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June 2017

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

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Fellows: 585

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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.



Matters Arising

Welcome to another edition of your journal. As is typical for this time of year, when most of us are busy with annual report and AGM preparations, there is no shortage of important 'matters arising' vying for our attention, but first let me say a few words about the theme of this month's journal.

The anti-money laundering and counter-terrorism financing (AML/CTF) landscape has been changing dramatically in recent years with tougher regulation and supervision of companies' due diligence in AML/CTF compliance. This has had an impact on all of us, but the impact has naturally been greatest for practitioners working for financial institutions and corporate services firms.

Customer due diligence and record-keeping requirements have been in place for financial institutions in Hong Kong since the enactment of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), but proposed amendments to the AMLO, due to be enacted before the end of this year, would extend these requirements to 'designated non-financial businesses and professions', which includes trust and company service providers. The government also proposes to amend the Companies Ordinance to require companies incorporated in Hong Kong to maintain beneficial ownership information via a register of 'persons with significant control' (PSC register).

Our Institute broadly supports these measures, though, as set out in our submissions to the two consultations issued earlier this year, we have caveats about the details. In particular, we urged the government to restrict access to the PSC registers to competent authorities only, rather than allowing public inspection. This was also the view of the Hong Kong Institute of Certified Public Accountants and The Law Society. I am pleased to report that the government has taken on board this suggestion and will probably not require public disclosure of PSC registers.

The implications of these developments for company secretaries in Hong Kong are discussed in this month's cover story, but I would like to devote the rest of my President's Message this month to the most important of those 'matters arising' I mentioned at the outset. As you probably already know, the Institute of Chartered Secretaries and Administrators (ICSA) proposes to expand the International Qualifying Scheme (IQS) into two streams – one leading to the designation of 'Chartered Secretary' and the other leading to the designation of 'Chartered Governance Professional'. In addition, ICSA also proposes to introduce 'Affiliated Members' – a new intermediate-level category of membership designed to attract younger and aspiring professionals.

ICSA is currently in consultation with the UK Privy Council to gain in-principle approval of these changes and it plans to seek approval from its entire membership later this year. Each of the nine divisions of ICSA, including our Institute, will need to consider whether to implement these proposed changes, wholesale or in part. In the run up to the voting exercise, tentatively scheduled for October this year, our Institute is arranging for full and informed discussions of the implications of the changes with our members and stakeholders in the coming months.

Our Council supports the addition of the designation of 'Chartered Governance Professional' as a recognition of the increasingly important governance role of our members, but does not believe that Hong Kong should introduce the Affiliated Member category for the time being. Council has also set out its proposals regarding the ways in which our students and members can attain the new Chartered Governance Professional designation. In brief, all future students of the Institute would continue to take the eight qualifying subjects of the IQS, but with strengthening in risk management, to obtain the dual Chartered Secretary and Chartered Governance Professional qualifications. Our existing associates, graduates and students would be required to undertake further CPD training or assessment within a specified time period to obtain the new qualification. Our fellows, who already have a sound grounding in company secretarial practices, governance and risk management, would be grandfathered to become Chartered Governance Professionals upon implementation of the dual qualifying programme without further training or assessment.

I look forward to discussing these matters with you in the forums we plan to hold in the months ahead. In the meantime, look out for further announcements in this journal and on our website.

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

Ivan Tam FCIS FCS

续议事项

新一期的月刊又和大家见面了。每年这个时候，我们大多忙于准备年报和周年股东大会，须注意的重要「续议事项」很多；不过，请先让我简略介绍本期月刊的主题。

近年来，打击洗钱及恐怖分子资金筹集方面的工作有很大改变，有关规例更趋严谨，对于公司是否尽职符合相关规定的监察也更见紧密。这对大家都有影响，对任职金融机构及公司服务机构的从业员影响尤大。

自从《打击洗钱及恐怖分子资金筹集（金融机构）条例》制定后，香港金融机构须遵从有关客户尽职审查及备存纪录的规定。今年年底前，该条例将予修订，扩大相关规定的适用范围，涵盖「指定非金融企业及行业人士」，包括信托及公司服务提供者。政府亦建议修订《公司条例》，要求在香港成立为法团的公司以「拥有重大控制权人士登记册」备存实益拥有权资料。

公会大致赞同上述措施，但正如我们今年较早时就两项谘询文件作出的回应所指，公会对当中的细节有所保留。我们特别促请政府限制公众人士查阅拥有重大控制权人士登记册，只向主管当局授予相关查阅权限。香港会计师公会及香港律师会亦有同样意

见。我很高兴告诉大家，政府已接纳这项意见，很可能无须向公众披露拥有重大控制权人士登记册。

这些发展对香港公司秘书的影响，在本期的封面故事均有所论述；而下文则会探讨本文开首所提「续议事项」当中最重要的事项。大家可能已经知道，特许秘书及行政人员公会（ICSA）建议把国际专业知识评审考试所授予的资格分为「特许秘书」及「特许管治专业人员」两个组别。此外，ICSA建议新增中等程度的「联席会员」会籍，以吸引较年轻及有志于行业发展的专业人士。

ICSA目前正与英国枢密院商议，寻求当局原则上批准上述改变，并计划在今年较后时间（初步订于10月）把建议方案提呈全体会员通过。ICSA九个分部（包括公会）须考虑是否全盘或局部实施这些建议。在会员投票作决定前，公会准备在未来数月安排会员和各持分者详细讨论各项改变的影响。

公会理事会支持新增「特许管治专业人员」的资格，认可公会会员日益重要的管治角色，但认为香港暂时不应引入「联席会员」会籍。理事会亦就学员及会员可如何取得「特许管治专业人员」的新资格制定建议。简言之，公会学员将来须继续报考国际专

业知识评审考试的八个科目，但要加强风险管理方面的知识，才能取得特许秘书和特许管治专业人员的双重资格。现有的会士、毕业学员和学员须在指定时间内完成必修的持续专业发展课程或评核，以取得新资格。而在公司秘书实务、管治及风险管理方面已有稳固基础的资深会士，在实施双重资格认可计划后，即会自动成为特许管治专业人员，不必接受进一步培训或评核。

未来数月，我们计划举行多个论坛，届时再与会员讨论这些事项。在此期间，请留意本刊及公会网站的进一步公布。

谭国荣 FCIS FCS

AML/CTF: Hong Kong reforms

CSj looks at the implications for company secretaries and risk and governance professionals of the government's latest proposals designed to strengthen Hong Kong's anti-money laundering and counter-terrorism financing regime.



Next year, the Financial Action Task Force (FATF) – the Paris-based organisation that recommends how nations should combat money laundering, terrorism financing and other threats to the international financial system – will review the strengths and weaknesses of Hong Kong's anti-money laundering and counter-terrorism financing (AML/CTF) regime. It will be FATF's Fourth Mutual Evaluation of Hong Kong and officials on both sides hope there will be improvement since the third exercise in 2008 which uncovered a range of deficiencies relating to, among other things, customer due diligence and record keeping; regulating financial institutions; money transfer regulations; and cross-border movement of cash.

Since then, the government has discussed a range of measures to strengthen Hong Kong's AML/CTF regime, including the legislative proposals outlined in two public consultations held earlier this year. The first consultation – *Proposal on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions* (DNFBPs) – was aimed largely at more stringent supervision of real estate agencies, law firms, accounting firms and trust companies. The second consultation – *Proposal on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies* – sought, among other things, to improve the transparency of beneficial ownership of companies incorporated in Hong Kong.

If enacted, the proposals of the first consultation would require amendments to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), while the proposals of the second consultation would require amendments to the Companies Ordinance.

'Maintaining the status quo is not an option,' the Financial Services and the Treasury Bureau (FSTB) noted in April when releasing the conclusions from the two public consultations. Overall, the FSTB added, 'there is broad support for the government to enhance AML/CTF regulation in Hong Kong in fulfilment of our international obligations under FATF. A majority of the respondents indicated agreement with the overall direction and principles as well as the broad framework of the legislative proposals.'

The Hong Kong Institute of Chartered Secretaries (the Institute) was among the respondent organisations expressing broad support. 'The Institute welcomes the proposed requirements,' says Chief Executive Samantha Suen FCIS FCS(PE). 'We would expect that Chartered Secretaries would have no issue with the compliance thereof, given their solid training and experience.'

As a result of the consultations, the government plans to prepare amendment bills based on the consultation conclusions and introduce them into the Legislative Council during its current 2016–2017 session. 'A balanced approach to legislation should be adopted so as to minimise the

regulatory burden and compliance cost on affected businesses,' the FSTB stated earlier this year.

An ideal position

The legislative amendments discussed above will have an impact on company secretaries. For example, as DNFBPs, company secretaries working for company service providers would be subject to enhanced customer due diligence and record-keeping requirements.

'The Chartered Secretary is well versed in AML/CTF concerns,' Ms Suen points out, noting that Institute members are already specified intermediaries under the AMLO and are routinely accepted by financial institutions as suitable certifiers of corporate due diligence documents.

The Institute has supported its members by setting standards relating to customer due diligence and record keeping and harmonising them with those of financial institutions. It has backed this up with continuous training. 'The standards set by the Institute are among the most advanced and are made available to the public to set best practices for corporate service providers,' Ms Suen adds.

Highlights

Under the proposed legislative amendments:

- Hong Kong-based trust companies, and company formation and service providers would be required to pass a 'fit and proper' test and obtain a licence from the Registrar of Companies in Hong Kong
- company secretaries working for company service providers would be subject to enhanced customer due diligence and record-keeping requirements, and
- company secretaries would need to ensure compliance with the proposed requirement for organisations to maintain a register of persons with significant control.

Under the proposed new beneficial ownership rules, company secretaries would need to ensure compliance with the proposed requirement for organisations to maintain a register of persons with significant control. The Institute agrees with the government's conclusion that disclosure of beneficial ownership should only be made to competent authorities. 'We believe that is the proper approach

as set out in our submission to the consultation,' Ms Suen says.

The proposals of the two consultations are designed to bring Hong Kong's AML/CTF laws in line with international standards. Hong Kong enacted its AMLO nearly five years ago and FATF guidelines have evolved since then. 'The proposals are in the right direction to ensure

our local laws are in line with the FATF standards in order to safeguard the integrity and reputation of Hong Kong as an international financial centre,' says Cliff Lam, Associate Managing Director at Kroll, a forensic accounting consultancy.

He points out that the specific transactions that are the target of the proposed new rules include real estate purchases; management of client assets such as savings or securities accounts; company formation and management; and buying and selling of business entities. 'These transactions are usually of high value and may involve a certain extent of financial crime risks,' Mr Lam says. 'It is important that practitioners should really know their clients, the source of funds for the transactions and the source of wealth of their clients.'

The Institute believes that its members are best placed to ensure such knowledge is accurate. 'The Chartered Secretary is trained to recognise higher risks of money laundering and terrorism financing,' points out Ms Suen. 'It is a function of professional training to develop the ability to risk-manage.'

Trust in regulation

Under the proposed legislative amendments, Hong Kong-based trust companies, and company formation and service providers would be regulated for the first time. Such entities would be required to pass a 'fit and proper' test and obtain a licence from the Registrar of Companies in Hong Kong.

The Institute supports the need for licensing of corporate service providers. 'The Companies Registry is the natural choice, as it is involved in company formation,' says Ms Suen. However, she

HKICS submissions

Earlier this year, the Institute made submissions to the two government consultations on legislative proposals to enhance the anti-money laundering and counter-terrorism financing (AML/CTF) regime in Hong Kong.

In its submission to the *Proposal on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies*, the Institute supported the proposal to require an ultimate beneficial ownership register in line with Financial Action Task Force (FATF) requirements. The Institute called for the register to be only open to searches by competent authorities and it appears that the government will adopt such an approach.

In its submission to the *Proposal on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions*, the Institute supported the proposal to introduce a licensing regime for trust and corporate service providers (TCSPs), as a class of designated non-financial businesses and professions. However, it expressed concerns regarding the ability of unqualified persons to carry out customer due diligence and record keeping. The proposal in the consultation was to allow any natural person over 18, who is an undischarged bankrupt and not having committed certain offences, to be licensed as a TCSP. The Institute believes that only those with experience and/or those who are qualified individuals (in line with the position adopted by Hong Kong's major competitors) should be considered 'fit and proper' to be licensed.

'FATF has pointed out that a majority of countries surveyed believe that strong consideration should be extended to the "fit and proper" requirements for TCSPs as expertise is required to understand business structures and their intended purposes, as well as to conduct effective vetting of owners. The persons carrying out senior roles in TCSPs should therefore have relevant experience, knowledge and good character,' says Mohan Datwani, the Institute's Senior Director and Head of Technical & Research.

notes that the effectiveness of such a regime will depend upon the level of resources that regulators are willing to commit to deal with oversight, especially over untrained persons.

'If the person is a specified intermediary, like a Chartered Secretary, or a lawyer or accountant, then oversight is much easier and supported by their professional bodies,' Ms Suen points out. 'If the person is untrained, there will be a learning curve prior to effective compliance.'

Many corporate service providers face regulation in other countries. 'We are already compliant with the requirements of regulators in various other jurisdictions and these are applied to our procedures in Hong Kong,' says Joe Cheung, Managing Director, Corporate and Private Clients, at Vistra, a firm that establishes corporate structures and provides trustee and administration services.

Mr Cheung says the Hong Kong proposals are no more onerous than currently implemented in other financial centres. 'We welcome the requirement to perform customer due diligence and record keeping since we are already doing so,' he says, citing Vistra's global resources.

While trust companies have no objection to regulatory oversight in principle, how public the register of persons with significant control should be is a contentious issue. Mr Cheung adds that there is a reasonable entitlement to privacy in personal financial affairs. 'We do not believe public scrutiny into such matters will benefit Hong Kong society.'

The government's conclusions noted that 'only a notable few, mainly from an international advocacy background,

“ maintaining the status quo is not an option ”

The Financial Services and the
Treasury Bureau

opined that Hong Kong should maintain a central register for unrestricted public access,' adding that 'we agree that access to... registers should be restricted to the competent authorities only.'

Trust providers tend to agree. 'In my view there is no legitimate need for the public to access each and every company's beneficial ownership information,' says Hans Peter Stadelmann, Managing Director of Alpadis Trust in Hong Kong, citing client safety as a reason not to make data widely accessible. 'A publicly transparent beneficial ownership register is no protection for the clients, but good and enforceable regulations are.'

Raising suspicions

The Hong Kong Monetary Authority (HKMA) is the go-to authority under the AMLO for supervising authorised institutions' compliance with legal and supervisory requirements. However, the Joint Financial Intelligence Unit (JFIU), set up in 1989 under the Organised and Serious Crimes Ordinance (OSCO), provides the actual grassroots enforcement.

The JFIU's key to successful intervention is the suspicious transaction report (STR). In Hong Kong, when a person knows or suspects that any property is, or is intended



to be, the proceeds of drug trafficking or a crime, or terrorist property, this knowledge or suspicion should be reported to an authorised officer as soon as practicable. In 2016, the JFIU received more than 76,500 STRs, of which more than 68,000 – nearly 90% – were filed by financial institutions. There is no breakdown for members of the Institute, but law firms filed 969 STRs, real estate agents 58, and accounting firms just three. Trust and corporate services providers filed 27 STRs.

'The Chartered Secretary views STR filings as important,' says Ms Suen. She notes that company secretaries, lawyers and accountants are trained to recognise higher risks of money laundering and terrorism financing. 'As professionals who do know their customers, they would reject high-risk customers. It would not be surprising if their STR filings are lower.'

Criminal prosecutions for accountants, lawyers and estate agents would not be an option under the proposals, although provisions under OSCO would apply to employees of financial institutions who knowingly contravene certain AMLO provisions. They could face prison terms of up to seven years and fines of up to HK\$1 million.

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The Chartered Secretary is trained to recognise higher risks of money laundering and terrorism financing. It is a function of professional training to develop the ability to risk-manage.
 ”

Samantha Suen FCIS FCS(PE), Chief Executive, The Hong Kong Institute of Chartered Secretaries

Under the legislative proposals, the Institute, The Law Society, The Hong Kong Institute of Certified Public Accountants and the Estate Agents Authority would be responsible for investigating breaches and applying appropriate sanctions under their respective disciplinary regimes. For Institute members for whom such actions would not be appropriate, the proposed trust and company service provider regime would be applicable.

Such violations would also be subject to the Institute's disciplinary procedures. 'The Institute already has detailed disciplinary rules and takes into account proper procedures and safeguards to ensure fairness and natural justice,' says Ms Suen. 'The Institute would apply its existing rules to matters of discipline and regards its current disciplinary rules as effective.'

She adds that discipline is a hallmark of any professional body where members fall below the requisite professional rules or standards. 'Penalties could range from disapprovals, public censure, to suspension and/or removal from membership,' she adds.

Road to the future

The proposed amendments come at a time when Hong Kong's professionals

are facing new challenges, such as those presented by China's Belt and Road initiative that is expected to utilise Hong Kong's legal, financial and corporate expertise. 'Belt and Road will involve significant infrastructure projects,' observes Alan Linning, a partner with the Sidley Austin law firm. 'The questions that will be asked are – who is doing them and what is the source of the funding?'

Rebecca Li, a former Hong Kong Independent Commission Against Corruption officer, now with Berkeley Research Group, a management consultancy, points out that much of the Belt and Road development will be in nations that have weak AML/CTF regimes. 'You need to know about anti-corruption activities in developing countries,' she says.

In addition, Hong Kong is seeking to strengthen its AML/CTF regime just as the banking industry in the US wants an overhaul of the rules there, including those covering STRs. The global financial community is examining the ramifications of an influential report describing US regulations as anachronistic and inefficient.

The report, *A New Paradigm: Redesigning the US AML/CTF Framework to Protect*

National Security and Aid Law Enforcement, issued in February by The Clearing House, a US banking advocacy group, proposes a system under which banks report only on transactions that reflect law enforcement priorities, rather than every suspicious transaction. Such a change would 'lessen the burden' on banks, the report argues, tapping into the anti-regulation fervour of President Donald Trump's administration.

The HKMA regards Hong Kong banks as critical to ensuring an effective stance against money laundering. 'We work closely with other stakeholders within both the government and the industry to ensure that the banking sector is able to play its gatekeeper role in Hong Kong's regime,' the HKMA commented in a statement. 'We participate in various international forums, including [FATF] to ensure that our risk-based approach to AML/CFT supervision is consistent with international practice and allows the most effective use of resources to address areas of higher risk.'

Ms Suen says the FATF expects Hong Kong to deploy professionals such as Institute members to maintain a high standard of compliance. 'In a paper in 2010, FATF noted that there is an issue as to the requisite professionalism to discharge customer due diligence and record keeping requirements,' she says, citing FATF Recommendation 22. 'This is a topic that would no doubt be honed in upon,' she adds. 'Namely, whether by imposing rules and regulations, could untrained persons be expected to genuinely be able to discharge them?'

George W Russell
Journalist



HKICS ACRU 2017

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AML compliance

Dominic Wai, Partner, ONC Lawyers, looks at the role of company secretaries and directors in anti-money laundering compliance.

Millions of dollars come into and go out of Hong Kong every day, legitimate or not, as Hong Kong is an international financial centre with no exchange controls. In the last few years, huge sums have flown out from countries around Hong Kong to or via Hong Kong for tax, funds control or investment reasons. This creates issues and risks of money laundering. There have also been numerous business email scams, or cases of impersonation of C-suite officers, where companies from overseas were deceived into wiring large sums of money to bank accounts in Hong Kong. Such wire transfers and movement of funds via 'money mules' are also money laundering as the funds are the proceeds of crime.

As a member of the Financial Action Task Force (FATF), an independent inter-governmental body that promotes policies against money laundering and terrorist financing, Hong Kong is obliged to implement the anti-money laundering (AML) requirements promulgated by the FATF.

Recently, the Securities and Futures Commission (SFC) issued an announcement notifying the industry of AML concerns. In the announcement, the SFC highlighted the following areas of concern identified during its onsite inspections of licensees and its AML investigations:

1. failure to scrutinise cash and third-party deposits into customer accounts
2. ineffective monitoring of transactions in customer accounts
3. failure to take adequate measures to continuously monitor business relationships with customers which present a higher risk of money laundering
4. inadequate enquiries made to assess potentially suspicious transactions to determine whether or not it is necessary to make a report to the Joint Financial Intelligence Unit (JFIU), and lack of documentation of the assessment results, and

Highlights

- understand anti-money laundering (AML) laws and risks, and ensure that the company's systems and personnel are capable of addressing AML risks
- appoint a director to be the responsible director for AML compliance
- appoint a director or senior company officer to be the central reference point for suspicious transaction reporting





5. failure to monitor and supervise the ongoing implementation of AML and counter-terrorist financing policies and procedures.

While financial institutions and intermediaries under the regulatory regime of the SFC and the Hong Kong Monetary Authority have more stringent AML compliance requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, the trend of the compliance regime has been to expand to other non-financial professionals such as accountants and lawyers. It is therefore important that Hong Kong complies with international AML standards to maintain its status as an international financial centre. To achieve that, directors and company secretaries of Hong Kong companies thus have important roles in maintaining high standards of AML and avoiding the criminal offence of a breach of AML laws in Hong Kong.

Duties of directors and company secretaries in relation to AML

Directors of a company have the duty to act in the best interests of the company and also have the duty of reasonable care, skill and diligence. The duties of directors of listed companies are more specifically set out in Rule 3.08 of the listing rules which makes it clear that directors are responsible for fulfilling their duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. They are further required to, *inter alia*, apply such degree of skill, care and diligence as may be reasonably expected of a person of their knowledge and experience and holding their office within the company. Directors are also required to follow up on anything untoward that comes to their attention.

In relation to AML, Section 25 of the Organised and Serious Crimes Ordinance (OSCO) provides that a person commits an offence if, 'knowing or having reasonable grounds to believe that any property, in whole or in part, directly or indirectly, represents any person's proceeds of an indictable offence,' he or she deals with that property. It is a defence if there is a disclosure of knowledge or suspicion that the funds or property are crime proceeds to the JFIU – as set out in Section 25A of OSCO. For example, if an officer of a company (whether a director, company secretary or manager) has a suspicion that monies that he or she has received or needs to deal with may be crime proceeds and makes a suspicious transaction report to the JFIU (or other authorised officers as defined under the law) before dealing with the monies, if the JFIU has no objection, then it would be safe for the company and the company's staff to continue with the transaction.

Section 25A of OSCO imposes a legal obligation on a person to make a report to the JFIU or other authorised officers if that person knows or suspects that any funds or property are crime proceeds. Accordingly, if any company secretary or director knows, or has such a suspicion, he/she will need to make a report to the JFIU or disclose to the officer in the company who is responsible for suspicious transaction reporting.

Given that directors are responsible for directing a company's business effectively, and this includes ensuring compliance with all relevant Hong Kong laws, AML laws among them, a director with reasonable care, skill and diligence would need to comply with AML laws by being able to:

- understand AML laws and risks

- ensure that the company's systems and personnel (for example identifying a director to be the responsible director) are capable of addressing the AML risks identified, having regard to the specific nature and business of the company, and
- appoint a director or proper senior company personnel to be the central reference point for suspicious transaction reporting.

For company secretaries, a main role and duty is to ensure that the company complies with relevant laws and regulations, which includes AML laws and practices, and to advise the board and directors on such developments. For company secretaries of listed companies, again the requirements are higher as set out in Section F of the Hong Kong Corporate Governance Code (Appendix 14 of the listing rules). Section F requires company secretaries to:

- play an important role in supporting the board by ensuring good information flow within the board and confirming that board policy and procedures are followed, and
- advise the board, through the chairman and/or the chief executive, on governance matters and facilitate the induction and professional development of directors.

The code also requires all directors to have access to the advice and services of the company secretary to ensure that board procedures, and all applicable law, rules and regulations, are followed.

Accordingly, not only does a company secretary need to be apprised of AML



“ millions of dollars come into and go out of Hong Kong every day, legitimate or not, as Hong Kong is an international financial centre with no exchange controls ”

laws to ensure that company policy and procedures are in compliance with those laws, but he or she also has the duty to ensure that the board and its directors are also apprised of the relevant AML laws with proper training and understanding of such laws.

The Hong Kong Institute of Chartered Secretaries issued an *Anti-Money Laundering and Counter-Terrorist Financing Guideline* in May 2016 pursuant to its AML/CFT Charter for corporate service providers (CSPs) to adopt to achieve a high standard of AML measures.

While the guideline is aimed at CSPs, it provides a practical guidance to company secretaries, directors and senior management of companies in designing and implementing their own policies, procedures and controls in the relevant operational areas, taking into consideration the size and industry of the specific company to meet the relevant AML statutory and regulatory requirements.

The AML laws in Hong Kong have been described as 'draconian' and 'unfair' in the past when a person could be convicted even though he or she may

hold a subjective and honest belief that the property is not the proceeds of an indictable offence, provided that a reasonable right-thinking person would so believe. Recently there has been a change in the test to be used for assessing whether an accused has 'reasonable grounds to believe'. In the case of *HKSAR v Pang Hung Fai (2014) 17 HKCFAR 778*, the Court of Final Appeal (CFA) laid down a two-limb test, namely that the accused must have:

1. grounds for believing that the property in question represents the proceeds of an indictable offence, and
2. the grounds must be reasonable.

Regarding the grounds for believing that the property in question represents the proceeds of an indictable offence, the accused's perception and evaluation can be taken into account and the test of reasonableness should be used to determine the amount of weight to be given to such perception and evaluation. Regarding the test that the 'grounds must be reasonable', the CFA held that the test is whether any reasonable person looking at the grounds 'would believe' (rather than 'could believe') that the property dealt with

represents the proceeds of an indictable offence and the meaning of 'believe' should be used in the sense of 'know'.

Subsequent CFA judgments, in particular the 2015 judgment in the Carson Yeung case – *HKSAR v Carson Yeung (FACC 5 and 6/2015)* – have left this two-limb test of the defendant's 'grounds to believe' intact.

Conclusion

With the new test in the *Pang Hung Fai* case, a court may now take into account the subjective and honest belief of an accused regarding the property in question, making Hong Kong's AML laws less 'draconian'. However, it remains the case that directors are subject to the duty of skill, care and diligence to effectively direct the company's business, and company secretaries still have a duty to assist the directors and the board to apply such skill, care and diligence to comply with the law, including AML laws, and therefore to avoid any risk of breach of AML laws and investigation by the authorities that might affect the interest of the company.

Dominic Wai

Partner, ONC Lawyers



A brief introduction to China's Cybersecurity Law

Cecilia Xianying Lou, Partner; and Mark Guangrui Fu, Managing Associate; of King & Wood Mallesons, give an introduction to China's Cybersecurity Law which becomes effective this month, and assess the implications of the law for companies with a business presence in both Mainland China and Hong Kong.

China's Cybersecurity Law (CSL) was approved in November 2016, and took effect on 1 June 2017. Being the first legislation devoted to cyberspace, this legislation governs the establishment, operation, maintenance and use of cybernetworks within China and the supervision and management of cybersecurity.

The Cyber Administration of China (CAC) is the principal governmental authority supervising and administering the CSL and cybersecurity regime. In conjunction with the CSL, CAC recently published a series of supplementary implementation measures (Implementation Measures), including the:

- *Measures for the Security Review of Network Products and Services (Provisional)* (the Security Review Measures)
- *Public Opinion Draft of the Measures for Evaluating the Security of Transferring Personal Information and Important Data Overseas* (Draft Data Transfer Measures), and
- *Measures on Administrative Law Enforcement Procedures for Internet Information Content Management.*

The three Implementation Measures listed above came into force on 1 June 2017, but further measures may be forthcoming.

Generally speaking, only entities incorporated in Mainland China are required to abide by the CSL and its Implementation Measures. Yet in practice, we believe the CSL will exert profound impacts, direct or indirect, on Hong Kong companies as well, considering the countless ties between Mainland China and Hong Kong.

Selected highlights

1. Network operators

Almost a quarter of the CSL is dedicated to a series of requirements and obligations imposed on so-called 'network operators' for the protection of cybersecurity. Under the CSL, network owners, administrators, as well as network service providers are qualified as network operators; meanwhile, the term 'network' is defined by the CSL to encompass any system that is comprised of computers or other information terminals and relevant equipment that collect, store, transmit, exchange and process information. Given internet's widespread use and borderless connectivity nowadays, the definition of network operators seems to be a bit vague and can potentially be interpreted broadly. On its surface, any entities that own internet infrastructures, or utilise computers or other information terminals such as websites, mobile apps, online platforms, where information is stored, transmitted, exchanged or processed, are possibly to be considered as network operators, provided that they involve operation or use of networks within Mainland China. In other words, if a Hong Kong entity stores, transmits or processes

information collected from its users from Mainland China, or has Chinese affiliates administer or maintain its websites, this entity is likely to be deemed as a network operator and is hence captured by the CSL.

Whilst the scope of network operators calls for further clarifications, the CSL and its Implementation Measures make it abundantly clear that all network operators shall abide by the obligations set out below.

- **Classified cybersecurity protection system** – network operators shall comply with certain tiered security obligations according to the requirements of a classified cybersecurity protection system, which includes, among others:
 1. formulating internal security management systems and operating instructions
 2. appointing dedicated cybersecurity personnel
 3. taking technological measures to prevent computer viruses

Highlights

- China's Cybersecurity Law (CSL) largely applies to entities incorporated in Mainland China, but it will have a significant impact on Hong Kong companies given the close ties between Mainland China and Hong Kong
- If a Hong Kong entity stores, transmits or processes information collected from its users from Mainland China, or has Chinese affiliates administer or maintain its websites, it is likely to be deemed as a network operator and is hence captured by the CSL
- the CSL mandates critical information infrastructure operators to retain within Mainland China critical and personal information which they collect and produce during their operations in the Mainland

and other similar threats and attacks, and formulating plans to monitor and respond to internet security incidents

4. retaining internet logs for at least six months, and
 5. undertaking data classification, back up, encryption and similar activities.
- **Emergency response plan and incidence report** – network operators are obligated to formulate emergency response plans for network security incidents and report incidents to the authorities.
 - **Co-operation with authorities** – network operators shall provide technical support and assistance to state security bodies safeguarding national security and investigating crimes, and will be subject to government and public supervision.
 - **Personal information protection** – network operators shall not disclose, falsify, or damage the personal information of citizens they collect. Without consent of information owners, no network operators are allowed to disclose such personal information to others, except that such personal information after being processed cannot identify specific persons and cannot be restored. Network operators must take remedial actions to address any data leakage, report the same to relevant regulatory authorities and notify the data owners.
 - **Oversight of information published by users** – network operators

are required to block, delete, save relevant records of prohibited information published by users, and report the same to the authorities.

- **Establishment of complaint systems** – network operators shall establish cybersecurity complaint and reporting systems, and promptly accept and handle complaints and reports.

2. Critical information infrastructure operators

Of particular note is that the CSL introduces a new concept of 'critical information infrastructure' (CII), which makes reference to networks used in public communications, information services, energy, transportation, water conservancy, finance, public services, and electronic government, as well as those networks of which the failure would possibly harm national security, national economy, or public interest. This coverage of CII is non-inclusive, and the CSL provides that the specific scope and security measures for CII shall be provided by the State Council separately (though the timeline is unknown). On this point, neither the CSL nor its Implementation Measures have issued any rules or guidelines about the specific scope and security measures for CII.

Some commentaries have pointed out, however, that reference could be made to the scope of CII under the *National Cyberspace Security Strategy* published by the CAC in late 2016, where CII is defined as: 'information infrastructure that affects national security, the national economy and the people's livelihood, where whenever data is leaked, it is destroyed or loses its functionality, national security and the public interest may be gravely

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Hong Kong companies that have direct business interests in Mainland China... are encouraged to carry out a review of their data security rules and privacy policies in the context of China's Cybersecurity Law and its Implementation Measures
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harmed, including but not limited to basic information networks providing public telecommunications, radio and television transmission, and other such services, as well as important information systems in areas and state bodies such as energy, finance, transportation, education, scientific research, hydropower, industry and manufacturing, healthcare and medicine, social security, public undertakings, as well as important internet application systems, etc.'

By comparison, the *National Cyberspace Security Strategy* takes in some additional industries such as education, scientific research, industry and manufacturing, healthcare and medicine, and social security. Although the *National Cyberspace Security Strategy* does not make specific reference to the CSL as its legislative basis, we concur that it may shed some light on the construction of CII to some extent. In this regard, we advise companies in aforementioned industries, especially those in 'additional' industries such as



education, scientific research, healthcare and medicine, to be fully aware of CII's obligations, and to stay tuned for further interpretations to be issued by the regulatory authorities regarding CII.

In addition to abiding by all requirements for network operators, CII operators should also comply with a higher level of obligations imposed by the CSL as set out below.

- **Data localisation requirement** – the CSL mandates CII operators to retain, within Mainland China, critical and personal information which they collect and produce during their operations in the Mainland. They may still be able to transmit this information overseas, but only after undergoing and passing a security review. Nonetheless, the newly issued Draft Data Transfer Measures appear to expand the scope of undertakings for such data localisation and security

review requirements to a wider range of entities – under the Draft Data Transfer Measures, network operators, rather than CII operators, shall store personal information and important data collected and produced during operations in Mainland China. Besides, the Draft Data Transfer Measures list certain circumstances where outbound data transfer is strictly prohibited, as well as the scenarios where data export is subject to approvals. Considering the broad and ambiguous scope of network operators under the CSL, the final version of the Draft Data Transfer Measures governing the data localisation requirement may be of great significance for companies with a business presence in Mainland China. We would suggest a wait-and-see approach at this point, and advise international companies to pay special care and attention on updates about the Draft Data Transfer Measures.

- **Annual safety assessment** – CII operators are required to, either by themselves or through third-party agencies, carry out a review and an assessment of cybersecurity threats at least once a year.
- **National security review** – when CII operators procure network products or services that may affect national security, a national security review is required. Furthermore, the Security Review Measures lay down more details about how a security review will actually be carried out. Similar to the Draft Data Transfer Measures, it seems that the Security Review Measures also have broadened the scope of products and services that are subject to security review to some extent – according to the Security Review Measures, all important network products and services for networks and information systems that are pertinent to national

security will be subject to security reviews. In addition, the Security Review Measures require such review to focus on whether network products or services are 'secure and controllable', and further set forth detailed criteria to be considered. Pursuant to the Security Review Measures, the government will establish a special committee formulating important policies concerning security reviews, and the CAC is responsible for organising the specific reviews, which will be conducted by designated third-party institutions and experts.

- **Other obligations** – CII operators should set up dedicated security management bodies and persons responsible for security management, and conduct security background checks on those responsible persons and personnel in critical positions. CII operators are required to periodically conduct cybersecurity education, technical training and skills evaluations for employees, and conduct disaster recovery backups of important systems and databases.

3. Providers of network products and services

In addition to network operators and CII operators, the CSL also singles out 'providers of network products and services'. Despite the fact that both the Security Review Measures and the CSL are silent on the definition of 'network products and services', it is clear that certain statutory requirements have been imposed on its providers as set out below.

- **Compliance with national standards** – all network products and services shall comply with

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companies potentially affected by China's Cybersecurity Law should keep a close eye on the issuance of related guidelines, implementation rules, and the further development of China's cybersecurity regime
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mandatory requirements under PRC national standards, which we believe should refer to technical standards for quality, safety, specifications, etc.

- **Technical security requirements** – a provider of network products and services shall not install any malicious codes. In case the provider discovers that its product or service has security leaks or defects, it shall inform users and relevant authorities, and adopt remediation measures.
- **Security maintenance** – a provider of network products and services shall provide its customers with security maintenance of its products and services during the service period.
- **Personal data protection** – where a network product or service has a function to collect users' information, its provider shall inform the user and obtain the consent from the user. If the collected information involves any personal information, the provider shall comply with the laws and regulations on the protection of personal information.

Our observations

Despite the uncertainties and ambiguities of certain key terms and clauses, the changes that the CSL brings to China's cybersecurity landscape will definitely be beyond all expectations. Hong Kong companies that operate businesses in Mainland China or have direct business interests in Mainland China, especially those falling into category of CII operators, are encouraged to carry out a review of their data security rules and privacy policies in the context of the CSL and its Implementation Measures. This may require a thorough understanding of companies' infrastructure layout and operation mechanisms, data transfer routes, as well as day-to-day activities relating to information collection, storage, transmit and process within Mainland China. Last but not least, companies potentially affected by the CSL should keep a close eye on issuance of related guidelines, implementation rules, and the further development in China's cybersecurity regime.

Cecilia Xianying Lou, Partner; and Mark Guangrui Fu, Managing Associate
King & Wood Mallesons

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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:

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Future-proofing sustainable business

Richard Welford, Chairman, CSR Asia, gives his top 10 tips to 'future-proof' your business.

The world is changing. Challenging economic times, volatile world events, a deteriorating environment, a growing social divide and fast-changing technology are leaving businesses more vulnerable than ever. There is an urgent need to adapt to risks that are inevitable (such as those linked to climate change), but it is harder to predict where new risks may come from.

Future-proofing is the process of anticipating the future and developing solutions to minimise the negative effects while taking advantage of the positive effects of shocks and stresses due to future events. At the heart of any future-proofing strategy needs to be a commitment to contributing to the sustainable development of our planet.

The process of starting a business has become much faster, but the mechanisms of failure operate more quickly as well. Through social media, you can effectively communicate about new products and services. Yet those same channels will even more quickly spread news about consumer dissatisfaction, corruption scandals, environmental destruction and community conflict.

Overwhelming research evidence now confirms the fact that sustainable business is good business and can create value for society at the same

time as increasing profits. At the centre of that relationship lies innovation and companies that want to create profits with purpose will recognise the need for ongoing innovation. Indeed, innovation around sustainability can provide companies with a new competitive advantage at three possible levels: products, processes and business models.

- To create value, the focus needs to be on sustainable alternatives based upon customer or societal needs and aspirations, resulting in new business opportunities for innovative products and services.
- Companies that have redesigned their processes focus on improving their entire operation (including the whole value chain) with an emphasis on efficiency, competitiveness and inclusivity.

- Sustainable business models, on the other hand, will significantly impact the way business is conducted and the company's ability to deliver new solutions aligned with a new business philosophy.

Whatever approach you take, the key to staying in business in the long run is innovation and risk management. Yet, in many organisations, innovation often remains incremental, rather than fundamental and systemic. But, as social and environmental issues continue to increase in importance, incremental innovation will become less effective in enabling companies, industries and economies to successfully adapt and survive in the future.

Many organisations have elements of environmental, social and governance (ESG) risk management in place, but they

Highlights

- future-proofing is the process of developing solutions to minimise the negative effects, while taking advantage of the positive effects, due to future events
- just because a brand has been around for decades doesn't mean that it's right for today's marketplace – change has never been so fast
- organisations need to take a much broader perspective to risk, moving from being reactive and compliance-driven to being proactive and predictive



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companies that will
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are often not as robust as they need to be to deal with risks that are much less predictable. Too often they focus on the extrapolation of past risks, rather than predicting future possible risks. There is a need for companies to take a much broader perspective to risk, moving from being reactive and compliance-driven to being proactive and predictive.

Thinking strategically about risk and taking a broader, deeper, more rigorous approach to risk can create agility and focus, both in the way you respond to risks and the way you innovate to exploit opportunities. This will bring competitive advantage and, with it, the ability to plan ahead with more certainty, in turn, future-proofing your business.

Companies therefore, need an approach that can anticipate ESG risks and at the same time build innovation structures. This is the only way to future-proof sustainable business. Businesses need an approach to manage this process that will feed into a future-proofing strategy.

Here is my top 10 list for developing a strategy to future-proof your business.

1. Establish a social purpose

Companies that will survive in the long run will have to do more than make profits. Stakeholders want to see societal contributions and shared value. Embed



a social purpose into the company's competitive positioning. Align your assets and expertise to meet social and environmental needs. Make sure that you are known not only for the products and services that you provide but also for the contribution you make to people, communities and the environment.

2. Zoom out and track the trends
Some of the trends that are shaping the

future are not difficult to see. Climate change, water, labour issues and human rights have consistently ranked highly in the annual research *Tracking the Trends* undertaken by CSR Asia. Stay on top of these big issues since they tend to have a huge influence on regulation, consumer sentiment and the campaigns of big NGOs. Periodically zoom out from the running of your business to look at the issues shaping the future.

3. Track influencing factors and predict future demands today

Be aware of the triggers and the stakeholders that can impact changing societal expectations. Social media has resulted in habits changing dramatically and this has affected lots of different businesses. You need to watch out for such influencing factors and influencing people that can indirectly impact your business. Make yourself aware of the developments happening around you even if those are not related to your industry. People cannot always tell you what they want, you have to anticipate change. This needs some imagination and experience with the trends of the industry you work in.

4. Listen to your stakeholders, but don't always believe them

Ongoing stakeholder engagement is key to uncovering the aspirations of people for the future. Take time to talk to younger people, in particular. Always take what your stakeholders tell you seriously and respond to their aspirations, but don't believe them when it comes to predicting the future. Get to know your stakeholders well, with deep insights into how they think and then try to imagine how they may behave in a very different kind of future world.

5. Evaluate risk in the future

You won't be able to predict the problems that might occur in the future but you can certainly take some steps to better prepare yourself. Find the risks or possible point of failures for your business. These risks could be in areas like people, systems, legal compliance or governance. But even more difficult to predict are the risks that arise because of changing aspirations of young people, conflicts over resources, runaway climate

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make sure that you are known not only for the products and services that you provide but also for the contribution you make to people, communities and the environment

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change and human rights abuses. Develop scenario planning techniques and try to be your own futurologist.

6. Create a favourable place for innovation to thrive

You cannot win by following the leaders, you have to innovate. Innovation requires creativity and trying out new ideas for products, services, processes and business models. That means encouraging new ways of meeting societal needs and new ways of operating, and it means not punishing mistakes that occur as the result of much needed experimentation. Create agile management teams that thrive on change.

7. Develop strategic partnerships for co-creation

Work with external partners with particular expertise where this can create synergies. Recognise that impact is most likely increased when people work collaboratively rather than competitively. Identify opportunities for collective impact. Contribute to multi-stakeholder initiatives that can focus on creating systemic change that can create value for businesses and societies.

8. Bring in outsiders to challenge your world view

The greatest risk to any business is institutional blindness, becoming

seduced by one's own views and opinions. Seek out advice from experts, consultants, innovators – people who think very differently to you and others in your company. Include them in key strategy discussions. Create future-oriented workshops to make sure your business increases its chance of surviving into the future.

9. Shape your own future

You do not have to stand by and watch the world change around you. There is a role for businesses in being a change agent. This means focusing on your social purpose, developing a theory of change, communicating through bold thought leadership and being part of shaping those future trends. You too can be an influencer.

10. Move from the brand and back to the purpose

Just because a brand has been around for decades doesn't mean that it's right for today's marketplace. Change has never been so fast. But you need to make a contribution to sustainable development by managing ESG risks and creating innovative, profitable solutions. After all, the best way to become a billionaire is to help a billion people.

Richard Welford, Chairman, CSR Asia

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Towards an inclusive governance – part two



This second and final part of the winning paper of the Institute's Corporate Governance Paper Competition 2016 completes the authors' elaboration of their five-stage inclusive stakeholder model of corporate governance.

In this article, we advocate an inclusive stakeholder model for the implementation of better corporate governance. The first part of this article, published in last month's *CSj*, sketched out our definition of corporate governance, the existing problems of corporate governance in Hong Kong and covered the first standard setting stage of our five-stage inclusive stakeholder model of corporate governance. This second and final part of our article will look at the remaining four stages of the model.

2. The compliance stage

The role of the company secretary has experienced a fundamental shift in recent years – from minute-taking to advising the board and helping to determine the company's future strategies. Every listed company in Hong Kong must have a company secretary, who serves the critical purpose of ensuring the board complies with the listing rules and fulfils its statutory responsibilities. Company secretaries also play a vital role in ensuring compliance with laws and regulations, and the company's own internal guidance. The company secretary is also expected to spot any governance problems in the company and provide the board with workable solutions. The importance of the company secretary in corporate governance is observed in their advisory position to the board.

Given the company secretary's role connecting the internal stakeholders, we suggest that the company secretary should:

- mobilise employees in the company to raise awareness of corporate governance, and
- coordinate the information flow between the board and employees.

Corporate compliance activities are not governed by widely accepted standards. Therefore, externally, professional associations from each industry could set out new standards of compliance for their members to follow. The drawback of setting out a general compliance standard is that it is not specific to each industry and the company could therefore use this as an excuse not to follow the standard. Creating industry-specific compliance standards allows no room for ignorance of the requirements. The relevant associations can also host sharing sessions to talk about success stories with their members. As a result, the compliance side of corporate governance can be advanced externally and internally.

Highlights

- the authors argue that effective corporate governance requires the collaboration of both internal and external forces
- since the Companies Ordinance does not apply to the many Hong Kong-listed companies with an overseas domicile, it should be supplemented by equivalent requirements in the listing rules so as to create a level playing field for all companies
- non-shareholding stakeholders cannot be neglected as they play an important part in instilling the concept of corporate governance in every market participant

3. The monitoring stage

Regular monitoring can aid the discovery of loopholes and the early discovery of faults can mitigate losses.

Audit monitoring

External auditors look at information disclosure during the course of their audit. They have to check to make sure the information disclosed fulfils the minimum legal requirements. Their responsibilities go beyond merely fulfilling their contractual relationship with the client. Indeed, their public responsibilities are much more important. Therefore, they should not just blindly follow the requirements of their client. Instead, they should regulate their clients by requesting any missing information and checking its accuracy. Sometimes, their clients do not like this. However, this is also the reason why auditors serve as one of the important external monitoring forces for better corporate governance.

Public inspections

Due to the importance of the external

auditors, they should be monitored as well. Auditors have to stay independent and be aware of any conflicts and associated relationships with their clients. Public inspections on audit companies are hence required to achieve comprehensive and effective corporate governance.

Market monitoring

Market monitoring is also important. Market intermediaries must report any market misconduct they find. This may reduce the monitoring costs of regulatory bodies. This mechanism can keep an eye on corporate ethics from a bottom-up perspective, which is different from the top-down perspective of the regulatory bodies.

Internal controls

In addition to the help from external forces discussed above, internal controls within the company are also useful in striving

for better corporate governance and to minimise business risks. As mentioned in the standard-setting section of last month's article, we recommend that companies establish their own corporate standards, which could be above the legal requirements. However, setting standards alone is meaningless. Standards should come with an internal error correction mechanism. The company should constantly review its corporate governance, thus responding to institutional pressure. Once it realises there has been a serious deviation from the standards set, it should review the causes and make corresponding adjustments. As a result, this mechanism can maximise the effectiveness of the internally set standard.

4. The enforcement stage

Two suggestions are proposed in this stage. Firstly, in order to bring about effective reform of corporate behaviour,

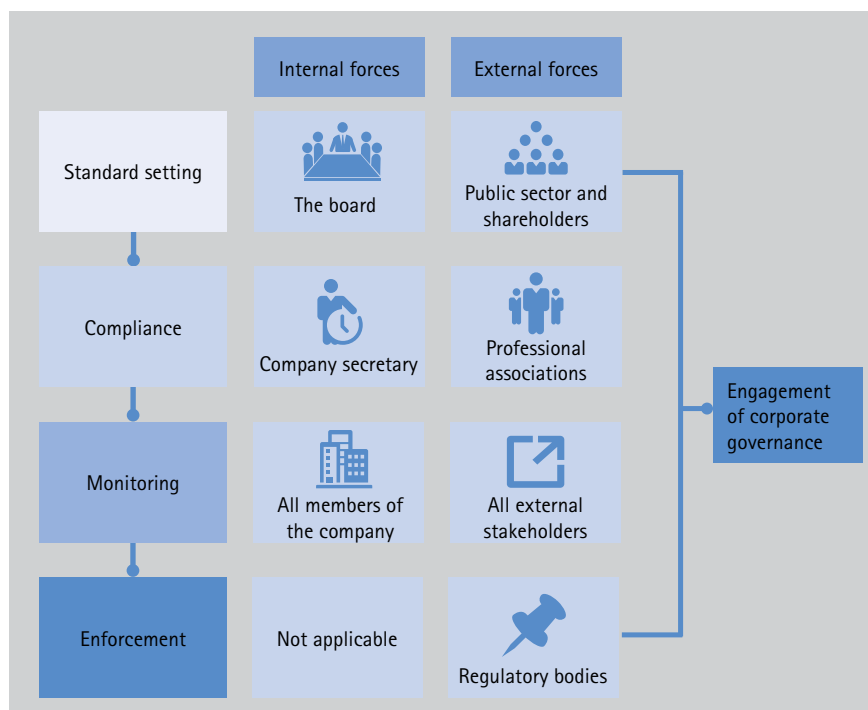
the duty to lead corporate governance reform falls squarely on the government. Secondly, while due regard has to be given to the unique cultural and historical background, Hong Kong has to move from transitional measures of half compliance to ultimate full compliance.

The government should lead corporate governance reform

The government should take the lead in initiating reform. Therefore, the government should be subject to the same, if not more stringent, duty to answer inquiries and the duty to account for the watering down or even rejection of the proposals for reform submitted by Standing Committee on Company Law Reform (SCCLR) and other parties, for example David Webb's HAMS proposal. The strictest duty to be accountable is required from the government for a number of reasons. First, if the government gives ambiguous and unconvincing justifications for rejecting proposals for reform, it is certain to undermine the corporate duty to be accountable when questioned by watchdog groups. The corporate sector may easily deflect external monitoring by blaming the government for having double standards for itself and the private sector. One example is the government's failure to give statutory backing to the rules on financial disclosure and connected transactions suggested in the SCCLR's 2005 proposal.

Second, the government's duty to account for the rejection of proposals for reform is highly determinative in achieving good corporate governance. As mentioned, the five stages of corporate governance are interrelated and mutually-reinforcing. If the proposals for reform are not given serious consideration at the enforcement

The inclusive stakeholder model





“ given the dysfunctional political system and legislature, the voice of activist groups serves as a better indicator to rebalance the interest of stakeholders ”

stage, this will render the efforts of the other four stages futile. Given the dysfunctional political system and legislature, the voice of activist groups serves as a better indicator to rebalance the interest of stakeholders.

Legal and regulatory reforms with teeth
As for the second suggestion, Hong Kong should move from halfway compliance to full compliance. The government must strengthen the regulatory framework and improve the overall regulatory efficiency. This involves giving greater statutory backing to the Corporate Governance Code and the listing rules, and improving co-ordination between the government, the SFC, HKEx and other regulatory bodies.

Hong Kong currently adopts a comply-or-explain regime as set out in the Corporate Governance Code. The rationale for this is that 'one size does not fit all' and companies may choose to either comply or to explain the reasons for any non-compliance with respect to their own circumstances. However, scholars have suggested that

a similar model in UK depends greatly on the initiative and stewardship of shareholders and the efficiency and discipline of the market, both of which are lacking in Hong Kong. Moreover, implementation of the comply-or-explain regime is effective only to the extent of companies' compliance but not in demanding specific explanations, as shown by the frequent use of standard explanations. Furthermore, many provisions of the Code are not specific enough and therefore unenforceable. We therefore argue that the government should require mandatory compliance for more provisions and gradually phase out the 'comply-or-explain' model.

Similarly, the broken net of the Companies Ordinance (Cap 622) should be fixed by strengthening the listing rules. The Companies Ordinance does not apply to the many Hong Kong-listed companies with an overseas domicile, so should be supplemented by equivalent requirements in the listing rules so as to create a level playing field for all companies. Alternatively, the government should expand its regulatory reach by signing

more MOUs and stepping up international enforcement cooperation.

A related matter is overall regulatory efficiency. It is worth noting that mere improvement of regulatory efficiency is futile if the regulator is not equipped with well-drafted legal weapons. It has been suggested by some that to sharpen the regulatory machinery, Hong Kong should have the SFC as the single regulator. This warrants caution. Only two countries in the world, Australia and Pakistan, have adopted this practice of having a single regulator. Rather, we propose that a relocation of the regulatory function from HKEx to the SFC would suffice avoiding conflicts of interest between the securities market operator and the market regulator. The functions of market operation and enforcement shall remain separate to prevent regulatory arbitrage.

In the short term, given the foreseeable opposition in reforming the comply-or-explain model and the huge costs of monitoring the quality of companies' explanations, the government should strengthen the monitoring function

in the public arena to relieve the regulatory burden.

5. The engagement stage

Despite empowering stakeholders with rights and giving them responsibilities, stakeholders may not have strong incentives to participate in the corporate governance process owing to the cultural and historical background in Hong Kong. As a result, proposals for reform can only succeed if they can influence stakeholders to think beyond their self-interest and take up more social responsibility. To do so, any proposal should take into account cultural influences.

Shareholder engagement

There has been a lack of shareholder activism in Hong Kong owing to the Asian culture of reluctance to resort to confrontation and resolution of conflicts by law. Other obstacles discourage investors from actively monitoring the company they have invested in. For example, their willingness to exercise monitoring powers is limited by the size of their shareholding, particularly where there are non-institutional controlling shareholders. Their willingness is further hampered by the lack of access to information and their preference to shy away from the spotlight. Exiting by selling their shares is simpler and generally a more favoured route for investors.

Is shareholder engagement desirable or is it just chaotic activism? Institutional investors have a crucial role in monitoring nominations to the board, the performance of corporate strategy and influencing the decision-making process due to their expertise and power. What distinguishes institutional investors from retail investors is that the former have a more long-term investment objective.

The inclusive stakeholder model applies to shareholder engagement. Both institutional and retail shareholders should be included. We suggest that the idea of institutional investor activism should be encouraged in Hong Kong to encourage collective activism with other minority shareholders. On one hand, there should be disincentives for the delegation of ownership obligations. But, more importantly, stronger incentives for active supervision have to be created. As mentioned above, institutional investors have a stronger willingness to monitor if they have a larger shareholding. Similarly, the composition of the voter pool is an important consideration. The targets of institutional activism are usually those firms with high institutional shareholdings and low insider shareholdings. A possible but highly disputed suggestion is to increase the free-float of shares to make room for a larger shareholding among minority shareholders.

Given the political constraints in increasing the free-float of shares, the role of the retail investors in collective activism cannot be overlooked. Some institutional investors are beginning to recognise the importance of collective activism with other minority shareholders. We think that more will follow suit when the success rate grows. Therefore, we propose a voluntary approach to investor activism as opposed to current SFC guidelines on responsible ownership. This is not only because the principles are not effective, but because encouraging willingness to participate without creating incentives is not effective enough (for example Principle 5 of the responsible ownership guidelines). A UK-style stewardship code is unnecessary and inapplicable to Hong Kong.

Build up corporate culture

Corporate culture also plays a vital role in

determining whether the desired corporate governance could be engaged and properly enforced within the company. Corporate culture generally refers to a set of values, rituals and standards that unifies how the employees behave in relation to the customers, fostering a unique culture for the company. Since these values are widely shared by the members of the company, in this sense, corporate governance acts to consolidate the corporate culture to a large extent.

On the other hand, some have suggested that employees and the CEO, which are parts of the corporate culture, can heavily influence corporate governance. As the corporate culture defines how the company works externally and internally in terms of business transactions, the board, which ultimately determines corporate governance, is affected by the corporate culture. Corporate governance and the corporate culture can therefore be said to be interrelated.

Indeed, at Lehman Brothers over-complacency badly influenced corporate governance, and this culminated in a crisis across the globe. After all these failures, whistleblowing programmes have emerged to help advance corporate governance. These form an important part of the culture of a company. Even though few studies reveal that having a whistleblowing policy can be an effective means of fighting corruption and poor corporate governance, there are many managerial issues in implementing such policies. A study by the Economist Intelligence Unit, in which more than 100 executives from various countries and industries were surveyed on their opinions on corporate governance, revealed that the largest obstacle to implementing corporate governance

is cultural and managerial hostility towards whistleblowing. So we can see how the corporate culture can affect the effectiveness of a whistleblowing policy and ultimately corporate governance.

The prominent relationship between corporate governance and corporate culture can be observed by contrasting the corporate culture in SMEs in Hong Kong with that of multinational corporations in foreign countries. Managers in Hong Kong SMEs are prone to ignore any misconduct or violation because of the traditional convention rooted in their mentality – turning a blind eye to any misconduct as long as the business is not harmed. On the other hand, a system of checks and balances is common within

foreign companies. This separation of powers helps maintain good corporate governance. Therefore, in order to improve corporate governance in Hong Kong, the corporate culture in its SMEs needs a serious review and evaluation.

Other non-shareholding stakeholders
External parties – other non-shareholding stakeholders – cannot be neglected as they play an important part in instilling the concept of corporate governance in every market participant. Indeed, ethical market players form one of the forces structuring a company's corporate governance. For a market to be effective and efficient all the stakeholders and market participants must act with integrity. This is what we desire in the Hong Kong market. Even

though they might not be the subject of regulation at this moment, there needs to be a greater awareness of corporate governance in a bid to achieve corporate governance through ethical guidelines or good communication channels. A clear example is that the capital market should not reward companies with bad corporate governance with easy access to equity capital and favourable interest rates. Most importantly, every stakeholder should take up a more active role and should not wait until the next market breakdown to catalyse any regulatory reform that could have prevented market failure.

Chan Sze Wai, Chiu Wai Hung and Wong Ho Wai

The University of Hong Kong



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Gender diversity on boards: are quotas the answer?

Alicia Yi, Managing Director, Board and CEO Services, Korn Ferry, discusses whether quotas will be required to increase the number of women on the boards of Asian listed companies.



Asian companies continue to lag the rest of the world when it comes to gender diversity according to research by global people and organisational advisory firm Korn Ferry. The long-term research project has found little change in Asian markets which do not adopt a quota system or board membership regulations, despite the publicity and the professed commitment to diversity by listed companies.

The Korn Ferry *Diversity Scorecard*, done in conjunction with the Centre for Governance, Institutions and Organisations at the National University of Singapore, also observed that Asian boards seem to adopt a more systemic and collective 'blindness' to the value of diversity based on a more traditional patriarchal approach.

While the study suggests a compelling business case for the appointment of women to the board – they are good for the bottom line – this has not translated into seats on the board for women in listed companies across the region. Companies in the study with at least 10% female board members on average have a higher return on assets and return on equity than companies with fewer than 10% female board members.

'When companies have a good corporate practice, it shows up in gender diversity as one aspect of many things that they do,' says Korn Ferry's Managing Director, Board and CEO Services, Alicia Yi. 'Boards that seek real advantage from diversity first have to engage in some self-reflection and be ready to make a few changes in both thought and process. That may include examining views of diversity on the board's own team, accepting diverse directors as full-fledged

partners, and employing tactics that make room for new directors on the board. The role of the board is a challenging function – its job is to challenge management. Doing risk management is not about rubber stamping – it's imperative to have different views on the board, but that mindset is not yet prevalent in Asia.'

Based on the top 100 listed companies from each economy in 2014, the year covered by the latest study – *Diversity Scorecard 2016: Building Diversity in Asia Pacific Boardrooms* – women made up 10.2% of the directors, up from 9.4% in 2013 and 8.0% in 2012. For Hong Kong, the figure was 10.7%. Another study released in March 2017 by the not-for-profit organisation Community Business found that 12.4% of directors on boards in Hong Kong are women.

So why are women missing from the Asian boardroom?

'There are a couple of things you need to think about,' says Ms Yi. 'One is the funnel or pipeline. The female supply of candidates that fit board requirements is limited because there are not enough women at senior levels in companies. You actually see a lot of women – almost 30%

to 40% in middle management roles, but it dwindles very fast as you move up the organisation.'

'Boards also generally want to hire people with profit and loss experience. The trouble is when you look at the C-suite, men dominate,' Ms Yi explains. 'The issue is not so much that there aren't capable women – but that they don't fit the required mould.'

Firms like Ms Yi's are increasingly being asked to improve the pipeline to a pool of possible female candidates by helping prepare senior women to be board-ready. 'Though there has been talk about gender equity in top leadership roles, in reality, we have reached a plateau. It has been difficult to shift from the stated desire of companies to have more women in leadership positions to tactical delivery that will ensure women are in the talent pipeline. Businesses need to put more effort into developing female talent up the career ladder. That could be how they retain their senior executive women and meet their diversity targets,' she tells CSj.

Family values

The predominance of family-owned or controlled companies in Asia is usually

Highlights

- Korn Ferry's 'Diversity Scorecard' research has found little long-term improvement in gender diversity on the boards of Asian listed companies
- companies in the study with at least 10% female board members on average have a higher return on assets and return on equity than companies with fewer than 10% female board members
- the author recommends an approach similar to the one adopted in the UK Corporate Governance Code where targets for gender diversity are set with the threat that quotas will be imposed if the targets are not met voluntarily



“
I think quotas are
the only thing that
will really work if I
want to see change
in my lifetime
”

cited as a barrier to greater gender diversity in listed companies and a particular characteristic of the Asian corporate landscape.

'That has an impact on the dynamics of selecting the board members because the family having a controlling power will appoint the people they are comfortable with, usually from within their inner circle to join the board,' Ms Yi says.

But change is afoot as the second and third generation of these founding families return from studies in the US or UK with their MBA or business management experience and with a different mindset, but change is happening slowly according to Ms Yi. 'Often the founders have a difficult time letting go and even when they hire a CEO who is professional, they maintain a strong control over their companies,' she says.

She adds that the old boys' network is still prevalent across Asia and this too is inhibiting the appointment of women to boards. 'In Asia, there is a lack of leaders who strive to bring about a diverse and inclusive board structure. When you look at the composition of a lot of boards in Asia, there are not many truly independent directors and the board selection process still relies heavily on

social networks. The way Asians view board appointment needs to catch up with the times too. Board directorships are often coveted for their prestige and viewed much like memberships to an exclusive club where directors view it as an honour to be asked to sit on a board rather than a professional responsibility that will require a considerable time commitment.'

'In markets like Australia you can't sit on the boards of more than six listed companies, so in a lot of developed countries there are regulations around how many listed boards you can sit on. I haven't seen that in Asia yet. I know some people in Singapore who sit on 15 boards, that's more than a full-time job.'

This is where, Alicia believes, the board chairman and company secretary have a role to play in leading and managing a board. 'Board leadership, composition and process are not static; rather, they change to align with shifting strategies as well as external factors, including macroeconomic forces and new competitors. No structure can be expected to last forever. As such, renewal and remodelling is needed,' she says.

So why are Singapore and Hong Kong, the two leading international business hubs of the region, that pride themselves on their

corporate governance and commitment to diversity and equality, lagging behind Malaysia, India and China when it comes to gender diversity in the boardroom?

In India and Malaysia, the presence of quotas plays a big role, but Ms Yi believes corporate culture also plays a role. Although Hong Kong has a track record of high-profile women in business and government, including the Chief Executive elect of the Special Administrative Region, this has not translated to the boardroom. 'Due to the visibility of a select number of high-profile female leaders in different sectors, often people just assume that the bias doesn't exist anymore, but our research paints a different picture,' she says.

Despite Hong Kong having the largest boards in the region with an average of 14 members, 29% of boards still have no women. In particular, few women are being appointed as executive directors, who comprise 31.3% of directors (another 39.7% are independent board members and 29.0% non-executive directors). The energy and information technology sectors also saw the lowest representation of female board members at less than 4%.

Singapore has a board culture that does not place emphasis on gender diversity, with only 33% of boards surveyed considering it an important attribute. Furthermore, over 80% of board search committees use criteria that tend to favour managers already within the pool of directors on boards. This makes it difficult for women to break into this network of directors seen as having the right skills, experience and contacts to serve on boards. Another major limiting factor is the tenure of Singapore directors, with an average of 9.4 years amongst

male directors and 7.2 years for female directors. Both figures are the highest in the region. This low turnover limits the opportunities for women to obtain directorships and there are still several sectors in Singapore where women make up less than 5% of board members.

One force for change may be emerging from the bottom up – shareholder activists. Ms Yi says, increasingly, institutional investors are demanding gender diversity as are shareholders at meetings, more so in Hong Kong than Singapore.

Half the sky

China does not have a gender diversity quota or regulations on the composition of boards of listed companies but it comes ahead of Singapore and Hong Kong in the survey. Chairman Mao's maxim that women hold up half the sky may have had some influence on this.

'When I look at the corporate culture, I think a positive thing that resulted due to communism is this gender neutrality. Women have long been recognised as assets in the Chinese workforce and this is apparent during my business meetings in China where I see a lot of women in senior roles. This is a stark contrast to Japan and Korea,' Ms Yi says. Booming technology and ecommerce companies in China also have a very different, gender blind, philosophy in regards to hiring. 'They are just looking for the smartest and most qualified talent,' she adds.

Ms Yi has changed her attitude towards the idea of quotas. 'I think quotas are the only thing that will really work if I want to see a significant change in my lifetime. I used to be really against it for all the reasons people talk about. A lot of women

are against it because they don't want to be seen as token additions.'

'While progressive societal norms are the most effective way to build meaningful and impactful gender diversity on corporate boards, each region has different levels of societal acceptance for gender equality. Relying on market forces will not move the needle by much. Putting in place a target with a threat of a quota, similar to the UK Corporate Governance Code on gender diversity at board level, is a step in the right direction,' she adds.

An emerging area where women can have a greater input if at the periphery of the board, is on advisory committees. 'Because board composition is less flexible, a lot of companies are now starting to put together an advisory board and we see that happening a lot in China,' she points out.

Ms Yi sees sprawling Chinese conglomerates embracing these committees as their businesses grow quickly and diversify, and they need the experience and insights to comprehend new sectors and markets. 'A Chinese company trying to market in the US or a traditional company trying to get into ecommerce may need some advisers. There are a lot of companies moving towards the advisory board concept.'

'As Asian companies mature and face greater competition and go global, there has to be a trend of professionalising the whole process of selection and appointment. The highest-performing boards now plan for board succession as much as they would for CEO succession. Undertaking a regular board evaluation is a crucial element of the board succession planning process. That requires a keen understanding of the strategy, as well as the ability to identify

directors with the skills and experience that synchronise with the strategy. To enable success, an increasingly important consideration for all boards as they refresh membership is diversity,' she says.

Listed companies and boards are increasingly looking to firms like Ms Yi's to support the selection process. The traits she looks for in a potential board member for her clients, though, remain gender neutral. 'What I look for in a board member is their ability to articulate an insight and that insight could come from asking certain questions,' she says.

'It's a combination of competence as well as maturity in their thinking because it's a very different responsibility from being an executive. As a board member, you are given a lot of information and you need to be able to reflect on it and ask the right questions. It's insight and depth, and the ability to demonstrate professional experience and provide a different perspective. They have to come well prepared to the board meetings, and, more often than not, female board members ask different questions, bring a different set of experiences and concerns with them into the boardroom and come better prepared,' Ms Yi says.

James Kelly

Journalist

Korn Ferry's Diversity Scorecard 2016: Building Diversity in Asia Pacific Boardrooms is available online at: www.kornferry.com.

The Community in Business report on gender diversity on boards 'Women on Boards Hong Kong 2016' is available online at: www.communitybusiness.org.

Professional Development

Seminars: April to May 2017

24 April 中国公司法和证券法实务



Chair: Cynthia Chen FCIS FCS, Company Secretary, Dan Form Holdings Company Ltd
Speaker: Dr Deng Lei, Senior Partner, China Commercial Law Firm

25 April Morning from hell: what to do in a crisis



Chair: Richard Leung FCIS FCS, Institute Past President, and Barrister-at-Law, Des Voeux Chambers
Speakers: Jennifer Van Dale, Partner; Adam Ferguson, Registered Foreign Lawyer (England & Wales); and Leonie Tear, Registered Foreign Lawyer (England & Wales); Eversheds

26 April Opportunities and challenges for China outbound investment



Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd
Speaker: Dicky To, Partner, Tax Services, RSM Tax Advisory (Hong Kong) Ltd

27 April Senior management liability



Chair: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical & Research
Speakers: Mark Johnson, Partner; and Ralph Sellar, Associate; Debevoise & Plimpton LLP

8 May Challenges of shareholder activism and disputes



Chair: Dr Eva Chan FCIS FCS(PE), Institute Treasurer and Membership Committee Chairman, and Head of Investor Relations, C C Land Holdings Ltd
Speakers: Stephen Chan, Partner, Dispute Resolution; and Anson Douglas, Associate, Dispute Resolution; Oldham, Li & Nie Lawyers

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
10 July 2017	6.45pm – 8.15pm	The role of Hong Kong notaries public in helping business and citizens (re-run)	1.5
11 July 2017	2.30pm – 5.45pm	Company secretarial practical training series: requirements for a successful Hong Kong IPO	3
12 July 2017	6.45pm – 8.15pm	BEPS impacts on your companies – updates and preparation	1.5
18 July 2017	6.45pm – 8.15pm	Practical implementation guide for ESG reporting	1.5
20 July 2017	6.45pm – 8.15pm	Company secretarial practical training series: best practice in board evaluation	1.5
24 July 2017	4.00pm – 5.30pm	Update on the Hong Kong Corporate Governance Code – sharing of market trends	2

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

Professional Development (continued)

MCPD requirements

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

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

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

Key update on the revised MCPD policy

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

Membership

New graduate

Congratulations to our new graduate below.

Fong Oi Ying

Membership/graduateship renewal for the 2017/2018 financial year

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. The Council, having taken into consideration the current financial resources of the Institute, has resolved to maintain the annual subscription fee for members and graduates the same as in 2013/2014.

Members and graduates should settle the payment 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.

For enquiries, please contact the Membership Section at: 2881 6177, or email: member@hkics.org.hk.

Members' activities highlights: April 2017

23 April

Sai Kung Dragon Boat Lovers 2017



The Institute's dragon boat team was the 1st runner up in the race

29 April

Young Group – mobile photography workshop



Workshop participants in Central, Hong Kong

Forthcoming membership activities

Date	Time	Event
6 June 2017	6.30pm – 8.30pm	Community Service – knowing breast cancer: early detection saves lives
13 June 2017	6.30pm – 8.30pm	Members' Networking – 办公室健康管理
7 July 2017	6.30pm – 8.30pm	Members' Networking – dining etiquette
29 July 2017	11.00am – 1.00pm	Young Group – introduction workshop on perfume making
15 Et 22 July and 5 Et 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.

Advocacy



Samantha Suen

HKICS Chief Executive interviewed by jobsDB

Institute Chief Executive Samantha Suen FCIS FCS(PE) gave an introduction to the career prospects of Chartered Secretaries for the young generation in an interview with jobsDB. To read the interview report, in the 'Job Hunting Guide for Fresh Graduates 2017' (毕业求职全攻略2017) programme, please visit the jobsDB's website: http://hk.jobsdb.com/en-hk/shorten/?page_id=18776.

External appointment

Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, was appointed by the Chief Executive of Hong Kong Special Administrative Region as one of the six new members to the Equal Opportunities Commission. Mr Datwani will bring valuable insights from his minority, legal and governance background to the Commission's work.

Training for China Huarong Asset Management Co Ltd

On 10 May 2017, the Institute organised a training session for 34 directors, supervisors and senior managers from China Huarong Asset Management Co Ltd in Beijing. This training session aimed to enhance the participants' understanding and knowledge of good corporate governance.



Group photo

Institute Vice-President Dr Gao Wei FCIS FCS(PE) and Council member Bernard Wu FCIS FCS delivered presentations on 'The continuing obligations and responsibilities of directors of Hong Kong listed companies' and 'Highlights of Hong Kong insider information regulations and best practices', to the participants during the training session.

Quam IR Awards presentation ceremony

On 25 May 2017, a presentation ceremony for the Quam IR Awards 2016 was held by Quam Hong Kong Ltd. The Quam IR Awards are in recognition of outstanding listed companies with model practices and leadership in investor relations in the Asia-Pacific region. Institute President Ivan Tam FCIS FCS was invited to the presentation ceremony as one of the award presenters. A token of appreciation was presented to Mr Tam for his participation.



Ivan Tam with the other award presenters

'Adieu' lunch with Paul Moyes, former Council member

On 15 May 2017, the Institute's Council organised a lunch with Paul Moyes FCIS FCS(PE) who resigned from Council and all other positions in the Institute with effect from 1 May 2017 due to his relocation from Hong Kong. President Ivan Tam FCIS FCS presented a token of appreciation and a gratitude card from all Council members to Mr Moyes for his valuable contribution to the Institute during his period of service since 2012. Senior secretariat staff also joined this luncheon.



Ivan Tam presenting a gratitude card to Paul Moyes



Paul Moyes with Institute Council and secretariat staff

Postgraduate Programme in Corporate Governance in Shanghai – second intake

The Postgraduate Programme in Corporate Governance (PGPCG) offered by The Open University of Hong Kong (OUHK) in Shanghai will have its second intake in September 2017. Intensive weekend classes will be held at the East China University of Science and Technology (ECUST/上海华东理工大学) in Shanghai. This programme aims to equip candidates with a sound knowledge and competency in corporate governance and corporate secretaryship. Upon successful completion of all prescribed courses of the PGPCG and attending a one-week Residential School in Hong Kong, students can transfer all credits earned to the Master of Corporate Governance (MCG) programme of OUHK. MCG Graduates are eligible to apply for full exemptions from the Institute's International Qualifying Scheme examinations. Students achieving distinction-grade performance may be awarded a scholarship at the end of the programme. The PGPCG application deadline is Tuesday 1 August 2017.



At the PGPCG information session

On 23 May 2017, an information session was arranged for those interested in studying for the PGPCG in Shanghai at the Grand Hyatt Shanghai.

For enquiries about the programme, please contact Dr Nigel Leung of OUHK at: (852) 2768 6926, or email: ccleung@ouhk.edu.hk, or Iona Li of the Institute's Beijing Representative Office at: (8610) 6641 9368 (ext. 228), or email: bro@hkics.org.hk.

Advocacy (continued)



Ivan Tam with CY Leung and representatives from other HKCPS member bodies

Congratulatory dinner for Hong Kong's outgoing Chief Executive

Institute President Ivan Tam FCIS FCS attended the congratulatory dinner for the Honourable CY Leung GBM GBS JP, outgoing Chief Executive of the Government of the HKSAR, on his appointment as the Vice-Chairman of the Chinese People's Political Consultative Conference (CPPCC) of the People's Republic of China on 18 May 2017. This congratulatory dinner was jointly organised by the Federation of Hong Kong Industries; The Chinese General Chamber of Commerce; The Chinese Manufacturers' Association of Hong Kong; The Hong Kong Chinese Enterprises Association; The Hong Kong Chinese Importers' & Exporters' Association; and The Hong Kong Coalition of Professional Services (HKCPS); of which the Institute has been a member since 2011.

Ten Outstanding Young Persons Selection 2017

On 18 May 2017, Institute President Ivan Tam FCIS FCS was invited to attend the opening cocktail reception organised by the Junior Chamber International Hong Kong (JCI Hong Kong) to kick off the selection nomination period for the Ten Outstanding Young Persons (TOYP) Selection 2017. The TOYP Selection is a flagship project launched by JCI Hong Kong in 1970 with the goal of selecting the TOYP of the year based on their outstanding performance in the respective fields of work and profession, as well as their contributions to the community.

International Qualifying Scheme (IQS) examinations

June 2017 diet reminder

Examination postponement application

Candidates who are absent from a scheduled International Qualifying Scheme (IQS) examination due to illness must submit a satisfactory medical certificate to apply for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the June examination diet, that is, on or before **Friday 30 June 2017**.

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 questions regarding the online study packs, please contact Karin Ng at: 2830 6010, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk. For technical questions regarding the PrimeLaw account, please contact Wolter Kluwer's customer service: HK-Prime@wolterskluwer.com.

Studentship

IQS information session

At the IQS information session held on 10 May 2017, Kitty Liu FCIS FCS, Company Secretary, Group Legal, AIA Group, shared her professional work experience with the attendees interested in pursuing a career in the Chartered Secretarial profession. Information on the IQS examinations and career prospects for Chartered Secretaries was also provided.



At the information session

Studentship (continued)

'Passing the Torch' project with HKUST – school visits

The Institute partnered with the Hong Kong University of Science and Technology (HKUST) to run the 'Passing the Torch' project for 2017. This project, sponsored by The Hong Kong Institute of Chartered Secretaries Foundation Ltd, aims to promote better knowledge of business ethics and corporate governance among 140 undergraduates.

In April 2017, five groups of selected HKUST students, guided by Institute representatives, visited different educational institutions and secondary schools (listed in the table opposite) and passed their knowledge of ethical standards and corporate governance gained from the three lectures delivered by Institute fellows in February and March 2017, to 153 students via interactive workshops.

A closing ceremony was held at the HKUST campus on 1 June 2017. Details will be reported in the next issue of CSj.

Date	Name of school/institute	HKICS representative
21 April 2017	PLK Vicwood KT Chong Sixth Form College (保良局庄启程预科书院)	Institute Education & Examinations Director Candy Wong
24 April 2017	Po Leung Kuk Laws Foundation College (保良局罗氏基金中学)	Angus Pang ACIS ACS
26 April 2017	Vocational Training Council (VTC) Tsing Yi IVE	Institute Education & Examinations Director Candy Wong
27 April 2017	Po Leung Kuk Choi Kai Yau School (保良局蔡继有学校)	Flora Chiang FCIS FCS(PE)
28 April 2017	Po Leung Kuk Ngan Po Ling College (保良局颜宝铃书院)	Donald Chan FCIS FCS



At PLK Vicwood KT Chong Sixth Form College



At Tsing Yi IVE



At Po Leung Kuk Ngan Po Ling College

PolyU Appreciation Reception for Scholarship & Bursary Donors 2016/2017

On 24 April 2017, The Hong Kong Polytechnic University (PolyU) organised an appreciation reception for sponsors who donated scholarships and bursaries to its students in the 2016/2017 academic year. As a token of appreciation for the Institute's support – in particular the Chartered Secretaries scholarships and subject prizes funded by The Hong Kong Institute of Chartered Secretaries Foundation Ltd – Institute Education Committee member Winnie Li ACIS ACS was invited to attend the reception.



At the reception

Studentship (continued)

Student Ambassadors Programme

Attendance at listed companies' AGMs

The Institute arranged its student ambassadors to attend the annual general meetings (AGMs) of the following six listed companies (listed in alphabetical order) on 5, 9, 11, 18 and 25 May 2017. The Institute would like to thank these listed companies for their generous support for the Programme.

- China Mobile Ltd
- CK Hutchison Holdings Ltd
- CLP Holdings Ltd
- Hutchison Telecommunications Hong Kong Holdings Ltd
- Sing Lee Software (Group) Ltd
- Swire Pacific Ltd



At China Mobile Ltd



At CK Hutchison Holdings Ltd



At CLP Holdings Ltd



At Hutchison Telecommunications Hong Kong Holdings Ltd



At Sing Lee Software (Group) Ltd



At Swire Pacific Ltd

Policy – payment reminder

Studentship renewal

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

Exemption fees

Students whose exemption was approved via confirmation letter in March 2017 are reminded to settle the exemption fee by Wednesday 28 June 2017.

New DI notices to take effect next month

The new disclosure of interests notices (DI notices) under Part XV of the Securities and Futures Ordinance (SFO) will come into effect on 3 July 2017. Under Part XV of the SFO, substantial shareholders, directors and chief executives of listed corporations are required to submit DI notices to the Stock Exchange and the listed corporation concerned. Moreover, listed corporations are required to submit reports to the Securities and Futures Commission (SFC) and the Stock Exchange of certain investigations which they may make, and where a person receiving information or preparing an investigation report under Part XV is an authorised financial institution or the holding company of an authorised financial institution, it must notify or deliver a copy of the information or report to the Hong Kong Monetary Authority. The SFC has published new prescribed forms for DI notices for use when mandatory electronic filing takes effect. The SFC reminds substantial shareholders, directors and chief executives of listed corporations that, as of 3 July 2017, DI notices with respect to their interests in securities of listed corporations must be submitted electronically.

The DI notices, and their accompanying directions and instructions for completion, are available on the SFC website: www.sfc.hk.

Competition Commission announces findings of its study into Hong Kong's auto-fuel market

The Competition Commission (Commission) has released a report outlining the findings of its study into the auto-fuel market in Hong Kong. The report identifies a number of issues which the Commission believes to be hindering competition and which would likely have contributed to high auto-fuel prices in the territory. The report also made recommendations on how to address these issues with the aim of furthering competition in the market.

The report is available on the Commission's website: www.compcomm.hk.

SFC issues guidance on directors' duties and valuations

Last month the Securities and Futures Commission (SFC) issued a guidance note on directors' duties and a circular to financial advisers regarding valuations in corporate transactions together with a statement on the liability of valuers for disclosure of false or misleading information. The guidance note reminds directors that they are the guardians of a listed company's assets and should ensure acquisition targets are properly considered and investigated. Directors should carry out independent due diligence regarding the asset or target company. They should not accept blindly and unquestioningly financial forecasts, assumptions or business plans provided to them, typically by a vendor or the management of the target. The listed company and directors should take all reasonable steps to verify the accuracy and reasonableness of material information that is likely to affect any valuation. Directors must also consider whether the proposed transaction or arrangement is in the interests of the company and its shareholders as a whole.

Further information is available on the SFC website: www.sfc.hk.

Hong Kong and UK regulators to collaborate on fintech

Last month the Securities and Futures Commission (SFC) entered into a cooperation agreement with the UK Financial Conduct Authority (FCA) to foster collaboration in support of financial technology (fintech) innovation. Under the agreement, the SFC and the FCA will cooperate on information sharing and referrals of innovative firms seeking to enter one another's markets.

The cooperation agreement is available on the SFC website: www.sfc.hk.

Two new SFC consultations

Last month the Securities and Futures Commission (SFC) launched two consultations concerning the online environment.

1. Online distribution and advisory platforms

The SFC has launched a three-month consultation on proposed *Guidelines on Online Distribution and Advisory Platforms*. The proposed guidelines will apply to all SFC-licensed or registered persons when conducting their regulated activities in providing order execution, distribution and advisory services in respect of investment products via online platforms. The guidelines aim to provide tailored guidance to the industry on the design and operation of online platforms, as well as clarify how the suitability requirement would operate in the online environment.

The suitability requirement, set out in Paragraph 5.2 of the Code of Conduct for Persons Licensed by or Registered with the SFC, requires licensed or registered persons to ensure that any recommendations or solicitations they make for their clients are reasonable in all circumstances, having regard to information about the client of which the licensed or registered person is, or should be, aware through the exercise of due diligence.

The proposed guidelines clarify that the posting of factual, fair and balanced materials on online platforms should not in itself trigger the suitability requirement. The suitability requirement will apply where investors can be subject to greater influence and need more protection, such as where robo-advice is provided.

In the proposed guidelines, the suitability requirement will be extended to the sale of complex products on online platforms because retail investors may have difficulty in fully understanding the nature and risks associated with a complex product based only on the information posted on an online platform. 'Complex products' refer to products whose terms, features and risks are not reasonably likely to be understood by retail investors because of their structure and which are difficult to value. Under the

proposed guidelines, online platforms are required to ensure that any transaction in a complex product (other than derivative products traded on an exchange) is suitable for the client in all circumstances, regardless of whether there has been any solicitation or recommendation.

The proposed guidelines also contain specific guidance on the provision of automated or robo-advice on an online platform. The consultation closes on 4 August 2017.

2. Hacking risks in internet trading

The SFC has launched a two-month consultation on proposals to reduce and mitigate hacking risks associated with internet trading.

The proposals incorporate new guidelines which set out baseline cybersecurity requirements for internet brokers to address hacking risks and vulnerabilities and to clarify expected standards of cybersecurity controls. Some of these requirements already feature in the Code of Conduct or SFC circulars and are being elaborated and consolidated into the proposed guidelines.

Key proposed requirements include two-factor authentication for clients' system login and prompt notification to clients of certain activities in their internet trading accounts. In addition, the SFC proposes to expand the scope of cybersecurity-related regulatory principles and requirements which now apply to electronic trading of securities and futures on exchanges to cover the internet trading of securities which are not listed or traded on an exchange. This includes authorised unit trusts and mutual funds because they are subject to the same hacking risks.

The SFC also proposes to update the definition of 'internet trading' to clarify that an internet-based trading facility may be accessed through a computer, mobile phone or other electronic device. The consultation closes on 7 July 2017.

Both consultations are available on the SFC website: www.sfc.hk.



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