

CSj

February 2018

Chartered Secretaries.
More than meets the eye.

特許秘書, 潛能, 超越所見.

The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Privacy compliance

A marathon
not a sprint

Blockchain
Insolvency law
SFC enforcement



CHARTERED
SECRETARIES
特許秘書

Listco Professional Development Programme is a specialized Listco Training platform, dedicated in providing high quality CPD trainings for listco directors and professionals. We are proud of having hundreds of members being key executives of Listco and the most renowned partner speakers in town from Big 4, leading international law firms and professional institutes.

Topics including:

- Listing Rules Compliance
- Corporate Governance & Internal Control
- Legal & tax issues
- Financial Reporting
- Business & Asset Valuation
- New Economy Industries

PROFESSIONAL TRAINING ... Makes You Fly Higher

2018 PREMIUM MEMBERSHIP ANNUAL PASS

Regular price at **HKD3,800 / pass**

Free access to all regular Listco CPD Trainings in 2018
Call us at **3628 5722** for details.

2018 1st Quarter Sessions

- PwC Hong Kong** / Hong Kong salaries tax update on termination payments and benefits-in-kind
/ Common areas which trigger a tax audit by the Inland Revenue Department
- Ernst & Young** / How Data & Analytics can improve Business Performance in the New Digital Era?
– An Accounting Perspective
- RSM Hong Kong** / Data Privacy compliance series – Are you ready to meet the challenges of GDPR?

We Promote
PROFESSIONAL
LISTCO Practices

Specialized CPD training programme for Listed Companies



SCAN TO DOWNLOAD
THE REGISTRATION FORM



CHARTERED
SECRETARIES
特許秘書

Join us to explore
what a career in
Chartered Secretary
and Governance
profession can offer.

REGISTER
NOW!!



- Insights of Chartered Secretaries
- Interview preparation workshop
- On-site interviews
- Networking and refreshments
- Lucky draw

Open to undergraduates of all degree disciplines

Chartered Secretaries Preview Day

Saturday, 17 March 2018 | 1.30pm–5.00pm

Salon Rooms, 5/F, Harbour Grand Hong Kong,
23 Oil Street, North Point, Hong Kong
(MTR Fortress Hill station, Exit A)

Free Admission

For registration and enquiries, please
contact Ally Cheung or Ruby Ng at
2881 6177 or student@hkics.org.hk.

Welcome refreshment
sponsor



Coffee break sponsor



Sponsors



Media partner



Supporting organisations



Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It 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 in which it operates as a company limited by guarantee. CSIA aims to give a global voice for corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

Council 2018

David Fu FCIS FCS (PE) – President
Dr Gao Wei FCIS FCS(PE) – Vice-President
Paul Stafford FCIS FCS(PE) – Vice-President
Dr Eva Chan FCIS FCS(PE) – Treasurer
Professor Alan Au FCIS FCS
Arthur Lee FCIS FCS
Ernest Lee FCIS FCS(PE)
Stella Lo FCIS FCS
Gillian Meller FCIS FCS
David Simmonds FCIS FCS
Bernard Wu FCIS FCS
Wendy Yung FCIS FCS
Ivan Tam FCIS FCS – Immediate Past President
Dr Maurice Ngai FCIS FCS(PE) – Past President

Membership statistics update

As of 31 December 2017 membership statistics were as follows:
Students: 3,406
Graduates: 374
Associates: 5,366
Fellows: 645

The Hong Kong Institute of Chartered Secretaries

(Incorporated in Hong Kong with limited liability by guarantee)
 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
 Tel: (852) 2881 6177 Fax: (852) 2881 5050

Email: ask@hkics.org.hk (general) ecpd@hkics.org.hk (professional development)
 member@hkics.org.hk (member) student@hkics.org.hk (student)
 Website: www.hkics.org.hk

Beijing Representative Office

Rm 15A04A, 15A/F, Dacheng Tower, No 127 Xuanwumen West Street
 Xicheng District, Beijing, 100031, China
 Tel: (86) 10 6641 9368 Fax: (86) 10 6641 9078 Email: bro@hkics.org.hk

Institute of Chartered Secretaries and Administrators

Governance Institute of Australia

Level 10, 5 Hunter Street
 Sydney, NSW 2000
 Australia
 Tel: (61) 2 9223 5744
 Fax: (61) 2 9232 7174

Chartered Secretaries Canada

202-300 March Road
 Ottawa, ON, Canada K2K 2E2
 Tel: (1) 613 595 1151
 Fax: (1) 613 595 1155

The Malaysian Institute of Chartered Secretaries and Administrators

No. 57 The Boulevard
 Mid Valley City
 Lingkaran Syed Putra
 59200 Kuala Lumpur
 Malaysia
 Tel: (60) 3 2282 9276
 Fax: (60) 3 2282 9281

Governance New Zealand

PO Box 444
 Shortland Street
 Auckland 1015
 New Zealand
 Tel: (64) 9 377 0130
 Fax: (64) 9 366 3979

The Singapore Association of the Institute of Chartered Secretaries & Administrators

149 Rochor Road
 #04-07 Fu Lu Shou Complex
 Singapore 188425
 Tel: (65) 6334 4302
 Fax: (65) 6334 4669

Chartered Secretaries Southern Africa

PO Box 3146
 Houghton 2041
 Republic of South Africa
 Tel: (27) 11 551 4000
 Fax: (27) 11 551 4027

Committee chairmen

Audit Committee:

Ernest Lee FCIS FCS(PE)

Education Committee:

Dr Eva Chan FCIS FCS(PE)

Human Resources Committee:

Dr Maurice Ngai FCIS FCS(PE)

Membership Committee:

Stella Lo FCIS FCS

Nomination Committee:

Edith Shih FCIS FCS(PE)

Professional Development Committee:

Paul Stafford FCIS FCS(PE)

Secretariat

Samantha Suen FCIS FCS(PE) Chief Executive
Mohan Datwani FCIS FCS(PE) Senior Director and Head of Technical & Research
Louisa Lau FCIS FCS(PE) Registrar
Candy Wong Director, Education and Examinations
Lydia Kan FCIS FCS(PE) Director, Professional Development
Carman Wong FCIS FCS(PE) Company Secretary
Karen Ho Senior Manager, Finance and Accounting
Lawrence Wong Senior Manager, Marketing & Communications
Kenneth Jiang FCIS FCS(PE), BRO Chief Representative

February 2018

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

Views expressed are not necessarily the views of The Hong Kong Institute of Chartered Secretaries or Ninehills Media. Any views or comments are for reference only and do not constitute investment or legal advice. No part of this magazine may be reproduced without the permission of the publisher or The Hong Kong Institute of Chartered Secretaries.

Circulation: 8,200

Annual subscription: HK\$2600 (US\$340)

To subscribe call: (852) 3796 3060 or

email: enquiries@ninehillsmedia.com

Editorial Committee

Kieran Colvert
Mohan Datwani
Paul Davis
Lydia Kan
Ernest Lee

Low Chee Keong
Philip Miller
Samantha Suen
Li Zhidong

Credits

Kieran Colvert
 Editor
Ester Wensing
 Art Director

Harry Harrison
 Illustrator (cover)
Images
 iStockphoto

Contributors to this edition

Chadi Hantouche
 Wavestone
Timothy Loh
Greg Heaton
 Timohty Loh LLP
Christine Chow
 Hermes Investment
 Management

Alexander Tang
 Stephenson Harwood
Dr Davy Wu
 Hong Kong Baptist University

Advertising sales enquiries

Ninehills Media Ltd
 Tel: (852) 3796 3060

Jennifer Luk

Email: jennifer@ninehillsmedia.com

Frank Paul

Email: frank@ninehillsmedia.com

Ninehills Media Ltd

12/F, Infinitus Plaza
 199 Des Voeux Road
 Sheung Wan
 Hong Kong

Tel: (852) 3796 3060

Fax: (852) 3020 7442

Internet: www.ninehillsmedia.com

Email: enquiries@ninehillsmedia.com

© Copyright reserved

ISSN 1023-4128

Contents

Cover Story

GDPR compliance: a marathon not a sprint 06

Chadi Hantouche, Head of Cybersecurity and Digital Trust Asia-Pacific, Wavestone, offers advice on how to prioritise compliance objectives in the run-up to the implementation of the the EU's new General Data Protection Regulation, which becomes effective in May this year.

In Profile

The ethics of data privacy 12

In the emerging data privacy landscape in Hong Kong, Stephen Kai-yi Wong, Privacy Commissioner for Personal Data, argues that a consideration of ethics is just as important as adherence to the law.

In Focus

Pitfalls of non-compliance 18

In a follow-up to their cover story last month on the Securities and Futures Commission's new 'front-loaded' approach to regulation, Timothy Loh, Managing Partner; and Greg Heaton, Senior Consultant; Timothy Loh LLP, look at what this new regulatory landscape will mean for listed companies in Hong Kong.

Blockchain for good? 22

Christine Chow, Director – Engagement, Hermes Investment Management, looks at applications of blockchain technology for responsible supply chain management.

Technical Update

Cross-border insolvency law 26

Alexander Tang, Senior Associate, Stephenson Harwood, looks at recent developments in cross-border insolvency law adopted by the Hong Kong judiciary to overcome the deficiencies in our outdated insolvency legislation.

Can the board remove a director or an auditor? 30

The usual mechanism for the removal of a director or an auditor is by ordinary resolution of members at a general meeting. Dr Davy Wu, Senior Lecturer, Hong Kong Baptist University, looks at whether the board of directors can do the same without a resolution by members under the Companies Ordinance.

HKICS News

President's Message 04

Institute News 34

Student News 45

Bulletin Board 47





This month our journal looks at the very important and topical issue of data privacy compliance. Before commenting on this theme, I would like to say a few words about three key Institute events of last month. January is usually a fairly quiet time of the year, but 2018 got off to a roaring start for us with our Annual Dinner and two major forums held in the middle of the month.

Our Annual Dinner, held on 18 January, is our premier social event at the beginning of the year. At this year's dinner we were served up an excellent fare of good company and good food. The icing on the cake was the top quality speeches by our Guest of Honour, The Honourable Paul Chan Mo-po GBM GBS MH JP FCIS FCS, Financial Secretary of the Government of the Hong Kong SAR, and the winner of our HKICS Prize 2017, Natalia Seng FCIS FCS(PE), Past President of the Institute and Chief Executive Officer – China & Hong Kong, Tricor Group/Tricor Services Ltd.

A roundtable meeting of our Regional Board Secretaries Panel, also held on 18 January in Hong Kong, was the first of five such forums, with the other four to be held in Beijing, Shanghai, Guangzhou (or Shenzhen) and the Southwest (including Chengdu and Chongqing) later in the year. These roundtable meetings are designed to assist experience sharing and networking for our

A busy month

members and Affiliate Persons involved in, or with an interest in, the work of board and company secretaries in the Mainland and Hong Kong. This year's roundtable meeting in Hong Kong focused on the theme 'The Board Secretary Practices under the Tightened Regulations on Directors and Senior Management'.

The second forum I would like to mention was our 'Governance for Innovation; Innovation in Governance' seminar, held on 19 January, which was one of a series of events of the International Financial Week organised by the Government of the Hong Kong SAR and the Hong Kong Trade Development Council. The seminar addressed the current hot topic for everyone involved in listed company governance here in Hong Kong – the proposal to expand Hong Kong's existing listing regime to enable pre-revenue biotech companies to list (possibly as soon as mid-2018) and to attract companies from emerging and innovative sectors that have weighted voting rights structures, subject to additional disclosure and safeguards. The seminar produced a lively discussion of the major issues involved in these proposals and demonstrated the key role that our Institute plays in ensuring that 'due diligence' is conducted before reforms to Hong Kong's corporate governance landscape are implemented.

I would like to thank everyone involved in the events highlighted above. Apart from anything else, they provided me with an excellent opportunity to meet and chat with many of you, and I look forward to further occasions this year where I can deepen my understanding of the aspirations and concerns of our membership.

Turning to our theme this month, I don't think there can be any doubt that data privacy compliance has been a growing

concern for members of our Institute in recent years. This issue has been given extra urgency in the lead up to the implementation of the EU's new General Data Protection Regulation (GDPR) on 25 May 2018. The GDPR follows a trend of imposing extraterritorial jurisdiction which we have seen in many overseas laws brought out in the last decade. Our cover story, together with our In Profile interview with Stephen Kai-yi Wong, Privacy Commissioner for Personal Data, takes a look at the changing landscape for data privacy compliance as a result of the impending GDPR and the increasing importance of best practice expectations, rather than the letter of the law, in determining successful compliance.

I am sure I don't need to point out that this last point is a very important one for members of our profession. Companies go to an accountant when deciding whether something makes good financial sense, they go to a lawyer when deciding whether something is within the law, but they come to us for advice on corporate governance and whether something is the right thing to do.

David Fu FCIS FCS(PE)

繁忙的一月

本刊今期探讨个人资料私隐合规这个非常重要的热门课题。在进入主题前，我先介绍公会上月三项重要的活动。一月通常是一年之中较清闲的月份，但2018年甫开始，我们便有连串活动，包括月中举行的周年晚宴及两个大型会议。

1月18日举行的周年晚宴，是公会年初的首项社交活动。今年的晚宴，既有踊跃的参加者，也有丰富的盛宴。多位嘉宾的演讲，更为晚宴锦上添花，他们是香港特区政府财政司司长陈茂波、大紫荆勋贤 GBS MH JP FCIS FCS，以及2017年香港特许秘书公会杰出贡献奖得主、公会前会长兼卓佳集团／卓佳专业商务有限公司中国及香港行政总裁沈施加美 FCIS FCS(PE)。

同于1月18日在香港举行的公司秘书／董事会秘书圆桌会议，是今年五个同类会议中的首个，其余将分别在北京、上海、广州（或深圳）及中国西南部（包括成都及重庆）举行。这些圆桌会议的目的，是让参与内地及香港董事会秘书及公司秘书工作、或对有关工作有兴趣的会员及联席成员彼此分享经验，建立联系网络。今年香港的圆桌会议主题是「对董事及高级管理人员严格规管下的董事会秘书实务」。

第二个会议是1月19日举行的「创新·管治」研讨会，是香港特区政府及香港贸易发展局合办的国际金融周系列

活动之一。研讨会探讨参与香港上市公司管治工作的人士目前关注的一个热门话题，就是扩充香港现有上市机制的建议，在加强披露及保障措施的前提下，让未有收益的生物技术公司上市（可能早至2018年中），以及吸引采用不同投票权架构的新兴及创新型公司上市。研讨会就这些建议的主要议题展开热烈讨论，显示公会能发挥重要作用，确保香港实施企业管治改革前，先作「尽职审查」，充份讨论。

我谨向参与以上活动的所有人士致谢，这些活动让我有机会与众多会员见面畅谈。期待能参与今年的其他活动，以便更深入了解会员的志向和所关注的事项。

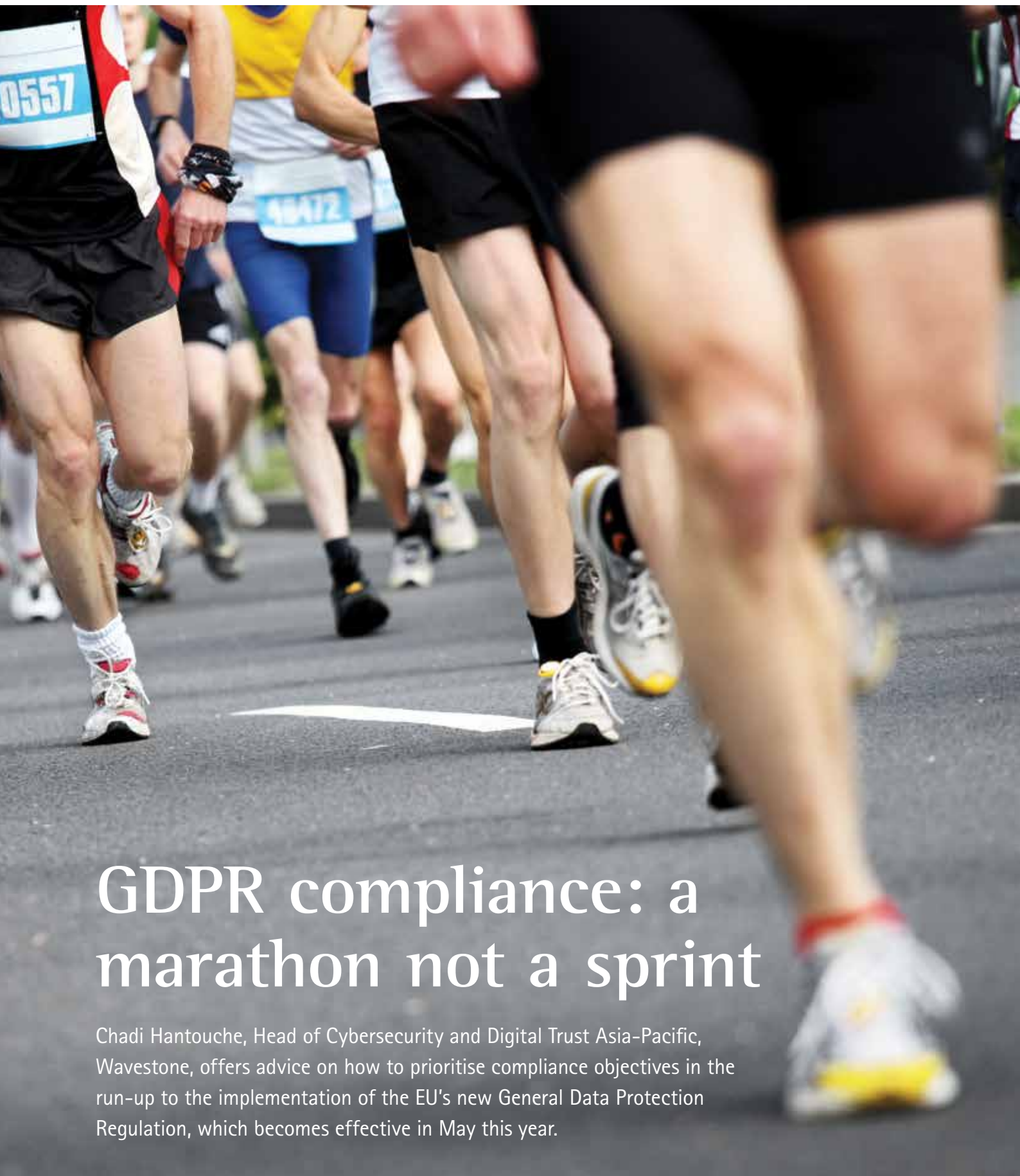
谈到今期的主题，毫无疑问，如何符合个人资料私隐规定，是公会会员近年日益关注的课题。随着欧盟的新法规《一般资料保护规则》即将在2018年5月25日实施，这课题更形迫切。近十年来，许多海外法例实行治外法权，《一般资料保护规则》也不例外。今期的封面故事及专访个人资料私隐专员黄继儿的文章，探讨这项即将实施的新法规为个人资料私隐合规工作带来的变化，并讨论一项趋势，就是在确定是否合规时，能否符合最佳做法的期望，已日渐比是否遵守法律条文来得重要。

不用我多说，以上最后一点对特许秘书来说十分重要。在决定某项行动在

财务上是否可行时，公司会请教会计师；在决定某事件是否合法时，会请教律师；而有关企业管治的问题，以及某项行动是否正确，公司会请教我们。

傅溢鴻

傅溢鴻 FCIS FCS(PE)



GDPR compliance: a marathon not a sprint

Chadi Hantouche, Head of Cybersecurity and Digital Trust Asia-Pacific, Wavestone, offers advice on how to prioritise compliance objectives in the run-up to the implementation of the EU's new General Data Protection Regulation, which becomes effective in May this year.

With just three months until the General Data Protection Regulation (GDPR) takes effect on 25 May 2018, businesses have been grappling with how to address the most important changes to affect the data privacy landscape in over two decades. Landmark in its breadth and reach, GDPR replaces the European 1995 Data Protection Directive. Building upon the key principles of the 1995 Directive, GDPR vastly expands its regulatory scope and will impact businesses globally, setting many industry leaders on a race towards compliance. The role of data protection officers (DPOs) will be critical to meet regulatory requirements in a post-GDPR environment. In addition, companies stand to gain traction by harnessing the expertise of their chief information security officer (CISO) along the way.

Assessing the impact of the GDPR

In simple terms, GDPR was designed with a tri-fold aim:

1. to harmonise privacy laws across Europe
2. to protect and empower the data privacy of all EU residents in an increasingly digitalised and data-driven world, and
3. to reshape the approach to data privacy by organisations across the EU.

In practical application, the GDPR has extraterritorial scope. It will extend the existing compliance jurisdiction to all companies collecting and/or processing personal data established in the EU (whether the processing takes place inside or outside the EU, such as in Hong

Kong), as well as all collectors established elsewhere (such as in Hong Kong) related to certain activities of EU residents in the EU. In addition to this increased scope, there will be hefty penalties for companies in violation of the regulation (applicable to both controllers and processors of data, meaning 'clouds' will not be exempt from sanctions). Under a graduated scale, companies will face fines up to 4% of global turnover.

The regulation improves existing measures relating to the need for a one-stop-shop for authorities to contact, requiring all non-EU businesses processing the data of EU citizens to appoint a representative in the EU. GDPR also clearly delineates expanded requirements for the role of the DPOs within each company. Additionally, GDPR outlines new provisions for data subjects' rights (namely, strengthening conditions for consent); new requirements for data breach notification; right to access; right to be forgotten; data portability; and privacy by design.

Of these changes, the increased jurisdictional scope will arguably have the largest immediate impact on global business. GDPR clarifies the legal ambiguities that have arisen in a number of high-profile court cases over the

years and, for the first time, regulatory jurisdiction will apply to all companies that process the personal data of individuals residing in the EU, regardless of whether that processing takes place on EU soil. Furthermore, it applies to the processing of personal data for individuals in the EU in instances where goods or services are offered (irrespective of payment requirements) and any behaviour monitoring that occurs within the EU.

Too little too late?

While the gravity of GDPR's requirements has been the focus of much media and industry attention, most companies launched their GDPR compliance programmes in 2017 – too late to be compliant by the May 2018 enforcement deadline. Some 25% of businesses began GDPR activities in 2016, with banks and insurers among the earliest adopters. These activities were typically limited to legal analysis and compliance programme planning beginning in mid-2016. The 'main pack', comprising about 50% of businesses, mostly B2C companies, began their GDPR preparation in the first half of 2017. The remaining 25% of businesses, comprising mainly small B2B companies, began IT analysis and IT remediation activities in the latter half of 2017.

Highlights

- the General Data Protection Regulation will extend the existing compliance jurisdiction to all companies processing the personal data of individuals residing in the EU
- half of the cost of compliance is likely to be dedicated to catch-up with existing regulations such as the Personal Data Ordinance in Hong Kong
- company secretaries need to have a clear idea of what the post-25 May privacy compliance landscape will mean for their organisations

Getting teams in place

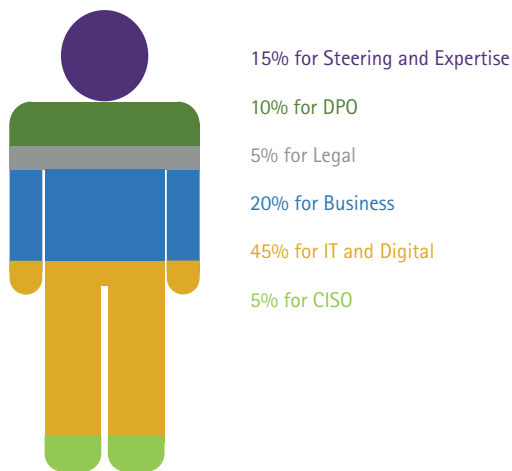
The creation of a GDPR compliance programme will have wide-ranging effects on companies and their myriad stakeholders. Company secretaries will be involved in implementing organisations' GDPR compliance programmes and therefore need to have a clear idea of what the post-25 May privacy compliance landscape will mean for their organisations. In larger organisations, the company secretarial department is likely to be overseeing the work of the teams discussed below, while in smaller organisations company secretaries will often be directly involved in implementing compliance measures.

Our analysis shows (see Figure 1: workload distribution) that while legal teams and the CISO will provide expertise, their workload will remain light with respect to the overall burden of GDPR compliance programmes. Conversely, IT and digital teams will be charged with IT systems evolution, and the workload of these teams will account for nearly half of the total workload necessary for GDPR compliance. IT and digital teams will be tasked with proposing new service offers and IT compliance tools and solutions (per the regulation, data subjects' rights, consent, portability and deletion). They will also implement changes to existing and future information systems to achieve compliance.

Business teams that collect and use customer data (or in charge of IT systems that process client data) will be required to map their processes, ensure their compliance, change the customer journey, and improve operating procedures with employees and partners.

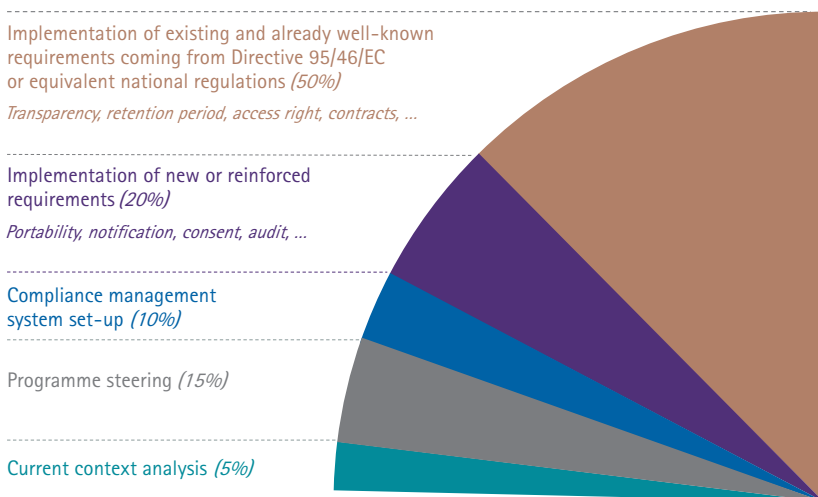
The projected budget for a GDPR compliance programme heavily depends

Figure 1: workload distribution



Source: Wavestone

Figure 2: typical budget distribution for a GDPR compliance programme



Source: Wavestone

both on the extent of personal data used within a company, and its current level of maturity. Field feedback shows (see Figure 2: typical budget distribution for a GDPR compliance programme) that half of the amount will be dedicated to catch-up with existing regulations (for example the Personal Data Ordinance

in Hong Kong), and only 20% for new requirements brought in by GDPR. The remaining budget is allocated to analysis and steering activities.

DPOs: the newcomers

DPO teams will need to formalise policies, directives and processes. They will be

expected to define the organisational targets and ensure compliance of solutions deployed by the business functions and IT teams.

DPOs have historically been attached to legal, compliance, or risk management departments within companies (see Figure 3: DPOs' historical attachment within corporations). Before the GDPR, DPOs were viewed as legal or IT experts. Moving forward, individuals in this role must know the ins and outs of their business, and assume a new role as facilitator. The GDPR requires strategic thinking and there are currently few expert resources available, therefore DPOs will be tasked with utilising existing expertise and

resources to effectively target the most difficult aspects of implementation.

We outline three areas in particular for DPOs to focus their attention (see Figure 4: areas of focus for DPOs).

The role of information security officers

CISOs are responsible for ensuring the cybersecurity of personal data and related systems. Given the breadth and depth of their expertise, there are several ways in which CISOs can strongly contribute to compliance before May 2018. This includes, 'tracking the blind spots', or ensuring the security of privacy-critical applications.

“
[GDPR] will apply to all companies that process the personal data of individuals residing in the EU, regardless of whether that processing takes place on EU soil
”

The CISO can also improve security by adhering to the 'privacy by design' principle. Additionally, CISOs offer expertise in prioritising some key privacy

HKICS ACRU 2018
Annual Corporate and Regulatory Update

CHARTERED SECRETARIES
特許秘書

Date: Tuesday, 5 June 2018
Time: 8.45am - 6.20pm
Venue: Hall 5G, Hong Kong Convention and Exhibition Centre, Wan Chai, Hong Kong

Speakers from:

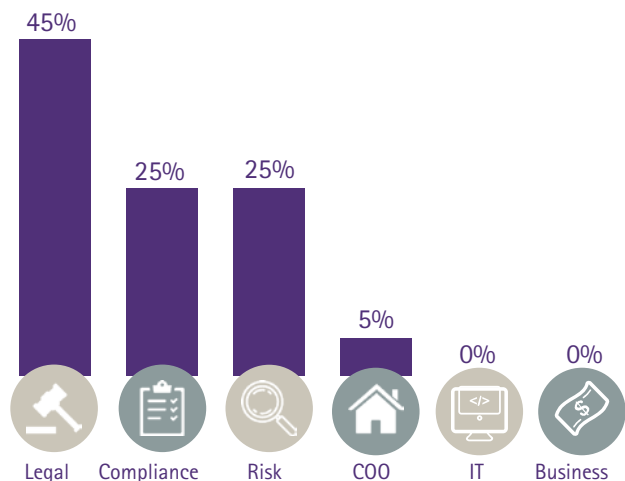
- Companies Registry
- Equal Opportunities Commission
- Hong Kong Exchanges and Clearing Limited
- Securities and Futures Commission

More details to follow soon
SAVE THE DATE

www.hkics.org.hk

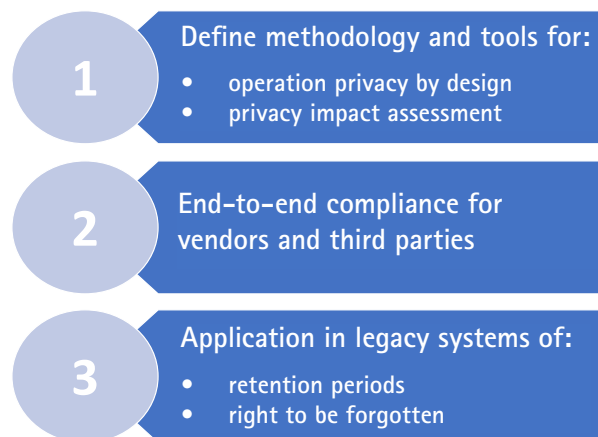
The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會
(Incorporated in Hong Kong with limited liability by guarantee)

Figure 3: DPOs' historical attachment within corporations



Source: Wavestone

Figure 4: areas of focus for DPOs



Source: Wavestone

technologies in the cybersecurity action plan. The CISO is also usually indispensable for the updating of incident detection and crisis processes including personal data breach notifications. In a post-May 2018 GDPR landscape, CISOs will also need to assist with right to erasure, anonymisation and consent management issues.

What are the priorities for May 2018?

For most companies, meeting each and every GDPR requirement by May 2018 will not be possible. Our recommendation is to focus on the three priorities set out below.

1. You will need to prove that accountability has been clearly defined and is running within your company, in terms of organisation, policies, privacy by design, privacy impact assessments, etc.
2. Some critical processes must be compliant. For these, you need to perform business processes reviews, and to get the associated IT systems compliant.

3. Choose two transversal topics to address. Our advice is to start with consent management and transfers to third parties. Consent management requires the subject's agreement to process personal data relating to him or her. This consent has to be clear, explicit, easy to withdraw, given freely, and a record should be kept – a set of rules that may prove tricky to enforce.

Transfer to third parties, on the other hand, requires an 'adequate level of protection' of personal data transferred outside the European Economic Area. The regulation does not define what level of protection could be 'adequate', as it depends on the current state-of-the-art, and may vary over time.

Following the May deadline, the next steps would then be to handle the remaining business processes and IT systems compliance, as well as the implementation of the rights to erasure (or 'right to be forgotten') and to portability.

The right to erasure allows the data subject to obtain the erasure of personal data concerning him or her without undue delay, in a number of cases: if the use of this data is not necessary anymore, if the data subject withdrew consent, if the data has been unlawfully processed, etc. Portability allows the subject to receive his or her data, in a structured and interoperable format, and where technically feasible to require this data to be transferred directly from one organisation ('controller' in the law) to another. The technical implementation of both these rights can be a technical challenge.

But do not forget: 25 May 2018 is just the first milestone of the privacy race – which is more a marathon than a sprint.

Chadi Hantouche
Head of Cybersecurity and Digital Trust Asia-Pacific, Wavestone



CHARTERED
SECRETARIES
特許秘書

HKICS



Online CPD seminars

CS Practical Training Series:

Annual General Meeting – Private and Listed Companies

Options for Winding Up a HK Private Ltd Co – Liquidation vs Deregistration

Director Induction/Training & Development

ESG Reporting

SFC Means Enforcement Business

HK Incorporated NGOs – Public Governance Standards/Business Review As Ltd or Guarantee Co under NCO

Handling a Difficult AGM

Register now

Anytime anywhere at your convenience



More than meets the eye.
潛能. 超越所見.

Registration: <http://ecentre.ouhk.edu.hk/cpd/coursesHKICS/coursesOnOfferForHKICS>

CPD section of HKICS website: www.hkics.org.hk

Enquiries: 2830 6011 / 2881 6177 / ecpd@hkics.org.hk

The ethics of data privacy

In the emerging data privacy landscape in Hong Kong, Stephen Kai-yi Wong, Privacy Commissioner for Personal Data, argues that a consideration of ethics is just as important as adherence to the law.



Thanks for giving us this interview. The landscape for data privacy in Hong Kong and globally has been changing rapidly in recent years, do you think there is greater awareness of the importance of respecting data privacy here in Hong Kong?

'Locally, people are becoming more aware of the issue of personal data privacy. We talk about personal data and privacy all the time, and sometimes inappropriately. We should bear in mind that there are times when you are required to disclose personal data. We had an incident in Hong Kong recently where students were putting up posters (without authority or going through the proper procedure in their campus) making comments on officials in the government. The student body said they couldn't release any details about the students involved in order to protect their privacy. Now, while it is important for us as regulators to protect the individual's personal data privacy, it is equally important for us to protect the interests of the public. There are exemptions in the Personal Data (Privacy) Ordinance (the Privacy Ordinance), including for situations where there is prevention or investigation of a crime. Privacy protection is not intended to be a shelter for wrongdoers. So there has to be a balancing exercise.'

Incidents such as the one you mention have put privacy issues into the public spotlight – is it an interesting time to be Hong Kong's Privacy Commissioner for Personal Data?

'I do have a very interesting job and I have to be careful to always make a judgement about how to uphold the public interest. An issue that has come up recently, for example, is the use of drones. We have received complaints about drones filming from outside the balconies of people's homes. If the drone operator intends to show images where people's faces can be seen, a face being considered to be a personal identifier, there is clearly a high risk of infringing the Privacy Ordinance.'

However, if the drone is operated by a media organisation, there may be a public interest exemption. As you probably know, the Privacy Ordinance has an exemption for news activities. Freedom of the press and freedom of expression are crucial parts of freedoms that we enjoy under the Basic Law. So whether it is a violation of the Privacy Ordinance or not depends on all the circumstances.

The government will soon commence consultation on the use of drones. It appears that the majority of views so far is that there should be some sort of regulation, perhaps via a registration system for drone operators.'

The use of drones was not a problem back when the Privacy Ordinance was drafted – will technological change always be one step ahead of the privacy regime in Hong Kong?

'The advances in information and communications technology (ICT) – including artificial intelligence, machine learning, and the "internet of things" – will make life more difficult from a privacy point of view, but I think we should bear in mind that our legislation in Hong Kong is principle-based and technology-neutral. Our law and regulations were designed that way because it is hard to stay ahead of ICT development. The risk of this approach, though, is that in certain circumstances the rules may be out of touch with reality. We focused on high-level principles but who would have imagined when the Privacy Ordinance was drafted that a machine could learn.'

However, I would like to come back to your earlier question about the level of awareness of privacy issues in Hong Kong. We have been conducting various surveys and opinion polls looking at the attitude of the younger generation to privacy issues. The surveys show that 98% of them have a cell phone but half of them don't even realise that there are restrictions on the use of personal data. In other words, they post messages and images of other people whenever they like. So that's a very serious problem. The younger generation seems to be unaware of how important it is to be vigilant – not only about respecting the personal data of others but also about protecting their own personal data.

A few months ago, "Fingopay" was put on trial in the UK. This enables shoppers to make payments via a scan of their finger. I

Highlights

- Hong Kong's Personal Data (Privacy) Ordinance was designed to be principle-based and technology-neutral in order to remain relevant in the context of fast-changing ICT development
- reputation and the trust of the public are organisations' most important intangible assets – compliance with data privacy legislation and expectations should be seen as an important part of maintaining that trust and reputation
- The Office of the Privacy Commissioner for Personal Data seeks to balance the interests of individuals against the interests of the public, without compromising trade and innovation

“we expect business organisations to act according to their conscience, but this can be open to many different interpretations and that’s where international standards are so important”



saw a report where reporters asked a girl who had just used this service whether she was concerned about privacy risks. She immediately said she was not bothered. That seems to be the general attitude among the younger generation in Hong Kong too, as evidenced by similar responses when "Pokémon Go" was launched.'

Nevertheless, the growing number of scandals involving loss of customers' personal data or abuse of marketing practices could very quickly change attitudes among the younger generation – this surely is a major risk for data users?

'Of course, organisations collecting personal data need to maintain trust. We frequently hear from organisations, especially small and medium-sized enterprises (SMEs), that they can't afford to consider privacy compliance. Our response is to point out that their reputation and the trust of the public is one of their most important intangible assets and they need to maintain that trust. As a regulator, I believe we should help organisations to keep the respect and the trust of their data subjects (that is, the individual customers or clients), that's why we have just released our first guidelines on data protection specifically for SMEs.'

Do you think data users should be aware of global ethical best practice in addition to the law and regulations in Hong Kong?

'Absolutely. We expect business organisations to act according to their conscience, but this can be open to many different interpretations and that's where international standards are so important.'

I was posted to the United Nations (UN) in 1991 to work on human rights. When I came back I knew more about human rights, but I also learned how individual state parties would defend their human rights records and standards with reference to their different economic and historical backgrounds and cultures. Some may argue that human rights should be universal, but in reality there will always be some discrepancies among different state parties. In Asia, because of its historical and cultural background, privacy may not be treated the same as it is in Europe. I remember at one conference I attended the delegate from the Philippines said that the word "privacy" did not exist in tagalog.

One of the ethical standards we try to promote, not only in Hong Kong but also around the globe, is to give meaningful choices to data owners. Nowadays if you download an app, you will be asked whether you agree or accept the terms and conditions of use. I can tell you, even the Privacy Commissioner doesn't read those terms, like everyone else, I simply scroll down to the end and click "I agree". Failing to agree will mean you can't download the app. So regulators around the globe have been asking major service providers such as Facebook, Google and Microsoft to give individuals real choices. This could be offering the possibility to opt out of classified categories, for example, receiving advertisements.'

Can Hong Kong assist the Mainland in developing data privacy standards?

'When I was interviewed after taking up the Privacy Commissioner post in August 2015, I was asked whether I would be involved in

developing the privacy landscape in Mainland China. Initially, we had very little contact or exchange with the Mainland authorities because we didn't have a counterpart there.

I think it makes sense to work together – after all, in terms of ICT development, China is the biggest market in the world. But because of the lack of a single comprehensive piece of legislation in relation to data protection and the lack of a regulatory body I can't do anything unless I am invited. I have always been willing to explain

what our system is all about. In fact, a few months after I started work I received invitations from the Mainland – first from the commercial sector, mainly the banks, and then from academia.'

What sort of reception do you get when you talk about personal data privacy in the Mainland?

'They are very, very serious about this now – you cannot duck the issue when you have 1.4 billion people. In the Mainland many people have at least two phones and many cities are now cashless.'

GDPR impact assessment

How will the EU's new General Data Protection Regulation (GDPR) affect you? The Office of the Privacy Commissioner for Personal Data (PCPD) highlights nine areas where businesses in Hong Kong will need to give particular consideration once the GDPR has been implemented on 25 May 2018.

1. **Extra-territorial application.** If a Hong Kong company offers goods or services to EU residents, or monitors the behaviours of EU residents, say by online tracking, it has to comply with the GDPR.
2. **Accountability.** The GDPR requires a data controller (for example a company) to implement policy and measures (such as privacy by design and by default, data protection impact assessment, and appointment of data protection officers) to ensure compliance with the law. In Hong Kong, 'accountability' is not a legal requirement, but the PCPD encourages organisations to implement a privacy management programme.
3. **Mandatory breach notification.** Under the GDPR, a data user has to notify the relevant data protection authority and (for high-risk incidents) the affected individuals in the event of a data breach, unless an exception applies (for example measures taken to reduce the risk). In Hong Kong, data breach notification is voluntary.
4. **Sensitive personal data.** The GDPR imposes stricter conditions on the processing of sensitive personal data, for example a business cannot process sensitive personal data on the grounds of legitimate interest. In Hong Kong, we do not have a distinction between sensitive and non-sensitive personal data.
5. **Consent.** Consent is one of the six legal bases for processing personal data under the GDPR. Consent has to be freely given, specific and informed, and an unambiguous indication of a data subject's wish. In Hong Kong, consent is not required for collection of personal data. However, if an organisation wants to change the use of personal data, or use the personal data in direct marketing, data subjects' consent is needed.
6. **Data processor obligations.** The GDPR imposes direct obligations on data processors, such as maintaining records of processing, ensuring security of processing, reporting data breaches and designating data protection officers.
7. **New or enhanced rights of data subjects (including profiling).** The GDPR provides new and enhanced rights to data subjects, such as right to be forgotten; right to data portability; right to object to processing (including profiling); etc.
8. **Certification mechanism.** The GDPR recognises privacy seals and establishes a certification mechanism for demonstrating compliance by data controllers and processors. Certification is recognised by the GDPR as one of the legal bases for cross-border data transfer.
9. **Sanctions.** The GDPR empowers data protection authorities to impose administrative fines of up to €20 million or 4% of annual worldwide turnover, whichever is higher.

We know from social media that people in the Mainland are aware of the issues. They are also interested to learn about how we handle data privacy issues in Hong Kong.'

The Hong Kong government is not exempt from the Privacy Ordinance, so you are one of the few officials who have a role monitoring government – can you talk about this aspect of your role?

'Yes. When the Privacy Ordinance was enacted in 1995, the main consideration of the Legislative Council was to make sure that individuals' basic privacy rights would be well protected after the reunification in 1997. So, unlike many other jurisdictions in this part of the world, my office also regulates the behaviour of the government. In fact most of our work relates to the behaviour of the government – they are our largest client. My role is to make sure that, as one of my stakeholders, the government complies with the requirements of the Privacy Ordinance.'

The General Data Protection Regulation (GDPR) in the EU will take effect on 25 May this year and there are concerns in Hong Kong about the compliance risks for businesses here since the regulation has extraterritorial scope. What impact do you think the GDPR is going to have in Hong Kong?

'We are aware that many people are concerned about being caught under this new regulation, especially the SMEs in Hong Kong because they have fewer resources to ensure compliance and obtain legal advice. We have done a comparative study between the new EU regulation and our existing regulation and we have identified at least nine areas that we need to look at (see "GDPR impact assessment" box text). We will be publishing new guidelines soon on this issue.'

Would you like to see Hong Kong's Privacy Ordinance revised to match the GDPR?

'We need to consider whether our relevant provisions in Hong Kong should be revised, but, as I mentioned earlier, we also need to maintain a balance. The Privacy Ordinance not only protects the rights of individuals but also facilitates economic and ICT development in Hong Kong – we need to balance the interests of individuals against the interests of the public, without compromising trade and innovation.

Our role is not only to enforce the Privacy Ordinance but also to promote better awareness of the importance of respecting privacy. We have allocated more resources over the last two years to education and publicity. This includes organising seminars

“
one of the values I was
brought up with was the
importance of the rule of law
”

and talks; engaging organisations by going to their offices and talking to their staff; producing publicity materials online and offline; and issuing updates and publications in response to privacy issues. Moreover, we are always ready to issue a statement when relevant issues arise in the community. For example, I just issued a statement about whether people should be expected to draw the curtains when in a hotel room to protect their privacy. You may have seen that images were broadcast on the internet of a man and a woman engaging in intimate activities in a hotel room in Hong Kong. Some have asked why they didn't draw the curtain but I think that is irrelevant – they had the legitimate expectation that in a hotel room their privacy would be respected. So, no matter whether you stand a chance of being caught by the Privacy Ordinance or not, when people are in a private space, their privacy should be legitimately and duly respected. This principle has been backed up by the Administrative Appeals Board in previous cases.'

Could you tell us about your own background and training?

'I was born in Hong Kong in the 1950s. My parents, like many people just after the establishment of the People's Republic of China (PRC) in 1949, crossed the border into Hong Kong and set up home here. One of the values I was brought up with was the importance of the rule of law. At that time half the population was living in illegal structures and disputes were common – there were quarrels all the time about the use of public taps and toilets for example – but at the end of the day the attitude was that in Hong Kong we abide by the law.

When I went to university I had the same mindset – I knew the importance of the law to the community, especially at the grassroots level. After that I chose to join the government, partly because in those days the government offered a higher salary. I had my parents to look after, to help them move out of the squatter area.

I spent 17 years in the colonial government and 17 years in the Government of the Hong Kong SAR – 1997 was my half-way mark. I worked on the Hong Kong Bill of Rights Ordinance which was

enacted in 1991. After completing that legislative exercise I was sent to work with the UN Human Rights Committee. I reviewed the reports provided by various state parties, summarised their main points and drafted questions for Committee members to raise. I was also involved in the drafting of the final reports which were submitted to the UN General Assembly.

When I came back to Hong Kong in 1992, I was posted to the Public Prosecutions team dealing with human rights. When human rights issues cropped up in the courts, the prosecuting counsel representing the government would call me and I would make submissions to the court.

In the lead up to 1997, I was given the opportunity to be involved in handover issues. At that time there were very few lawyers of Chinese ethnic origin within the government, so I worked on many China-related issues. From 1996 to 2012, I became Deputy

Solicitor-General and Secretary of the Hong Kong Law Reform Commission, responsible for human rights, cross-boundary legal affairs, the Basic Law, legal policies and law reform.

So that sums up my work profile. I had a very unique training in human rights issues, unique because no else took that same path. Now you can study human rights at university, in those days that was not an option.'

Stephen Wong was interviewed by Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research; and Kieran Colvert, Editor, CSj.

The guidance note 'Data Protection & Business Facilitation – Guiding Principles for Small and Medium Enterprises' is available on the Privacy Commissioner for Personal Data website: www.pcpd.org.hk.

**Engage
your
stakeholders**

Investor communications **In-house newsletters**
Annual reports **Professional magazines**
Sustainability reports **Copywriting**

**ninehills
media**
T: +852 3796 3060
E: enquiries@ninehillsmedia.com
W: www.ninehillsmedia.com

Pitfalls of non-compliance

A new landscape for listed companies



In a follow-up to their cover story last month on the Securities and Futures Commission's new 'front-loaded' approach to regulation, Timothy Loh, Managing Partner; and Greg Heaton, Senior Consultant; Timothy Loh LLP, look at what this new regulatory landscape will mean for listed companies in Hong Kong.

We have recently seen a dramatic shift in the enforcement priorities of the Securities and Futures Commission (SFC). Where the SFC once focused primarily on regulating brokers, asset managers, financial advisers and other licensed intermediaries, it is clear today that there is a real and substantial focus on listed companies. Both the anecdotal and quantitative data confirm the shift. The number of investigations conducted by the SFC's Enforcement Division has fallen in absolute terms, which is consistent with the SFC's current philosophy of being more selective in its enforcement activities. However, the number of investigations focused on listed companies has increased as a proportion, with the number of investigations into corporate disclosure increasing 22% over the last financial year and the number of investigations into corporate mis-governance remaining relatively steady during the same period.

The shift is consistent with the stated position of the SFC, namely to prioritise listed company malfeasance and fraud, as well as the standards of listing sponsors. This article briefly summarises the SFC enforcement process that listed companies may experience.

Initiation of action

SFC enforcement actions against listed companies often begin with a request for documents pursuant to the Securities and Futures Ordinance (SFO) Section 179. Under this provision, the SFC may require the

production of any records or documents of a listed company in certain circumstances, such as where it appears to the SFC that the persons concerned in the listing of a company or in the management of a listed company may have engaged in fraud, misfeasance or other misconduct towards any of the company's shareholders. The SFC may also use this power to obtain records or documents from a company's present and former directors or employees, and to require the company or its officers, as applicable, to provide an explanation of those records or documents. Enquiries under Section 179 may be used, for example, where there is a concern that a listed company has failed to comply with the listing rules of the Stock Exchange of Hong Kong.

Enquiries under Section 179 are preliminary to a full investigation. They are typically initiated by the Corporate Finance Division of the SFC rather than the Enforcement Division. In this

regard, they present a lower risk to listed companies because the role of the Corporate Finance Division is to ensure proper regulation of listed companies, whereas the role of the Enforcement Division is to find wrongdoing and to prosecute it.

Nevertheless, listed companies should recognise that Section 179 enquiries pose real risks, as the failure to adequately address such enquiries can result in a referral from the Corporate Finance Division to the Enforcement Division. The seriousness of a Section 179 enquiry is evident from the fact that the SFO abrogates the privilege of self-incrimination so that any person requested by the SFC to provide an explanation of records or documents cannot decline the request on the grounds that such explanation may tend to incriminate him. Instead, the person must provide the explanation but the explanation may not be used against him

Highlights

- directors of listed companies now face many of the same types of regulatory burdens often associated with membership of a regulated profession
- a major change in the SFC's approach over the past few years has been to seek remedies for investors who have suffered a loss as a result of misconduct by listed companies and their directors
- persons requested by the SFC to provide an explanation of records or documents cannot decline the request on the grounds that such explanation may tend to incriminate them

“ where the SFC once focused primarily on regulating brokers, asset managers, financial advisers and other licensed intermediaries, it is clear today that there is a real and substantial focus on listed companies ”



in criminal proceedings except for perjury and its like offences.

Investigations

Investigative action taken by the Enforcement Division of the SFC poses a higher level of risk to listed companies as it may lead to civil or criminal sanctions. Investigations take place under Section 182 of the SFO, which permits the SFC to invoke draconian powers where, amongst other things, it has reasonable cause to believe that there may have been a breach of the SFO or the prospectus provisions of the Companies (Winding up and Miscellaneous Provisions) Ordinance. The SFC may also use its investigation powers where it has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with any dealings in securities. The SFC may, for example, initiate an investigation where there is initial evidence to suggest insider dealing, the failure of a listed company to disclose inside information, or a serious lapse in the duty of care owed by the directors of a listed company.

As part of an investigation, the SFC may apply to a magistrate for a warrant to enter premises, by force if necessary, and to search and seize records or documents.

Once an investigation has commenced, the SFC may also require a person to attend an interview to answer questions and otherwise to provide all assistance which the person may reasonably give. As with Section 179 enquiries, the privilege of self-incrimination is abrogated for full investigations.

Prosecution

If the SFC investigators believe that wrongdoing has taken place, the SFC may proceed to prosecution. In this regard, there has been an evolution in both the SFC's approach as well as to the range of options available to it.

The introduction of the new statutory requirement for listed companies to disclose inside information, that came into force on 1 January 2013, has given the SFC substantially more flexibility to pursue failures to truthfully and completely disclose price-sensitive information in a timely fashion. The SFC has been quick to leverage this option and so far, has instituted three cases in the Market Misconduct Tribunal against listed companies and their directors for a breach.

The SFC's recent announcement of its new policy of 'front-loaded' regulation confirms the SFC will revive and exercise

its powers to suspend or cancel listings of companies. These erstwhile dormant powers have long been available under the Securities and Futures (Stock Market Listing) Rules, but only resurfaced following the failure to implement changes proposed under SFC and HKEX joint consultation on listing regulation.

Another major change in the SFC's approach over the past few years has been to seek remedies for investors who have suffered a loss as a result of misconduct by listed companies and their directors. These remedies are, in many cases, supplemental to sanctions which may apply to wrongdoers and may include court orders to compensate investors for losses incurred, orders for a listed company to sue its directors (past or present) and orders to disqualify individuals from serving as directors. Thus, whilst directors of listed companies are not regulated by the SFC, they now face many of the same types of regulatory burdens often associated with membership of a regulated profession.

Timothy Loh, Managing Partner, and Greg Heaton, Senior Consultant

Timothy Loh LLP
www.timothyloh.com

A bird's eye view

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

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



Subscribe to *CSj* today to stay informed and engaged with the issues that matter to you most.

Please contact:

Paul Davis on +852 3796 3060 or paul@ninehillsmedia.com

Blockchain for good?

Christine Chow, Director – Engagement, Hermes Investment Management, looks at applications of blockchain technology for responsible supply chain management.



Following the launch of Bitcoin futures on 10 December 2017, it seems an opportune time to look into the technology that has enabled its ascent and applications in many sectors.

Bitcoin's birth originates from a nine-page paper by Satoshi Nakamoto-san, titled *Bitcoin: A Peer-to-Peer Electronic Cash System*. In the paper, the author focuses on the underlying standardised, decentralised ledger or registration process where each transaction is time-stamped at each interaction point by the associated transaction parties. These interaction points are commonly referred to as 'nodes'.

In this peer-to-peer network, the open registration process serves as an ongoing cryptographic proof-of-work, providing transparency in the value chain of the items being exchanged. However, the decentralised registration system is not without its weaknesses. For example, a certain percentage of fraud is expected. In its nascent form, registrations by nodes are on a best effort basis; and nodes can leave and rejoin the network at will.

As the application of blockchain technologies expands, we have seen increasing practical applications. For example, two Australian banks are now using blockchain for bank guarantee for commercial property leasing. It eliminates the need for physical document management through multiple transactions. The technology is also increasingly being used in supply chain management – from seafood to tea, and from farm produce to diamonds.

Blockchain and supply chain management

Starting January 2018, the Seafood Import Monitoring Programme requires

specific data related to seafood imports to be provided electronically to US Customs and Border Protection. Origin data of seafood is recorded alongside the global tracking system. An example from the global fish trade gives us a glimpse of the importance of this development. An article in the *Financial Times* ('The fight against food fraud' published 24 March 2016) reported that when fish from off the coast of Scotland, Norway and Russia are caught and cleaned, they are sent to China to get filleted before being shipped to larger freezers in South Korea for global retailer buyers to make bulk purchases. Without a transparent process of monitoring the global peregrinations of our food, we are exposed to significant food safety issues without knowing the source of potential contamination during the multiple stages of preparation processes, let alone knowing whether any child or slave labour has been involved.

An article by Thomson Reuters Foundation ('Can blockchain ensure Unilever's tea farmers produce a fairer brew?' published 14 December 2017) reported that a group of food and retail companies, including Nestle, Unilever, and Tyson Foods joined an IBM project in August 2017 to study how blockchain systems can help track food supply chains and improve

safety. With improved data, small-scale farmers are able to get bank loans with more favourable terms, improving their productivity and quality of life. Blockchain is also used in ensuring the authenticity of organic certification.

In November 2017, Hermes Investment Management had the opportunity to participate in the International Council on Mining and Metals (ICMM) roundtable on blockchain technology applications in the supply chain. As the only investor representative at the event, we were keen to communicate the message that global investors expect companies to find reliable, transparent and cost-effective ways to certify that their supply chains are sustainable and free from slavery and corruption. Everledger, a London-based company, shared its experience in monitoring the diamond supply chain. Knowing the origin of a diamond helps to reduce counterfeiting, insurance fraud and smuggling from conflict regions because digital certificates are difficult to forge being in a decentralised system, providing a better alternative to paper certificates.

The implications for the cobalt supply chain

At the ICMM meeting, we discussed whether the same control rigour through

Highlights

- blockchain is increasingly being used to improve traceability and transparency in supply chain management
- the current paper certificates system in the cobalt supply chain should be replaced by a more digitally enhanced method
- wider adoption of blockchain in the cobalt supply chain will require buy-in by all parties – including miners, smelters, refiners, battery manufacturers and the consumer electronics and auto companies

“
 global investors expect
 companies to find
 reliable, transparent
 and cost-effective
 ways to certify that
 their supply chains
 are sustainable and
 free from slavery
 and corruption
 ”



technology could be applied to the cobalt supply chain. This recommendation can be traced back to a blog we published in March 2017 – ‘Beyond tin, tungsten, tantalum and gold: cobalt mining in the Democratic Republic of Congo (DRC)’. In the blog, we highlighted the challenges of monitoring the cobalt supply chain, and began engagement along the chain to understand the root causes of issues related to human rights violations. We advocated a collaborative platform that facilitates the sharing of costs and expertise, with access to a wide range of companies. We wanted companies to consider using blockchain technology to identify human rights issues and to improve current supply chain management practices.

Since then, cobalt prices have risen from US\$52 per tonne to US\$75 per tonne (December 2017), according to the London Metals Exchange. Whilst companies are

working on substituting cobalt with other minerals, the rapidly increasing demand for electric vehicles mean that there is inevitably going to be a demand gap. In the interim period, the demand for cobalt continues to rise.

Many of the companies that we engaged with have done well in improving their cobalt supply chain. Apple has expanded its responsible sourcing efforts to beyond 3TG covering cobalt. Samsung SDI, a key battery manufacturer for Apple and Samsung Electronics, published a supply chain responsibility report, following the OECD Due Diligence Guidelines for Responsible Supply Chain. Together with other members of the Responsible Cobalt initiative, established by the Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, the two companies led a collaborative academic study seeking ways to create sustainable societal impact in local communities.

The Chinese cobalt smelter and refinery, Huayou Cobalt, which was heavily criticised by Amnesty International for allowing child labour in its mines, conducted a detailed presentation at the OECD responsible supply chain conference in Paris in May 2017. The presentation provided an update on the local community's engagement, training and health and safety improvements that the company has made in its operations in the DRC. We are pleased to see such progress, however, the application of technology still lagged our expectations. Fortunately, at the ICMM meeting, RCS Global, the responsible sourcing advisory and audit group that has worked with many of the aforementioned companies on this issue, presented a potential solution. It has mapped out a 12-step blockchain-based Chain of Custody system for the minerals supply chain. There are a number of similarities and differences in applying blockchain to minerals when



compared to other supply chains. In terms of similarities, key players in the upstream production, such as the miners, must agree a set of input data to define the data features of cobalt. At this point there is little difference to the 40 features, including colour and clarity, to create a unique diamond's identification, or using a batch tracking method to ensure the authenticity of organic food produce, except that cobalt, which is a by-product of copper, will have a different set of identification features. These may include, for example, a mineral fingerprint that analyses content of impurities.

In terms of challenges, there are a number of them. Firstly, tea or bacon do not transform in the same way as cobalt from plantation or farm to shop shelf. The manufacturing process that produces smartphone and car batteries as end products requires the use of numerous types of materials; cobalt is only one

component. During the multiple stages of transformation and aggregation, there needs to be a clear approach in authenticating that all the materials used are child and slave labour free. Secondly, there has to be an overall alignment of the responsible production processes to standardise 'registration by nodes' at each aggregation point. For example, the current paper certificates system will have to be replaced by a more digitally enhanced method. Thirdly, independent traders of cobalt play a crucial role in the supply chain. They mix cobalt from different sources to suit the demands of the market. Downstream buyers should agree common production and material stewardship standards and associated purchase terms promoting best practices. In all likelihood these will arise from existing or developing industry platforms.

One key challenge remains – the business case for adoption for miners. Currently

the pressure is from the downstream companies to provide more transparency, but without any corresponding reward – either financially or reputationally.

The journey ahead

All of the above require industry collaborative efforts, covering the industries of miners, smelters, refiners, battery manufacturers and ultimately, the consumer electronics and auto companies. With improved traceability and transparency, companies can improve quality management and use of recycled materials, enhancing the circular economy. We are probably at the beginning of this journey, although I am confident that given the progress in many sectors that we have witnessed this year on applying blockchain for good, we are closer to our goals than ever before.

Christine Chow

*Director – Engagement
Hermes Investment Management*

The Hermes Investment Management blog 'Beyond tin, tungsten, tantalum and gold: cobalt mining in the DRC' is available online at: www.hermes-investment.com/ukw/blog/eos/beyond-3ts-gold-cobalt-mining-drc. The academic study into creating sustainable societal impact in local communities mentioned in the article is available online at: <https://escholarship.org/uc/item/17m9g4wm>.

The views and opinions contained herein are those of the author and may not necessarily represent views expressed or reflected in other Hermes communications, strategies or products.

Cross-border insolvency law

Alexander Tang, Senior Associate, Stephenson Harwood, looks at recent developments in cross-border insolvency law adopted by the Hong Kong judiciary to overcome the deficiencies in our outdated insolvency legislation.

There are an increasing number of cross-border insolvency cases dealing with a wide range of interesting legal issues. In this article, we discuss these recent developments which are broadly divided into the following three categories:

1. the three core requirements in the winding up of foreign companies
2. recognition and assistance to foreign liquidators, and
3. cross-border restructuring.

1. The three core requirements for the winding up of foreign companies

It is well established that the most appropriate jurisdiction to wind up a company is the jurisdiction where it is incorporated. While it is *prima facie* unusual for a court to wind up

a foreign company, the Hong Kong Court is empowered by Section 327 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) to wind up a foreign company under certain circumstances, for example inability of the foreign company to pay its debts.

In addition to the statutory provisions, common law courts have applied self-imposed constraints known as the three core requirements when considering whether a foreign company should be wound up.

In the shareholder dispute case of *Kam Leung Sui Kwan v Kam Kwan Lai and others* [2015] 18 HKCFAR 501 – more commonly known as the Yung Kee case – the Court of Final Appeal confirmed that the three core requirements are:

1. there is a sufficient connection with Hong Kong
2. there must be a reasonable possibility that the winding up order would benefit those applying for it, and
3. the court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.

The Court of Final Appeal explained that for a Hong Kong petition presented by a creditor, in deciding whether there is sufficient connection, the fact that there is a reasonable prospect that the petitioner will derive a sufficient benefit from the making of a winding up order, whether by the distribution of its assets or otherwise, will always be necessary and often sufficient. It was decided that the same question should be applied to a shareholder petition, but the factors for consideration are different. For a creditor petition, the presence of significant Hong Kong assets for distribution amongst creditors will usually establish a sufficient connection. In a shareholder petition, the presence of shareholders within jurisdiction is highly relevant and will usually be the single most important factor.

In the Yung Kee case, the company to be wound up was a British Virgin Islands (BVI) holding company which in turn owned a BVI subsidiary. The BVI

Highlights

- the benefits to be obtained from a winding up order against a foreign company will be interpreted broadly by the court and public interest considerations will be taken into account
- there is now a quick alternative mechanism for foreign liquidators appointed by a jurisdiction similar to Hong Kong to obtain information and documents without first having to domestically petition for the winding up of the foreign company
- common law judicial assistance powers have been used to facilitate cross-border restructuring



subsidiary was the majority shareholder of a number of Hong Kong and other BVI subsidiaries which owned valuable Hong Kong real estate. The corporate structure was designed by the shareholders to minimise Hong Kong tax and estate duty. It was argued successfully before the Court of First Instance and the Court of Appeal that the company had no connection with Hong Kong because all it owned were shares of the wholly owned BVI subsidiary. This was, however, overruled by the Court of Final Appeal which held that the connection between the holding company and the underlying assets of the corporate group was not broken by the interposition of the company's wholly owned BVI subsidiary.

The three core requirements were more recently considered in the case of *Shandong Chenming Paper Holdings Ltd v Arjowiggins HKK Ltd* HCMP 3060 of 2016, concerning a foreign company failing to honour the payment of an arbitral award.

Shandong Chenming is a People's Republic of China (PRC) company listed in both Shenzhen and Hong Kong. The company was solvent with substantial assets in the PRC, but had no Hong Kong assets or business operations. A statutory demand was served by a creditor of Shandong Chenming based on an unpaid arbitral award which was registered for enforcement in Hong Kong. While not disputing that the arbitral award was payable, Shandong Chenming sought a declaration from the Hong Kong court that the second core requirement was not satisfied, that is the creditor would not benefit from a winding up order in Hong Kong. This was because of the old age difficulty of Hong Kong liquidators being unable in a practical sense to take control of and sell PRC-based assets. If the application by Shandong Chenming was successful, it would have barred a winding up petition from being presented by the creditor. Shandong Chenming argued that the proper course for the

creditor was to enforce the arbitral award in the PRC.

Taking into account the listed shares, the corporate structure of Shandong Chenming and its company's articles of association, the Court concluded that the value of its Hong Kong listing status was incapable of providing any material benefit to its creditors. Nevertheless, the court found that the creditor would still benefit from a winding up order as Shandong Chenming would be expected to satisfy the arbitration award because of the immediate and severe consequences of a winding up order. For instance, Shandong Chenming's management in Hong Kong would be assumed by the liquidators; the liquidators would investigate management conduct; any share transfer since the presentation of the winding up petition would be void unless otherwise approved by the court; and Shandong Chenming's status as a listed company in Hong Kong would be

jeopardised. The court also decided that there was a public interest consideration and this point underpinned the judgment. Shandong Chenming's refusal to honour the arbitral award showed its flagrant disregard for the Hong Kong legal system, which did not sit well with the Companies Judge. He noted that if a company wants to be Hong Kong listed it should respect the court's decision to allow the award to be enforced in Hong Kong.

Apart from being a strong message from the Hong Kong court that it will not tolerate foreign companies seeking to evade payment of a judgment debt and/or arbitral award, the case showed that benefits to be obtained from a winding up order against a foreign company will be interpreted broadly by the court and also that public interest considerations will be taken into account.

2. Recognition and assistance to foreign liquidators

A company's assets and information may often be located outside its place of incorporation. The quickest way that foreign liquidators can seek recognition and assistance is where a country adopts the UNCITRAL Model Law on cross-border insolvency which establishes simplified procedures for the recognition of foreign insolvency proceedings. At present, about 45 jurisdictions have adopted the UNCITRAL Model Law, but Hong Kong is not a party.

In the past, foreign liquidators seeking assistance from Hong Kong courts had to wind up the foreign company and appoint themselves as local liquidators in order to avail themselves of statutory investigative powers. This inevitably incurs time and costs, and may not always be successful. By way of an example, in the case of *Re*

“
recent developments in cross-border insolvency law adopted by the Hong Kong judiciary... have enabled Hong Kong to remain relevant amongst other jurisdictions like Singapore, Cayman Islands and Malaysia in an increasingly competitive insolvency and restructuring market
”

China Medical Technologies Inc [2014] 2 HKLRD 997, the court initially found that the three core requirements were not met and dismissed the winding up petition. It was only after new evidence was uncovered suspecting a significant part of the company's assets were misappropriated in Hong Kong through a number of Hong Kong bank accounts operated by persons in Hong Kong, that the court eventually allowed the company to be wound up in order to avail the foreign liquidators of statutory investigative powers.

The landmark case of *Joint Official Liquidators of A Co v B & C* [2014] 5 HKC 152 has entirely changed the practice of foreign liquidators seeking recognition in Hong Kong. The Hong Kong court granted a recognition order to Cayman liquidators pursuant to a letter of request from the Cayman Court. The case was the first reported Hong Kong judgment confirming a private international law principle, namely that the authority of a liquidator appointed under the law of the company's place of incorporation should be recognised in Hong Kong. The significance of the principle is that if a party (for example a bank) receives a request from a liquidator of a foreign company, it should respond in the same way as if the request were made from a director of the foreign

company. The previous practice of Hong Kong-based banks, however, was that they would request foreign liquidators to produce a Hong Kong court order before disclosing bank records.

Even though Hong Kong has not adopted the UNCITRAL Model Law, since the *Joint Official Liquidators* case, there is now a quick alternative mechanism for foreign liquidators appointed by a jurisdiction similar to Hong Kong to obtain information and documents without first having to domestically petition for the winding up of the foreign company.

Assets are, however, treated differently from information. If the foreign company has assets in Hong Kong, foreign liquidators are still required to obtain a vesting order from the Hong Kong court to obtain title to the subject assets.

3. Cross-border restructuring

Corporate restructuring in Hong Kong is often carried out via a scheme of arrangement under which a debt compromise reached between the company and 50% in number and 75% in value of creditors (following endorsement of the deal by the court) is imposed on all creditors – in other words, a court imposed cram down. Different from the winding up

of a foreign company, the justification for exercising the court's power to sanction a foreign company's scheme of arrangement is found only in the first core requirement, namely, that the scheme has a sufficient connection with Hong Kong.

A typical Hong Kong cross-border restructuring case involves an offshore company (for example a BVI company) listed in Hong Kong which has an offshore debt (for example governed by New York law or English law). The primary issue is how the offshore debt can be compromised and recognised to be enforceable in the different jurisdictions.

According to the old English principle known as the *Gibbs Rule* laid down in *Antony Gibbs Et Sons v La Societe Industrielle et Commerciale des Metaux* [1890] 25 QBD 399, a foreign composition does not discharge a debt unless it is discharged under the law governing the debt. A scheme of arrangement in the jurisdiction of the governing law of the debt is therefore crucial and restructuring of the type of cases mentioned above will inevitably involve parallel schemes in multi-jurisdictions. The principle is followed by most common law jurisdictions including Hong Kong.

In the case of *Re Winsway Enterprises Holdings Ltd* [2017] 1 HKLRD 1, the Hong Kong court sanctioned a local scheme in which the offshore debt was governed by New York Law. While the US does not have a mechanism which is equivalent to a scheme of arrangement, the US Bankruptcy Court was prepared to grant recognition of the proceedings in Hong Kong and ancillary relief necessary to compromise the debt in the US pursuant to Chapter 15 of the US Bankruptcy Code. A parallel scheme was also sanctioned

by the BVI court. The schemes and proceedings in various jurisdictions therefore enabled the debt governed by New York law to be compromised.

Singapore has recently and rather controversially not followed the *Gibbs Rule* in the judgment of *Pacific Andes Resources Development Ltd* [2016] SGHC 210. The main argument against the *Gibbs Rule* relied upon by the Singapore court is that it focuses on the contractual terms between the parties but fails to recognise that the statutory insolvency regime only comes into play to determine a creditor's entitlement when the debtor company becomes insolvent. Also, it was argued that the *Gibbs Rule* is not in line with the general modern approach of the courts which recognises that the administration of an insolvent company should be implemented by a primary court applying a single bankruptcy law. The ultimate and practical effect of not following the *Gibbs Rule* is that the debtor company will save substantial costs as it does not have to commence parallel schemes. It remains to be seen whether Hong Kong and other common law jurisdictions will follow the Singapore approach.

A major problem with Hong Kong schemes of arrangement is the absence of a statutory moratorium. Creditors opposing the scheme can derail the process by presenting a winding up petition. Companies routinely appointed provisional liquidators to create a *de facto* moratorium when applying for a scheme of arrangement. However, in the case of *Re Legend Resorts International Limited* [2006] 3 HKC 565, the Court of Appeal held that the appointment of provisional liquidators over an insolvent company cannot be done solely for the purpose of a corporate restructuring.

In the recent case of *Z-Obee Holdings Limited* HCMP 1563 of 2017, the Hong Kong court allowed the parties to adjourn the hearing of a winding up petition of a Bermuda company so that the Hong Kong provisional liquidators could apply to be appointed as provisional liquidators in Bermuda. The Bermuda provisional liquidators, who can carry out corporate restructuring under their laws, then applied to seek recognition in Hong Kong by way of a letter of request and introduced parallel schemes to effect a restructuring in both Bermuda and Hong Kong. This was an innovative use of the common law judicial assistance powers to facilitate cross-border restructuring, and is expected to be used more often to get around the restriction imposed by *Re Legend*.

Conclusion

There are a wide range of recent developments in cross-border insolvency law adopted by the Hong Kong judiciary to overcome the deficiencies in our outdated insolvency legislation. This has enabled Hong Kong to remain relevant amongst other jurisdictions like Singapore, Cayman Islands and Malaysia in an increasingly competitive insolvency and restructuring market.

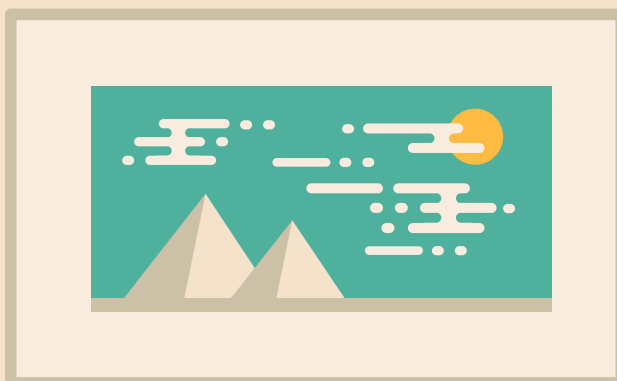
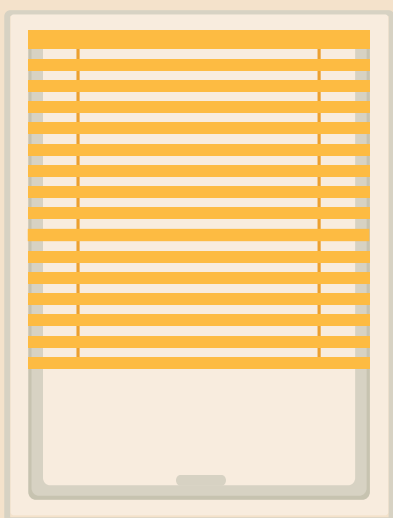
Alexander Tang, Senior Associate
Stephenson Harwood

The author is a restructuring and insolvency lawyer, and holds a specialist qualification in insolvency awarded by the Hong Kong Institute of Certified Public Accountants. He can be contacted at: alexander.tang@shlegal.com.

Copyright: Alexander Tang of Stephenson Harwood

Can the board remove a director or an auditor?

The usual mechanism for the removal of a director or an auditor is by ordinary resolution of members at a general meeting. Dr Davy Wu, Senior Lecturer, Hong Kong Baptist University, looks at whether the board of directors can do the same without a resolution by members under the Companies Ordinance.



There is no question about the central role played by the board of directors and external auditor in the corporate governance of a company. According to the Hong Kong Corporate Governance Code, an effective board 'should assume responsibility for the company's leadership and control and be collectively responsible for promoting its success by directing and supervising its affairs. Directors should take decisions objectively in the best interests of the company.' (Principle A.1) External auditors, on their part, need to provide a professional judgement on whether the company's financial statements show a true and fair view of its financial position and performance to its members, based on which the members can assess the directors' stewardship of the company.

Removal is a mechanism by which a company can get rid of incompetent directors or external auditors but the mechanism could be abused if it is used to remove a director who relentlessly makes constructive but unwelcome challenges to the board or an external auditor who refuses to yield to unethical pressure from the company. While members in general meeting can remove a director or an auditor, this article discusses whether the board of directors can do the same without a resolution by members under the Companies Ordinance.

Appointment of directors

The Companies Ordinance does not prescribe for any mechanism for appointing directors, therefore it is the articles of association that determine how a director should be appointed. For instance, Schedule 2 provides that a person may be appointed as a director by ordinary resolution for an unlimited period unless otherwise stated in the

appointment. (Article 22(1)(a) and (2)) If a person is appointed to the board by the directors to fill up a causal vacancy, this director must retire from office at the next annual general meeting but can seek appointment. (Articles 22(4) and 23)

This arrangement is based on the premise that members should have the final say on who should be running the company for them. But this arrangement does not preclude the articles from prescribing other ways of appointing directors. For example, Hong Kong's Financial Secretary may appoint up to six directors representing the public interest to the board of directors of Hong Kong Exchanges and Clearing Ltd (HKEX) (Article 88(4) of HKEX's Articles of Association). Hong Kong's Chief Executive may appoint any persons as directors of the MTR Corporation Ltd (MTR) provided that the number of such directors shall not exceed three. (Article 90 of MTR's Articles of Association)

Removal of directors under the Companies Ordinance

In relation to the removal of a director, the Companies Ordinance provides that a company 'may by an ordinary resolution passed at a general meeting remove a director before the end of the director's

term of office, despite anything in its articles or in any agreement between it and the director.' (Section 462(1)) This in effect reproduces Section 157B(1) of the former Companies Ordinance. Undoubtedly, a director can be removed by members with an ordinary resolution. However, is this the only way or just one way of removing a director? Can the articles give the board of directors a power to remove a director? Or, in an extreme case, can the articles empower any third party, such as a majority shareholder, to remove a director?

The former Companies Ordinance stated that Section 157B was not to be taken 'as derogating from any power to remove a director which may exist apart from this section.' (Section 157B(8)) It is settled law that under Section 157B the board could be given by the articles a power to remove or disqualify a director by written notice (*Lee v Chou* [1984] WLR 1201). One could argue that this can enable the board to swiftly remove a director involved in culpable conduct without the delay involved in convening a general meeting. Under the articles of HKEX and MTR, a director elected by shareholders can be removed from office by giving him notice to that effect signed by all the other directors (HKEX: Article 92(2);

Highlights

- there is some doubt as to whether an article authorising the board to remove a director would be valid under the new Companies Ordinance
- while there is a need for a mechanism to remove incompetent directors, this could be abused if it is used to remove a director who makes constructive but unwelcome challenges to the board
- the author suggests that Hong Kong should consider clarifying the law to ensure that, in a public company, only shareholders can remove directors

“
 the Hong Kong government may
 consider if there is a case to follow
 the Australian law that in a public
 company (which is usually listed) only
 the shareholders can remove directors as
 this can certainly give greater protection
 to independent non-executive directors
 ”

MTR: Article 97(c). Such articles were undoubtedly valid under the former Companies Ordinance. The question is, are they still valid under the 'new' Companies Ordinance, where there is no equivalent of Section 157B(8)?

The Australian experience

In Australia, before the Corporations Act 1989 was replaced by Corporations Act 2001, Section 227(1) and (11) of the former mirrored Section 157B(1) and (8) of the former Companies Ordinance with the only difference that Section 227 applied only to public companies. While Section 203D(1) of the Corporations Act 2001 (applying only to public companies) replaced Section 227(1) of the former statute, there was no equivalent of Section 227(11) in the new law. However, Section 203E states that 'a resolution, request or notice of any or all of the directors of a public company is void to the extent that it purports to (a) remove a director from their office; or (b) require a director to vacate their office'. It is logical that the mechanism under Section 203D(1), which is equivalent to our Section 462(1), is not the only way that a director can be removed otherwise Section 203E would be redundant.

Recently, in *State Street Australia Ltd in its capacity as Custodian for Retail Employees Superannuation Pty Ltd (Trustee) v Retirement Villages Group Management Pty Ltd* [2016] 113 ACSR 483, the Australian Federal Court held that Section 203D(1) does not provide an exhaustive codification of the mechanism for removal. The Federal Court considered that 'the language of Section 203D(1) uses the phrase "[a] public company may ...". The word "may" is empowering. Significantly, the phrase is not "may only ...". The text suggests that Section 203D(1) provides a mechanism rather than the mechanism.' (original emphasis)

Can the board remove a director under the 'new' Companies Ordinance? In Hong Kong, Section 462(3) provides that other subsections of Section 462, such as the one requiring the director proposed to be removed to be served with special notice, 'apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.' It is noted that if a provision of any ordinance (including the Companies Ordinance) requires or otherwise provides for a resolution of a company and does not

specify what kind of resolution is required, what is required is an ordinary resolution unless the company's articles require a higher majority. (Section 562(3))

Considering the above, it is submitted that one way to interpret Section 462 is that, by not rewriting Section 157B(8) into the new law, the legislative intention must be that a director can only be removed by members under Section 462. But Section 462(1) does not lay down the only way for members to remove a director, therefore the articles can designate other ways for members to remove a director such as by way of a special resolution or even a unanimous resolution at a general meeting as implied by Section 462(3). As a note of digression, this interpretation means that Section 462 is at odds with the amendment to Section 157B(1) brought about by the Companies (Amendment) Ordinance 2003 which required removal of directors be made by ordinary resolution instead of special resolution in order to avoid entrenchment of directors. Another possible interpretation is that Section 462(1) allows the members of a company to remove a director but does not exclude removal by the board of directors or any third party as authorised by the articles, with Section 462(3) only specifying the procedural requirements in the event of removal by members' resolution. This interpretation is supported by the *State Street Australia Ltd* case and explains that it is not necessary to put an equivalent of Section 157B(8) into the 'new' Companies Ordinance. It remains to be seen how the Hong Kong court is to interpret Section 462.

Removal of an auditor

The Companies Ordinance provides that a company 'may by an ordinary resolution passed at a general meeting remove a person from the office of auditor despite

any agreement between the person and the company; or anything in the company's articles' (Section 419(1)). Since the provisions on removal of director and removal of auditor have a similar structure, it is arguable that Section 419(1) just lays down a mechanism rather than the mechanism of removing an auditor. It also means that the articles of a company can give its board of directors a power to remove an auditor by notice, or cause the auditor's term of office to expire by notice. Although Section 416 lists out the cases in which the appointment of auditor is terminated, it does not state that those are the only cases. Comparison can be made with Section 329(1) of the Corporations Act 2001 that an auditor 'may be removed from office by resolution of the company at a general meeting of

which [special notice] has been given, but not otherwise'; and Section 510(2)(a) of the Companies Act 2006 of the UK that the power to remove an auditor is 'exercisable only by an ordinary resolution at a meeting' of which special notice has been given. For the avoidance of doubt, it would be advisable to add a provision that the board of directors must not do anything that has the effect of removing its auditors or requiring them to vacate their office.

Conclusion

This article proposes that there are at least two ways to interpret the statutory provision on the removal of directors – one allows only the members to exercise the power to remove and the other one does not. On the other hand, it also explores

whether the wording of the statutory provision regarding the removal of an auditor could allow such a power to be given to people other than the members.

Regarding removal of directors, it is suggested that in future the Hong Kong government may consider if there is a case to follow the Australian law that in a public company (which is usually listed) only the shareholders can remove directors as this can certainly give greater protection to independent non-executive directors.

Dr Davy Wu

Senior Lecturer, Department of Accountancy and Law, School of Business

Hong Kong Baptist University

CSj is the **only publication** dedicated to corporate governance in Hong Kong.

Each issue is distributed to over **8,000** members of HKICS, and read by approximately **20,000** individuals.

CSj is the most effective way to source your future **Corporate Secretarial** colleagues.

To advertise your vacancy in the Careers section, please contact us at: enquiries@ninehillsmedia.com

ninehills
media

Professional Development

Seminars: December 2017

5 December

AML/CFT – regulations and reforms – persons with significant control register/TCSP regulation



Chair: Professor CK Low FCIS FCS, Institute Technical Consultation Panel member, and Associate Professor in Corporate Law, CUHK Business School

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

6 December

Common challenges in ESG reporting & guidance on environmental KPIs



Chair: Sally Chan FCIS FCS(PE), Assistant Company Secretary, CLP Holdings Ltd

Speakers: Ricky Ho, Director, Risk Advisory Services; and Angus Chan, Manager; Avista Group

7 December

Company secretarial practical training series: company dissolution and company restoration



Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel member, and Executive Director, Global Compliance & Reporting of Corporate Secretarial Services, Ernst & Young Company Secretarial Services Ltd

Speaker: Frances Chan FCIS FCS, Director, K Leaders Business Consultants Ltd

11 December

Company secretarial practical training series: secondary offerings in Hong Kong



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

Speaker: David Yun, Partner, Kirkland & Ellis LLP

13 December

Company secretarial practical training series: formation, administration and maintenance of NGOs (in the form of a company limited by guarantee) (re-run)



Chair: Kitty Liu FCIS FCS, Institute Membership Committee member, and Company Secretary – Group Legal, AIA Group

Speaker: Susan Lo FCIS FCS(PE), Institute Professional Development Committee member, and Executive Director, Director of Corporate Services and Head of Learning & Development, Tricor Services Ltd

14 December

2017 AGM season review



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

Speaker: Stephanie Cheung, Vice-President, Client Services, Computershare Hong Kong Investor Services Ltd

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
27 February 2018	6.45pm – 8.15pm	Insolvent trusts and risk management	1.5
28 February 2018	6.45pm – 8.15pm	International enforcement of large judgments and arbitration awards	1.5
7 March 2018	6.45pm – 8.15pm	Understanding the updated COSO enterprise risk management framework	1.5
8 March 2018	6.45pm – 8.15pm	How to avoid and handle employment disputes?	1.5

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

Seminar fee discount for HKICS registered students

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

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

Online CPD (e-CPD) seminars

The Institute has launched a series of e-CPD seminars in collaboration with The Open University of Hong Kong (OUHK). Through the online learning platform of OUHK, members, graduates and students are able to easily access selected video-recorded seminars with any smart device anytime, anywhere. The launch of e-CPD seminars enables members, graduates and students to schedule their professional learning more flexibly. *Details and registration are available at the CPD courses section of the OUHK website: <http://ecentre.ouhk.edu.hk>. For enquiries, please contact the Institute's Professional Development section at: 2830 6011, or email: ecpd@hkics.org.hk.*

CPD requirements

All members and graduates are reminded to observe the deadlines set out below. Failing to comply with the CPD requirements may incur an administrative penalty of HK\$3,000 payable upon the Institute's demand and constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's Articles of Association.

CPD year	Members and graduates who qualified on or before	CPD or ECPD points required	Point accumulation deadline	Declaration deadline
2017/2018	30 June 2017	15 (at least 3 ECPD points from the Institute's ECPD seminars)	30 June 2018	31 July 2018

Professional Development (continued)

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

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

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

Membership

Membership/graduateship removal due to non-payment of 2017/2018 subscription

Subscription payments for the year 2017/2018 were due on 30 September 2017. Under Byelaw 13 of The Institute of Chartered Secretaries and Administrators (ICSA) and Article 20 of the Institute, any members failing to pay the subscription

within six months of the date fixed for payment: he/she and his/her name shall be removed from the membership registers of both ICSA and the Institute.

For the year 2017/2018, 126 members and graduates were removed from the membership registers of ICSA and the Institute. Former members and graduates

are required to apply for re-election and settle the outstanding subscription, plus a re-election fee, should they wish to reinstate their membership or graduateship with ICSA and the Institute. All applications for re-election are subject to the Membership Committee's review and approval.

Application for election to membership for 2018

Associates and graduates are encouraged to advance their membership status to fellows and associates respectively once they have fulfilled the prerequisites of relevant working experience and other requirements set by the Council. See the table opposite for upcoming application deadlines and respective approval dates in 2018.

Application deadline	Approval date
Friday 26 January 2018	Tuesday 6 March 2018
Friday 27 April 2018	Tuesday 5 June 2018
Friday 27 July 2018	Tuesday 4 September 2018
Friday 19 October 2018	Tuesday 20 November 2018

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

Final call for volunteers for single elders visit programme

The Institute organised two community service events in November and December 2017 to raise members' awareness of the needs of single elders in Hong Kong. Positive feedback was received from the participants, following which the Institute will launch a series of community service programmes from February to July 2018 whereby volunteers will form groups to visit single elders. Members, graduates and students who are willing to commit to visits under this programme are invited to join as volunteers.

Interested members, graduates and students are welcome to apply on or before Friday 9 February 2018. For details, please contact the Membership section at: 2881 6177, or email: member@hkics.org.hk.

New graduates

Congratulations to our new graduates listed below.

Au Yeung Yiu Chung
Lam Wai Ying
Lau Sze Yan, Trevina
Law Yuk Yee
Man Fung Yan
Sham Yee Tung

New fellows

The Institute would like to congratulate the following fellows elected in December 2017.

Beh Ho Yuk Lan, Yolanda FCIS FCS

Ms Beh is currently the Head of the Hong Kong office of Bocimar Hong Kong Ltd with responsibilities for a total of four Groups with about 100 local/overseas companies in Hong Kong holding about 100 ships. She has extensive experience in administration having worked in several industries including electronic, manufacturing, paper, petrochemical, greeting cards, premiums and logistics. Over the last 10 years she focused more on company secretarial work specifically involved shipping companies and ships.

Ms Beh demonstrates her professionalism and provides valuable advice to the Corporate and Legal Department at the Headquarters in Antwerp. She frequently liaises with banks, government bureaus of different countries whilst facilitating the acquisition of new ships/bank loans/ship flag registration and related matters. Ms Beh was admitted as a graduate of the Institute in 1993 and elected as an associate in 1997.

Chow Man Yee, Bony FCIS FCS

Ms Chow has been working in Hong Kong Nihon Cement Company Ltd (HKNC) as a company secretary since 1990. HKNC is one of the leading cement suppliers in Hong Kong, having engaged in most of

Hong Kong's mega infrastructure projects. She has over 25 years of extensive work experience in company secretarial matters, internal and external compliance, business administration, corporate data and systems, corporate documents, event management, shipping, cargo insurance and pension funds affairs. Ms Chow holds a bachelor's degree in banking from National Chengchi University, Taiwan.

Chung Mei Ling FCIS FCS

Ms Chung is the Vice-President, Board of Directors' Office/CEO Office of ICBC International Holdings Ltd. She has over 15 years' experience advising on corporate governance, corporate planning and human resources strategies. Ms Chung

Membership (continued)

graduated with a Bachelor of Social Science in Economics from The Chinese University of Hong Kong, a Master of Arts in Professional Accounting and Information Systems from City University of Hong Kong, and a Global Executive MBA from The Chinese University of Hong Kong. She is also a Chartered Professional in Human Resources of British Columbia & Yukon, and a fellow of Hong Kong Institute of Human Resource Management.

Poon Yuen Ling FCIS FCS

Ms Poon has been working with Everbright International group for over 23 years, and has been the Company Secretary of China Everbright International Ltd (Stock Code: 257) since 2001. She has over 25 years of working experience in company secretarial affairs and is mainly responsible for legal, company secretarial, corporate governance and compliance matters for the listed group.

Wong Shuk Ying FCIS FCS

Ms Wong is the Deputy Group Secretary of Prudential plc (Stock Code: 2378), which is listed on the Stock Exchanges in London, Hong Kong, Singapore and New York. She joined Prudential plc when it was listed in Hong Kong in 2010. She has over 10 years of experience in company secretarial, corporate governance and related regulatory compliance work in the listed companies in Hong Kong. Prior to joining the Prudential group, Ms Wong gained over 10 years of corporate secretarial experience in professional practice in an audit firm in Hong Kong.

Chak Wai Ting FCIS FCS

Company Secretary, Colour Life Services Group Company Ltd (Stock code: 1778)

Chan Pak Chuen, Patricia FCIS FCS

Vice-President, Credit Risk, China Merchants Securities Company Ltd (Stock code: 6099)

Chan Yuen Mei FCIS FCS

Deputy Company Secretary, Melco International Development Ltd (Stock code: 200)

Cheng Wing Sze FCIS FCS

Cheung Wai Fan, Jacqueline FCIS FCS

Assistant Group Company Secretarial Manager, Vistra Group

Cho Wing Han FCIS FCS

Assistant Director – Company Secretariat, Haitong International Securities Group Ltd (Stock code: 665)

Choy Man Har FCIS FCS

Head of Finance and Administration, Qualified Accountant, Assistant Company Secretary, Huabao International Holdings Ltd (Stock code: 336)

Ho Kit Hung FCIS FCS

Accounting Manager, Swire Pacific Ltd (Stock code: 87)

Mak Yuk Ling, Ada FCIS FCS

Shun Tak Holdings Ltd (Stock code: 242)

Philip David Miller FCIS

Senior Assistant Company Secretary, HSBC (Stock code: 5)

Tai Bik Yin FCIS FCS

Company Secretary, China Aircraft Leasing Group Holdings Ltd (Stock code: 1848)

Tong Chak Wai, Wilson FCIS FCS

Group Chief Financial Officer,

Chevalier International Holdings Ltd (Stock code: 25)

Tsang Kit Man FCIS FCS

Manager, Tax Department, Ernst and Young

Wong Kin Wah FCIS FCS

Senior Company Secretarial Manager, Reanda EFA Secretarial Ltd

Wong Kit Wai FCIS FCS

Chief Financial Officer and Company Secretary, Hing Lee (Hong Kong) Holdings Ltd (Stock code: 396)

Wong Tak Chun FCIS FCS

Company Secretary and Head of Corporate Finance, Top Spring International Holdings Ltd (Stock code: 3688)

Wong Yuk Fung, Yuri FCIS FCS

Company Secretary and Assistant Vice-President, Orix Asia Ltd

Members' activities highlights: January 2018

23 January

Mentors' Training – mentorship skills



Forthcoming membership activities

Date	Time	Event
10 February 2018	2.30pm – 4.30pm	Fellows' Only – visit to Hong Kong Observatory
5 March 2018	6.45pm – 8.30pm	Welcome drinks with newly elected fellows (by invitation only)
10 March 2018	10.00am – 12.30pm	Mentorship Training – effective communication skills
3, 10, 17 and 24 March 2018	3.30pm – 5.30pm	HKICS dragon boat team training sessions

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

Advocacy

HKICS Prize winner 2017

The annual HKICS Prize celebrates the achievements of leaders of the Chartered Secretarial profession. The 2017 prize was awarded to Institute Past President and Chief Executive Officer – China & Hong Kong, Tricor Group/Tricor Services Ltd, Natalia Seng FCIS FCS(PE), who has extensive experience and expertise in company secretarial practice and in promoting corporate governance.

Natalia was first elected a member of the Institute Council in 1997, and became President from 2007 to 2010, followed by three years of ex-officio service on Council until 2014. During the years on Council, she was the Chairman and a member of numerous committees, panels and groups, including the Education, Membership, Professional Development, Human Resources and Nomination committees, as well as the Professional Services Panel, Special Entry Interview Panel, AML/CFT Working Group and Mainland China Focus Group. She was also a Council member of The Institute of Chartered Secretaries and Administrators from 2010 to 2014.

Look out for the interview with Natalia Seng in a future edition of CSj.



HKICS attends the 11th Asian Financial Forum

Institute Immediate Past President Ivan Tam FCIS FCS; Past President Maurice Ngai FCIS FCS(PE); Council member Bernard Wu FCIS FCS; and Chief Executive Samantha Suen FCIS FCS(PE); attended the 11th Asian Financial Forum organised by the Hong Kong Trade Development Council on 15 and 16 January 2018. During the forum, a wide range of issues including global investment growth, fintech, banking innovation, payment technology, artificial intelligence, green finance and private wealth management, were discussed.

HKICS Past President interviewed by Cable TV

On 23 January 2018, Natalia Seng FCIS FCS(PE), Institute Past President and Chief Executive Officer – China & Hong Kong, Tricor Group/Tricor Services Ltd, was interviewed by Hong Kong Cable Television Ltd (Cable TV). In the interview, she discussed recent anti-money laundering and counter-terrorist financing (AML/CFT) regulatory reform; the extension of financial institutional standards to trust and corporate service providers; and the need for professionalism in dealing with customer due diligence. Natalia pointed out that Hong Kong's international reputation was at stake since the Financial Action Task Force Mutual Evaluations of Hong Kong would be carried out this year. Natalia also highlighted the long-standing efforts of the Institute in AML/CFT and the professionalism of Institute members.

Advocacy (continued)

HKICS Annual Dinner 2018

The Institute held its 2018 Annual Dinner on 18 January 2018 at the JW Marriott Hotel Hong Kong, with the participation of about 600 guests from the Government of the Hong Kong SAR; regulatory bodies; the Liaison Office of the Central People's Government in the Hong Kong SAR; professional bodies; academia; and Institute members. Under the theme of 'A Sparkling Night', Institute President David Fu FCIS FCS(PE) addressed the occasion with a review of the Institute's major achievements in 2017, and how the Institute, as a governance institute, is working closely with The Institute of Chartered Secretaries and Administrators (ICSA), in particular planning for launching the new qualifying scheme for the new professional designation – Chartered Governance Professional and the current designation of Chartered Secretary, gaining better and wider recognition in Hong Kong, Mainland China as well as internationally.

As part of that close co-operation, ICSA's International President David Venus FCIS visited Hong Kong, Beijing and Taipei in late January 2018 to get a better sense of developments relevant to Hong Kong and Mainland China. Details of his visit will be reported in the next edition of CSj. In addition, next year – 2019 – will be the 70th anniversary of ICSA's presence in Hong Kong and the 25th anniversary of the establishment of the Institute in Hong Kong. A series of activities will be organised in the year ahead for celebration of this double anniversary.

Guest of Honour, The Honourable Chan Mo-Po, Paul GBM GBS MH JP FCIS FCS, the Financial Secretary of the Government of the Hong Kong SAR delivered the keynote address at the Annual Dinner.

At the Annual Dinner, the Institute held its 'Best Green Pioneer Contest' with over 20 members, graduates and students participating. After the first round of assessment by a panel of three judges comprising President David Fu FCIS FCS(PE), Past President April Chan FCIS FCS and Institute fellow Phyllis Ng FCIS FCS, a second round of voting was held with all the guests, members, graduates and students at the Annual Dinner casting their votes on the green living tips proposed by the three finalists using the Institute's mobile app. A specially-designed gift – a stainless-steel straw – was also given to all the guests at the Annual Dinner, symbolising the Chartered Secretaries' support for and participation in the world's green living trend. In addition, the inaugural charity sale of The Hong Kong Institute of Chartered Secretaries Foundation Ltd (the HKICS Foundation), which was established by the Institute in January 2012, was held at the Annual Dinner. The Institute's neckties and scarves selling at HK\$200 each, as well as the Institute's limited edition of wine charms, which were produced in collaboration with a social enterprise selling at HK\$300 each, were available for charity sale. The proceeds from this charity sale has raised a total of HK\$15,800 for the HKICS Foundation.

The Institute would like to thank all members, graduates and students who participated in the 'Best Green Pioneer Contest', as well as all lucky draw sponsors and everyone who has helped, and to congratulate all the winners of the contest and lucky draw.



'Best Green Pioneer Contest' results

Joint champions:

'Green living starts from you!' by Alice Leung FCIS FCS(PE) and 'Hold a second, hankies please' by Ron Pau, GradICSA

2nd runner-up:

'Continue support green awareness by hand-in-hand to save our Earth' by Rebecca Yu FCIS FCS(PE)



From left to right: Rebecca Yu FCIS FCS(PE); Institute President David Fu FCIS FCS(PE); Ron Pau, GradICSA; Alice Leung FCIS FCS(PE)

Guests (in alphabetical order)

Ir Dr Alex Chan BBS, Chairman, Hong Kong Council for Academic Accreditation & Vocational Qualifications

April Chan FCIS FCS, Past President, The Hong Kong Institute of Chartered Secretaries

Professor Kalok Chan, Dean of CUHK Business School, The Chinese University of Hong Kong

Stephen Chan, Honorary Secretary, The Association of Hong Kong Accountants

YK Chan, Vice-President, Hong Kong Institute of Arbitrators

陈强, 中央政府驻港联络办协调部副处长

Dr June Cheng, Associate Professor and Team Leader of Accounting & Law, The Hong Kong Polytechnic University

Jeremy Choi, Vice-President, The Taxation Institute of Hong Kong

Rebecca Chow FCIS FCS, Past President, The Hong Kong Institute of Chartered Secretaries

Ada Chung JP, Registrar of Companies, Companies Registry

Lily Chung, Executive Director, Hong Kong Business Ethics Development Centre, Hong Kong Independent Commission Against Corruption

Michael Duignan, Senior Director, Corporate Finance, Securities and Futures Commission

Anthony Fan, President, The Hong Kong Independent Non-executive Director Association

Professor Faung Kai-Lin, Professor, National Chengchi University

David Graham, Chief Regulatory Officer and Head of Listing, Hong Kong Exchanges and Clearing Ltd

Paul Ho, Divisional President 2018 – Greater China, CPA Australia – Hong Kong Division

Grace Hui, Managing Director and Chief Operating Officer, Listing Department, Hong Kong Exchanges and Clearing Ltd

Edwin Ing FCIS FCS, Past President, The Hong Kong Institute of Chartered Secretaries

Gordon Jones FCIS FCS, Senior member, The Hong Kong Institute of Chartered Secretaries

Christine Kan, Managing Director, Listing and Regulatory Affairs Division, Hong Kong Exchanges and Clearing Ltd

Advocacy (continued)

Dr Betty Kwok, Associate Head and Assistant Professor, Hang Seng Management College

Dr David Lam, The Honorary Secretary, The Hong Kong Medical Association

Mary Lam ACIS

Thomas Lee, Deputy President, Hong Kong Professionals and Senior Executives Association

John Leung JP, Chief Executive Officer, Insurance Authority

The Honourable Kenneth Leung, Legislative Councillor (Accountancy), Legislative Council of the HKSAR

Richard Leung FCIS FCS(PE), Past President, The Hong Kong Institute of Chartered Secretaries

Sr Dr Tony Leung, Senior Vice-President, The Hong Kong Institute of Surveyors

Professor Liming Liu, Dean, Faculty of Business, Lingnan University

罗智中, 中央政府驻港联络办协调部主任科员

John Maguire, Chairman, Hong Kong Securities and Investment Institute

Neil McNamara FCIS FCS, Past President, The Hong Kong Institute of Chartered Secretaries

Frank R Mullens FCIS FCS, Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong

Charles Ng, Associate Director-General, Invest Hong Kong

Melissa Pang, Vice-President, The Law Society of Hong Kong

Michael Scales FCIS FCS, Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong

George Seng

Natalia Seng FCIS FCS(PE), Past President, The Hong Kong Institute of Chartered Secretaries

Professor Tony Shieh, Academic Director of MSc in Accounting Programme, The Hong Kong University of Science and Technology

Michael Shue, Chairman, Hong Kong Trustees' Association

Dr Irene Siaw, Associate Professor, The Open University of Hong Kong

Eric Tong, President, Hong Kong Institute of Certified Public Accountants

Teresa Tso, Chairman, Association of Chartered Certified Accountants Hong Kong

Dr Claire Wilson, Head of Department of Law & Business, Hong Kong Shue Yan University

Paul F Winkelmann, Chief Executive Officer, Financial Reporting Council

Duffy Wong FCIS FCS, Past Chairman, The Association of The Institute of

Chartered Secretaries and Administrators in Hong Kong

Horace Wong FCIS FCS, Past President, The Hong Kong Institute of Chartered Secretaries

Wong Kuen-fai JP, Commissioner, Inland Revenue Department

Dr Raymond Wong, Associate Head & Associate Professor, City University of Hong Kong

Tak Wong, President, The Hong Kong Institute of Landscape Architects

Dr Davy Wu, Programme Director, MSc in Corporate Governance and Directorship & Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University

Kirk Yip, Press Secretary to Financial Secretary, The Government of the HKSAR

Professor Susana Yuen, Dean, School of Business and Hospitality Management, Caritas Institute of Higher Education



Annual Dinner photo gallery



Advocacy (continued)

Best Board Secretary/Company Secretary Awards

Congratulations to our five Institute Affiliated Persons (APs) who received 'Best Board Secretary/Company Secretary Awards' at the 2017 China Financial Market Listed Companies Awards Ceremony on 8 January 2018. The event was organised by *China Financial Market*, a financial magazine, and the Institute was one of its associate organisers. Institute Chief Executive Samantha Suen FCIS FCS(PE) presented the 'Best Board Secretary/Company Secretary Awards', 'Best Investor Relationship (IR) Awards' and 'Most Valuable Brand Awards' at the presentation ceremony.

The five Institute APs who received 'Best Board Secretary/Company Secretary Awards' are listed below (in alphabetical order).

- Hu Aibin, China Nonferrous Mining Corporation Ltd
- Sun Feixia, Harbin Bank Co, Ltd
- Wei Qiyang, CGN Power Co, Ltd
- Yu Xingxi, China Railway Construction Corporation Ltd
- Zhu Qin, Everbright Securities Co, Ltd



Best Board Secretary Awards



Best IR Awards



Most Valuable Brand Awards

HKICS seminar on 'Governance for Innovation; Innovation in Governance'

On 19 January 2018, the Institute organised a seminar on 'Governance for Innovation; Innovation in Governance', with the participation of 130 directors, INEDs, company secretaries and senior management. The forum, in partnership with the Hong Kong Trade Development Council and sponsored by KPMG, was part of the International Financial Week of the Asian Financial Forum 2018. At the seminar, Institute Past President and ICSCA Senior Vice-President Edith Shih FCIS FCS(PE); and Chairman of the Board of Directors of the Hong Kong Science and Technology Parks Corporation, The Honourable Fanny Law Fan Chiu-fun GBM GBS JP; and other speakers, shared topics on corporate governance and innovation, as well as the listings of innovative companies in Hong Kong with the participants.



Group photo with the speakers

International Qualifying Scheme (IQS) examinations

June 2018 diet schedule

	Tuesday 5 June 2018	Wednesday 6 June 2018	Thursday 7 June 2018	Friday 8 June 2018
9.30am – 12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2.00pm – 5.00pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Please enrol between 1 and 31 March 2018.

IQS study packs go green

The Institute has launched online versions of four IQS study packs. This service, which is free to all registered students, enables students to schedule their professional learning and studies more flexibly, economically and in an environment-friendly manner. Students are highly encouraged to activate their online account and obtain access to the study packs for examination revision as soon as possible. For details of the account activation, please select Education under the News section of the Institute's website: www.hkics.org.hk, or refer to the Student Handbook of the Institute.

For further information regarding the online study packs, please contact Ally Cheung at: 2830 6031, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk. For technical questions regarding the PrimeLaw account, please contact Wolter Kluwer's customer service: HK-Prime@wolterskluwer.com.

HKICS examinations preparatory programme

The Institute's examinations preparatory programme conducted by HKU SPACE will commence on Wednesday 21 February 2018. The timetable and enrolment form are available via 'Examinations' in the Studentship section of the Institute's website: www.hkics.org.hk. For enquiries, please contact HKU SPACE at: 2867 8478, or email: hkics@hkuspace.hku.hk.

Recommended reading list update – Hong Kong Taxation

The recommended reading list of Hong Kong Taxation has been updated with *Hong Kong Taxation and Tax Planning* as the main reading material. Starting from December 2017, The Institute's Hong Kong Taxation study outline will no longer be available for sale. For details of the updated recommended readings list of Hong Kong Taxation, please select 'recommended readings' of the 'International Qualifying Scheme (IQS)' under the Studentship section of the Institute's website: www.hkics.org.hk.

Studentship

Student Ambassadors Programme

Recruitment of summer internship

The Institute invites companies and organisations to offer summer internship positions to local undergraduates under its Student Ambassadors Programme, with the aim to promote the Chartered Secretarial profession to the younger generation in Hong Kong. The internship period will be for a maximum of eight weeks from June to August 2018.

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

HSMC BBA-CG Advisory Committee meeting

The meeting of the Advisory Committee of the Bachelor of Business Administration (Honours) in Corporate Governance (BBA-CG) of the Hang Seng Management College (HSMC) was held on 5 January 2018 at the HSMC Campus. At the meeting, Institute Chief Executive and HSMC BBA-CG Advisory Committee Chairman Samantha Suen FCIS FCS(PE), as well as Institute fellows and HSMC BBA-CG Advisory Committee members Frances Chan FCIS FCS; Loretta Chan FCIS FCS; Jenny Choi FCIS FCS and Kevin Lau; advised on proposed changes to the BBA-CG Programme by sharing the latest developments in the Chartered Secretarial profession.



At the meeting

Policy – payment reminder

Studentship renewal

Students whose studentship expired in December 2017 are reminded to settle the renewal payment by Friday 23 February 2018.

Exemption fees

Students whose exemption was approved via confirmation letter in November 2017 are reminded to settle the exemption fee by Saturday 24 February 2018.

Significant controllers registers

The Companies (Amendment) Ordinance 2018 (the Amendment Ordinance), which will come into operation on Thursday 1 March 2018, introduces new requirements for companies incorporated in Hong Kong to enhance the transparency of corporate beneficial ownership. Companies incorporated in Hong Kong will be required to obtain and maintain up-to-date beneficial ownership information, by way of keeping a significant controllers register (SCR) for inspection by law enforcement officers upon demand.

The new requirement to keep a SCR applies to all companies incorporated under the Ordinance in Hong Kong, including companies limited by shares, companies limited by guarantee and unlimited companies. Companies which have their shares listed on the Stock Exchange of Hong Kong are exempted from the requirement.

The SCR should be in either English or Chinese and should contain required particulars of the company's significant controllers (including registrable persons and/or registrable legal entities). The SCR should be kept at the company's registered office or a prescribed place in Hong Kong.

The company is required to take reasonable steps to ascertain its significant controller(s). The steps include reviewing the company's register of members, articles of association, shareholder agreements or other agreements and issuing notice(s) to any person that the company knows or has reasonable cause to believe:

- (a) to be a significant controller, or
- (b) to know the identity of another person who is a significant controller.

The addressee of the notice is required to confirm or provide (as appropriate) the requested particulars relating to the significant controller.

The conditions for determining whether a person has significant control over a company are set out in Annex II of the Companies Registry External Circular No 2/2018. The required particulars relating to a registrable person of a company should be entered into the company's SCR within seven days after they have all been provided or confirmed by the registrable person; while each of the required particulars relating to a registrable legal entity should be entered in the company's SCR within seven days after that particular comes to the notice of the company.

The company will have to designate a representative to serve as a contact point for providing information about the SCR and related assistance to law enforcement officers. The designated representative must be either a shareholder, director or an employee of the company who is a natural person resident in Hong Kong or an accounting professional, a legal professional or a person licensed to carry on a business as trust or company service provider. The particulars of the designated representative should also be entered into the SCR.

If a company fails to comply with the requirement of keeping a SCR, the company, and each of its responsible persons, will be liable on conviction to a fine up to HK\$25,000 and a daily fine of \$700.

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

New licensing regime for trust and company service providers

A new licensing regime for trust or company service providers (TCSPs) will commence with effect from Thursday 1 March 2018. Under the new licensing regime, TCSPs are required to apply for a licence from the Registrar of Companies (the Registrar) and satisfy a 'fit-and-proper' test before they can provide trust or company services as a business in Hong Kong. TCSP licensees are also required to comply with the statutory customer due diligence and record-keeping requirements as set out in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap 615.

To ensure proper compliance with these statutory requirements, officers of the Companies Registry will conduct onsite inspections, investigate any incidents of non-compliance and initiate disciplinary actions where appropriate. Any person who carries on a trust or company service business in Hong Kong without a licence commits an offence and is liable on conviction to a fine up to HK\$100,000 and imprisonment for up to six months.

The Registrar is empowered to grant, refuse to grant, renew, suspend or revoke a licence, and impose or vary any conditions in relation to a licence. A TCSP licence, once granted, will generally be valid for three years. TCSP licensees are required to obtain prior approval from the Registrar before any person becomes an ultimate owner, a partner or a director of a licensee. They should also give notifications to the Registrar of any changes in particulars previously provided in connection with an application for the grant or renewal of a licence within one month of the change. A TCSP licensee who intends to cease to carry on the trust or company service business is also required to, before the intended date of cessation, notify the Registrar of that intention and the intended date of cessation.

Transitional arrangements

With effect from Thursday 1 March 2018, a person will be deemed to have been granted a licence to carry on a trust or company service business in Hong Kong if immediately before Thursday 1 March 2018 (the commencement date of the new licensing regime), he/she was carrying on a trust or company service business in Hong Kong and for that purpose held a valid business registration certificate.

If the deemed licensee does not apply for a licence during the transitional period of 120 days from the commencement date, the deemed licence will, unless terminated earlier (for example, when the deemed licensee ceases business), cease to have effect on the expiration of the transitional period. If the deemed licensee applies for a licence during the transitional period, the deemed licence will generally cease to have effect when the application is granted, rejected or withdrawn.

Implementation of the new licensing regime

To facilitate implementation of the new licensing regime, the Companies Registry has set up a new office, the Registry for Trust and Company Service Providers, which will be responsible for the administration of the licensing regime and regulation of TCSPs. The new Registry starts operation with immediate effect to handle public enquiries.

More information is available on the new website (www.tcsp.cr.gov.hk) which has also been set up to provide detailed information relating to the new licensing regime, including external circulars, relevant guidelines, specified forms and frequently asked questions.

HKICS Foundation Charity Sale

HKICS Foundation Charity Sale will continue until the end of March 2018. Let's get your neckties and scarves, selling at HK\$200 each, and limited edition of wine charms, selling at HK\$300 each. All proceeds from this Charity Sale will go to the HKICS Foundation for promoting good secretaryship and corporate governance.

A donation of HK\$200 or above is tax deductible with an official receipt. For enquiries, please contact Idy Cheung at 2830 6018 or event@hkics.org.hk.



The HKICS Foundation, a wholly owned subsidiary of The Hong Kong Institute of Chartered Secretaries, is a registered charity under Section 88 of the Hong Kong Inland Revenue Ordinance (charity reference 91/11348). To find out more about the HKICS Foundation and its activities please visit www.hkics.org.hk.



Congratulations to
Our Clients on Winning

Best
ESG Awards!

We have the good fortune to work with
the award-winning companies of the 2017 Inaugural BDO ESG Awards.

AAC Technologies Holdings Inc.

has received the accolades of
Best in ESG and **Best in Reporting** (Large-Cap).

Panda Green Energy Group Limited

is the recipient of the
ESG Report of the Year (Small-Cap),
as well as the
Best in ESG and **Best in Reporting** (Small-Cap).

We are honored and gratified that
they trust us to make the ESG reporting critical to their success.
We'd like to congratulate both organisations,
and are proud to be their ESG reporting partners for consecutive years.



Alaya Consulting

本識顧問

Building Trust Through Narrative

Call Us Today: **+852 3990 0790**