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About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of ICSA in 1990 before gaining local status in 1994 and has also been ICSA's China/Hong Kong Division since 2005. HKICS is a founder member of Corporate Secretaries International Association (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice to corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

Membership statistics update

As of 30 June 2018 membership statistics were as follows:
Students: 3,410
Graduates: 339
Associates: 5,313
Fellows: 658

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The value of ESG

Before turning to the theme of this month's journal, I would like to remind you of two very important events coming up in the Institute's calendar. Firstly, on Wednesday 29 August 2018 we will be holding a general meeting to submit proposed revisions to our Articles of Association to a vote by members. These revisions will enable us to award the new designation of Chartered Governance Professional, so I urge all members to attend the meeting, in person or by proxy, and to support the revised Articles.

The meeting will be held at Theatre A, 22/F, United Centre, 95 Queensway, Hong Kong, at 6.30pm. The full text of the new Articles of Association is available on the Institute's website: www.hkics.org.hk. The proposed amendments to the Articles have been submitted to, and approved by, the Registrar of Companies of Hong Kong and The Institute of Chartered Secretaries and Administrators.

The second event I would like to highlight will take place on 14 September at the JW Marriott Hotel, Hong Kong. That of course is the date of our premier CPD event of the year – our 11th biennial Corporate Governance Conference (CGC). The conference will be a unique opportunity to keep up to date with frontier issues in the company of top thought leaders in governance. You can find the programme and speaker line-up on the conference website: www.hkicscgc.com. If you haven't already done so, I urge you to reserve a seat while seats are still available.

The theme of this month's journal serves as a good appetiser for next month's CGC. Under the theme 'Corporate Governance: The New Horizon', the conference will address the many tough challenges that governance professionals will need to grapple with in the years ahead. The combined effects of new technologies and changing social demographics, as well as new regulatory approaches, point to an interesting decade ahead of us. One thing is certain – governance professionals will need to keep themselves informed of a much wider variety of issues in the future.

Environmental, social and governance (ESG) risks and opportunities are a perfect case in point and this month's journal updates us on a number of ESG challenges. For example, how should we be managing and reporting on climate-related impacts? Our third cover story looks at guidance from the Task Force on Climate-related Financial Disclosures on how companies should be addressing and reporting on their climate resilience. Our second cover story offers practical advice on how to get to grips with ESG management and reporting using the Global Reporting Initiative Sustainability Reporting Standards – the best known and most commonly used of the global ESG frameworks.

While these tools will certainly be helpful in crafting your ESG strategy and programme to bring value to the table, to get the full benefit of your ESG initiatives it is worth bearing in mind the 'why' as well as the 'how'. Our first cover story provides a very sobering reminder that investors are quite capable of spotting a 'fluff' ESG report. If you enter your ESG programme as a public relations exercise, you are likely to send exactly the wrong signal to investors. They are looking for the assurance that your company recognises that getting to grips with ESG risks and opportunities is a survival issue for companies today, not an opportunity to score PR points.

So, I leave you in the good hands of the contributing authors in this month's edition of our journal and I look forward to the debate on ESG, as well as the many other governance issues vying for our attention, at our CGC in September.

David Fu FCIS FCS(PE)

环境、社会及管治的价值

在讨论今期的主题前，先提醒大家公会即将举行的两项重要盛事。首先，我们将在2018年8月29日(星期三)举行会员大会，把公会章程的修订建议提交会员表决。这些修订让我们得以推出'Chartered Governance Professional'专业资格。我谨促请所有会员亲自或派代表出席会议，支持修订议案。

会议将于当天下午6时30分假座香港金钟道95号统一中心22楼演讲厅A举行。新章程全文可于公会网站：www.hkics.org.hk浏览。章程的修订建议，已提交香港公司注册处及特许秘书及行政人员公会，并获得核准。

第二项盛事，将于9月14日在香港JW万豪酒店举行。这当然是指公会今年重要的持续专业发展活动，两年一度的第11届企业管治研讨会(CGC)。参与者有难得的机会，与管治界别的杰出思想领袖共同探索最新的重要议题。研讨会程序及讲者阵容，可于研讨会网页：www.hkicscgc.com浏览。假如尚未报名，请立即行动，以免向隅。

本刊今期的主题，正好是下月CGC的前菜。今年研讨会的主题是「企业管治新里程」，探讨管治专业人员未来须面对的众多艰巨挑战。新科技的发展、社会面貌的改变，以及新的规管方法，意味着未来十年将充满变数。有一点是肯定的：管治专业人员日后须掌握更多方面的知识。

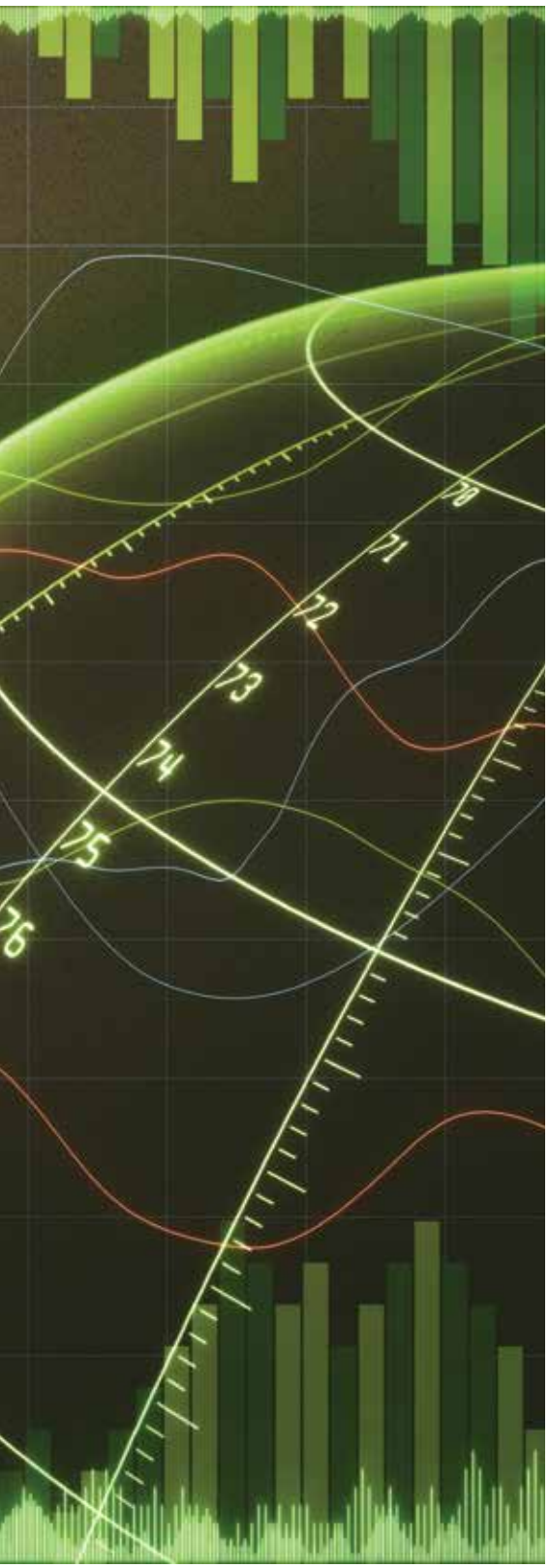
环境、社会及管治(ESG)的风险与机遇，正是个好例子。今期月刊介绍一些ESG方面的挑战，例如我们应如何管理及报告与气候相关的影响？第三个封面故事介绍气候相关财务披露专责小组的指引，探讨公司应如何灵活应付气候变化的挑战，以及如何加以报告。第二个封面故事提供实用建议，介绍全球最知名、最广泛使用的ESG框架，即全球报告计划可持续发展报告标准，说明如何以这些标准从事ESG管理及报告。

这些工具无疑有助制定ESG策略及计划，创造价值。要从ESG工作中得到最大益处，则除了掌握「如何」做到，更必须紧记「为什么」要这样做。第一个封面故事清晰地提醒我们，投资者很能辨识「虚假」的ESG报告。假如以公关项目的角度推行ESG计划，便很可能向投资者传达同一错误讯息。投资者实际上希望得到保证，知道公司明白掌握ESG风险和机遇与公司的存亡攸关，并非公关技俩。

请大家细阅今期月刊的文章。期待在9月份的CGC听到有关ESG的讨论，以及其他众多管治课题的介绍。

傅溢鸿 FCIS FCS(PE)

The ESG imperative



The message from investors on environmental, social and governance (ESG) disclosure is clear and unambiguous, Sally J Curley, CEO, Curley Global IR, writes. Treating this as a public relations exercise and producing a 'fluff' CSR report raises red flags for investors.

There is no shortage of increasing evidence demonstrating the link between returns on investment and companies' ESG efforts. The Harvard Law School Forum, the Forum for Sustainable and Responsible Investment, numerous accounting firms and other organisations have published data showing the increasing number of assets under management that are ESG-focused, or use ESG screens to identify investments.

Research conducted by Curley Global IR, LLC (CGIR) adds to this data and provides – perhaps for the first time – an internal peek into the ESG-related resource allocation process. From December 2017 through March 2018, CGIR spoke with portfolio managers involved in sustainable and responsible investment (SRI) decisions and/or their corporate governance counterparts. Because of strong relationships, robust conversations occurred with most.

Where appropriate, CGIR expanded the dataset by incorporating public statements into its research.

Twenty-four asset management firms are included in the dataset; 14 investors were interviewed and the remainder of the information was derived from press interviews and/or directly from public statements, most from company websites. More than US$17 trillion in assets under management are represented by these 24 firms.

CGIR asked questions of research participants that focused on trends, internal resource commitment, engagement approach and use of third-party data sources. The goal was to identify whether the use of ESG factors in investing had risen and, if so, had internal resource commitments increased accordingly. Other research goals centred on determining how public companies were handling any increase in

Highlights

- asset management firms are investing heavily in environmental, social and governance (ESG)
- when asset managers see a report that lacks in detail, clarity and focus, they are more sceptical that the company has a real ESG framework in place to minimise risks
- a company's ESG programme should yield data that is pertinent to its industry and the company specifically, and which is reportable, repeatable and auditable

requests, and what trends are emerging in definitions, content and clarity.

The survey findings

What emerged from the data were five key, and we believe new, insights.

1. There is no single definition of sustainability.

2. Asset management firms are heavily investing in, and/or creating, SRI vehicles.

3. There is a significant need for companies to outline what they believe is most material to disclosure; however, several participants mentioned a fear of overregulation in the US from the Securities and Exchange Commission (SEC).

4. Investor relations is clearly the first point of contact for these investors and, in many instances, is the preferred point of contact based on existing relationships.

5. There is an intense desire for clarity and consistency in measuring metrics and defining terms.

We've delved deeper into each insight, starting with definitions.

1. Defining sustainability

There were nearly as many specific definitions of sustainability as there were participants in the survey. However, one key thread ran through each commentary: sustainability wasn't solely a focus on environmental aspects, but rather what factors would affect the long-term, sustainable performance of an organisation.

Similarly, while there was consistency on ESG being 'environmental, social, governance', some participants used this as an adjective and some as a noun. As one research participant indicated: 'We believe we were the first firm to use the term sustainability, as opposed to ESG. Our view of sustainability is how the company sustains its business model and cash flows into the foreseeable future for the long term.'

In other conversations, ESG was viewed as those factors used to generate SRI. The impact of social media, and the pressure on investment firms to now provide an ESG/SRI product in order to differentiate themselves for millennial and baby boomer investors, has only enhanced the variety of definitions. CGIR did find that the concepts were close enough in context to be viewed as a trend.

2. Expanding investment in ESG

Our second finding is that asset management firms are investing heavily in ESG. CGIR's data shows a significant commitment of human and financial resources related to ESG, and deciphering materiality as it relates to the asset manager's investments. The collective focus of the institution, particularly as stewards of their clients' capital, is perhaps the biggest sign that ESG investing is here to stay.

Nearly all asset managers continued to heavily emphasise ESG when investing and/or have significantly increased SRI-focused internal resources. Some created a new position – Head of Sustainable Investing or a similar role – within the past 12 months. Nearly all asset managers use some form of screening, positive or negative, when assessing investments. 'We have a large sophisticated group that's been staffed up … ESG is very important to us,' commented one respondent.

A few asset managers rolled out ESG firm-wide. 'The responsibility is carried out by all investment professionals. More of a firm-wide [policy] as opposed to a public-speaking person,' commented another respondent. Other asset management firms have developed their own sophisticated models and screens. 'The team has developed a proprietary ESG scoring system … to assess current and projected ESG conditions in various countries, and to facilitate macroeconomic country comparisons around the world,' was another comment our survey received.

3. Understanding materiality

CGIR's third finding yielded concern about overregulation in the US, but a strong need for the companies themselves to identify and disclose what ESG-related factors are most material. We use the US SEC's definition of materiality here.

An increasing call from investors for issuers to provide clear and transparent disclosure has given rise to ESG-related organisations attempting to set standards. These groups – Sustainability Accounting Standards Board (SASB), MSCI, Global Reporting Initiative (GRI), to name a few – also attempt to help create a framework of disclosure for issuers. However, because each of these organisations varies in the specifics, a lack of a consistent framework still exists. Companies face growing pressure to demonstrate to investors their compliance with certain criteria, including disclosure around diversity and inclusion, gender equality related to pay and climate change, and are left to navigate their own path, or 'pick one' reporting framework.

> “You learn how to skim past the fluff ... If it's all just fluff, then it raises concerns.”
>
> (CGIR survey respondent)

All of this stems from the asset manager's need to identify and minimise risk for their constituents – the asset owners. However, this increased pressure on issuers to disclose ESG-related 'material' items, without a consistent framework or guideline, has created an open field for ESG. As one Head of Sustainable Investing said in CGIR's research: 'There are two things that [go] hand in hand. [First], the quality of disclosure by issuers of ESG performance data. As you know, all other financial reporting data is codified under regulations. But on the ESG side it's unstructured and unregulated data, and to get the quality data out of issuers is the biggest piece of that. And [secondly] closely related ... is issuers trying to understand which of these performance factors companies should focus on.'

Another asset manager made a point to say: 'The Sarbanes-Oxley Act stuff is overdone ... Generally speaking, what I hate about governance is that it's so rules-based as opposed to principles-based.'

4. The role of investor relations

With respect to CGIR's fourth finding, the Investor Relations Officer (IRO) plays a significant role as, at a minimum, a first point of contact for ESG-related questions. This stems from the IRO's existing relationship with portfolio managers, as well as their relationships with most heads of corporate governance.

Interestingly, several firms specifically mentioned that they did not wish to speak with a Chief Sustainability Officer (CSO) or a Head of Corporate Communications, saying their experience had not been productive when doing so. Typically the outreach to the IRO takes one of three paths:

1. stops with the IRO if that spokesperson is savvy enough about the company's ESG-related policies and disclosures
2. is escalated to a Head of Business or the CEO, and/or
3. is escalated to a member of the board of directors who is in the best position to address the ESG-related issue.

'I've been reaching out to Investor Relations (IR) to get its assessment of ESG from a company standpoint. Each team should treat this as another component of traditional fundamental analysis, so it would be IR. Because we are [United Nations-supported Principles for Responsible Investment] signatories, one of the initiatives is to get assessment from IR teams as to how they are progressing with integrated reporting, as well as pushing SASB standards. We don't deal with a CSO at all. I've never really understood what they do', one research participant stated.

Another comment received was: 'We typically go through IR first, but who we speak with depends on the different types of conversations. If it's a governance issue, we will want to speak with a

> CGIR research shows that it is time – perhaps beyond it – for public companies to create and manage a comprehensive ESG programme, with a formal audit-controls framework and communications plan

board member, independent director or chairman. If it's an environmental and social risk issue, we will want a country head or someone who does product quality work. We're happy to have people from sustainability functions, but it's also a worry if that function sits within a marketing or communications department. These guys try to face off on all constituencies and they aren't expert enough for investors.'

While asset managers are reaching out to IROs, IROs are also going to asset management firms to seek input regarding what is most important to disclose. This outreach seems welcome by some asset managers and somewhat troubling to others. One study participant indicated that: 'IR teams are struggling with what is most important to disclose to investors.'

5. Establishing consistent metrics

Our fifth finding revealed an intense desire for clarity and consistency in measuring metrics and defining terms. There are numerous frameworks that exist, as mentioned earlier, however, one clear set of guidelines has not yet been adopted. So what can companies do?

One of the most interesting pieces of feedback from CGIR's survey was that issuers should take heed when publishing a 'fluffy' corporate social responsibility (CSR) report. In fact, a few ESG-focused asset managers specifically mentioned that when they see a report that lacks in detail, clarity and focus, they are more sceptical that the company has a real ESG framework in place to minimise risks. As one survey participant put it: 'We glance through them [the CSR reports]. With us, a lot of time is spent pre-meeting and typically that would start with the annual report and maybe CSR reports. You learn how to skim past the fluff. You can get some insights, as well as how [the company is] presenting it. If it's all just fluff, then it raises concerns.'

CGIR surmises that a perfect storm of factors has created the proliferation of requests and need for ESG-related disclosure. Those factors include a millennial generation (and baby boomers) seeking to invest in companies that 'do good'; the rise of passive investments, which by some counts now comprise 60% of all assets under management, and thus the need for differentiated investment offerings that are actively managed; the proliferation of social media, which serves to 'out' public companies who aren't acting as good fiduciaries; and, as a result, the enhanced risk asset managers perceive to exist and the belief that the use of ESG-related screens will help to mitigate that risk.

Quality disclosure

CGIR research shows that it is time – perhaps beyond it – for public companies to create and manage a comprehensive ESG programme, with a formal audit-controls framework and communications plan. The programme should yield data that is pertinent to its industry and the specific company, and which is reportable, repeatable and auditable. Companies take heed – the trend toward ESG investment looks to be enduring. Those issuers without a plan to adequately disclose information and address asset manager questions may find themselves – and their boards – dealing with ESG-related shareholder proposals instead.

Sally J Curley is founder and CEO of Curley Global IR, LLC (https://curleyglobalir.com), an investor relations, ESG and corporate governance consultancy.

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What makes a good ESG report?

The Global Reporting Initiative Sustainability Reporting Standards replaced the GRI's G4 reporting framework on 1 July 2018. Vicky Lee and Carissa Pobre, Sustainability Advisers, The Purpose Business, give some tips on how to raise your game when it comes to ESG management and reporting by using the GRI Standards.

It has been two years since Hong Kong Exchanges and Clearing Ltd (HKEX) increased the requirements for reporting on the environmental and social impacts of listed companies. While listed companies are no strangers to fulfilling these requirements, publishing information about ESG issues is still fairly new in Hong Kong and there have been concerns in the market about the latest upgrading of some ESG elements to 'comply or explain'. Will companies, for example, address these new disclosure responsibilities as a box-ticking exercise?

Report readers want more than that. In the 'Analysis of ESG Practice Disclosure in 2016/2017' (the HKEX Analysis), published in May 2018, HKEX encourages issuers to provide a comprehensive description of their policies on ESG performance and disclosure and to improve their overall ESG reporting practices.

One way of ensuring that you meet the local requirements in Hong Kong is to adopt the Global Reporting Initiative Sustainability Reporting Standards (GRI Standards). GRI offers a forward-looking and forward-thinking tool for businesses in their approach to ESG. The interconnections between local and GRI reporting standards can be easily seen through GRI's guide *Linking the GRI Standards and HKEX ESG Reporting Guide* (http://bit.ly/GRI_HKEX). The GRI Standards will be a particularly useful framework for company secretaries, both in terms of regulatory compliance and their board advisory roles.

Introducing the GRI Standards

The GRI Standards were launched in 2016 and replaced the former G4 reporting framework on 1 July 2018. They come at a time when non-financial disclosure is in increasingly high demand. As investors, stock markets and stakeholders in general expect greater transparency on critical ESG issues, reporting frameworks like the GRI Standards encourage more ownership among companies of their environmental and social risks.

Research jointly undertaken by GRI and RobecoSAM, the sustainable investing company that also handles benchmarking of the Dow Jones Sustainability Indices, reinforces how the GRI Standards provide information that investors want to know and are well placed to form the basis of ESG-related disclosure.

In Hong Kong, just as elsewhere globally and across Asia, the GRI reporting framework has increasingly become the standard framework used by listed companies. Navigating the HKEX ESG requirements alongside the GRI Standards – its global benchmark and counterpart in several ways – provides companies with a way to disclose their ESG performance and bring value in the long term. Below, we focus on three key areas where the GRI Standards can help companies on their ESG journey:

1. stakeholder engagement
2. materiality, and
3. management approach.

1. Stakeholder engagement

Both the HKEX and GRI Standards emphasise that stakeholder engagement should be a key part of your ESG programme. HKEX states that issuers should engage stakeholders on an ongoing basis in order to understand their views and meet their expectations. The GRI Standards have long emphasised

Highlights

- the GRI Standards can help companies in Hong Kong meet the local ESG reporting requirements
- materiality should be the number one ESG reporting principle, as it encourages issuers to truly understand their risks and opportunities
- companies need to show that the board provides leadership and sets the strategic direction on ESG issues

> “the GRI Standards will be a particularly useful framework for company secretaries, both in terms of regulatory compliance and their board advisory roles”

stakeholder inclusiveness as one of the GRI's four reporting principles, and they recommend that the stakeholder engagement exercise should be conducted using a locally recognised institutional framework and that its outcomes should correspond to the material issues covered in the report.

Stakeholder engagement is a crucial step prior to your materiality assessment to gain insight on where your pressing environmental and social impacts and risks lie. Report readers expect you to demonstrate concrete details regarding who, when, how often and how you engage your stakeholders, as well as what you learn from them. However, the HKEX Analysis found that only a small percentage of their 400 sample issuers gave sufficient context on this engagement.

Cathay Pacific's Sustainable Development Report 2016 demonstrates an in-depth stakeholder engagement exercise with key stakeholder groups to help define a sustainable development strategy that addresses stakeholder concerns. The approach of its stakeholder engagement is clearly presented with information on who was engaged and how they were engaged, as well as the common issues that were important to stakeholder groups. Cathay Pacific took into consideration the views of its stakeholders in its materiality assessment and continues to examine if the views of its stakeholders are changing over time.

The GRI Standards are composed of a modular series of documents. First are the three universal standards of the 100 series, which are applicable to all reporters.

1. GRI 101 Foundation
2. GRI 102 General Disclosures, and
3. GRI 103 Management Approach.

According to the description of 'Stakeholder Inclusiveness' in GRI 101 Foundation, 'systematic stakeholder engagement increases accountability to a range of stakeholders. Accountability strengthens trust between the organisation and its stakeholders. Trust, in turn, strengthens the credibility of the report.'

GRI 102 General Disclosures provides a framework for companies to deliver their stakeholder engagement approach and process structurally. Companies should bear in mind that the ultimate goal of adopting the GRI Standards is not just to improve information disclosure, but also to use stakeholder feedback in creating more responsible and relevant business development.

2. Materiality

The principle of materiality underpins all quality ESG reporting: it means understanding the ESG issues that are important to your business, thus informing the topics and key performance indicators (KPIs) to cover in your report. As reporting frameworks become more sophisticated, materiality – defined as reflecting an organisation's significant economic, environmental and social impacts, or substantively influencing the assessments and decisions of stakeholders – is one of the principles that the GRI Standards have further emphasised.

Conducting a proper materiality assessment can serve as a starting point to developing an ESG strategy, though many companies still struggle with applying and disclosing this principle. According to the HKEX Analysis, the quality of materiality disclosures varies among Hong Kong–listed issuers. While many of them claim to have conducted materiality assessments, over half of them (52%) provided inadequate details in their ESG reports on their stakeholder engagement and materiality assessment process – some providing hardly any detail at all. The HKEX found that some ESG reports contained lengthy narratives on their materiality assessments that were 'vague and difficult to read'.

The GRI Standards encourage companies to view the materiality process as an opportunity to further understand what

their businesses should focus on. For one thing, determining your material issues should be stakeholder-driven – one example being the 2017 *Sustainable Development Report* by Swire Properties. Their methodology is systematically presented, step-by-step, presenting the assessment journey from qualitative issues identification to quantitative survey, leading the reader to the company's materiality matrix that plots the internal and external stakeholders to each issue. Most importantly, the outcome of the materiality assessment gives direction to the company's action plans under its Sustainable Development 2030 Strategy.

Materiality should be the 'number one' ESG reporting principle, as it encourages issuers to truly understand their risks and opportunities. If risks are properly managed and opportunities are realised for further development, this will encourage the development of a more favourable and vibrant business environment in Hong Kong.

Beyond keeping track of the right data, disclosing sufficient information on your materiality process also shows transparency for report readers and stakeholders. This is particularly important because going through a process to understand what truly matters to the business, whether financial or non-financial in nature, is one that should entail involvement and responsibility at board level.

3. Management approach

Consideration also needs to be given to your internal controls relating to ESG performance and disclosure. What your report readers actively look for is not just the figures relating to your emissions or your employee turnover rate, but the policies and management approach you have established to address material ESG issues. In particular, you need to show that the board provides leadership and sets the strategic direction on ESG issues.

Management approach disclosures are therefore a unique highlight of the GRI Standards. Hong Kong Electric Investment (HKEI) explains clearly the board's involvement in its CSR policy in the 'Challenges and Strategies' section of its 2017 *Sustainability Report*. A CSR Committee supervised by the CEO and senior management was formed for formulating strategies and embedding CSR initiatives into operations. HKEI also makes use of its GRI Content Index to direct its readers to where they can obtain more information.

An effective policy and management approach will not be something you can come up with overnight. It is nonetheless important to tell your readers about your current policies and your plans for developing them in the future. The GRI Standards advise that, if you do not have a management approach for a particular material topic yet, don't be afraid to disclose this, although you should also disclose your determination to remedy this.

Board involvement in ESG is more than just a recommendation. The board can no longer simply delegate the task of compliance with ESG requirements and should be taking an active part in the reporting process. The board needs to thoroughly understand their company's environmental and social impacts and embed ESG factors into the business. The HKEX *ESG Reporting Guide* notes that 'the board has overall responsibility' in reporting, and this message is also emphasised in the HKEX Analysis.

Raising your game

The GRI Standards focus on the ultimate purpose of ESG reporting – that is, to demonstrate a commitment to responsible growth. The GRI Standards are designed so that companies can consider and better understand their significant impacts on the broader economy, environment and society. When companies truly own these issues, through reporting, they are able to tell their story to enable responsible growth. The GRI reporting principle of 'sustainability context' is particularly useful to contextualise the company's ESG-related impacts and contributions.

So how do you put this in practice and increase the business value of your ESG reporting? We recommend that you do not only focus on the number of KPIs you can get into your report, but also on your overall approach to ESG issues. You can start the process by going back to your last two reports. Take a holistic and collaborative approach to work out your ESG strategy through stakeholder engagement and materiality using the GRI Standards. Most important of all, make sure your board of directors is involved in the reporting process.

The KPI requirements will be hard to comply with if you don't have a viable sustainability strategy. What makes a good report? Essentially, good ESG reporting should reflect the collective efforts of the company to strategically tackle its sustainability impacts.

Vicky Lee and Carissa Pobre
Sustainability Advisers, The Purpose Business

> *More information is available on The Purpose Business website: http://thepurposebusiness.com.*

Climate-related financial disclosures

In a two-part series, Dr Glenn Frommer and Theodora Thunder, Principals, The Sustainability Partnership, look at guidance from the Task Force on Climate-related Financial Disclosures on how companies can address one of the toughest challenges of ESG disclosure – reporting on climate-related risks and opportunities.

Regulators, investors and providers of capital increasingly seek and focus on material information around a company's understanding and management of climate-related issues as they relate to corporate development and long-term profitability. From their perspective, analysing an organisation's resilience to climate-related shocks and impacts substantially influences their valuation, investment, asset allocation, credit ratings, lending and insurance underwriting decisions.

In response and in anticipation of regulatory oversight, there is a global momentum amongst companies to disclose in mainstream reporting the relevant financial data and discussions of the impacts that climate change issues have on financial decision making and planning. This movement is hitting the corporate risk radars in Asia mainly due to international supply chain links, operating capacities and the increased national-level regulatory environment around climate change issues.

The TCFD Framework

In June 2017, the World Business Council for Sustainable Development's Task Force on Climate-related Financial Disclosures (TCFD) published a set of recommendations designed to help bring clarity, comparability and measurability to climate issues that are often recognised as non-quantifiable and unpredictable. The recommendations serve as a dynamic management tool that moves the conversation of climate risk beyond sustainability into the overall programme of corporate governance and risk management. This supports the delivery of corporate specific, decision-useful and forward-looking information around the financial consequences and opportunities of climate risk that key stakeholders seek.

The TCFD proposes a framework of four core elements that solicits disclosures based on the flow of corporate governance, strategy and financial decision making. The framework's unique strength is its ability to bring the realities of climate change issues into corporate risk decision making and planning – this speaks to the core of corporate secretarial management practice.

The framework is flexible in that it facilitates the understanding and application to organisations across multiple sectors and jurisdictions. While the recommendations aim to be ambitious, they are practical for near-term adoption. The objective is to establish for the financial community and internal management a platform from which climate-related risk and opportunities can be appropriately assessed, priced and integrated into finance and business operations.

Four core elements of recommended disclosures

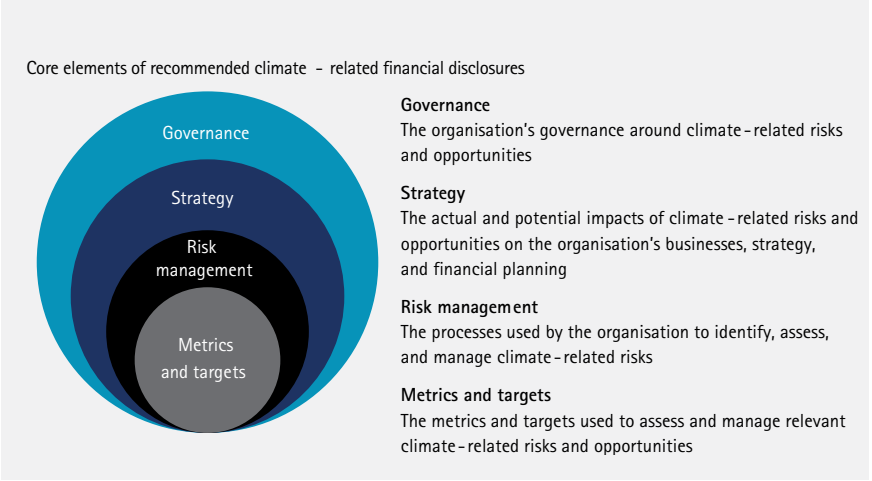
1. Governance

In line with best corporate practices, good governance directs the high-level approach, management and disclosure of climate-related risks and opportunities as a component of the broader organisational governance programme. This highlights the board's understanding, prioritisation, management and oversight of issues, as well as how the board monitors and oversees progress and targets when addressing climate change issues in relation to organisational development.

Highlights

- an organisation's resilience to climate-related shocks and impacts substantially influences investors' valuation, investment, asset allocation, credit ratings, lending and insurance underwriting decisions
- the Task Force on Climate-related Financial Disclosures (TCFD) recommendations help bring clarity, comparability and measurability to climate issues that are often recognised as non-quantifiable and unpredictable
- the TCFD framework's unique strength is its ability to bring the realities of climate change issues into corporate risk decision making and planning – this speaks to the core of corporate secretarial management practice

> “while the recommendations aim to be ambitious, they are practical for near-term adoption”



2. Strategy
Strategy discloses the actual and potential impacts of climate-related risks and opportunities where such information is material. Importantly, this includes risks and opportunities identified over the short, medium and long term, and how they influence business and financial planning. The use of scenario analysis can be useful in this element to test resilience of the organisation's strategy.

3. Risk management
Risk management details the organisation's systems and processes for identifying and assessing material climate-related risks in scope and intensity. This covers both physical and transitional risks. Physical risks concern acute impacts (for example storm surges and flooding), which are often short term and event driven; while chronic impacts (for example rising sea levels and increased air temperatures) refer to the longer-term shifts in climate patterns. Transitional risks arise from the changes in policy, regulations, technologies, investment, insurance and consumer markets that affect corporate planning and future business development. Moreover, depending on the nature, speed and focus of these issues, transitional risks pose varying levels of financial and reputational risk to the organisation.

Managing risk is necessarily transparent and accountable and demonstrates how the processes for identifying, assessing and managing climate-related risks and opportunities are integrated into the organisation's overall risk management programme. Establishing context and issue materiality are necessary steps within the process. Scenario analysis plays an important role as it presents the opportunity to test a range of trajectories in which to evaluate risk appetite and mitigation efficacy over time and in different contexts.

4. Metrics and targets
The metrics and targets used to assess and manage relevant climate-related risks and opportunities require transparency, measurability and consistency. The TCFD framework is by design complementary to existing international, industry and national metrics, standards or guidelines. Principally, the company should disclose Scope 1, Scope 2 and, if appropriate, Scope 3 greenhouse gas (GHG) emissions using the World Resources Institute's GHG Protocol (https://ghgprotocol.org), and discuss the related business risks. Management of climate risks associated with anticipated regulatory requirements and market constraints on water, energy, land use and waste management should also be included in the metrics to demonstrate progress. Discussions should incorporate the targets set to manage risks and report performance against such targets, as well as identify potential opportunities for growth.

Seven principles for disclosures and reporting

To underpin the framework and help guide current and future developments in climate-related financial reporting, seven principles for best disclosure practices are suggested which, when applied, improve the quality and value of data for users.

Disclosures should be:

1. representative of relevant information (material and in context)

2. specific and complete
3. clear, balanced and understandable
4. consistent over time
5. comparable within sector, industry or portfolio
6. reliable, verifiable and objective, and
7. provided on a timely basis.

These principles align with already well-established best practices in annual reporting and generally apply to most providers of financial disclosures. They are designed to make clear the linkages between climate-related issues and their governance, strategy, risk management and metrics and targets.

The Hong Kong context

Asia-based corporations should consider the model suggested in the recommendations for financial disclosure of climate-related issues. The exposure and financial consequences in terms of both physical and transitional risks are an increasing reality regardless of company size or turnover. The TCFD framework provides the platform for companies to kick-start the internal process for risk assessment and the dialogue on how climate-related issues are relevant in current governance, strategy and risk management practices.

Using the TCFD recommendations places the resilience lens on managing business costs and revenues, the supply chain, business interruptions and the efficiency of resources allocation in terms of climate-related impacts. The further use of scenario analysis to test alternative pathways provides ways for organisations to consider how the future might look if certain trends continue or certain conditions are met. These two benefits serve to inform Hong Kong boards and senior management when making risk management decisions and to initiate the climate dialogue with stakeholders.

> “the TCFD recommendations are consistent with the HKEX *Environmental, Social and Governance Reporting Guide*”

The TCFD recommendations are consistent with the HKEX *Environmental, Social and Governance Reporting Guide* requirements and with industry and international standards and guidelines such as the Sustainable Development Goals, Global Reporting Initiative, International Integrated Reporting Council and Sustainability Accounting Standards Board. At the same time, the recommendations are flexible enough to accommodate and support evolving practices and interface with existing internally deployed management systems. This is highly relevant to and facilitates the preparation of ESG reporting.

The recommendations are unique amongst the many global frameworks in that they are not stand-alone in use nor do they set key performance indicators, but rather are developed to promote the integrated conversation on corporate risk. Even with first-time or highly qualitative disclosures, corporate constituents can review, recognise and understand how organisations consider and position climate-related issues and the potential financial impacts.

The TCFD recommendations provide an opportune entry point for companies to start the step-by-step response to the global regulatory, financial and investment communities' increased call for more qualitative, inclusive and quantified data on climate issues. Importantly, they provide investors, financial partners and internal management with a more precise understanding and financial asses sment of the organisation's exposure to climate risks over the short, medium and long term.

Dr Glenn Frommer and Theodora Thunder, Principals
The Sustainability Partnership

In part two of this article, to be published in the next edition of CSj, the authors introduce the value and uses of scenario analysis to help understand and price the consequences from climate change–related issues.

The Sustainability Partnership advises companies on the end-to-end management of ESG issues and their reporting.

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CGC 2018 preview

CSj previews the Institute's upcoming biennial Corporate Governance Conference, to be held on Friday 14 September 2018 at the JW Marriott Hotel in Hong Kong.

Next month, the 11th in the Institute's series of biennial corporate governance conferences (CGCs) gets underway in Hong Kong. The CGC 2018 will be debating the tough questions lying ahead of governance professionals in the emerging business landscape from both a local and international perspective.

The challenges ahead

The Institute's CGCs have always been primarily focused on addressing future challenges. 'Over the years we have always tried to have an orientation for the conference which is forward-looking; preparing our members and attendees for things that are likely to come up in the years to come, rather than things that they have already had to deal with,' as the Event Chairman, Peter Greenwood FCS FCIS, puts it.

In the current environment, however, looking forward is a rather daunting prospect. This year's CGC comes at a time of unprecedented change globally and locally. On the one hand, digital

technologies are transforming every sector of the economy, demolishing tried and tested business models of the past and creating new opportunities for innovators around the world. In addition, we are also entering a time of great uncertainty in political, social and environmental matters.

So what will be the major risks and opportunities for organisations and for governance professionals in the decade ahead? Under the theme 'Corporate Governance: The New Horizon', the Institute's upcoming CGC will address the changing landscape from multiple perspectives.

Session 1: 'New Values, New Responsibilities' – will look at the changing expectations on organisations in terms of delivering more than financial performance. This will include issues relating to ESG performance, sustainability and climate change responsibility.

Session 2: 'New Relationship with Shareholders' – will look at organisations' relationships with shareholders and stakeholders. Issues that will be relevant here include shareholder engagement, shareholder rights, the role of controlling shareholders, and the balance between shareholder and stakeholder interests.

Session 3: 'New Strategies for the Digital Age' – will look at the impact of emerging technologies on organisations. Issues such as risk management, reputation management, social media and cybersecurity will be particularly relevant here.

Session 4: 'New Skills, New Mindset, New People' – will look at the changing landscape from a human resources perspective. How can organisations change mindsets, acquire relevant skills and become more flexible and adaptive? The very topical issue of board diversity will form part of the discussion.

A forum for change

Another defining characteristic of the Institute's CGCs is the determination to ensure that the forum not only debates relevant corporate governance challenges, but also offers possible solutions to them. This is certainly the ethos of the Keynote Speaker of the CGC 2018 – Professor Mervyn King, Chairman of the International Integrated Reporting Council and Chairman Emeritus of the Global Reporting Initiative.

Professor King is probably best known for his work chairing the committee that has taken his name – the King Committee on Corporate Governance in South Africa. Since the 1990s, the King Reports on Corporate Governance have consistently been ahead of the times in their approach to governance and the roles and responsibilities of companies in society. They have championed issues such as stakeholder inclusivity, sustainability reporting and integrated reporting, and have come to define many of the key concepts that make up 'best practice' in governance today.

An innovation at this year's CGC will be a final debate at the end of the conference between Professor King and young members of the Chartered Secretarial profession in Hong Kong. This debate is designed to ensure that the perspective of the younger generation of governance professionals has a voice at the forum. The long-term challenges that will form the centre of the conference's discussions will, after all, shape the world they will inherit.

Join the debate

In keeping with the practice of past years, this year's CGC will adopt a format of relatively short speaker presentations (limited to 20 minutes) followed by extended panel discussions and Q&A sessions. This helps to boost the level of interaction between speakers, panellists and conference attendees. In addition, CGC participants can look forward to the very lively discussions inspired by the use of the electronic voting system. Holding regular electronic polls throughout the debate gives every member of the audience a chance to express his or her view on the topics under discussion. Moreover, in the hands of Event Chair Peter Greenwood, the polls often add to the good humour with which the day's discussions are held.

> *The Hong Kong Institute of Chartered Secretaries' Corporate Governance Conference 2018 will take place at the JW Marriott Hotel, Hong Kong, on Friday 14 September 2018. More information and the conference registration form can be found on the CGC webpage: www.hkicscgc.com.*
>
> *This year's corporate governance conference will be the culmination of the Corporate Governance Week, organised in the lead-up to the Institute's double anniversary (next year marks the 70th anniversary of ICSA's local presence and the 25th anniversary of incorporation of the Institute). More information on the events of the Corporate Governance Week can be found on the Institute's website: www.hkics.org.hk.*

CGC 2018 | 14-15 September | JW Marriott Hotel, Hong Kong
Corporate Governance: The New Horizon

Day 1 Conference Programme: Friday, 14 September 2018

Time	Rundown and Topics	Speakers/Panellists
8.20 am	Registration	
8.40 am	Opening Speech	**Mr David Fu FCIS FCS(PE)** *President, The Hong Kong Institute of Chartered Secretaries*
8.50 am	Speech by the Guest of Honour	**The Honourable Mr James Lau JP** *Secretary for Financial Services and the Treasury* *The Government of the HKSAR*
9.00 am	Keynote Address The New Horizon: New Challenges, Opportunities and Thinking	**Professor Mervyn King** *Chairman, International Integrated Reporting Council (IIRC)*
	Session One: The New Horizon: New Values, New Responsibilities	
9.20 am	Financial Performance: The Holy Grail?	**Mr David Simmonds FCIS FCS** *Group General Counsel, Chief Administrative Officer & Company Secretary, CLP Holdings Limited*
9.40 am	HKICS Research: The Need for Change?	**Mr Andrew Weir** *Senior Partner, Hong Kong/Vice Chairman, KPMG China*
10.00 am	Session One - Panel Discussion Event Chair: **Mr Peter Greenwood FCIS FCS**	**Mr David Simmonds FCIS FCS** **Mr Andrew Weir** **Ms Katherine Ng** *Senior Vice President, Head of Policy, Listing Department* *Hong Kong Exchanges and Clearing Limited* **Mr Nicholas Allen** *Chairman, Link Asset Management Limited*
10.40 am	Networking Break	
	Session Two: The New Horizon: New Relationship with Shareholders	
11.00 am	To Tango: How and With Whom?	**Professor Frederick Ma Si-hang GBS JP** *Chairman, MTR Corporation Limited*
11.20 am	Board/Shareholders: The Cyber Dimensions?	**Mr Chris Lawley** *VP, APAC, Diligent Corporation*
11.40 am	Session Two – Panel Discussion Panel Chair: **Professor C K Low FCIS FCS** *Associate Professor in Corporate Law* *CUHK Business School*	**Professor Frederick Ma Si-hang GBS JP** **Mr Chris Lawley** **Ms Pru Bennett** *Managing Director, Blackrock & Head, BlackRock Investment Stewardship Team* **Mr Xie Bing FCIS FCS** *Board Secretary, China Southern Airlines Company Limited* **Mr Tim Payne** *Senior Partner, Head of Asia, Brunswick Group Ltd*
12.20 pm	The Registrar of Companies' Briefing	**Ms Ada Chung JP** *Registrar of Companies, Companies Registry*
12.40 pm	Lunch	
	Session Three: The New Horizon: New Strategies for Digital Age	
1.20 pm	Regulating in the New Digital Age	**Ms Julia Leung SBS** *Deputy Chief Executive Officer and Executive Director, Intermediaries Securities and Futures Commission*
1.40 pm	Cybersecurity: The Losing Battle?	**Mr Kenneth Wong** *Partner, Risk Assurance Cybersecurity & Privacy Lead Practice PwC China/Hong Kong and Asia Pacific*

	Session Three: The New Horizon: New Strategies for Digital Age (continued)	
2.00 pm	Session Three – Panel Discussion Event Chair: **Mr Peter Greenwood FCIS FCS**	**Mr Kenneth Wong** **Ms Gabriela Kennedy** *Partner, Mayer Brown JSM* **Mr Miro Pihkanen** *Partner, Cyber Risk Services , Deloitte* **Mr Vivek Aranha** *Managing Director, Link Market Services, Hong Kong* **Ms Wong Wai Yin** *Senior Manager, Global Responsible Investment & Governance, Asia Pacific, APG Asset Management Asia*
2.40 pm	Networking Break	
	Session Four: The New Horizon: New Skills, New Mindset, New People	
3.00 pm	Business as Usual: Why Change?	**Ms Cindy Chow** *Executive Director, Alibaba Hong Kong Entrepreneurs Fund*
3.20 pm	Leading the Change: An Involved Task?	**Ms Ann Kung** *Deputy Chief Executive, Bank of China (Hong Kong) Limited*
3.40 pm	Session Four – Panel Discussion Event Chair: **Mr Peter Greenwood FCIS FCS**	**Ms Cindy Chow** **Ms Ann Kung** **Ms Glendy Choi** *Executive Director & CEO, D&G Technology Holding Co., Ltd* **Ms Hannah Carmichael** *Programme Director, NED Asia , Financial Times*
	Closing Remarks: Corporate Governance for the New Horizon Company	
4.20 pm	Dialogue with Professor Mervyn King Event Chairman's Closing Colloquy	
5.00 pm - 6.30 pm	Cocktail Reception	The Lounge, Lobby Level
[ECPD = 7 Points]		

Note: Speakers may change dependent on their pressing commitments, and HKICS reserves the right to change speakers.

Day 2 Optional Site Visits: Operating in the New Horizon — Saturday, 15 September 2018

Time	Rundown and Topics	Co-ordinators
9.00 am	Assembly (Central Post Office)	
10.00 am - 12.15 pm	Facilities Visit: Site Visit and Group Discussions (In alphabetical order) Group 1 – Black Point Power Station Group 2 – Hongkong International Terminals Group 3 – Ngong Ping 360 Group 4 – Ocean Park	 CLP Holdings Limited CK Hutchison Holdings Limited MTR Corporation Limited Ocean Park Corporation
1.00 pm	Return (Central Post Office)/Programme End	
[ECPD = 3 Points]		

Terms and Conditions Apply.

Discovery obligations of the Competition Commission

Philip Monaghan, Partner; Scott Schaeffer, Counsel; and Charles Paillard, Associate; O'Melveny, discuss the implications of a recent decision by the Hong Kong Competition Tribunal which clarifies respondent discovery rights in enforcement actions brought by the Competition Commission.

The Hong Kong Competition Tribunal, which hears all cases regarding violations of Hong Kong's competition law, recently issued a decision addressing the discovery obligations of the Competition Commission in proceedings before the Tribunal. The decision, *Competition Commission v Nutanix Hong Kong Limited and others* (CTEA 1/2017 [2018] HKCT 1), is the first of its kind. It provides increased clarity on a number of discovery issues relevant to respondents in enforcement proceedings. Key holdings include:

1. **Leniency communications.** Communications between the Competition Commission – Hong Kong's competition enforcement agency – and parties who *unsuccessfully* seek leniency are privileged and need not be disclosed in later proceedings.

2. **Complaints to the regulator.** Complaint forms filed by members of the public – which can result in Commission investigations and Tribunal proceedings – are ordinarily protected from disclosure.

3. **Internal Commission documents.** The Commission's internal documents are not exempt from disclosure simply because they are internal. Any withholding must be justified based on the content of the individual document. Public interest immunity may, however, extend to (1) internal communications which reveal the Commission's sources or plans, methods, procedures, and tactics; and (2) reports made by staff and case handlers to Commission members for decision and minutes of Commission meetings.

4. **Scope of discovery.** Discovery in Tribunal proceedings 'should approach the standard applicable to the prosecution in criminal proceedings', including the disclosure of relevant material which may undermine the Commission's case or advance a respondent's case.

Notably, the *Nutanix* decision did not address discovery obligations placed on respondents. Still, the decision's guidance regarding Commission obligations and respondent discovery rights should aid respondents in future enforcement actions.

This article discusses in detail the *Nutanix* decision, highlighting key takeaways and comparative considerations relative to other jurisdictions.

Background

Hong Kong's Competition Ordinance (Cap 619) took effect in December 2015. In March 2017, the Commission filed its first enforcement action, alleging that Nutanix and other information-technology companies engaged in bid rigging. Specifically, the Commission alleged that Nutanix orchestrated the submission of fake 'cover' bids in order to ensure another respondent secured a contract to supply and install an IT server system for the Hong Kong Young Women's Christian Association.

SiS International Ltd (SiS) – one of the respondents accused of submitting a so-called 'dummy' bid – sought discovery from the Commission. On 26 May 2017, the Tribunal issued an order requiring the Commission to disclose 'a list of documents . . . separating: (a) those sought to be relied upon and used by [the Commission] in these proceedings, and (b) unused materials, with the origination of each of the documents identified.' SiS argued that the Commission's subsequent disclosure was deficient and sought redress before the Tribunal.

The decision

On 14 March 2018, Justice Godfrey Lam partially ruled in favour of SiS. He made a number of points at the outset, holding that:

- while the Rules of the High Court (O 24 r 2 of the Rules of the High Court) apply to Tribunal proceedings, there is no automatic general discovery in enforcement actions before the Tribunal

Highlights

- respondents in proceedings before the Tribunal have extensive discovery rights and are able to make significant claims for disclosure
- the Commission cannot simply make blanket claims of public interest privilege without justifying those claims based on the content of the documents
- the Tribunal endorses without prejudice privilege for unsuccessful leniency and unsuccessful settlement communications with the Commission, which preserves the rights of applicants to pursue leniency without fear of undue prejudice

> “the decision’s guidance regarding Commission obligations and respondent discovery rights should aid respondents in future enforcement actions”

- discovery is at the discretion of the Tribunal
- while discovery in Tribunal proceedings should approach the standard applicable in criminal proceedings, the law does not require automatic disclosure of all unused materials, only those materials meeting the ‘test of relevance’, and
- even if competition cases involve the determination of a criminal charge, this ‘does not necessarily mean that criminal jurisprudence and procedures apply, or apply in the same way in all respects to these proceedings’.

Justice Lam then examined each class of documents subject to the discovery application lodged by SiS.

Leniency communications

SiS sought all without prejudice correspondence, as well as all records of without prejudice communications, between the Commission and respondents in relation to the Commission’s leniency policy. The Commission was willing to produce (1) any pre-existing documents provided during the course of the leniency process, and (2) communications related to successful leniency applications (an academic concession in the circumstances as there were none). It objected to the production of communications between the Commission and *unsuccessful* leniency applicants or records of such communications, invoking the without prejudice privilege and public interest immunity. Justice Lam sided with the Commission.

Public Interest Considerations. The Commission’s Leniency Policy emphasises that leniency is ‘a key investigative tool’, and that it is ‘in the public interest that leniency should be accorded to an undertaking which is willing to terminate its participation in cartel conduct’. The Commission argued that disclosure of communications related to unsuccessful leniency applicants would ‘severely undermine’ the leniency programme, as individuals and companies would be hesitant to come forward without the assurance of confidentiality.

Justice Lam balanced the public interest considerations of encouraging leniency applicants against the desire to determine Tribunal proceedings based on all available information. He held that the public interest in non-disclosure of unsuccessful leniency communications outweighs any contrary interest in disclosure.

Justice Lam recognised the ‘strong public interest in encouraging eligible parties to apply for leniency and in facilitating free and frank communication in the process’. Disclosure of unsuccessful leniency communications would mean that leniency applicants would be in a ‘worse position than those who have not applied for leniency at all’. For the same reason, Justice Lam suggested that public interest weighs in favour of an informer privilege for any person who has given information to the Commission, although that privilege would still be subject to a balancing exercise.

Still, Justice Lam acknowledged – and the Commission did not contest – that the Commission should disclose (i) any pre-existing documents provided during the course of the leniency process, and (ii) any ‘successful’ leniency communications (that is, where leniency had been granted – there were, however, no successful leniency applications in the case as noted above).

Without prejudice privilege. Justice Lam also held that communications regarding unsuccessful leniency applications benefited from the without prejudice privilege or ‘a privilege akin to it’. As a general rule, this means that leniency communications and any information contained therein cannot be disclosed or used against the unsuccessful applicant in enforcement proceedings.

Justice Lam explained that without prejudice privilege facilitates the kinds of cooperation and settlement envisioned by

Internal document type	Public interest privilege?
Records of internal communications between Commission staff during the execution of search warrants issued under Section 48 of the Competition Ordinance.	• Yes, in so far as the communications tend to reveal the Commission's sources of information, its plans, methods, procedures, or tactics.
Preliminary and preparatory working drafts of witness statements of informants, complainants and/or persons under investigation generated internally by staff of the Commission.	• Not generally. Relevance may be a more appropriate argument against disclosure.
Internal preparatory and briefing notes prepared by Commission staff for the purpose of conducting interviews or executing warrants under Section 48 of the Competition Ordinance.	• Yes, to the extent the documents concern the execution of search warrants, or where the documents might reveal investigation methods, procedures and tactics of the Commission.
Records of internal communications, recommendations, approvals, meetings and the relay of information generally, as between Commission staff and Commission members, for the purpose of the performance of the Commission's investigative and enforcement functions.	• Yes, but only substantive reports made by the staff to the Commission members for their decision – that is, Commission staff's appraisal of the case, the Commission members' internal deliberations, Commission minutes and the Commission's approval mechanisms generally. • Justice Lam states in his decision that it is 'vital that there should be freedom of communication in this context between the Commission and its staff, without apprehension that what was expressed might be disclosed to respondents in future'.
Records of general internal communications between Commission staff responsible for investigations or litigation-related tasks, including internal reports and electronic correspondence.	• Not generally. Relevance claims may be a more appropriate argument against disclosure.

the Leniency Policy. As in civil litigation, parties must be able 'to put their cards on the table' and negotiate openly without fear that what they disclose will be used against them. Accordingly, without prejudice privilege applies to 'negotiations between the Commission and persons subject to investigation and proceedings even though the context lies outside litigation of private rights'.

Finally, Justice Lam concluded that without prejudice privilege would also apply to settlement negotiations (separate and apart from leniency communications) between the Commission and potential enforcement targets, at least when those communications have not resulted in a successful settlement agreement. Although not expressly discussed, the holding appears to imply that successful settlement negotiations may be disclosed.

Complainant's original complaint

The Commission objected to the disclosure of the original complaint form alerting it to the potential bid rigging. The Commission claimed that public interest immunity was warranted in order to encourage reporting without fear of disclosure. Justice Lam recognised that the complaint form, along with the complainant's name and contact details, normally is confidential and covered by informer privilege. In the *Nutanix* case, however, the Commission had already revealed the identity of the complainant, likely with the complainant's consent. That fact undermined any further interest in protecting the complaint form and the Tribunal ordered the Commission to disclose the document.

Internal Commission documents

The Commission objected to the production of any internal reports, minutes, or correspondence regarding its investigation and ongoing Tribunal

“The *Nutanix* decision indicates that the first step in assessing disclosure is relevance. It is only when documents are relevant that a question of public interest privilege can arise.”

proceeding against the *Nutanix* respondents. Justice Lam rejected the Commission's claims that (1) these internal Commission documents were irrelevant as a matter of law, and (2) that the public interest privilege uniformly prohibited the disclosure of internal documents. He acknowledged, however, that legal professional privilege would apply to the extent the dominant purpose of any communication was for obtaining legal advice.

For any document not related to the obtaining of legal advice, Justice Lam concluded that discovery obligations must be assessed by reviewing the contents of the documents. The *Nutanix* decision indicates that the first step in assessing disclosure is relevance. It is only when documents are relevant that a question of public interest privilege can arise.

Relevance. The decision is clear that a document is not 'necessarily irrelevant simply because it is an internal communication within the Commission'. For example, an internal document may be relevant and discoverable when it records information gathered during an investigation and that information has not otherwise been disclosed. Conversely, an internal document would likely be irrelevant if the Commission has already disclosed the primary material on which the internal document is based.

Public interest immunity. Justice Lam refused a 'sweeping proposition that every internal communication is privileged' pursuant to public interest privilege. And while the Commission attempted to divide its internal documents into five subcategories, Justice Lam concluded that many of the categories were too broad to assess whether disclosure was required. Some of the key conclusions regarding internal documents are set out above.

Witness documents

The *Nutanix* decision also addressed the disclosure of documents related to a witness statement by Mr D, an employee of SiS who purportedly participated in the bid rigging and who received immunity. SiS requested a 'warts and all' account of the witness. Justice Lam ruled that the Commission must disclose two intermediate drafts of the witness statement not previously shared, but refused to require disclosure of internal notes made prior to meetings with Mr D. Justice Lam explained that 'warts and all' does not mean 'everything under the sun'.

Comparative considerations

The *Nutanix* decision is notable for an additional reason: the Commission's positions on disclosure and privilege mirror those taken by antitrust enforcers in other jurisdictions, notably the US Department of Justice (DOJ). In the US, the DOJ 'holds the identity of leniency applicants and the information they provide in strict confidence, much like the treatment afforded to confidential informants'. On that basis, the DOJ has successfully argued that communications and information received from leniency applicants – both successful and unsuccessful – can properly be withheld. In particular, courts have accepted that the disclosure of confidential sources (including their very existence) 'would lead members of the cartel to identify and intimidate the leniency applicant and to more carefully hide information', placing at risk ongoing and future investigations.

The DOJ has also successfully challenged the disclosure of internal documents on privilege grounds, including under the attorney-work-product privilege, the deliberative-process privilege (sometimes called 'executive privilege') and the attorney-client privilege. The attorney-work-product privilege in particular 'extends to documents and tangible things that are prepared in anticipation of litigation or for trial by an attorney', which is broad but not without limits.

Philip Monaghan, Partner; Scott Schaeffer, Counsel; and Charles Paillard, Associate; O'Melveny

The Competition Commission's leniency policy is available on the Commission's website: www.compcomm.hk.

This article is a summary for general information and discussion only. It should not be relied upon as legal advice and does not purport to represent the views of O'Melveny & Myers LLP.

CHARTERED SECRETARIES 特許秘書

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Liability under the Competition Ordinance

With key parts of the Competition Ordinance uninterpreted in Hong Kong, Peter Westerlind Wigstrom, Registered Foreign Lawyer, Deacons, looks at overseas competition cases to guide businesses and individuals on the likely extent of their liability under the law.

The Competition Ordinance (the Ordinance) came into full force in December 2015. The law is designed to promote competition and prohibit anti-competitive conduct in Hong Kong to the benefit of consumers, businesses and the economy at large. While it is arguably too early to assess the effect on the overall competitive environment, active enforcement of the competition rules means that businesses and individuals are already exposed to potentially significant risks.

The competition rules prohibit anti-competitive decisions, concerted practices and agreements between undertakings (the First Conduct Rule), anti-competitive conduct by undertakings with substantial degree of market power (the Second Conduct Rule) and, in relation to the telecommunications market, mergers between undertakings that substantially lessen competition in Hong Kong (the Merger Rule).

The Hong Kong competition regime adopts a prosecutorial model, whereby the Competition Commission (the Commission) investigates suspected anti-competitive conduct and prosecutes cases before the Competition Tribunal (the Tribunal). There is no stand-alone private right of action, which means that parties cannot bring complaints of competition rule violations directly to the Tribunal. However, in a recent case, the Court of First Instance allowed an allegation of a contravention of the First Conduct Rule raised as part of the defence in a civil action to be transferred directly to the Tribunal, without the matter first being referred to the Commission.

The Tribunal has the power to impose significant penalties for a contravention, or an involvement in a contravention, of a competition rule, including:

- imposing fines of up to 10% of the Hong Kong turnover of the relevant undertaking for each year the contravention occurred, up to a maximum of three years
- requiring the payment of an amount not exceeding the amount of any profit gained or loss avoided as a result of the contravention
- declaring an agreement, the making or giving effect to which constitutes the contravention, to be void or voidable or ordering modification or termination of such agreement, and
- ordering the disqualification of directors for up to a maximum of five years.

A party found to have contravened a competition rule is further exposed to civil follow-on actions for damages brought by third parties who have suffered harm as a result of the competition rule violation. In addition to civil liabilities, criminal liability may arise, including for non-compliance with the Commission's investigatory powers.

Clearly, there is significant risk exposure for businesses and individuals under the Ordinance. However, the exact scope of liability for anti-competitive conduct is not clear as the law is still in development with key sections of the Ordinance yet to be interpreted. This article raises some of the key questions relating to when liability for anti-competitive acts can be assigned to an undertaking and brings up the uncertainties regarding individual liability under the Ordinance.

Highlights

- with key parts of the Competition Ordinance uninterpreted, the exact scope of liability for anti-competitive conduct remains unclear
- businesses are exposed to possibly significant risks as liability could arise from unlawful conduct of rogue employees, subsidiaries, portfolio companies, joint ventures and even third-party contractors or service providers
- it remains to be seen how the Tribunal interprets the scope of individual liability and how fines for individuals are set

Can an undertaking be held liable for anti-competitive conduct by its employees?

The competition rules apply to the conduct of an 'undertaking', which is defined as any entity engaged in economic activity, including a natural person engaged in economic activity. In a recent Tribunal decision, Justice Lam referenced a UK decision stating that since an undertaking that is a company can only act through individuals employed by it, the acts of a company are performed by its employees. It follows, it was held in the UK decision, that any act by any employee could, potentially, lead to an infringement attributable to the corporate employer.

The EU courts have adopted an expansive approach, whereby a company as a matter of principle is liable for any anti-competitive conduct by its employees. A company cannot avoid liability on the basis that its employee acted contrary to instructions or without the management's knowledge. Anti-competitive acts of a rogue employee can therefore put employers at significant risks.

The question whether an employee's unauthorised acts can be attributed to its employer has been raised by a defendant in the Tribunal's hearing of the Commission's case against five companies for alleged bid rigging. The Tribunal decision may therefore provide clarity on the scope of corporate liability for an employee's anti-competitive conduct in Hong Kong.

Can an undertaking be held liable for anti-competitive conduct by its subsidiaries or joint ventures?

Parental liability is another key issue that remains uninterpreted by the Tribunal. The scope of parental liability is important as it determines under what circumstances an undertaking can be held liable for unlawful acts of its subsidiaries or joint ventures. A wide scope may significantly increase the potential risk exposure for undertakings under the Ordinance.

The guideline on the First Conduct Rule provides guidance on when the Commission considers that two entities form one undertaking. Similar to the approach adopted in the EU, the Commission will assess whether the relevant entities constitute a single economic unit based on whether one entity exercises decisive influence over the commercial policy of another entity, such as a subsidiary. The Tribunal, however, is not bound by the Commission's guideline and is yet to consider the 'single economic unit' doctrine and the scope of parental liability under the Ordinance. It therefore remains unclear under what circumstances an undertaking can be held liable for anti-competitive conduct by its subsidiaries or joint ventures.

With the lack of clarity in Hong Kong, it may be helpful to understand how EU courts have determined the scope of parental liability.

Under EU law, a parent company can be held jointly and severally liable for a competition law infringement by its subsidiary where the two entities form a single economic unit. This is the case where the parent company exercises decisive influence over the conduct of the subsidiary. In relation to wholly owned subsidiaries, decisive influence by the parent company is presumed. Where ownership of a subsidiary falls below 100%, decisive influence must be proven. Notably, the EU courts have held that a parent company with only a minority interest can exercise decisive influence over its subsidiary and, thus, form a single economic unit with that subsidiary. For liability for the acts of a subsidiary to arise, a parent company need not have participated in, or been aware of, the infringing conduct.

With regard to financial investments in portfolio companies, the EU courts have held that liability can in principle be avoided, provided that the parent company behaves as a pure financial holding company with no influence over the portfolio company's industrial or commercial activities. If, however, decisive influence over the conduct of the portfolio company is established, liability for anti-competitive conduct may be assigned to the parent company.

In relation to joint ventures where the parent companies exercise joint control, the EU courts have held that each parent company can be regarded as exercising decisive influence over the joint venture, both in the case of a 50/50 joint venture and where one parent company holds a minority share. Thus, liability can be imputed on each of the parent companies for anti-competitive conduct by the jointly controlled venture.

Can an undertaking be held liable for anti-competitive conduct by third-party subcontractors or service providers?

Having considered whether liability can be assigned to an undertaking for unlawful conduct carried out by its employees, subsidiaries or joint ventures, the question arises whether the scope of liability under the Ordinance extends to acts carried out by third-party subcontractors or service providers with which the undertaking does not form a single economic unit.

> “the Commission CEO, Brent Snyder, has advocated for holding individuals accountable to competition law violations”

The Tribunal's view may be clarified in its decision in the Commission's case against 10 contractors for alleged price-fixing and market sharing. In the pre-trial hearings, arguments have been raised by two defendants that the alleged conduct was carried out by subcontractors and, therefore, liability for that conduct should not be imputed to the defendants. The decision is expected later this year.

In the EU, the question was considered in a case involving a concerted practice between a service provider and two competitors of the undertaking to which the service provider provided services. It was held that, in principle, an undertaking can be liable for a concerted practice on account of the acts of an independent service provider supplying services to it, provided that one of the following conditions is met:

- the service provider acted under the direction or control of the undertaking
- the undertaking was aware of the anti-competitive objectives pursued by its competitors and the service provider and intended to contribute to them by its own conduct, or
- the undertaking could reasonably have foreseen the anti-competitive acts of its competitors and the service provider and was prepared to accept the risk.

As can be seen, the EU courts have taken an expansive approach to liability and may attribute unlawful conduct of a service provider to an undertaking to which it provides services, despite the absence of a structural link between the entities.

Are individuals exposed to liability under the Ordinance?

In addition to undertakings being exposed to significant risks under the Ordinance, the Commission CEO, Brent Snyder, has advocated for holding individuals accountable to competition law violations. However, there is significant uncertainty as to whether the Tribunal can assign liability and impose pecuniary penalties on individuals for contraventions of the competition rules.

As mentioned above, the Ordinance prohibits certain anti-competitive conduct by 'undertakings' and empowers the Tribunal to impose fines, upon an application by the Commission, on any 'person' found to have contravened the competition rules. This inconsistency of the legislative text creates uncertainty. An 'undertaking' is defined as any entity engaged in economic activity. A 'person' is broader in scope and includes any public body and any body of persons, corporate or unincorporated, including an undertaking. A key question is therefore whether an individual, for example a director of a company, falls within the definition of an 'undertaking' and as such can be held liable for a contravention of a competition rule. The Commission has clarified that it does not consider an employee to be an 'undertaking'.

The Ordinance also empowers the Tribunal to impose fines on a 'person' found to have been involved in a contravention of a competition rule. Such accessory liability can be imposed on a person who:

> “given the significant penalties available under the Ordinance, businesses and individuals should take appropriate actions to mitigate competition law risks and avoid liability”

- attempts to contravene a competition rule
- aids, abets, counsels or procures any other person to contravene a competition rule
- induces or attempts to induce any person to contravene a competition rule
- is knowingly concerned in, or a party to, the contravention of a competition rule, or
- conspires with any other person to contravene the rule.

There is further uncertainty as to the amount of fines that can be imposed on an individual. The maximum amount of a pecuniary penalty is set in relation to an undertaking's turnover and there is no provision in the Ordinance on how to determine fines for an individual.

It remains unclear how the Tribunal will interpret the relevant provisions of the Ordinance, including whether liability for individuals is limited to accessory liability and how fines for individuals will be determined.

In addition to possible pecuniary penalties, the Tribunal may order the disqualification of directors for up to a maximum of five years, provided that the undertaking of which the person is a director has contravened a competition rule and the person is considered unfit to be involved in the management of that undertaking.

Last, individuals may be exposed to criminal liability under the Ordinance. In particular, failure to comply with the Commission's investigatory powers is punishable by fines of up to HK$200,000 and imprisonment for up to one year. Destroying or falsifying documents, providing false or misleading documents or information, or obstructing a dawn raid is each a criminal offence punishable by fines of up to HK$1 million and imprisonment for up to two years.

Conclusion

With key parts of the Ordinance uninterpreted, the exact scope of liability for anti-competitive conduct remains unclear. Businesses are exposed to possibly significant risks as liability could arise from unlawful conduct of rogue employees, subsidiaries, portfolio companies, joint ventures and, even, third party contractors or service providers. Individuals also face significant risks and penalties under the Ordinance. However, it remains to be seen how the Tribunal interprets the scope of individual liability and how fines for individuals are set.

Given the significant penalties available under the Ordinance, businesses and individuals should take appropriate actions to mitigate competition law risks and avoid liability. This may include reviewing business practices and agreements to ensure compliance with the Ordinance, implementing competition law compliance and dawn raid policies and conducting targeted training programmes for management and employees. Businesses should also consider extending competition law compliance efforts to entities whose conduct may be attributed to them, such as their subsidiaries and joint ventures, owing to the possibly wide scope of parental liability. Importantly, compliance programmes and policies should be reviewed periodically to ensure that they are attuned to the developments of the law.

Peter Westerlind Wigstrom
Registered Foreign Lawyer, Deacons

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The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretarial profession over a substantial period.

Awardees are bestowed with the highest honour – recognition by their professional peers. We urge you to submit your nominations now!

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Please visit www.hkics.org.hk or contact Louisa Lau at 2830 6008 or email to member@hkics.org.hk for details.

Please act now!

Professional Development

Seminars: June and July 2018

11 June

Developments in enterprise risk management and crisis management

Chair: *Edith Shih FCIS FCS(PE), Institute Past President, and Executive Director & Company Secretary, CK Hutchison Holdings Ltd*

Speakers: *Tom Shropshire, Partner and Global US Practice Head; Michael Bennett, Partner, Global Division Head – Dispute Resolution, London; Matthew Axelrod, Partner, Dispute Resolution, Washington; Linklaters LLP; and Melvin Sng, Partner and Head of Dispute Resolution – Asia, Linklaters Singapore Pte Ltd*

12 June

Building a background check – the A-Z of due diligence in Asia

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

Speaker: *Julie Yoon, Director, Mintz Group*

13 June

Company secretarial practical training series: the role and challenges of INEDs (re-run)

Chair: *Ernest Lee FCIS FCS(PE), Institute Council member and Audit Committee Chairman, and Partner, Audit & Assurance, Deloitte China*

Speaker: *Dr Davy Wu, Senior Lecturer, Department Accountancy and Law, Hong Kong Baptist University*

15 June

Company secretarial practical training series: share capital and debentures, share buybacks and share option schemes

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

Speaker: *Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd*

20 June

Company secretarial practical training series: bank accounts and fund flow in China (re-run)

Chair: *Alberta Sie FCIS FCS(PE), Institute Professional Services Panel member, and Company Secretary & Director, Reanda EFA Secretarial Ltd*

Speaker: *Desmond Lau ACIS ACS, Director – China Corporate Services, Tricor Services Ltd*

21 June

China outbound investment regulatory developments

Chair: *Cynthia Chen FCIS FCS, Named Company Secretary, Asiasec Properties Ltd*

Speakers: *Karen Ip, Partner; and Nanda Lau, Partner; Herbert Smith Freehills LLP*

26 June

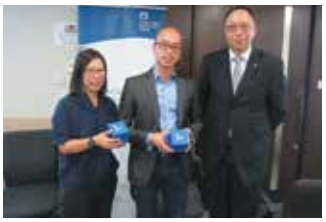
Corporate governance: are we behind the curve in Asia?

Chair: *Arthur Lee FCIS FCS, Institute Council member and Audit Committee member, and Assistant President & Company Secretary, CGN New Energy Holdings Co Ltd*

Speakers: *Kariem Abdellatif, Head of Global Subsidiary Governance Services; Robert-Jan Kokshoorn, Co-head of Global Subsidiary Governance Services; and Javed Aboobakar, Managing Director (Mauritius); Citco Group Ltd*

27 June

What is good ESG reporting? What is in demand?



Chair: *Daniel Chow FCIS FCS, Institute Exemption Sub-Committee member, and Senior Managing Director, Corporate Finance and Restructuring, FTI Consulting (Hong Kong) Ltd*

Speakers: *Will Ng, Sustainability Advisor; and Vicky Lee, Sustainability Advisor; The Purpose Business*

28 June

How to avoid and handle employment disputes (re-run)

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

Speaker: *Cynthia Chung, Partner, Deacons*

6 July

Company secretarial practical training series: disclosure of interests in securities

Chair: *Carmen Lam FCIS FCS, Company Secretary, Tongda Hong Tai Holdings Ltd*

Speaker: *Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd*

6 July

Practical company secretarial workshops: part 1 – how to manage board meetings effectively, module 1 – effective board meetings

Speaker: *April Chan FCIS FCS, Institute Past President and Chairman of Technical Consultation Panel, and Inaugural President, CSIA*

Online CPD (e-CPD) seminars

For details, please visit the CPD section of the Institute's website: www.hkics.org.hk. For enquiries, please contact the Institute's Professional Development Section at: 2830 6011, or email: ecpd@hkics.org.hk.

Professional Development (continued)

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
22 August 2018	6.45pm–8.15pm	Company secretarial practical training series: how to review financial statements and MD&A	1.5
24 August 2018	4.00pm–5.30pm	Crowdfunding – what is it and what are the rules in Hong Kong?	1.5
24 August 2018	6.45pm–8.15pm	Cybercrime investigations – notes from the front line	1.5
29 August 2018	6.45pm–8.15pm	The GDPR: new rules, wider reach. What the company secretary needs to know about the impact of the GDPR on global businesses	1.5
31 August 2018	6.45pm–8.45pm	Company secretarial practical training series: non-Hong Kong company and dormant company	2

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

Membership

New graduates

Congratulations to our new graduates listed below.

Ang Nga Sze, Rachel
Cheung Chun Sum
Cheung Ka Ho
Law Pak Ting, Beatrice
Lee, Yvonne
Ling Qin
Ng Ho Yee
Ng Ka In
Tsang Lo
Wan Hiu Tung

New fellows

The Institute would like to congratulate the following fellows elected in June 2018.

Chan Lai Kam FCIS FCS

Ms Chan is the Founder and Signing Partner of an audit firm. She is a practicing member of the Hong Kong Institute of Certified Public Accountants and a fellow of the Association of Chartered Certified Accountants, The Institute of Chartered Secretaries and Administrators and the Institute. Ms Chan obtained a bachelor's degree in accountancy and a master's degree in corporate governance from The Hong Kong Polytechnic University.

Chung Wai Yin, Christine FCIS FCS

Ms Chung is a Partner of KPMG and has 25 years of professional experience in different functions of KPMG China. She currently serves as the Director and Company Secretary of KPMG entities focusing on regulatory, compliance and governance matters. Prior to her current role, she served as a Tax Partner and provided taxation services to clients operating in Hong Kong and Mainland China. Ms Chung is also a member of the Hong Kong Institute of Certified Public Accountants. She holds a bachelor's degree in law from Peking University and a master's degree in law from The University of Hong Kong.

Leung Siu Hung, Joel FCIS FCS

Mr Leung has 20 years of directorate experience in companies listed in Hong Kong, NASDAQ, as well as state-owned enterprises. He is the Principal Financial Planner of Prudential plc (Stock code: 2378) and responsible for the family office and high net-worth clients. Prior to joining Prudential Group, he served in different law enforcement agencies for a decade. Mr Leung has been qualified by different professional bodies, including as a senior town planner and researcher of the China City Development Institute; an assessor of the Royal Institution of Chartered Surveyors; an arbitrator of China International Economic

and Trade Arbitration Commission; and a fellow member of The Hong Kong Institute of Directors. He is also the Vice-Chairman (Investment) of The Institute of Certified Management Accountants. Mr Leung obtained master's degrees in urban planning, law and corporate governance from The University of Hong Kong, The Chinese University of Hong Kong and The Hong Kong Polytechnic University, respectively.

So Yee Kwan FCIS FCS

Ms So is the Manager of Corporate Services of Tricor Services Ltd – a global professional service provider specialising in integrated business, corporate and investor services. She has 13 years of experience in the corporate secretarial field and is currently the named Company Secretary of six companies listed in the Stock Exchange of Hong Kong. Ms So received a bachelor's degree in International Business Management from Oxford Brookes University in the UK, and a master's degree in professional accounting and information systems from the City University of Hong Kong.

Tse Kar Keung FCIS FCS

Mr Tse is the Financial Controller and Company Secretary of Golden Power Group Holdings Ltd (Stock code: 3919) and is responsible for reviewing and supervising the Group's overall internal control system, accountancy function and listed company secretarial matters. He joined the company in March 2010 as the Senior Accounting Manager and Assistant to Chairman. He has been a member and a fellow of the Association of Chartered Certified Accountants since 2008 and 2013, respectively; a member and a fellow of the Hong Kong Institute of Certified Public Accountants since 2009 and 2016, respectively; as well as a member and a fellow of the Institute and The Institute of Chartered Secretaries and Administrators in 2017 and 2018, respectively. Mr Tse also obtained master's degrees in professional accounting and corporate governance, as well as applied accounting and finance from the City University of Hong Kong and Hong Kong Baptist University, respectively.

Wong Kui Tong FCIS FCS

Mr Wong is the Company Secretary and Authorised Representative of Shunten International (Holdings) Ltd (Stock code: 932). He is a member of the Hong Kong Institute of Certified Public Accountants, Association of Chartered Certified Accountants, The Institute of Chartered Secretaries and Administrators and the Institute. Mr Wong obtained a bachelor's degree in accountancy and a master's degree in corporate governance from The Hong Kong Polytechnic University.

Wong Siu Fan FCIS FCS

Ms Wong worked as the named Company Secretary for a Main Board-listed company in Hong Kong. She has over 15 years of experience in company secretarial, corporate governance and related regulatory compliance work for listed companies in Hong Kong. Ms Wong is also an associate member of the Hong Kong Institute of Certified Public Accountants. She holds a master's degree in financial management from the University of London and a bachelor's degree in accountancy from The Hong Kong Polytechnic University. She also has extensive experience in auditing, accounting and financial management in an international accounting firm and several listed companies.

Xie Jilong FCIS FCS

Mr Xie is the Secretary to the Board and Joint Company Secretary of CRRC Corporation Ltd (CRRC) (Stock code: 1766) and is mainly responsible for corporate governance, information disclosure and management of investors relations. Mr Xie holds an executive master's degree in business administration from the University of International Business and Economics and is the professor-level Senior Economist. He is a fellow of The Institute of Chartered Secretaries and Administrators and the Institute. He has been a speaker at several seminars of the Institute and a trainer at several training sessions of the China Securities Regulatory Commission. He is a member of the Institute's Mainland China Focus Group and Mainland China Technical Consultation Panel.

Xie Xin Yu FCIS FCS

Mr Xie is the Executive Director, Deputy General Manager and Secretary of the Board of Directors of Anhui Expressway Company Ltd (Stock code: 995). He has 22 years of experience serving as the Company Secretary and is mainly responsible for corporate information disclosure, equity affairs, capital operation, financial management, and auditing matters. He is also the part-time Chairman of Anhui Traffic Holding Group (Hong Kong) Company Ltd. Mr Xie is a qualified senior engineer and holds a bachelor's degree in engineering from Changsha Communication College and a master's degree in engineering from University of Science and Technology of China.

Membership (continued)

Membership/graduateship renewal for the 2018/2019 financial year

The membership/graduateship renewal notice, together with the debit note, for the financial year 2018/2019 was posted to members and graduates in early July 2018. Members and graduates should settle payment, as well as complete and return the personal data update form, to the Institute Secretariat as soon as possible, but no later than Sunday 30 September 2018. Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees and levies determined by the Council.

Members and graduates who have not received the renewal notice should contact the Institute's Membership Section immediately at: 2881 6177, or email: member@hkics.org.hk.

Community service – single elders visit programme

The Institute organised a series of community service activities under its single elders visit programme from February to July 2018 to raise members' awareness of the needs of single elders in Hong Kong. During this six-month programme, members, graduates and students joined as volunteers and formed groups to visit single elders regularly. A briefing session, social gatherings and debriefing session were also arranged for volunteers and single elders throughout the programme, which participants found fruitful and rewarding.

The Institute will continue to support the community by organising service programmes for members, graduates and students to join. For details, please visit the Events section of the Institute's website: www.hkics.org.hk.

Members' activities highlights: July 2018

14 July 2018

Mentorship Training – master relationship through communication hints workshop

23 July 2018

Members' Networking – 粤港澳大湾区之经济发展及营商环境

Forthcoming membership activities

Date	Time	Event
4 and 11 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class A)
11 August 2018	9.45am–12.00pm	Community Service – volunteer training
18 and 25 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class B)
1 September 2018	10.00am–12.30pm	Members' Networking – local skincare factory visit
11 September 2018	6.45pm–8.30pm	Mentorship Programme – 2nd social gathering (by invitation only)
18 September 2018	12.45pm–2.00pm	Members' Networking – 由夏入秋养生贴士
22 September 2018	10.00am–12.30pm	Fun & Interest Group – cake baking for Mid-Autumn Festival

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

Advocacy

HKICS interviewed by *Hong Kong Economic Times*

Institute Council member and Membership Committee Chairman Stella Lo FCIS FCS(PE) was interviewed by *Hong Kong Economic Times* to introduce the Chartered Secretarial profession and its governance role in overseeing corporate regulatory compliance. An article relating to the interview was published in the A23 'Corporate Governance Series 2018' section (企业管治新典范专辑系列2018) of *Hong Kong Economic Times* on 19 June 2018.

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

At the interview

HKICS attends the Belt and Road Summit 2018 in Hong Kong

Institute President David Fu FCIS FCS(PE) and Immediate Past President Ivan Tam FCIS FCS were invited by the Hong Kong Trade Development Council to attend the Belt and Road Summit 2018 in Hong Kong on 28 June 2018. Launched in 2016 and now in its third year in Hong Kong, the Belt and Road Summit brought together over 3,000 government officials and business leaders from some 50 countries and regions, who gathered to share the Belt and Road Initiative's latest developments and the emerging opportunities for various sectors.

HKICS attends the HKEX's 18th anniversary cocktail reception

On 13 June 2018, Institute President David Fu FCIS FCS(PE) and Council member Bernard Wu FCIS FCS attended a cocktail reception organised by Hong Kong Exchanges and Clearing Ltd (HKEX) to celebrate the 18th anniversary of its listing on the Stock Exchange of Hong Kong.

HKICS attends the Global Forum Assessment Team meeting

On 27 June 2018, Institute President David Fu FCIS FCS(PE), Past President Natalia Seng FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE) were invited by the Companies Registry to attend a meeting with the Global Forum Assessment Team. The Global Forum, which is a working party under the Organisation for Economic Co-operation and Development, is responsible for monitoring the implementation of internationally agreed standards on the exchange of information for tax purposes. More than 140 jurisdictions, including Hong Kong, have joined the Global Forum. The meeting was part of the three-day visit of the Global Forum Assessment Team and provided the opportunity for face-to-face discussions with representatives from the private and professional service sectors in Hong Kong regarding various issues covered in the ongoing peer review of the legal and regulatory framework, including the effectiveness of exchange of information on request in practice.

President attends the Bills Committee meeting

On 19 June 2018, Institute President David Fu FCIS FCS(PE) attended a meeting of the Bills Committee of the Legislative Council of the Government of the Hong Kong SAR, held at the Legislative Council. During the meeting, Mr Fu presented the Institute's proposed amendments to the Companies (Amendment) Bill 2018 to the attendees, including officials, legislators and Bills Committee members of the Government of the Hong Kong SAR. The proposed amendments are expected to come into operation on 1 February 2019.

To view the Institute's proposed amendments to the Companies (Amendment) Bill 2018, please visit the Submissions section of the Institute website: www.hkics.org.hk.

Achievements and awards

Institute Past President Richard Leung FCIS FCS was appointed Justice of the Peace (JP) by the Government of the Hong Kong SAR on 1 July 2018. The main function of JPs is to visit prisons, detention centres and other institutions to ensure their effective management and that no individual is unfairly treated or deprived of his or her rights. JPs ensure that complaints lodged by individuals are handled in a fair and transparent manner.

CHARTERED SECRETARIES 特許秘書

Shifts in corporate thinking, reporting and governance

~ with Professor Mervyn King ~

15 September 2018 | Time: 2.30pm–4.00pm | Venue: City University of Hong Kong

The Hong Kong Institute of Chartered Secretaries (HKICS) is pleased to have invited distinguished speaker Professor Mervyn King, Chairman of the International Integrated Reporting Council (IIRC), to give a 1.5 hours lecture under the theme of "Shifts in corporate thinking, reporting and governance". The primary aim of this lecture is to provide HKICS students with an up-to-date governance framework and stimulate new thinking.

The final event of the HKICS Corporate Governance Week, this engaging lecture comprises seven core topics and all students will be encouraged to express and share their views. Applicants who must be HKICS students are free to attend through online registration.

Core topics of the lecture:

- Shift from silo reporting to integrated reporting
- Shift from short term profit to value creation
- Shift to sustainable development
- Shift from financial to inclusive capital
- Shift from mindless checklist governance to mindful governance
- Shift from focus on shareholder wealth to the long term health of the company
- Shift to outcomes based governance

Professor Mervyn King
Senior Counsel and former Judge of the Supreme Court of South Africa
Professor Extraordinaire at the University of South Africa on Corporate Citizenship
Honorary Professor at the Universities of Pretoria and Cape Town and a Visiting Professor at Rhodes
Chairman of the King Committee on Corporate Governance in South Africa
Chairman of the Good Law Foundation
Chairman of the International Integrated Reporting Council (IIRC) in London
Chairman Emeritus of the Global Reporting Initiative in Amsterdam
Chairman of the African Integrated Reporting Council
Chairman of the Integrated Reporting Committee of South Africa

Online registration:

For more information, please contact:
2881 6177 or email:
student@hkics.org.hk

www.hkics.org.hk

CGweek
8–15 September 2018

As an institute promoting good governance, HKICS is organising a Corporate Governance Week (CGW) to engage aspiring young people, company secretaries, governance leaders and regulators to research, discuss and debate on key governance issues and stimulate new thinking.

Advocacy (continued)

Corporate governance practical training for IAC in Zhuhai

From 4 to 6 July 2018, the Institute and The Insurance Association of China (IAC) jointly organised a practical training on corporate governance in Zhuhai. This was the third training held after the signing of the Memorandum of Understanding with IAC in March 2015, designed to facilitate collaboration in promoting good governance practices to members of IAC. This latest training was attended by 82 board secretaries, representatives from board secretary offices, supervisory board offices, internal control departments, risk management departments and strategic planning departments of insurance companies in Mainland China. Institute Past President Dr Maurice Ngai FCIS FCS(PE), Chief Executive Samantha Suen FCIS FCS(PE) and five other senior legal/accounting professionals, as well as senior board secretaries, gave presentations on corporate governance best practices from different perspectives.

At the training

President attends the HKIA's 20th anniversary cocktail reception

On 6 July 2018, Institute President David Fu FCIS FCS(PE) was invited by the Hong Kong International Airport (HKIA) to attend its cocktail reception in celebration of the 20th anniversary of its relocation to Chek Lap Kok from Kai Tak, Hong Kong.

MAICSA Annual Conference 2018

On 10 July 2018, International President of The Institute of Chartered Secretaries and Administrators and Institute Past President Edith Shih FCIS FCS(PE) was invited by The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) to be the Guest of Honour of their annual conference, themed 'Forging Forward – New Dimensions', in Kuala Lumpur.

Ms Shih was also invited to be a special guest speaker discussing the topic of 'management and corporate governance – hands on or handcuffed?' with about 600 participants at the conference. Other speakers from regulatory authorities and distinguished industry personalities also shared their experiences in their areas of expertise during the presentations and panel discussions throughout the conference. Institute Chief Executive Samantha Suen FCIS FCS(PE) also attended the conference.

Edith Shih at the conference

CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries
Notice of General Meeting

Wednesday, 29 August 2018 at 6.30pm

NOTICE IS HEREBY GIVEN that a general meeting of The Hong Kong Institute of Chartered Secretaries (the 'Institute') will be held at Theatre A, 22/F, United Centre, 95 Queensway, Hong Kong on Wednesday, 29 August 2018 at 6.30 pm for the purpose of considering and, if thought fit, passing with or without amendments the following resolution as a Special Resolution:

SPECIAL RESOLUTION

"That the provisions contained in the attached printed document be approved and adopted as the new Articles of Association of the Institute, in substitution for, and to the exclusion of, the existing Articles of Association of the Institute."

By Order of the Council
Wong Yee Man
Company Secretary

6 August 2018

Notes:

(a) Pursuant to Article 44 of the Institute's Articles of Association, any member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and, on a poll, to vote in his/her stead. A proxy need not be a member of the Institute.

(b) Pursuant to Article 47 of the Institute's Articles of Association, an instrument appointing a proxy must be delivered to 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong at least 48 hours before the time appointed for holding the meeting or adjourned meeting, i.e. no later than 6.30 pm on Monday, 27 August 2018.

(c) Certain amendments in the new Articles of Association are intended to:
- (i) align the objects with those as set out in the Charter and Byelaws of The Institute of Chartered Secretaries and Administrators (ICSA) of February 2018 currently in force;
- (ii) give effect to the new designation called Chartered Governance Professional;
- (iii) make explicit the requirement for personal details to be provided to the Institute for consistency with ICSA Byelaws; and
- (iv) embrace the requirements of professional standard for Students and Graduates of the Institute and the necessary disciplinary proceedings for three disciplinary bodies.

(d) In view of the number of amendments proposed to be made, it is recommended that a new set of Articles, consolidating all the proposed amendments, should replace the existing Articles of Association.

(e) The full text of the new Articles of Association (both marked up against the Articles of Association currently in force, and as a clean document) are available on the Institute's website www.hkics.org.hk. A print copy of the new Articles will also be available upon request in writing to the Company Secretary.

(f) The proposed amendments to the Articles of Association have been submitted to, and approved by, the Registrar of Companies in Hong Kong and ICSA.

International Qualifying Scheme (IQS) examinations

December 2018 examination schedule and enrolment

The timetable and enrolment form for the December 2018 examinations are available under the Studentship section of the Institute's website: www.hkics.org.hk. The December 2018 examination enrolment is from 1 to 29 September 2018.

Syllabus update – Corporate Administration

The topic, titled *Hong Kong Competition Law*, will be included in the syllabus of Corporate Administration under the field of Corporate Assets with effect from the December 2018 examination diet.

For details of the syllabus, please refer to Chapter 14 of the Corporate Administration study pack or, visit the IQS Syllabus of the International Qualifying Scheme under the Studentship section of the Institute's website: www.hkics.org.hk.

IQS study pack updates

The 2018 updated online version of the IQS study packs for *Corporate Secretaryship, Corporate Governance, Corporate Administration* and *Hong Kong Corporate Law* have been made available on the HKICS PrimeLaw online platform. Summaries of the updates for each of these three study packs are available under the News section of the Institute's website: www.hkics.org.hk. Students who have activated their online account will have access to the updates and the summaries on that platform too. Students who have not yet activated their accounts are encouraged to do so as soon as possible.

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

Student Ambassadors Programme (SAP) 2018/2019 – recruitment of mentors

The Institute's SAP programme continues to be an effective platform to introduce the Chartered Secretarial profession to local undergraduates. Members are invited to contribute as mentors of student ambassadors. Interested members please contact Eva Cheung (Education & Examinations) for details at: eva.cheung@hkics.org.hk, or 2830 6019. A tea reception for mentors and mentees will be organised in October 2018 to kick off the SAP 2018/2019.

Policy – payment reminder

Studentship renewal

Students whose studentship expired in June 2018 are reminded to settle the renewal payment by Thursday 23 August 2018.

Exemption fees

Students whose exemption was approved via confirmation letter in June 2018 are reminded to settle the exemption fee by Thursday 23 August 2018.

HKUSPACE 香港大學專業進修學院 HKU School of Professional and Continuing Education

CHARTERED SECRETARIES 特許秘書

中國董事會秘書實務
PRC Corporate Secretaryship

1640-1666NW

課程大綱

- 董事會秘書定位及職責
- 董事會秘書實務
- 董事會秘書的價值體現及工作建議
- 破冰實例

課程時間表

課程為期四週　　授課時間：4堂，每堂6小時，共24小時

上課時間：周六 14:00-17:00 及 18:00-21:00

授課日期：2018年8月25日、9月1日、9月8日及9月15日
(校方保留更改及調動課堂時間之權利)

授課地點：港島區其中一所教學中心

講者簡介

端木梓榕先生

- 廣州市產權交易所專家委員會委員
- 廣東中科招商創業投資管理有限責任公司高級副總裁，合規/風控負責人
- 畢業於中山大學，曾供職於廣州珠江啤酒集團公司及廣州立白企業集團有限公司
- 授課經驗：曾為高校學生社會實踐作培訓講座；為廣州市國資委、中小企業服務中心舉辦的企業改制上市培訓班上授課

修讀證明書 / 成績證明書

學生如成功完成該學科單元，出席率達75%或以上，並在持續評估中的個案分析取得合格成績，可獲發修讀證明書。

學費

每單元課程港幣$3,850

課程查詢

2867 8317(王小姐)

prcprogramme@hkuspace.hku.hk

每個單元課程出席率達75%或以上之香港特許秘書公會會員，可以獲得18個ECPD學分，但有關實際可帶往下年度之ECPD學分詳情，請個別與公會聯絡。

電話：28816177； 電郵：ecpd@hkics.org.hk

The Exchange updates and streamlines its guidance materials

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has updated and streamlined some of its guidance materials to provide greater clarity to the market. The Exchange's guidance materials, including guidance letters, listing decisions and frequently asked questions (FAQs), are designed to provide the market with guidance and clarity on the application of certain listing rules and practices. These materials have increased significantly over the years and a number of professional advisers commented that they should be streamlined. The changes, which do not affect the policy direction of the Exchange, include the withdrawal of 12 guidance letters, five listing decisions, two FAQ series and one FAQ. The withdrawn materials were either outdated or incorporated into the new or updated guidance materials.

Details of the changes can be found on the HKEX website: www.hkex.com.hk.

SFC amends takeovers rules

On 19 January 2018, the Securities and Futures Commission (SFC) issued a consultation paper on proposed amendments to the Codes on Takeover and Mergers and Share Buy-backs (Codes). The consultation period ended on 19 April 2018. A total of 26 submissions were received from a range of stakeholders, including listed companies, asset management firms, industry associations and law firms. Last month the SFC released its consultation conclusions. The amended Codes are set out in Appendix 2 to the consultation conclusions and apply with immediate effect. The amendments are designed to enhance investor protection.

The SFC emphasises that Takeovers Executive should be consulted where there is any doubt about the application of the revised Codes, particularly where the timing may produce major difficulties for transactions which have already been announced.

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

Regulators conclude consultation on further enhancements to the OTC derivatives regulatory regime

The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have issued consultation conclusions to a joint consultation on further enhancements to the over-the-counter (OTC) derivatives regulatory regime in Hong Kong. Based on market feedback, the mandatory use of Legal Entity Identifiers – unique 20-digit, alpha-numeric codes which identify an entity in a financial transaction – in trade reporting will only apply to the identification of entities that are on a reporting entity's side of a transaction. This requirement will apply to the reporting of new transactions and daily valuation information beginning Monday 1 April 2019.

Reporting entities should continue to identify their counterparties in transaction reports in accordance with a waterfall of identifiers specified in the Supplementary Reporting Instructions for OTC Derivative Transactions. Regulators will maintain close dialogue with reporting entities and keep in view international developments to assess the need for further requirements in this area.

The HKMA and the SFC will proceed with their proposals for Phase 2 Clearing with some fine-tuning. The clearing obligation will be expanded to include specified standardised interest rate swaps denominated in Australian dollars and the list of Financial Services Providers will be revised. The regulators have also adopted the trading determination process proposed in the joint consultation paper and are currently using the process to determine for which products it may be appropriate for Hong Kong to introduce a platform trading obligation.

The consultation conclusions paper can be downloaded from the websites of the HKMA: www.hkma.gov.hk, and the SFC: www.sfc.hk.

CHARTERED SECRETARIES
特許秘書

HKICS Online CPD seminars

CS Practical Training Series:

- ESG Reporting
- Handling a Difficult AGM
- Company Dissolution and Company Restoration
- Formation, Administration and Maintenance of NGOs
- Competition Law – Directors Duties, Liabilities and Other Issues
- AML/CFT – Regulations and Reforms – Persons with Significant Control Register/TCSP Regulation

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