory concerns regarding the quality and performance of applicants to, and listed issuers on, GEM. These include concerns about price volatility of GEM securities post-IPO, whether there is an open market for all GEM listings and the possible exploitation of GEM as a means of achieving a main board listing without a commensurate due diligence process at the relevant time. The proposals seek, among other things, to remove the streamlined process for GEM transfers to the main board and to increase the minimum expected market capitalisation and minimum public float value for GEM applicants. The proposed changes to the main board listing rules are designed to ensure that there is a clear distinction between the main board and GEM.

The two consultation papers, along with frequently asked questions, have been posted on the HKEX website: www.hkex.com.hk.

SFC consults on proposed rules for open-ended fund companies

The Securities and Futures Commission (SFC) has launched a two-month consultation on detailed legal and regulatory requirements applicable to new open-ended fund companies (OFCs) in Hong Kong. The consultation closes on Monday 28 August 2017.

The Securities and Futures (Amendment) Ordinance 2016 provides a legal framework for OFCs in Hong Kong. The OFC structure enables investment funds to be established in corporate form, in addition to the current unit trust form. Under the framework, all OFCs are required to be registered with the SFC as the primary regulator. The 2016 Ordinance also empowers the SFC to make subsidiary legislation and issue codes and guidelines in relation to the regulation of OFCs. The consultation sets out the SFC's proposed OFC rules and OFC code, which include requirements relating to the OFC's formation, its key operators, ongoing maintenance, termination and winding-up, and will be applicable to all OFCs.

The consultation paper is available on the SFC website: www.sfc.hk.

New insurance regulator for Hong Kong

Last month the Insurance Authority (IA) took over the statutory functions of the Office of the Commissioner of Insurance (OCI) to regulate insurance companies. The OCI was disbanded on the same day. The IA, a statutory body established by the Insurance Companies (Amendment) Ordinance 2015, is Hong Kong's new insurance regulator. Under the new regulatory regime to be administered by the IA, there will be an expanded scope of regulatory oversight over insurance companies. The IA will also take over the regulation of insurance intermediaries from three existing self-regulatory organisations and establish a statutory licensing regime within two years.

More information is available on the IA website: www.ia.org.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.

A bird's eye view

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

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



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