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January 2018

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The journal of The Hong Kong Institute of Chartered Secretaries
香港特許秘書公會會刊

Listing regulation

New proposals for Hong Kong

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January 2018

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Editorial Committee

Credits

Kieran Colvert
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Contributors to this edition

Timothy Loh
Timothy Loh LLP
Low Chee Keong
CUHK Business School
John T Dinner
John T Dinner Governance Services
Mohan Datwani
HKICS
Kelly Cooper
CSR Asia
Bryane Michael
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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

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Good governance comes with membership

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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It 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.

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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)
member@hkics.org.hk (member)
ecpd@hkics.org.hk (professional development)
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
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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

The Institute of Chartered Secretaries & Administrators
c/o MCI UK
Durford Mill, Petersfield
Hampshire, GU31 5AZ
United Kingdom
Tel: (44) 1730 821 969

ICSA: The Governance Institute
Saffron House, 6-10 Kirby Street
London EC1N 8TS
United Kingdom
Tel: (44) 20 7580 4741
Fax: (44) 20 7323 1132

The Institute of Chartered Secretaries & Administrators in Zimbabwe
PO Box CY172
Causeway Harare
Zimbabwe
Tel: (263) 4 702170
Fax: (263) 4 700624

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Looking ahead

I am honoured to be addressing you as President of our Institute after my election at the Council meeting following our Annual General Meeting on 15 December 2017. I hope to be able to build on the excellent work of our Immediate Past President Ivan Tam FCIS FCS, and indeed all of my predecessors in this role. Our Institute has achieved a great deal in recent years thanks to the hard work not only of its Past Presidents, but also of Council, the secretariat and all of our members in Hong Kong and Mainland China. I hope to be able to keep up this momentum during my tenure as President, taking forward our strategic goals. I will be reporting in more detail on the agenda for 2018 and the years ahead after our Council strategy meeting.

One issue which looks set to feature prominently for Hong Kong and for our profession in the year ahead is the future regulatory architecture of our capital market, and it is this complex issue which features as the central theme of our journal this month. The issue has been much in the news recently as both Hong Kong Exchanges and Clearing Ltd (HKEX) and the Securities and Futures Commission (SFC) have put forward proposals to change the listing framework for IPOs and our listing regulatory model.

In June 2016, the SFC and HKEX consulted the market on a proposal to create two new committees which would have given the SFC a greater say in approving listings. This proposal met with deep division during the five-month consultation period and the conclusion in September 2017 was that, instead of the two committees proposed by the SFC, a Listing Policy Panel is to be established, which will provide the SFC with a forum for advisory input on listings policies with broader regulatory or market implications, but leaves intact the primacy of The Stock Exchange of Hong Kong Ltd (the Exchange) in approving listings in the city.

Earlier this year, HKEX put forward the 'New Board Concept Paper' and its consultation paper on the Growth Enterprise Market (GEM). Revised proposals issued last month would align the GEM and Main Board listing requirements more closely and make GEM a standalone market for small and mid-sized companies instead of a stepping stone to the Main Board. The proposals would also expand the existing listing regime by introducing two new chapters to the Main Board listing rules to allow the listing of biotech issuers which are pre-profit and/or pre-revenue, as well as issuers from emerging and innovative sectors that have weighted voting rights structures, subject to additional disclosure and safeguards. HKEX also proposes to create a new concessionary secondary listing route to attract issuers from emerging and innovative sectors that are primary listed on the New York Stock Exchange, Nasdaq or the 'premium listing' segment of the London Stock Exchange's Main Market. There will be further consultation in this regard.

These latest developments involve important questions for Hong Kong's future as a capital market. How can we maintain the competitiveness of our market without compromising investor protection? How can we improve our listing framework for IPOs and for regulating listed companies? This latter issue, along with the implications of the SFC's 'front-loaded' approach to its regulatory role, is addressed in this month's cover story. This has been a long-running debate in Hong Kong. Ever since the inquiry into the Penny-Stocks Incident back in 2002, for example, there has been a question as to whether Hong Kong should maintain its current dual responsibility model – whereby the SFC is the statutory regulator and the Exchange is the frontline regulator – or proceed to the model adopted in the US and UK where the statutory regulator holds substantially all regulatory powers. It will be interesting to see how this debate evolves in the year ahead and you can rest assured that we as governance professionals will be core contributors to shaping Hong Kong's future in this area.

Before I go, I would like to remind you of our Annual Dinner 2018, which will be held on the 18th of this month at the JW Marriott Hotel Hong Kong. Our Annual Dinner always provides an excellent opportunity for Institute members and friends to get together in an informal and enjoyable setting, and this year's event is shaping up to be particularly interesting since our Guest of Honour will be Paul Chan Mo-Po GBM GBS MH JP FCIS FCS, Financial Secretary, the Government of the Hong Kong SAR. I look forward to seeing you at the dinner and working with you all in the year ahead.

David Fu FCIS FCS(PE)

展望未来

2017年12月15日周年会员大会后的理事会会议中，本人获选为公会会长，很荣幸在这里以会长的身分向大家发言。前任会长谭国荣FCIS FCS以及历届会长的工作都十分出色，本人希望以此为基础，继续发展会务。有赖历任会长、理事会、秘书处及香港与中国内地全体会员的努力，公会近年来做了大量工作，成绩有目共睹。本人希望在出任会长期间延续这势头，实现策略目标。理事会举行策略会议后，本人将更详尽说明2018年及往后的工作。

来年势将深获香港和特许秘书行业关注的一项发展，是香港资本市场未来的监管架构。这复杂的课题，正是本刊今期的主题。香港交易及结算所有限公司（港交所）及证券及期货事务监察委员会（证监会）最近提出建议，修改首次公开招股的上市框架以及香港的上市监管模式，因此近期此事经常获传媒报道。

2016年6月，证监会及港交所提出建议谘询市场，建议内容是设立两个新委员会，让证监会在批准上市申请的工作上有更大决定权。在为期五个月的谘询期间，各界意见有重大分歧。2017年9月发出的谘询总结提出设立上市政策小组，取代证监会建议的两个委员会，让证监会就对监管工作或市场有影响的上市政策提供意见，但维持香港联合交易所有限公司（联交所）在批准香港上市申请的工作中的首要地位。

今年较早时，港交所提出《建议设立创新板》框架谘询文件，以及有关创业板的谘询文件。上月公布的修订建议，将使创业板和主板的上市条件更趋一致，让创业板成为中小型公司上市的独立市场，而非作为主板上市的踏脚石。建议亦将扩充现有的上市机制，在主板上市规则增加两章，在加强披露及保障措施的前提下，让尚未有盈利及／或收益的生物技术公司，以及采用不同投票权架构的新兴及创新型公司能够上市。港交所亦建议设立新的第二上市途径，吸引在纽约证券交易所、纳斯达克作第一上市，或在伦敦证券交易所主板市场作高级上市的新兴及创新型公司。这建议将再作谘询。

这些最新发展，牵涉香港作为资本市场的未来。我们可如何维持香港市场的竞争力，而又不损对投资者的保障？我们可如何改善上市框架，监管首次公开招股及上市公司？今期的封面故事，探讨第二个问题，以及证监会「前置式」监管方针的影响。这课题长期以来在香港一直甚具争议。例如自从2002年仙股事件的调查起，就有讨论涉及香港应否继续维持现有的双重责任模式，即证监会是法定监管机构，联交所是前线监管机构，又或应改用美国和英国采纳的模式，由法定监管机构掌握大部分监管权力。来年这讨论的进展值得关注，而作为管治专业人员，我们必定提供意见，塑造香港这方面的未来发展。

最后，谨此提醒大家，公会2018年周年晚宴将于1月18日假香港JW万豪酒店举行。周年晚宴一向是公会会员和友好非正式地聚首一堂，轻松愉快地交流的好机会。今年公会邀得香港特别行政区政府财政司司长陈茂波大紫荆勋贤GBS MH JP FCIS FCS作为主礼嘉宾，周年晚宴将特别吸引。期望在晚宴见到大家，也期望来年与大家共同合作。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

Front-loaded regulation: the implications for listed companies

Timothy Loh, Managing Partner; and Greg Heaton, Senior Consultant; Timothy Loh LLP, argue that the new front-loaded regulation adopted by the Securities and Futures Commission (SFC) signals an increasing level of oversight and intervention by the SFC in the regulation of listed companies.

In July 2017, Ashley Alder JP, the Chief Executive Officer of the Securities and Futures Commission (SFC), formally introduced a new approach to regulating companies listed, or applying to be listed, on the Stock Exchange of Hong Kong (SEHK). The new approach, called 'front-loaded regulation', emphasises 'earlier, more targeted intervention' to pre-empt or limit investor losses from major corporate misfeasance and market misconduct.

Front-loaded regulation does not disturb the SEHK's role as the frontline regulator of listed companies, a role which many market participants had argued forcefully should be maintained in the course of a joint SFC-SEHK consultation on decision making and governance in listing regulation. However, it gives new life to long-standing powers of the SFC under the Securities and Futures (Stock Market Listing) Rules (SMLR) to directly regulate listed companies. These rules and their predecessor, the Securities (Stock Exchange Listing) Rules, have for almost 30 years given the SFC the power to object to any listing or to suspend or cancel a listing on various grounds, including:

- where materially false, incomplete or misleading information has been included in any prospectus or other document issued in connection with a listing or in any announcement or other document issued by an issuer in connection with its affairs
- where it is necessary or expedient in the interest of maintaining an orderly and fair market, or
- where it is in the interest of the investing public or it is appropriate for the protection of investors.

Expansion of enforcement powers

Traditionally, the SFC has relied on enforcement powers that can only be exercised through a court or the Market Misconduct Tribunal (MMT). The SFC has now, in effect, explicitly added the power to suspend a listed company or to cancel the listing of a listed company as additional tools in its arsenal. The power to suspend, in particular, is likely to be highly effective because:

1. no approval from a court or any tribunal is required for the SFC to use it, and
2. though the SFC has indicated that it will 'normally' give a listed company a reasonable opportunity to be heard before it exercises this power, it is not obliged under the SMLR to do so.

So far, the SFC has reported that it has used its power of suspension as

'exceptional early protective action', usually taken during an investigation to maintain the status quo pending:

1. further investigation
2. the taking of a specific remedy, or
3. the imposition of a specific sanction.

In this latter respect, where a listed company has acted in a manner prejudicial to its investors, the SFC has traditionally sought court orders to require the listed company to sue its officers or to disqualify its officers from being directors in the future.

Regrettably, because the power of suspension is not subject to any approval from a court or tribunal, the basis upon which this power is exercised and the arguments raised against it are not transparent. There is no right to appeal a decision by the SFC to suspend a listing to an independent tribunal such as the Securities and Futures Appeals Tribunal (SFAT). In contrast, decisions of the SFC under the SMLR to object to a listing can be appealed to the SFAT.

However, a listed company which objects to a decision by the SFC to suspend dealings in its securities may make representations to the SFC. Such representations are to be heard by the directors of the SFC. In this case, any director of the SFC who originally made the decision to suspend may not participate in the deliberations or vote in connection with the hearing of the objection but may explain his decision. The listed company is entitled to be represented by its lawyer in the hearing of its objection.

Parallel regulation

A further consequence of front-loaded regulation is that it may enable the SFC to supplement the SEHK listing rules. The SFC's powers of suspension may be exercised, not only when the issuer has disclosed false information, but also whenever the SFC believes that it is 'appropriate for the protection of investors'. The latter is potentially capable of a very broad interpretation.

In May 2017, the SFC issued a *Guidance note on directors' duties in the context of valuations in corporate transactions*. Earlier, in June 2012, the SFC issued its *Guidelines on Disclosure of Inside Information*. These documents were issued in the context of the SFC's powers under the Securities and Futures Ordinance (SFO) in respect of conduct unfairly prejudicial to shareholders of

Highlights

- under the Securities and Futures (Stock Market Listing) Rules, for almost 30 years, the SFC has had the power to object to any listing or to suspend or cancel a listing on various grounds
- no approval from a court or any tribunal is required for the SFC to use the power to suspend a listing
- after abandoning proposed amendments to the listing process, it appears the SFC will instead expand its role through greater reliance on its existing powers

> “traditionally, the SFC has relied on enforcement powers that can only be exercised through a court or the Market Misconduct Tribunal”

listed companies and the requirement for listed companies to disclose inside information. Significantly, they were issued to provide guidance on the SFC's expectations of listed companies for the purpose of exercising specific statutory powers. It is not a great leap to imagine that, on the same basis, the SFC would issue guidance on what it regards as 'appropriate for the protection of investors'.

The validity of such guidance is unclear. Under the SFO, quite apart from the SFC's power to require the SEHK to make or amend particular listing rules, the SFC has the power to make its own rules in relation to listing. However, in so doing, it must consult with the Financial Secretary of the Government of the HKSAR and the SEHK. It does not appear that any similar requirement for consultation would apply in the case where the SFC simply issues guidance as to how it plans to exercise its discretion to suspend a listed company.

Looking forward

Though the SFC's new front-loaded regulation appears to be an evolving approach whose implications for listed companies are not fully known, it seems probable that it signals an increasing level of oversight and intervention by the SFC in the regulation of listed companies. Whilst it is always inherently difficult to make predictions, this oversight and intervention will, in our view, take place through the issuance of guidance as to expected standards of conduct and through gradual enforcement action under the SMLR. We say this for two reasons.

First, the SFC has repeatedly expressed concerns about the quality of regulation of listed companies under the current framework, known as the dual-filing system, under which listing applications are reviewed by both the SEHK and the SFC. These concerns were expressed as long ago as 2003, when a three-member expert group appointed by the Financial Secretary of the Government of the HKSAR issued a report (*Expert Report*) recommending that the regulatory functions of SEHK be transferred to the SFC. This was intended to clear the conflict of interests of the SEHK as both a regulator and a profit-making entity, and to improve the quality and efficiency of listing applications. The recommendations of the *Expert Report* were supported by the SFC but faced significant opposition, and ultimately were not adopted.

Most recently, in November 2016 the SFC and SEHK issued a *Joint Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation*, which proposed greater SFC participation in listing policy and in the review of decisions of the listing committee. These proposals were abandoned following fierce opposition.

The failure of these consultations to result in any significant changes, and the fact that the SFC has responded to these failures by reverting to the SMLR, suggests that the SFC will henceforth continue to expand its role through application of the SMLR on an incremental basis.

A second reason why it seems likely that the SFC will continue to expand its role through the SMLR is that such an expansion seems consistent with the prevailing trend in which the SFC has been taking an increasingly active role in deploying its statutory powers – powers which the SEHK does not have – to regulate listed companies. This trend is particularly notable in the rise in the number of SFC investigations now focused on listed companies as a proportion of all investigations. As is often the case with regulation, there is a natural tendency to continuously move towards a higher degree of regulation and the present trend shows no signs of abating.

One sign of things to come was the introduction in 2013 of the statutory requirement to disclose inside information. This requirement in effect moved the regulation of the key post-listing obligation, namely the duty to disclose information on a continuous basis, from the SEHK to the SFC. Once the new requirement came into effect, the SFC promptly commenced three actions before the MMT, one each against AcrossAsia, Mayer and Yorkey, letting it be known that it was the new cop on the block.

Another sign of things to come is the SFC's not infrequent use of its statutory powers to seek remedies through the courts for listed company misconduct. These remedies include requiring the listed company to pay compensation to investors or to sue directors or former directors who have engaged in

misconduct, or disqualifying directors from serving as such. The SEHK does not have equivalent powers to compel persons to cooperate with its investigations, nor does it have an equivalent ability to seek these types of remedies. The powers of the SFC to suspend or cancel listings go hand in hand with these other statutory powers and there seems to be no obvious reason why the SFC would not deploy its powers to suspend or cancel in appropriate circumstances.

In ramping up the use of its existing powers, the SFC has sought to improve collaboration among its operational divisions. Specifically, the SFC has formed an 'ICE' team composed of officers from the Intermediaries, Corporate Finance and Enforcement divisions, tasked with identifying and responding to problems relating to listed companies, especially in the Growth Enterprise Market (GEM). Using the supervisory tools of the Intermediaries division, the SFC undertook a thematic review of price volatility of listings on GEM, focused on placing agents whose practices purportedly resulted in a high concentration of shareholdings among a small number of placees. Subsequently, the Enforcement division launched investigations into a number of listing sponsors. ICE has also attempted to identify and disrupt groups of interrelated companies that allegedly work together to defraud minority shareholders through market manipulation and by entering into apparently legitimate transactions that do not make genuine business sense. In one recent operation, the SFC used 136 officers from three SFC divisions to search multiple premises.

The result of the foregoing is that, over the long term, it seems likely that the core of the regulation of listed companies will move from the SEHK to the SFC.

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

Corporate governance: an overview

Low Chee Keong FCIS FCS, Associate Professor in Corporate Law, CUHK Business School, provides a concise overview of three inter-related questions, namely, what is corporate governance, why is it important and where may it go from here.

Academic research suggests that there is a systematic difference between countries in terms of the legal protection accorded to minority shareholders with two distinct trends emerging. First, the least protection for investors is provided in countries in which companies have the highest ownership concentration. Secondly, expropriation of outside shareholders arises most significantly where a company is affiliated to a group of companies, all of which are controlled by the same shareholder.

This evidence suggests that the common law system provides more protection for investors as the transfer of assets and profits out of firms for the benefit of their controlling shareholders is more prevalent in civil law jurisdictions and is significant for two reasons, namely:

1. the importance of the centrality of legal protection for minority shareholders, and

2. the assertion that legal regulation can outperform private contracting.

In short, strong legal regulation and effective enforcement are critical to sound and effective corporate governance.

Does corporate governance matter in practice?

These findings have significant policy implications as good corporate governance practices contribute towards the overall well-being of a financial system, as witnessed from both the Asian financial crisis in 1997 as well as the global financial crisis in 2008. The former brought to the foreground the common occurrence of weak corporate governance that allowed companies to engage in excessive over-leverage, some of which were aided by implicit state guarantees; while the latter exposed significant shortcomings with the laissez-faire attitude towards deregulation in the financial services industry in the US. A common thread through these crises was that the concepts of transparency, disclosure and accountability were largely ignored as investors assumed short-term outlooks to derive increasing profits from the steadily rising financial markets.

In the lead up to the Asian financial crisis, companies across the region were guilty of neglecting the principles of good corporate governance, the difference being perhaps in the degree of neglect. This is evident from instances of corporate abuse through related-party transactions, incidence of capricious decision-making, shifting of assets within the corporate group, undertaking of transactions without proper disclosure and poor financial management by directors. The repeal of the *Glass-Steagall Act* of 1933 – which separated the commercial and investment banking activities of financial institutions – by the *Gramm-Leach-Bliley Act* in the US in 1999 is often viewed as a key contributor towards the global financial crisis. With the support of the then Federal Reserve Chairman Alan Greenspan, as well as the then Treasury Secretary Professor Lawrence Summers, this reform allowed banks to use their deposits to invest in derivatives. By doing so, it allowed the larger banks to deploy their resources towards the creation of increasingly sophisticated and complex derivatives which coincide with the growth of subprime mortgages as financial institutions sought to increase their rates of returns. When the housing bubble burst, it precipitated the banking crisis in 2007 which subsequently spread to Wall Street as by 2008 a number of the major banks – with their over-reaching tentacles into the financial markets – had become 'too big to fail'.

Defining corporate governance

The term 'corporate governance' was succinctly defined in *The Cadbury Report* as 'the system by which companies are directed and controlled'. 'Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place', the Report stated.

Although somewhat simplistic, it highlights the importance of processes that companies should institute and implement to ensure that effective

Highlights

- strong legal regulation and effective enforcement are critical to sound and effective corporate governance
- 'soft' law is beneficial only where there is active compliance by business elites, diligent monitoring by capital market actors and effective control by regulatory elites
- the fragilities of humans have invariably been the dominant or root cause of the crises that we have experienced to date

> “as the tentacles of the modern corporation reach further outwards, so too must there be a commensurate level of corporate behaviour that meets the expectations of the various stakeholders which continue to evolve”

practices transcend the various levels of the organisation. These were viewed as necessary responses to what was then seen as the lack of managerial oversight which led to the spectacular corporate collapses of the Bank of Credit and Commerce International, Coloroll, the Polly Peck Group and Maxwell Communication Corporation in the late 1980s and early 1990s. These collapses did not only result in substantial financial losses to shareholders, employees, creditors, investors as well as the government – they were also seen as posing considerable challenges to the integrity and reputation of the City of London as an international financial centre.

Significantly, the *Cadbury Report* recommended that compliance should be based on a voluntary code of best practice – designed to achieve the necessary high standards of corporate behaviour – supplemented by appropriate levels of disclosure. It must be noted that the scope of the *Cadbury Report* was specifically to address issues arising from the financial aspects of corporate governance, and in the circumstances the committee opined that it would be most appropriate to adopt a principles-based ‘comply or explain’ approach. In a nutshell, companies were expected to comply with the core corporate governance principles identified in the voluntary Corporate Governance Code and if they do not comply, they needed to explain why not. The underlying aims of this approach was to ensure transparency as it was hoped that market forces and pressure from investors would ensure compliance rather than explaining non-compliance.

This principles-based self-regulatory approach rapidly gained favour across global capital markets. The idea of a voluntary code on corporate governance that focuses on structures, processes and practices has been actively promoted since the publication of the *Cadbury Report* in 1992 and the present UK Corporate Governance Code, which was published in September 2014, now sits at the forefront having being followed in almost every sophisticated corporate law system in the world.

Different models for corporate governance

The evolution of the ‘comply or explain’ model has continued over the years, assisted by the publication of the *Principles of Corporate Governance* by the Organisation for Economic Co-operation and Development (the OECD Principles) in 1999, providing a sound template upon which the various codes of corporate governance across jurisdictions could be harmonised. Recognising that good corporate governance is not an end in itself and in response to various developments in the financial markets, as well as with the global economy, the OECD Principles were updated and revised in 2004 and 2015 respectively.

While most countries have adopted the principles-based approach, it is not the only model as some jurisdictions such as the US practices a rules-based approach. The latter has enshrined its applicable standards of corporate governance in the *Sarbanes-Oxley Act* thereby making compliance mandatory. A key objective of passing this legislation was to restore public confidence in the markets following the scandals which surfaced from the collapse and subsequent bankruptcies of Enron, WorldCom, Adelphia, Tyco and Global Crossing in the preceding two years which resulted in billions of dollars in financial losses, as well as the loss of thousands of jobs.

However, the irony is that it was with this almost draconian legislation firmly in place when its shortcomings were glaringly exposed with the collapse of Lehman Brothers in the US, triggering the global financial crisis of 2008 with its well-known impact on the American and world economies. Another knee-jerk reaction followed with more draconian legislation

passed in the form of the *Dodd-Frank Act* of 2010 as the black letter law approach, with its severe sanctions for contraventions of the rules, was perpetuated.

Did the self-regulatory and principles-based approach on the other side of the Atlantic fare any better? That is very hard to conclude as was crudely illustrated by the collapse of the Royal Bank of Scotland which necessitated the biggest bank bail-out ever by the British government.

So, what are the choices if any? Despite the differences in approach, both the principles-based as well as the rules-based models share a common objective, namely, to enhance the quality of the processes that support the practice of good corporate governance through lessons learnt from the corporate collapses from the late 1980s through to early 2002. However, is one model to be preferred over the other?

In his speech at the 2003 Washington Economic Policy Conference, William Donaldson, the then Chairman of the Securities and Exchange Commission, noted that 'corporate scandals have exacerbated the roughly US$7 trillion collapse in the aggregate market value of US corporations over the past few years' and opined that – 'a "check the box" approach to good corporate governance will not inspire a true sense of ethical obligation. It could merely lead to an array of inhibiting, "politically correct" dictates. If this was the case, ultimately corporations would not strive to meet higher standards, they would only strain under new costs associated with fulfilling a mandated process that could produce little of the desired effect. They would lose the freedom to make innovative decisions that an ethically sound entrepreneurial culture requires.'

Donaldson goes on to recommend that board members should define the culture of ethics that they expect all aspects of the company to embrace, and that this must apply 'to the very DNA of the corporate body itself – from top to bottom and from bottom to top'.

Just simply checking the box is not enough and it is trite that the foundations of good corporate governance must rest upon an effective system of checks and balances as highlighted succinctly by Monks and Minow in their book *Corporate Governance*. 'In essence, corporate governance is the structure that is intended:

1. to make sure that the right questions get asked, and

2. that checks and balances are in place to make sure that the answers reflect what is best for the creation of long-term, sustainable, renewable value.'

With moral hazard appearing to increase on the part of investors, especially with government intervention following the global financial crisis, how do we effectively respond to the cultural and structural challenges that are raised above? How do we get corporate boards to move away from the 'shareholder primacy' model – where only profits matter as charity has no seat at the board – to one that encompasses a more diverse range of interests which include shareholders, employees, consumers, the community and the environment? Should we – and would it be too onerous – to impose upon boards of directors a duty to consider, and to implement, robust standards for good corporate social responsibility as a safeguard against reputational risks?

While voluntary compliance with good corporate governance practices based on the principle of 'comply or explain' has gained wide recognition as possibly one of the best and most comprehensive examples of 'self-regulation', questions have nonetheless arisen with respect to whether it is the most effective way of ensuring that corporations act responsibly. 'Soft' law is beneficial only where there is active compliance by business elites, diligent monitoring by capital market actors, and effective control by regulatory elites. On a critical analysis, have codes of corporate governance contributed significantly to improved corporate governance practices? If they have not, is it time – at least in certain areas – to rethink and re-evaluate the case for enhanced reliance on 'hard law' so as to provide clearer expectations to ensure compliance? In short, should corporate governance be by rule or by principle or indeed by some hybrid of the two?

What's next?

Amongst the key causes of the global financial crisis are the failures of ethical and effective leadership of corporations, characteristics of which make them difficult to regulate let alone ponder over the impossibility of legislating on such issues. Principles of corporate governance need to be more carefully contextualised and diversified, especially in the transnational domain. Simultaneously, the status of and relations between citizenship, states, transnational corporations and non-governmental organisations in a transnational regulatory domain needs much closer consideration. Only with these issues addressed can a more balanced and fruitful discussion of corporate governance mechanisms take place, especially when it comes to assessing the merits of 'soft' versus 'hard' law in a given political economy.

In the circumstances, despite the complexities, the appeal of the flexibility of Codes which encompasses both 'soft' and 'hard' law becomes increasingly evident. Guidance on this vexed issue may be obtained from the recently released *King IV Report* which lays emphasis on the outcomes that good governance should achieve – namely the exercise of ethical and effective leadership by the governing body towards the achievement of an ethical culture, good performance, effective control and legitimacy. *King IV* also moved from 'apply or explain' to 'apply and explain'.

Taking cognisance of the paradigm shifts in the corporate world, the foundation stones upon which *King IV* are built include ethical leadership, the organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting. The appeal of *King IV* lies substantially in its universal applicability stating as it does that 'good leadership, which is underpinned by the principles of good governance, is equally valuable in all types of organisations'.

Conclusion

Codes of corporate governance have come a long way since the publication of the *Cadbury Report* about a quarter of a century ago. It must be remembered that the committee chaired by Sir Adrian Cadbury was tasked simply to deal with the financial aspects of corporate governance and that we have in the intervening period since then expanded considerably on the scope of such codes. On the other hand, the US adopts a 'black letter law' approach with a legislative framework setting out the requirements and resulting penalties for non-compliance. It is trite that there is

no 'one size fits all' as regards 'soft' or 'hard' law since market development and maturity may differ across jurisdictions compounded by cultural and/or socio-economic considerations. Accordingly what may work well in one country may not necessarily produce similar results in another.

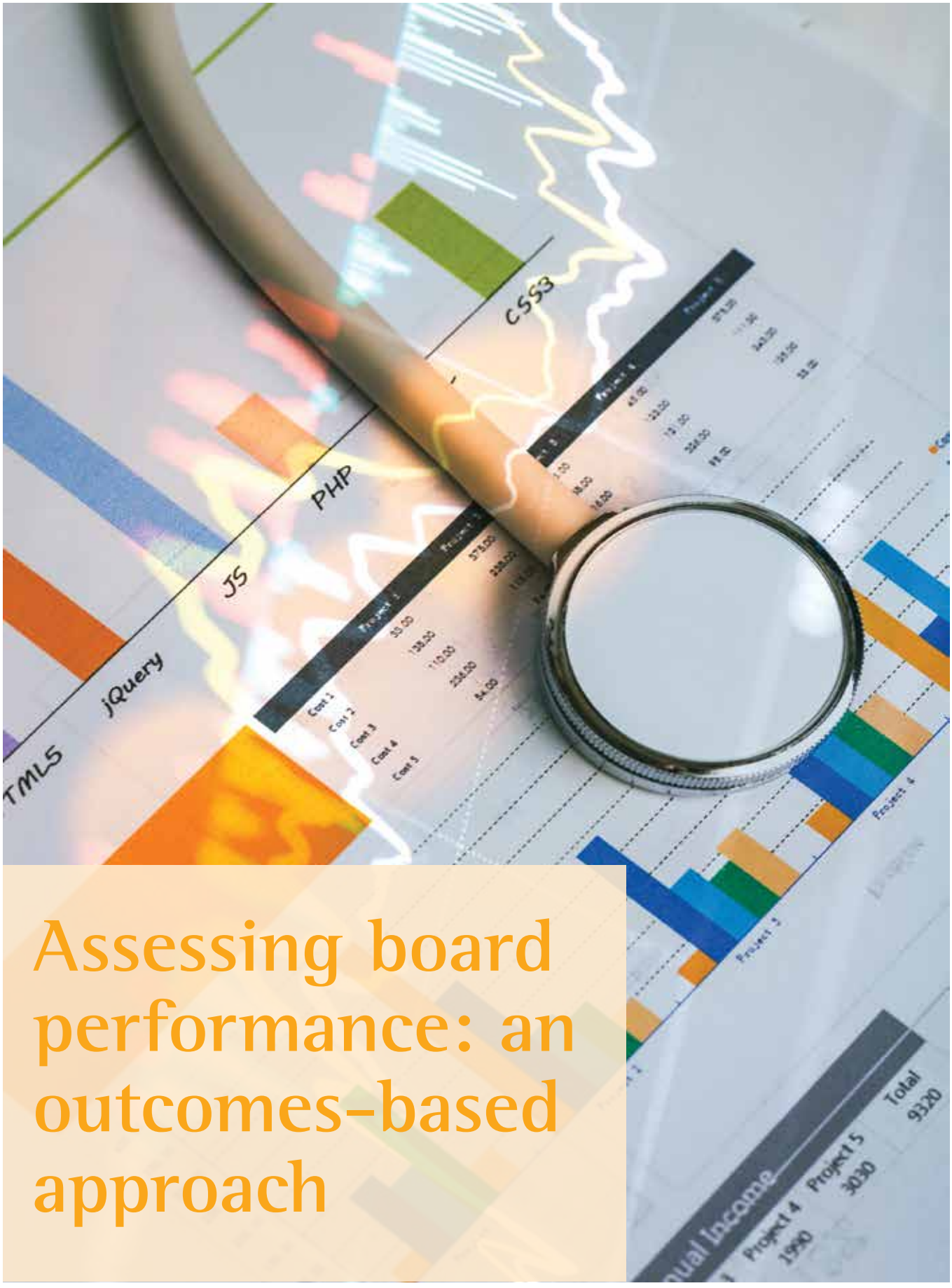
That said, what is clear is that there must be adherence to some basic common sensical practices which transcends national boundaries especially since there is a common denominator in the corporate governance debate namely that companies always involve the use of 'other people's money' for which there is a legitimate right to expect that this will be applied responsibly by those empowered to do so. As the tentacles of the modern corporation reach further outwards so too must there be a commensurate level of corporate behaviour that meets the expectations of the various stakeholders which continue to evolve.

The practice of corporate governance – together with its associated codes as well as legislation – have evolved over the past 25 years during which time numerous corporate excesses have been witnessed, leading to the Asian financial crisis in 1997 as well as the global financial crisis in 2008. Although a number of fora has been set up to raise and discuss some of the issues, as well as to propose changes, it must be expressly recognised that, despite all best intentions, we must recognise the fragilities of humans which have invariably been the dominant or root cause of the crises that we have experienced to date.

Low Chee Keong FCIS FCS
Associate Professor in Corporate Law CUHK Business School

This article draws from and expands upon the chapter titled 'Corporate Governance Codes Under the Spotlight' in du Plessis JJ & Low CK (eds), Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses, Springer (2017) available at: www.springer.com/gp/book/9783319518671.

The author can be reached at: cklow@cuhk.edu.hk.



Assessing board performance: an outcomes-based approach

Board evaluations have become an established part of board governance best practice around the world, but John Dinner, President, John T Dinner Board Governance Services, argues their ultimate value for organisations can be increased if an outcomes-based approach to the evaluation process is adopted.

Regulators and other oversight bodies have included board and related evaluation processes as a part of good governance practices and guidelines for more than 25 years. These were precipitated by a focus on boards and their effectiveness in response to significant corporate failures, the lessons learned and an effort to clarify how good governance is achieved. Since then, there have been regular iterations of guidelines and practices in which board evaluation processes have been a consistent component.

However, based on anecdotal evidence, it would appear the approach to board evaluations has not evolved significantly and this article encourages a new focus on governance outcomes, as opposed to traditional inputs, when assessing board performance and effectiveness. This premise recognises that sustained efforts to adopt and refine governance inputs have failed to satisfactorily impact how organisations are governed. Governance outcomes result from actually realising the purported benefits that would result from the effective implementation of governance inputs. These inputs relate largely to the many component pieces that come under the banners of board structure, governance processes and boardroom dynamics and relationships.

Optimising board assessments

Boards can easily defend the status quo in terms of how they evaluate their performance as a team, as well their component pieces. That said, many organisations consistently demonstrate leadership in the area of board-related evaluations, as well as other governance practices. The following represents themes identified during a broad review of board-related assessments and the process used to complete them. These themes reflect best practices and personal expert experience in conducting board assessments.

Engaging management

The success of board evaluations can be enhanced by soliciting input from as many individuals as possible who have first hand observation/experience of board performance. In addition to members of the board, it can be particularly beneficial to also include members of management or staff in the process as they bring unique and valid perspectives to the assessment process. While management may not be well positioned to respond to all related issues, they can add an important perspective to the broader evaluation process.

In doing so, it is recommended the evaluation process design should include the following:

- management participation should be limited to those who have regular interaction with the full board or one or more of its committees, and
- the same confidentiality should be provided to management as that committed to board members.

Reporting should not separate out conclusions reflecting board and management input. As there tends to be a high level of consistency of responses between the two groups, all responses (both survey and interviews) should be melded into a single assessment report. Where there is disparity of responses, these different perspectives should not be assigned to either the board or management, as this can have a negative impact on the candour management will exercise in its assessment of the board.

Highlights

- the outcomes-based approach relies on a shift away from governance inputs to governance outcomes
- most boards have been measuring governance inputs without undertaking the much harder work of understanding the degree to which the intended ends – the outcomes – are achieved
- this new focus reflects the board's contribution to organisational success in tangible, relevant ways

Interviewing evaluation participants

There is real value to be derived from making one-on-one confidential interviews as a central part of the assessment process. Relative to relying solely on survey results, interviews are highly effective in uncovering more meaningful, relevant and thoughtful feedback. In my professional experience, evaluation participants often view surveys simply as a task to be completed. As much as they serve as a useful starting point in a more rigorous evaluation process, they do not always uncover the most salient issues impacting good governance.

The use of interviews results in increased demands on directors' time, but the expected payback relative to the time investment by directors is significant and worthy of serious consideration.

Participation by new directors

Many organisations defer participation by new directors in full board assessment processes until at least a full year or some other term has been served. The rationale for this policy is entirely understandable and can be easily supported. It reflects a belief that new directors need to have a certain exposure and service on the board to be able to meaningfully assess and provide an informed perspective on how well their colleagues deliver on their fiduciary duties.

At the same time, there is real value to be derived from all board members participating in the board assessment process, despite the limited tenure of newer directors. Newer directors can bring a fresh perspective and probe different issues that may not be top of mind of more veteran board members.

Use of external facilitators

The provisions of the 2014 UK Corporate Governance Code, which now require board evaluations of FTSE 350 companies to be externally facilitated every three years, are clearly the direction in which board evaluations are heading. About 19% of the largest public US companies used an outsider for their board evaluations in 2013. Spencer Stuart, the international executive search firm, predicts that as many as 35% of major US companies will follow suit in the next several years.

Most North American boards that use an external resource for their board evaluations also tend to follow the UK approach of 'every three years' instead of annually. Board evaluations in the intervening years are generally conducted internally, often using a survey format or short phone calls from the board chair or chair of the nominating/governance committee to each director.

Adopting an outcomes-based approach

The concept of governance outcomes, while not revolutionary, is far from mainstream. This approach is new, innovative, leading edge and, in most jurisdictions, largely untested. However, it is no longer without precedent. The 2016 *King Report on Corporate Governance (King IV)* in South Africa addresses governance outcomes explicitly, representing what the authors cite as the 'original intellectual thinking of the King Committee'. These governance outcomes include:

- establishing an ethical culture
- creating sustainable organisational performance and value creation
- protecting and building trust in the organisation, its reputation and legitimacy
- adequate and effective control by the governing body, and

- setting an example by the board's own ethical behaviour.

Arguably, some of these governance outcomes can be viewed as inputs. Is establishing an ethical culture an outcome in and of itself or does it, in turn, lead to something else – an outcome (or outcomes) that boards and organisations in general should pursue? An ethical culture should lead to trust and confidence in that organisation, the work of the board and the leadership that reports to it.

Similarly, adequate and effective control by a board is, surely, a governance input that is fully intended to produce some greater, more impactful outcome. But to date in the recent history of focus on governing well, most boards have been measuring these and other inputs without undertaking the much harder work of identifying, understanding and defining metrics that will show proof of the degree to which the intended ends – the outcomes – are achieved.

As much as the work of the Institute of Corporate Directors in South Africa has helped launch and move the governance outcomes agenda forward, there may well be more work to determine exactly what constitutes genuine governance outcomes.

The author believes governance outcomes relate to the benefits, payback or reward realised when the underlying principles of good governance are fully achieved. Examples of these principles include: leadership; stewardship; independence; transparency; owner rights; and accountability.

The author has been exploring the concept of governance outcomes for many years and has identified the following as being primary governance outcomes:

- trust and confidence in the work of the board and management on the part of key stakeholders, particularly an organisation's owners and customers
- deep reputational respect across a broader set of stakeholders
- mission and vision achievement, and
- increasing organisational value.

An outcomes-focused approach relies on a markedly different board evaluation model with an entirely new focus – namely a shift away from metrics related to governance inputs to ones linked to governance outcomes. This new focus reflects the board's impact on the organisations, as opposed to isolated practices, the board's value as a strategic asset to the organisations they oversee, and the board's contribution to organisational success in tangible, relevant ways.

Assessing governance outcomes is likely to achieve success in the following ways:

- refreshing and re-energising the more traditional approach to board assessments organisations have typically employed, with diminishing returns resulting from the repetitive process
- challenging process participants to think about how the board performs from different perspectives, frustrating some while energising others, and

> "over time... the practice of assessing board effectiveness using the same process and metrics produces diminishing returns"

- identifying new opportunities the board of directors could leverage to continue on its good governance journey.

Final remarks

Over the past quarter century, many boards have responded positively to new ways of encouraging greater oversight effectiveness. One of the most significant developments has been the practice of regularly assessing board performance. Over time, however, the practice of assessing board effectiveness using the same process and metrics produces diminishing returns. Board performance assessment practices need to evolve as well so they are positioned to deliver new insights and serve as a catalyst for continuous board improvements. The purpose of this paper is to encourage boards to adopt this proactive posture in adopting new practices and applying greater rigour to its approach to assessing their effectiveness.

John Dinner, President
John T Dinner Board Governance Services

The author can be reached by email at: john@boardgovernance.ca.

AML/CFT: preparing for the new regime

Two new sets of anti-money laundering and counter-financing of terrorism (AML/CFT) legislation are due to be enacted in Hong Kong by 1 March 2018. Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries, looks at the background to, and the implications of, Hong Kong's latest AML/CFT upgrade.

If you have been following the development of AML/CFT law and regulation, you will have noticed that wholesale changes always follow triggering events. So, for example, tougher sanctions compliance requirements followed the fateful 911 events of 2001. Similarly, the current renewed emphasis on AML/CFT compliance requirements have come in the wake of the Panama Papers leak in 2015.

There were around 11.5 million documents leaked from the Panamanian law firm, Mossack Fonseca, which served as trust and corporate service provider (TCSP) to over 214,000 entities, including companies, trusts and foundations. The immediate takeaway of the Panama leak was that people were hiding their wealth and some of these must have been ill-gotten gains, including from tax evasion and other predicate offences which amounts to money laundering.

The Panama Papers leak involved over 200 countries, 140 state leaders, and 29 Forbes-listed billionaires and it was followed by a mad scurry by people, especially politicians, to distance themselves from the scandal. The reaction was pronounced in Europe, where a number of prominent state leaders were named in the leaked papers. To appear whiter than white, Europe implemented new laws requiring public disclosure of beneficial ownership at more than 25% of ownership of legal entities.

In this connection, there had always been the Financial Action Task Force (FATF) (the global AML/CFT agency) Recommendation 24 which requires countries to prevent the misuse of legal entities for money laundering or terrorist financing through disclosure of beneficial ownership. But prior to the Panama Paper leaks, the international community was not really focused on this particular issue. AML/CFT regulation tended to focus on financial institutions following certain large-scale money laundering scandals involving leading banks, for example laundering money in Mexico.

Aside from beneficial ownership disclosure, the international community also began to consider the complementary FATF Recommendation 22, in respect of 'designated non-financial business and professions' (DNFBPs), inclusive of the TCSP sector. TCSPs serve to incorporate and provide services to legal entities, and as such should conduct appropriate customer due diligence before onboarding their clients. In fact TCSPs, as the first point of contact for establishing and managing legal entities, have a significant role to play in combating financial crimes. They need to engage in proper customer due diligence regarding their clients, in particular to meet bank standards and requirements as many of their clients need to establish bank accounts.

Hong Kong is now playing catch up with these global trends. There is renewed urgency locally since a mutual evaluation of Hong Kong's AML/CFT regime by FATF is scheduled for this year. Our overall standing as an international financial centre is at stake, hence the two sets of complex legislation on beneficial ownership and TCSP regulation which the government hopes to push through the legislative process in an accelerated manner to make them effective by 1 March 2018.

Beneficial ownership/significant control

To ensure compliance with FATF Recommendation 24, Hong Kong has proposed the Companies (Amendment) Bill 2017 (CO Amendments). The CO Amendments follow the UK legislation and in Hong Kong we will be creating a new Division 2A to Part 12 of the Companies Ordinance. The main difference between the Hong Kong and the UK legislation is that the disclosure of beneficial ownership would not be made to the public as is being done in the UK, but is to be retained by the company for searches by law enforcement officers as well as compliance review by the Registrar of Companies (Companies Registrar).

In terms of terminology, instead of using the term 'beneficial owner', Hong Kong as with UK, will focus on persons who have significant control, that is 'significant controllers' (SCs) (see 'The

Highlights

- two sets of complex legislation on beneficial ownership and regulation of trust and company service providers are due to become effective by 1 March 2018
- Institute members should study the new legislation and the Companies Registry guidelines, and implement their own compliance programmes
- the Institute will also be offering training to its members and thought leadership articles in this journal to assist compliance with the new and complex AML/CFT regime

> “the main difference between the Hong Kong and the UK legislation is that the disclosure of beneficial ownership would not be made to the public in Hong Kong”

meaning of significant control' text box) over an applicable company. An 'applicable company' means a Hong Kong private (and not listed) company. Further, irrespective of whether there is an SC or not, there will be a need for all Hong Kong private companies to create a significant controller register (SCR). This is because any Hong Kong private company is supposed to conduct due diligence as to whether it has an SC or not and to note this within its SCR.

In accordance with emerging international practice, whether a person is an SC is in general tied to a 25% test. However, as there are other indicia of whether a person is an SC or not, the reference to an SC is potentially open ended. In practice, this makes identifying an SC especially complex with trust-using Hong Kong incorporated companies. For example, aside from the trustees, would the protector, beneficiary and settlor be an SC over a trust structure? There is no straightforward answer to this question, which means that there is scope for law enforcement officers to seek information. The right to privacy versus regulation will be an unending debate.

The significant controller register

A Hong Kong incorporated private company must have an SCR whether it has an SC or not. That is, all companies are required to conduct due diligence and verification as to whether the company has an SC or not. The process would be a continuous one. Where the company has an SC, it would be obliged to enter in the SCR the SC's related registrable person as well as the registrable legal entity. In most cases, the registrable person is a natural person. But a registrable person could include a specified entity, namely a corporation, a government, international organisations and/or a local entity. For example, where Government A holds more than 25% interest in a Hong Kong company through Government A Company, then Government A is a registrable person and Government A Company is a registrable legal entity.

The Institute made clear in its submission to the Legislative Council Bills Committee considering the draft legislation, that we believe that where in the chain of ownership leading to a registrable person there is a listed company, the due diligence should end. Under the current draft legislation, only where in the chain of ownership the registrable legal entity is a Hong Kong listed company, is it exempt from the obligation to identify the registrable person. As there is the obligation upon a Hong Kong private company to identify whether it has an SC, and for the SC to confirm the relevant entry in the SCR, there are potentially nine case scenarios ranging from there being no SC to a company not being sure as to whether there is an SC or not (see 'SCR compliance' text box), in addition to the plain vanilla case where readily available and confirmed information is entered into the SCR.

Penalties and other matters

There are many technical aspects to the CO Amendments which require detailed study by Institute members. The Companies Registry website is a good starting point, the draft amendments and the Institute's comments have already been circulated to Institute members. Just as a reminder, the CO Amendments Bill is riddled with

penalty provisions. If a company fails to keep an SCR, it and its responsible person faces a Level 4 fine (HK$25,000). Where particulars are not updated, the fine would be at Level 4 plus HK$700 per day. The steepest penalty is where a person knowingly or recklessly makes a misleading statement which is false or deceptive in a material particular. This will incur a fine of up to HK$300,000 and two years' imprisonment.

The company must appoint a designated representative for complying with the CO Amendments. This must be a natural person who is a director or employee of the company, or a licensed TCSP (under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) Amendments discussed below). Therefore, by studying the CO Amendments well, there is potential scope for Institute members to become designated representatives for companies and this represents a business opportunity to those willing to invest the time and effort for a detailed understanding of the CO Amendments Bill.

The AMLO Amendments

In addition to the focus on the FATF Recommendation 24 requirements relating to the disclosure of beneficial ownership, the international community, together with the Institute, have recognised the equal importance of the FATF Recommendation 22 requirements relating to the customer due diligence obligations of DNFBPs. The main focus has been on the client onboarding process of TCSPs. The Institute's late Professional Services Panel chairman, Paul Moyes, began to implement a long-standing idea of formalising the Institute's AML/CFT Guidelines for the TCSP sector in collaboration with Past Presidents of the Institute Natalia Seng FCIS FCE(PE), Edith Shih FCIS FCS(PE), and Samantha Suen FCIS FCS(PE) – who is also the Institute's current Chief Executive – and the author as draftsman.

The Guidelines took some two years to muster up support and buy-in from the government and stakeholders. Part of the support came from the fact that Hong Kong was going to be subject to the FATF mutual evaluation. The government realised that to maintain Hong Kong's international reputation as a leading financial centre, there was a need to regulate beneficial ownership disclosure and DNFPBs. The AMLO Amendments extend financial institution standards relating to customer due diligence, record keeping and training to DNFPBs. Compliance with these standards will be less of a challenge for Institute members since they have been familiar with the Institute's AML/CFT guidelines first issued in 2008 and added to most recently in 2016.

The effect of the AMLO Amendments are to make the Companies Registrar the regulator of TCSPs, and to require all TCSPs to obtain a licence before being permitted to act as a corporate service provider in matters such as incorporating companies and providing nominee directors and shareholders, as well as other services detailed under FATF Recommendation 22. This means that all Institute members who desire to provide TCSP services to clients (and not only to their own companies), need to have a licence. The exception would be where the Institute members are also either a legal professional and/or certified public accountant, where they could choose to be regulated instead by their professional body.

All those working in the TCSP sector should familiarise themselves with the AMLO Amendments, along with the three sets of guidelines when issued by the Companies Registrar. The issue to flag is that the AMLO Amendments are pitched at the lowest standards in terms of TCSP licensing. The current draft legislation is that anyone over 18 and who has not committed certain crimes under AMLO

The meaning of significant control

A person has significant control if one or more of the following conditions are met – if the person

- holds, directly or indirectly, if the company has a share capital, more than 25% of the issued shares in the company, or, if the company does not have a share capital, a right or rights to share in more than 25% of the capital, or, as the case requires, profits of the company
- holds, directly or indirectly, more than 25% of the voting rights in the company
- holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company, and/or
- has the right to exercise, or actually exercises, significant influence or control over the company.

and/or other specified Ordinances (the fit and proper test) would be permitted to register themselves as a TCSP. This contrasts with the standards in The Grand Cayman, BVI and Singapore. In Singapore's case, in addition to legal professionals, certified public accountants, Chartered Secretaries, and other professionals, there are provisions for those persons that have three years relevant experience over the last five years to be registrable as a filing agent subject to similar fit and proper test as with Hong Kong.

At a LegCo Bills Committee meeting in November 2017, which the Institute attended and at which the author spoke, the government made it plain that the new AML/CFT legislation was designed to improve Hong Kong's score at the upcoming 2018 mutual evaluation. It remains to be seen whether standards will have to be raised further. For now, Institute members should study the new legislation and the Companies Registry guidelines, and implement their own compliance programmes. TCSPs should also consider joining the Institute's AML/CFT Charter to demonstrate to the market their serious commitment to combat financial crimes. The Institute will also be offering training to its members and thought leadership articles in this journal to assist compliance with the new and complex AML/CFT regime.

Mohan Datwani FCIS FCS(PE)
Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries

More information on the Institute's AML/CFT Charter can be found at: www.hkics.org.hk.

Significant controller register compliance

- **Case 1 – where there is no significant controller.** The company needs to state in the SCR that it knows, or has reasonable cause to believe that there is no significant controller.
- **Case 2 – where there is an unidentified registrable person**. The company needs to register in the SCR that it knows or has reasonable cause to believe that there is a significant controller; and to make a separate note in respect of each person that the company has not been able to identify.
- **Case 3 – where particulars of an identified registrable person are not confirmed.** The company needs to register in the SCR that it has identified a registrable person but not all the particulars of the person have been confirmed and make a separate note in respect of each person whose required particulars the company has not been able to confirm.
- **Case 4 – where a company's investigations are ongoing.** The company must note in its SCR that the company has not yet completed taking reasonable steps to ascertain whether it has a significant controller.
- **Case 5 – where matters have ceased to be true.** The company must note in its SCR the matter that has ceased to be true and note in the register the date on which the matter ceased to be true.
- **Case 6 – where notice requirements have not been complied with within the specified period.** The company must note in its SCR that the company has given a notice under Section 653P(2) or 653P(3) in respect of which a requirement made under Section 653Q or 653R has not been complied with within the specified period (one month) and make a separate note in the register in respect of each such notice.
- **Case 7 – where notice requirements have been complied with after the specified period.** The company must note in its SCR that the company has given a notice under Section 653P(2) or 653P(3) in respect of which all of the requirements made under Section 653Q or 653R have been complied with after the specified period and make a separate note in the register in respect of each such notice.
- **Case 8 – where the change notice requirement is not complied with within specified period.** The company must note in the entry for the addressee in its SCR that the company has given the notice to the addressee and note in the register that the addressee has failed to comply with the requirement within the specified period.
- **Case 9 – where the change notice requirement is complied with after specified period.** The company must note in the entry for the addressee in its SCR that the addressee has complied with all of the requirements after the specified period and note in the register the date of the compliance.

CHARTERED SECRETARIES
特許秘書

A Sparkling Night

HKICS Annual Dinner 2018

Guest of Honour

Chan Mo-Po, Paul

GBM GBS JP FCIS FCS

Financial Secretary
the Government of the Hong Kong SAR

Thursday
18 January 2018

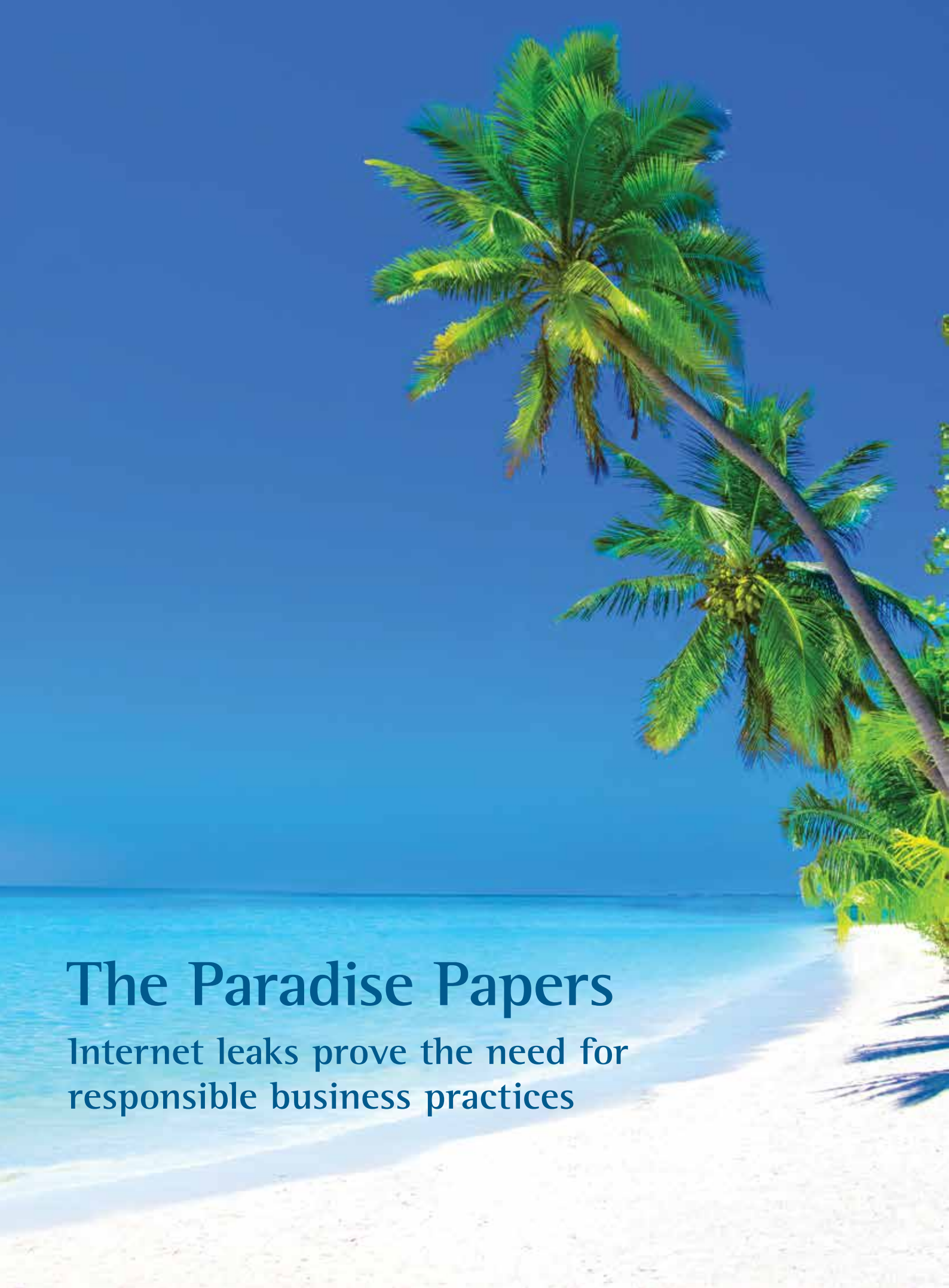
6.30pm Cocktail reception
7.30pm Dinner

Ballroom
JW Marriott Hotel
Hong Kong

See you there!

For enquiries, please contact Vicky Lui at 2830 6088 or Vincy Wong at 2830 6048 or member@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)



The Paradise Papers

Internet leaks prove the need for responsible business practices

Tax ethics are once again in the public spotlight in the wake of the Paradise Papers revelations. Kelly Cooper, Project Manager, CSR Asia, makes the case for companies to create value both for themselves and the communities within which they operate by responsible and transparent tax policies.

In November 2017 the mass leak of 13.4 million documents publicly exposed the offshore interests of hundreds of high-net-worth individuals and global businesses. The cache of ultra-sensitive documents was dubbed The Paradise Papers. The documents were leaked from offshore legal firm Appleby, as well as several business services companies whose clients include banks, corporations, HSI and FTSE 100 companies. The Paradise Papers detailed how some of the world's wealthiest corporations and individuals are avoiding tax by masking their riches in covert tax havens.

The BBC estimated that the sums of money held in the aforementioned offshore accounts is around 10 trillion US dollars, which amounts to almost the same collective economic output of Japan, the UK and France. The leaked Paradise Papers have been subject to a series of international investigations led by the International Consortium of Investigative Journalists, and have whipped up a media frenzy fed by public outrage over the lack of honesty and transparency shown by beloved brands and trusted organisations.

Damage to company's public perception by aggressive tax avoidance

In the past, information leaks such as these would need to be handed physically from person to person, rarely gaining much traction, particularly not on a global scale. Today's technology allows for the instant transfer of mass information dumps. Fears of digital safety and the risk of cybersecurity are common threats to business operations. An act as simple as logging on to public wi-fi can lead to a security breach and the theft of confidential, highly sensitive documents. The world's largest technology organisation, Apple, was just one of the big-name brands exposed by the scandal. Apple's registered offshore holdings meant taxes were disproportionately shouldered by the consumer on purchase of Apple products. Paradoxically, the large corporation that reaps the profits shifted them to a low-tax haven in Jersey, UK, meaning Apple largely avoided paying tax on sales made outside the US. The irony of technology giant Apple having its digital data stolen is not lost. It proves, rather unnervingly to some, that not even the most technology savvy can protect themselves from cyber-attack.

The risks of reduced transparency

The Paradise Papers release is only the latest in a series of revelations into the aggressive tax avoidance methods of the ultra-rich. While not illegal, the operations incite public distrust and disappointment by virtue of their secrecy and the breaking of the social contract of taxation. It seems that the lessons in risk taking and secrecy we hoped had been learnt in the fall-out of the global financial crisis, which was in large part spawned by financial malpractice in 2008, seem not to have been learned.

Today's interconnected society has amassed a new landscape for business and customer relationships. It is no longer sufficient for a company to be the most recognisable brand, have a desirable product or a superior price point. Mobile technology has armed the millennial market with relentless connectivity and as a result there is an unprecedented demand from the public to disclose product information on a scale previously unheard of in the public domain. Subsequently, both the product and the organisation behind it must prove themselves worthy of having a positive impact, not only on the individual, but on a greater scale; for society and the planet. With such high expectations,

Highlights

- the Paradise Papers detail how some of the world's wealthiest corporations and individuals are avoiding tax by masking their riches in covert tax havens
- tax transparency is essential in the context of today's technology, which allows for the instant transfer of mass information dumps
- while not illegal, shifting profits from high-tax countries within which organisations are selling their products to low-tax countries breaks the social contract of taxation

> “while not illegal, the operations incite public distrust and disappointment by virtue of their secrecy and the breaking of the social contract of taxation”

organisations must ask themselves what value they bring to the communities within which they operate, and to understand the risks of being engaged in hidden or immoral business practices.

The public expects and demands the value of massive corporations to uphold the same values as the societies within which they operate. This includes following societal rules such as paying taxes. While it is important to recognise that organisations are not engaging in illegal misconduct, shifting profits from high-tax countries within which organisations are selling their products, to low-tax countries simply results in fewer tax payments being made in the country where the product is being sold, resulting in lower investments for schools, roads and health care to invest in developing the community. There is already a call to introduce legislation designed to force companies to be open about the tax arrangements that they have. For example, the OECD's base erosion and profit shifting (BEPS) initiative has already created a framework agreed by over 100 countries and jurisdictions to tackle BEPS tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.

The necessity of such legislation is proving to be increasingly essential, unless companies can act on their own volition to openly share business processes with the public, garner public trust and support and prove themselves worthy of creating moral business practices which have a long-term relationship and a positive impact upon society.

Promoting value for business and the community

To make a profit for shareholders whilst also supporting the community where a business operates can be mutually beneficial, and if done correctly will garner the trust and increase transparency around business practices, lowering the risk to brand and cementing the organisation as a trusted member of society. Business can operate to enhance and serve the community by engaging with societies, generating trust and identifying social needs that can be used by the business to create more value. The value generated not only benefits the business's bottom line, but simultaneously generates value for society. Subsequently, communities hold business in higher regard and the bottom line of the business is supported, creating strong relationships with communities and long-term value for investors. For a long time, we have encouraged environmentally friendly practices and responsible investment, now it is imperative that companies create true value for the communities within which they operate, starting with responsible and transparent contributions through taxation and the proper disclosure of contributions.

Kelly Cooper, Project Manager
CSR Asia

The author can be contacted at: kelly.cooper@csr-asia.com.

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

CHARTERED SECRETARIES 特許秘書

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行政人員文憑/證書《中國企業管理》
Executive Diploma / Executive Certificate in PRC Corporate Administration

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

單元一　中國公司行政 Corporate Administration in PRC
單元二　中國公司治理 Corporate Governance in PRC
單元三　中國稅務 Taxation in PRC
單元四　中國公司法律 Corporate Law in PRC

***學生亦可報讀個別學科單元**

行政人員文憑 《中國公司治理》
Executive Diploma in PRC Corporate Governance

本港唯一與香港特許秘書公會合辦有關國內公司治理的課程

學生如成功完成核心單元一至三及任何一個非核心單元(即四或五)，並在持續評估中的個案分析取得合格成績，將獲發行政人員文憑《中國公司治理》。具體如下：

核心單元：(必須全部修讀)
單元一　中國董事會秘書實務 Corporate Secretaryship in PRC
單元二　中國公司治理 Corporate Governance in PRC
單元三　中國公司行政 Corporate Administration in PRC

非核心單元：(可選單元四或五)
單元四　中國稅務 Taxation in PRC
單元五　中國公司法律 Corporate Law in PRC

***學生亦可報讀個別學科單元**

最新單元

中國稅務

講者簡介	龍朝暉博士 ・中山大學嶺南學院財稅系副教授 ・兼任廣州市稅務學會常務理事及中國電子商務立法起草小組成員等職務
上課時間及地點	課程為期兩週 授課時間：4堂，每堂6小時，共24小時 上課時間：週六14:00 - 17:00及18:00 - 21:00、週日10:00 - 13:00及14:00 - 17:00 授課地點：港島區其中一所教學中心
授課日期	2018年2月3日、2月4日、2月10日及2月11日 (校方保留更改及調動課堂時間之權利)
每單元課程學費	港幣3,850元

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課程查詢

電話：2867 8317 (王小姐)　電郵：prcprogramme@hkuspace.hku.hk

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

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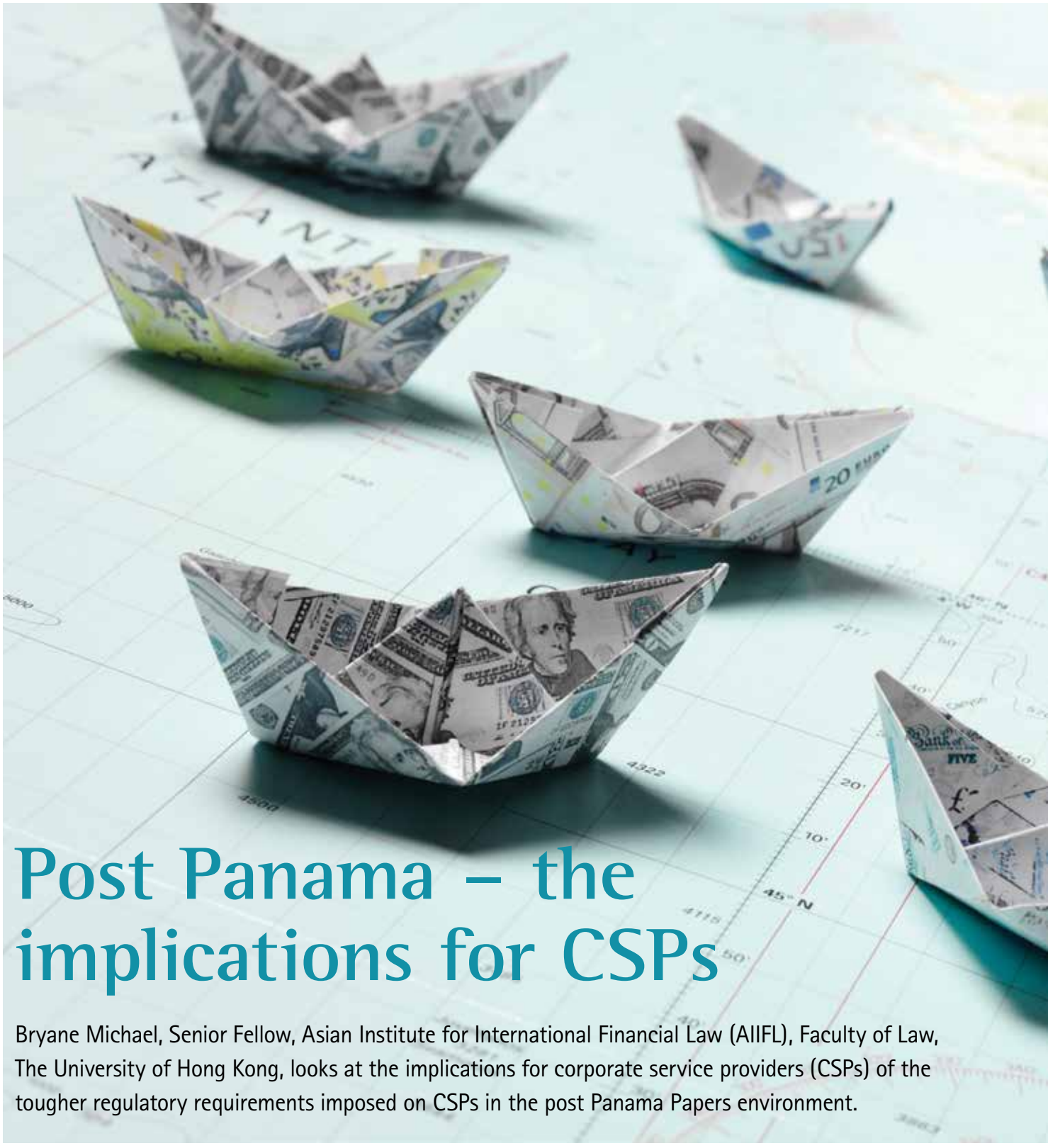

Post Panama – the implications for CSPs

Bryane Michael, Senior Fellow, Asian Institute for International Financial Law (AIIFL), Faculty of Law, The University of Hong Kong, looks at the implications for corporate service providers (CSPs) of the tougher regulatory requirements imposed on CSPs in the post Panama Papers environment.

A raft of new laws promises to change the way that company secretarial firms attract clients and do business. This article provides an except from a larger report – *The Role of Hong Kong's Financial Regulations in Improving Corporate Governance Standards in China: Lessons from the Panama Papers for Hong Kong* – looking at the way the Panama Papers will change corporate governance practices in Hong Kong and the Mainland. The report, authored by myself and Say Goo, Professor and Director of AIIFL, describes how The Hong Kong Institute of Chartered Secretaries (the Institute) can help small incorporation agents and intermediaries to move up the value chain or exit the market.

The evidence suggests that tightening incorporation rules and strengthening corporate governance would not radically affect the number of company registrations in Hong Kong. Excluding outliers (the jumbo-sized global incorporation firms), most of the 1,100 incorporation, secretarial and corporate services firms registered by the Hong Kong Trade Development Council (HKTDC) employ on average 10 people. Moreover, we should bear in mind that a very few of Hong Kong's incorporation agents' newly incorporated creations stand the test of time. Incorporation agents in Hong Kong thus seem ripe for industry consolidation as more regulatory requirements force these firms to offer extra advisory services in the areas of compliance, corporate governance. The simple half-day one stop-shop incorporation will probably disappear.

A cursory look at the data suggests that our proposals (see 'Our proposals' box text) would cost Hong Kong's incorporation industry relatively little. Across the sector, these firms employ close to 10,000 people – a number which the HKTDC data roughly confirm. If only 1% of incorporations deal with non-Hong Kong companies (that is offshore), we can assume that new regulations would impact the 'expected value' of only two firms and US$10 million in revenues. If these new regulations choke off even 20% of this business, Hong Kong still only loses about $2 million – hardly a huge dent in an industry worth over US$1 billion. Yet, the undeniable conclusion remains. As roughly 35% of all newly incorporated businesses drop out after some time, one must question the long-term effectiveness of these incorporation agents.

What would the remaining incorporation agents morph into? Large international companies handling incorporations in Hong Kong tend to provide a

Highlights

- tougher regulatory requirements are likely to lead to consolidation in the corporate service provider industry in Hong Kong
- firms that offer a fuller range of services will remain more competitive
- small incorporation agents may need to move up the value chain or exit the market

range of services – from advising on incorporation to complex corporate matters like accounting, restructuring, and compliance across borders. Simply complying with the Institute's AML/CFT Charter will push equilibrium employment and compliance expenses in these companies higher – pushing out the smaller and less competitive firms. Even paying for Thomson Reuters' World-Check (to check individuals' background information) will pose a problem for the smaller firms in the incorporation market.

> "Company secretarial and other advisers... should endorse the right to information as a core value in companies' mission statements"

A professional body like the Institute could help inform incorporation agents of all sizes about the factors shaping their market – and provide advice to those having to change their service offerings or exit the market. As such our 31st recommendation encourages the Institute to offer workshops explaining how the changes to Hong Kong's corporate governance rules will change the nature of competition in Hong Kong's corporate secretarial services sub-sector. Firms that offer a fuller range of services – like helping Mainland and other companies adopt corporate governance reforms – will remain more competitive than the simple incorporation service providers.

Our proposals

- The Hong Kong Institute of Chartered Secretaries, along with The Law Society of Hong Kong and the Hong Kong Institute of Certified Public Accountants, should adopt professional rules to include a 'presumption of transparency' rather than the current 'presumption of confidentiality' to discourage the supply and demand for legal/regulatory avoidance.
- The Hong Kong Institute of Chartered Secretaries should conduct workshops preparing small incorporation agents and intermediaries to move up the value chain or exit the market.
- Put a beta version of beneficial ownership registers online which company secretarial advisory and management firms could assist clients with.
- Company secretarial and other advisers giving advice on key corporate governance documents should endorse the right to information as a core value in companies' mission statements.

For the other 27 recommendations, see the full study (URL provided in the end note).

The post-reform era represents a potential boon for company secretarial firms left standing. They would be offering a greater range of value-added services – and thus earn higher profit margins. They would also attract less ire, ire which ultimately encouraged hackers to attack Mossack Fonseca in the first place. Even if the Institute does not agree with this analysis or the recommendations within, the Institute will have an important role to play in preparing the industry for the post-Panama transition.

Bryane Michael, Senior Fellow
Asian Institute for International Financial Law
Faculty of Law, The University of Hong Kong

This article reflects the views of the author only. The full report – 'The Role of Hong Kong's Financial Regulations in Improving Corporate Governance Standards in China: Lessons from the Panama Papers for Hong Kong' – is available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914865.

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Professional Development

Seminars: November 2017

9 November
The rise of corporate risks when leveraging digital & social media

Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd
Speaker: Ryan Lim, Principal Consultant and Founding Partner, QED Consulting Pte Ltd

10 November
Risk management developments in Hong Kong

Chair: Stella Lo FCIS FCS, Institute Council member, and Group Company Secretary, Guoco Group Ltd
Speakers: Alva Lee, Partner, Advisory; and Karan Kumar, Director, Risk Consulting; KPMG China

13 November
Ready for the proposed changes in AML/CFT regulations?

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: Michael Chan, Regional Compliance Manager, Asia & Middle East, Walkers

15 November
Company secretarial practical training series: the essential elements of a corporate compliance programme

Chair: 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
Speaker: Elaine Chong FCIS FCS, General Counsel-Hong Kong, CLP Power HK Ltd

20 November
Valuation and compliance for corporate transactions

Chair: Jerry Tong FCIS FCS, Institute Education Committee member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd
Speaker: Spencer Tse, Partner, Valuation Advisory Services, PwC HK

21 November
Implementing new risk management and ESG provisions (with case study)

Chair: Terry Wan FCIS FCS(PE), Institute Membership Committee member, and Group Company Secretary, Li & Fung Ltd
Speakers: Gloria So, Principal; and Winnie Leung, Risk Manager; Shinewing Risk Services Ltd

22 November

Recent developments in cross-border insolvency law

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

Speakers: Jamie Stranger, Partner; and Alexander Tang, Senior Associate; Stephenson Harwood

23 November

中国金融科技发展与监管研究

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

Speaker: Sofia Yao, Senior Partner, Dentons

28 November

Fund structures and beneficial ownership in BVI and Cayman Islands

Chair: Edmond Chiu FCIS FCS(PE), Institute Membership Committee member and Professional Services Panel member, and Executive Director, Corporate Services, Corporate & Private Clients, Vistra (Hong Kong) Ltd

Speakers: Denise Wong, Partner; and Regina Fan, Counsel (England & Wales); Walkers

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
19 January 2018	6.30pm – 8.50pm	Governance for innovation; innovation in governance	2
23 January 2018	6.45pm – 8.15pm	Legality and regulation of cryptocurrencies and other digital tokens	1.5
25 January 2018	6.45pm – 8.45pm	Directors and senior executives liabilities – SFC's new regulatory approach	2
29 January 2018	6.45pm – 8.15pm	How to resolve shareholder disputes in the case of deceased shareholders?	1.5
31 January 2018	3.00pm – 5.45pm	New connected transactions rules	2.5
1 February 2018	4.00pm – 5.30pm	Development of data privacy law in the PRC	1.5

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

Professional Development (continued)

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

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	The accredited providers of ECPD seminars are listed below. • 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	Where a relevant person: 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; 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.

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

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.

Membership

Forthcoming membership activities

Date	Time	Event
18 January 2018	6.30pm – 10.00pm	HKICS Annual Dinner 2018 (full)
23 January 2018	7.00pm – 9.30pm	Mentorship Programme – mentors' training (by invitation only)
3 February 2018	2.30pm – 7.30pm	Fun and interest group – indoor war game (jointly organised with Hong Kong Institute of Certified Public Accountants and The Hong Kong Institute of Architects)
10 February 2018	2.30pm – 4.30pm	Fellows' Only – visit to Hong Kong Observatory

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

Members' activities highlights: December 2017

9 December

Members' Networking – golf fun day

16 December

Community Service – 关爱独居长者行动 (行动 2)

Membership (continued)

Recruitment of volunteers for single elders visit programme

The Institute organised two community service events in November and December 2017 to raise its members' awareness of the needs of single elders in Hong Kong. The participants found both events meaningful and rewarding. 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 the monthly visits during the specified period are invited to join as volunteers.

Tentative schedule

February 2018	Kick-off briefing and first visit to single elders
March 2018	Volunteer groups' visit to single elders
April 2018	Volunteer groups' visit to single elders
May 2018	Gathering for all volunteers and single elders
June 2018	Volunteer groups' visit to single elders
July 2018	Gathering for all volunteers and single elders and debriefing

Interested members, graduates and students are welcome to apply on or before Thursday 8 February 2018. For details, please contact the Membership Section at 2881 6177 or email: member@hkics.org.hk.

Chartered Secretary Mentorship Programme 2018

The Chartered Secretary Mentorship P rogramme is running its fourth term in 2018. The Institute has received a record-breaking number of applications from over 130 mentors and mentees for the 2018 Programme – proof of how mentors and mentees have found the programme to be beneficial and constructive for career and personal development.

On 5 December 2017, a ceremony was held to close the 2017 Programme, and to launch the 2018 Programme. At the ceremony, Institute President Ivan Tam FCIS FCS thanked the mentors for their time and welcomed new participants joining the programme. He also encouraged mentees to make use of this platform to broaden their horizons. Institute Treasurer and Membership Committee Chairman Dr Eva Chan FCIS FCS(PE) gave a review and provided practical tips on maintaining a successful mentoring relationship.

A series of activities will be arranged for the 2018 Programme. Details will be reported in future editions of CSj.

New associates

Congratulations to our new associates listed below.

Chan Chun Sing
Chan Dik Cheung
Chan Hiu Leong
Chan Ka Yan
Chan Kam Yin
Chan Mei Ki
Chan Mei Ping
Chan Nga Ting
Chan Pik Kwan
Chan Pui Ching
Chan Sheung Nga
Chan Suet Yiu
Chan Sze Wai
Chan Ting
Chan Tsz Yeung
Chan Wai Han, Vivian
Chan Wai Yee
Chan Wing Wing
Chan Yip Keung
Chan Yip Wang
Chan Yuen Sze
Cheng Kwai Yuk
Cheng Chi Chung, Kevin
Cheng Ka Yan
Cheng Pak Kay
Cheung Hing Lung, Raphael
Cheung Hoi Man
Cheung Hong Ting
Cheung Ka Lai
Cheung Ka Lun, Karen
Cheung Sin Kei
Cheung Sin Ping
Cheung Wan Sze
Cheung Wing Suet
Ching Tsui Wah
Chiu Ka Ming
Choi Hau Yung
Choi Shuk Mei, Tammy
Chow Kai Yu
Chow Shu Ting
Chow Tsz Lun, Aaron
Chow Wing Kei
Choy Se Hon
Chu Lok Lai
Chui Nga Lem
Chung Chor Wai
Chung Suk Ting
Fong Kei Kwong, Karen
Fong Yi Yeung
Ho Chiu Yee
Ho Ka Ki, Vicki
Ho Siu Wing
Ho Ting Shan, Suki
Ho Wai Kuen
Huang Yin
Hui Ka Yan
Ip Tsz Sum
Kaur Satpreet
Kwan Sau In
Kwok Chun Yu
Kwok Po King
Kwok Yee Tai
Kwong Chung In
Kwong Ka Ki
Lai Mei Ki
Lai Wai Leuk
Lai Wing Kwan
Lam Chi Fai
Lam Chi Wai
Lam Ho Kuen
Lam Ho Yan
Lam Hoi Yan
Lam King Fung
Lam Man Fung
Lau Mei Fong
Lau Tsz Shan
Lau Wai Keung
Lau Wing Yiu
Lau Yee Wing
Lau Yin Hing
Law Hoi Ching
Law Sze Nga
Lee Man Na
Lee Man Yu
Lee Sze Wai
Lee Ying Yeung, Clive
Lei Ming Fung
Leong Kai Weng, Subrina
Leung Heung Ping
Leung Ngai Nam, Cara
Leung Shui Bing
Leung Sze Ming
Leung Wai Hang, Victoria
Leung Wing Chi
Leung Yuet Ting
Li Kit Chung
Li Kwok Fat
Li Wing Wah
Li Yu Ming
Li Yuen Shan
Lo Chu Wing
Lo Kwan Yeung
Lo Wai Sum
Lui Chi Hin
Lun Hau Mun
Ma Sui Hung
Mak Po Man, Cherie
Mok Hoi Ying
Mok Hon To, Quinness
Mui Ka Wai
Ng Chun Chi
Ng Hoi Yan, Jennifer
Ng Ka Man
Ng Kim Hung
Ng Pak Hiu
Ng Wai Yee
Ng Yat Kwan
Or Kam Ting
Peng Sisi
Po Ka Wai
Poon Kiu Yan
Pui Joanne
Qiu Shaomeng
Shi Shaoming
Shing Wai Kwan
Shum Yick Chun
Siu Wing Shan
Sum Suet Yi
Sung Kit Lin
Tam Lai Ching
Tang Hoi Ting
Tang Po Man
Ting Siu Bong
Tong Ho Fai
Tong Oi Tai
Tsang Kwai Ping
Tsang Siu Kit
Tse Kwan Ting
Tse Pui On
Tse Shing Wa
Tse Sui Lun
Tsoi Wing Ki
Wan Ho Yan
Wan Wing Yi, Carol
Wong Chak Kuen
Wong Chun Kit, Gally
Wong Chun Sek, Edmund
Wong Hei Ching
Wong Hoi Sui
Wong Ka Wai
Wong Kin Chung
Wong Kwan Yeung
Wong Man Pui
Wong Mau Shek
Wong Pui Yee
Wong Shun Tsz
Wong Sze Man
Wong Sze Man, Nana
Wong Tsun Wah
Wong Wing Gee
Wong Yau Kit
Wong Yu
Wong Yuk Kwan, Jennifer
Yau Yan Yi
Yeung Bo Yee
Yeung Ian Ian
Yeung Kam Chi
Yeung Ming Man
Yeung Siu Wai, Kitty
Yim Wing Sze
Yip Wai Ching
Yiu Ho Pui
Yu Oi Ling
Yuen Lok Lam, Lorraine
Yuen Sin Hang
Yuen Yee Tak
Yung Pik Chu, Judy
Zhou Xiaoke

Membership (continued)

New graduates

Congratulations to our new graduates listed below.

Cheng Pui Shan	Lau Tsz Wai	Li Cheuk Hung	Luo Shuyu	Wong Pui Yue
Chung Yuk Mei	Leung Siu Miu	Lo Shuk Yee	Ng Sui Yin	Zhang Mengchi

Advocacy

Chief Executive visits HKSAR Beijing Office

On 23 November 2017, Institute Chief Executive Samantha Suen FCIS FCS(PE) and Professional Development Senior Manager Ken Yiu ACIS ACS(PE), visited The Office of the Government of the Hong Kong Special Administrative Region of the People's Republic of China in Beijing (HKSAR Beijing Office) and met with HKSAR Beijing Office's Assistant Director Mandy Wong and Commercial Relations Officer Emily Tse. They discussed the development of the Chartered Secretarial profession in the Mainland and the strength of Hong Kong as a corporate governance hub for Asia.

At the HKSAR Beijing Office

President attends the inauguration ceremony of the China 100 Board Secretaries Committee Forum

On 25 November 2017, Institute President Ivan Tam FCIS FCS attended the 'China Financial Technology Innovation and Listed Companies Industry Development Forum' and the 'Launching Ceremony of the China 100 Board Secretaries Committee Forum', and delivered a congratulatory speech on behalf of the Institute at the inauguration ceremony of the China 100 Board Secretaries Committee Forum.

Institute Vice-President Dr Gao Wei FCIS FCS(PE) who is one of the founder members of the China 100 Board Secretaries Committee Forum and Beijing Representative Office Chief Representative Kenneth Jiang FCIS FCS(PE) also attended this event. The three Institute delegates communicated and shared views on relevant topics with the board secretaries, other professionals and officials who were at this event.

At the inauguration ceremony

Advocacy (continued)

HKICS President and Council for 2018

The Institute held its Annual General Meeting (AGM) on 15 December 2017 with over 30 members attending.

At the Council meeting following the AGM, the Honorary Officers for 2018 were elected with David Fu FCIS FCS(PE) being elected as President. Mr Fu is currently the Company Secretary of Swire Pacific Ltd, Cathay Pacific Airways Ltd, Hong Kong Aircraft Engineering Company Ltd, and Swire Properties Ltd. Ivan Tam FCIS FCS, who will retire from the presidency after two years on 31 December 2017 will continue to serve as a Council member in the capacity of Immediate Past President. Dr Maurice Ngai FCIS FCS(PE) will continue to serve as a Council member in the capacity of Past President. Edith Shih FCIS FCS(PE) will retire from Council on 31 December 2017 after serving as an ex-officio member for three years. The Institute would like to thank Ms Shih for her contributions.

The Council

A thank you dinner was held to express appreciation to the Council, Committee, Panel and Working Group members of the Institute, members and peers who have contributed to student and member development and professional training, as well as those who have supported the Institute by taking up external appointments in other government bodies and associations.

HKICS Council 2018

Honorary Officers:	
David Fu FCIS FCS(PE)	President
Dr Gao Wei FCIS FCS(PE)	Vice-President (re-elected to Council)
Paul Stafford FCIS FCS(PE)	Vice-President
Dr Eva Chan FCIS FCS(PE)	Treasurer (re-elected to Council)
Council Members:	
Professor Alan Au FCIS FCS	Gillian Meller FCIS FCS
Arthur Lee FCIS FCS (newly elected)	David Simmonds FCIS FCS (newly elected)
Ernest Lee FCIS FCS(PE)	Bernard Wu FCIS FCS
Stella Lo FCIS FCS	Wendy Yung FCIS FCS
Ex-officio:	
Ivan Tam FCIS FCS	Immediate Past President
Dr Maurice Ngai FCIS FCS(PE)	Past President

At the AGM

At the thank you dinner

Advocacy (continued)

President's visit to Beijing

On 20 and 21 November 2017, an Institute delegation led by Institute President Ivan Tam FCIS FCS visited four organisations in Beijing, namely: China Securities Regulatory Commission (CSRC), Insurance Association of China (IAC), Ministry of Finance (MoF), and State-owned Assets Supervision and Administration Commission (SASAC). Other delegates participating were Past President Dr Maurice Ngai FCIS FCS(PE), Council member Bernard Wu FCIS FCS, Chief Executive Samantha Suen FCIS FCS(PE) and Beijing Representative Office Chief Representative Kenneth Jiang FCIS FCS(PE).

During the visit to CSRC, Institute delegates introduced the latest developments of the Chartered Secretarial profession and the Institute's development in Mainland China, and discussed with Mainland officials topics that were of concern to both parties. At the meeting with CSRC officials, Institute delegates met with: CSRC Vice-Chairman Jiang Yang; Head of International Affairs Department Jiang Feng; Head of Marketing Department Li Jizun; and Deputy Head of Listed Companies Supervision Department Deng Ke. Mr Yang expressed his appreciation of the Institute's efforts in providing professional training services to relevant personnel of Mainland companies listed in Hong Kong. CSRC will continue to support the Institute's initiatives to facilitate the development of both the Hong Kong and Mainland market.

During the visit to IAC, Institute delegates met with IAC Deputy Secretary-General Li Xiaowu, and discussed future cooperation in 2018 and promotion of board secretary professionalisation. At the meeting with SASAC Deputy Director-General of Enterprises Reform Bureau Yang Jingbai, the two parties discussed and agreed to consider cooperation in terms of promoting communication and experience sharing among board secretaries and joint research on corporate governance issues of centrally administrated enterprises. Institute delegates also met with MoF Deputy Inspector, Accounting Department, Wang Peng, and discussed the implementation of internal control systems and their effectiveness. Mr Peng suggested the Institute consider collating information on the effectiveness of internal control systems of other jurisdictions, and also consider including an internal control element in the Institute's professional qualification scheme.

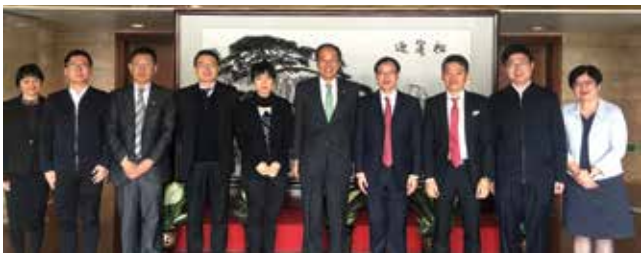
The Institute delegates also took the opportunity to meet with several Institute members and students in Beijing on 20 November 2017. They updated members and students with the Institute's latest developments and listened to their opinions and suggestions on building up the board secretary profession and the Institute's professional development activities in Mainland China.

The Institute would like to express its appreciation to all the officials, members and students with whom the Institute delegates met during this visit in Beijing for their time and support.

At CSRC

At IAC

At MoF



At SASAC

Meeting with Institute members and students in Beijing

Chief Executive talks at 2017 Forum for Corporate Governance Professionals in Taipei

Institute Chief Executive Samantha Suen FCIS FCS(PE) was a speaker at the Forum for Corporate Governance Professionals in Taipei on 6 December 2017 organised jointly by the Governance Professionals Institute of Taiwan, Taiwan Corporate Governance Association, National Chengchi University and KPMG Taiwan. Ms Suen introduced the Institute, The Institute of Chartered Secretaries and Administrators, the Chartered Secretarial profession, and the roles and functions of company secretaries in the corporate world. The other speakers covered the importance and value of having corporate governance professionals in corporations as well as their roles and functions. The forum was attended by about 100 participants who were professionals and university students.

At the forum

Advocacy (continued)

The 45th AP ECPD seminars

The Institute held its 45th Affiliated Persons Enhanced Continuing Professional Development (AP ECPD) seminars on the topic of 'Annual Financial Audit and Annual Reporting' in Beijing between 22 and 24 November 2017. The seminars attracted over 250 participants from H-share, A+H share, red-chip, A-share and to-be-listed companies.

Speakers from Hong Kong Exchanges and Clearing Ltd, senior professionals and board secretaries shared their knowledge and experience on a wide range of topics including: the opportunities and challenges of investor education in the context of the increased interconnection between Hong Kong and Mainland China; updates on the latest amendments of the Hong Kong Stock Exchange listing regulations; continuous obligations and penalties for infringement for directors of listed companies; financial audit and annual report preparation; inside information monitoring and disclosure, and counter-measures for insider dealing; AGM trend analysis of major global markets; new perspectives and thinking in risk management; investor relationships and financial public relations in the context of the increased interconnection between Hong Kong and Mainland China; the implementation of the corporate governance requirement regarding putting party-building content into listed companies' Articles of Associations; and the communication with international institutional investors. At the group discussion session, the participants were grouped by industries and discussed the problems they encountered in the preparation of Environmental, Social and Governance reports and shared their practical experiences.

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

Institute representatives with speakers

At the seminar

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

The 7th Golden Bauhinia Hong Kong summit and award ceremony

The Institute participated in the 7th Golden Bauhinia Hong Kong Summit and Awards Presentation Ceremony organised by Ta Kung Wen Wei on 30 November 2017 as one of the joint organisers. Institute President Ivan Tam FCIS FCS was one of the officiating guests. He delivered a speech and presented the 'Listed Companies of Most Investment Value' awards (最具投资价值上市公司奖项) at the ceremony. In appreciation of its contribution, the Institute received the '20th Anniversary of Hong Kong's Return to Motherland Special Contribution to Capital Market' award (香港回归二十周年资本市场特别贡献奖) this year. Institute Council member Bernard Wu FCIS FCS, Chief Executive Samantha Suen FCIS FCS(PE) and Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE) also attended this ceremony.

Congratulations to the following Institute members and Affiliated Persons who received the 'Best Board Secretaries of Listed Companies' awards (最佳上市公司董事会秘书奖项) (in alphabetical order):

- Huang Wensheng FCIS FCS, China Petroleum & Chemical Corporation
- Li Jiewen, China National Offshore Oil Corporation
- Wu Enlai, PetroChina Company Ltd
- Xie Bing FCIS FCS, China Southern Airlines
- Xie Jilong, CRRC Corporation Ltd
- Yu Xingxi, China Railway Construction Corporation Ltd
- Zhang Zhankui, Aluminum Corporation of China Ltd

Group photo with the 'Listed Companies of Most Investment Value' awardees

Ivan Tam at the ceremony

Advocacy (continued)

Inauguration and first meeting of the Institute's Mainland China Technical Consultation Panel

The Institute established its Mainland China Technical Consultation Panel (MCTCP) this year as a panel of the Institute's Mainland China Focus Group. It was established to provide technical support on issues of common interests of the Mainland board secretary profession through meetings, consultations and guidelines.

The MCTCP comprises 13 members with diverse expertise. Institute Vice-President Dr Gao Wei FCIS FCS(PE) was appointed by Institute Council as the MCTCP Chairman. Board Secretary of China Shenhua Energy Company Ltd Huang Qing FCIS FCS, and former Board Secretary of Haitong Securities Dr Jin Xiaobin FCIS FCS, were appointed as MCTCP Vice-Chairmen.

The MCTCP held its first meeting on 28 November 2017 at the Institute's Beijing Representative Office (BRO) with 11 members participating. Institute Chief Executive Samantha Suen FCIS FCS(PE), Professional Development Director Lydia Kan FCIS FCS(PE) and BRO Chief Representative Kenneth Jiang FCIS FCS(PE) also attended the meeting.

At the first MCTCP meeting

At the meeting, which was chaired by Dr Gao Wei, amongst other things, three Interest Groups were established under MCTCP, namely: Regulation Consultation Group, Practical Guidelines Group and Corporate Governance Practical Training Materials Development Group. Members also had a full discussion on proposed projects and agreed to work on two projects in 2018.

Secretariat Christmas dinner

On 20 December 2017, a Christmas dinner for the Institute secretariat was held. Institute Council member Bernard Wu FCIS FCS, President Ivan Tam FCIS FCS and newly elected Council member for 2018 Arthur Lee FCIS FCS joined the dinner and the seasonal celebrations. This year, some family members of secretariat staff also attended. Thanks to the generous contributions of lucky draw prizes by the Council, the Chief Executive and Department Heads, the secretariat staff and their families spent a joyous dinner gathering together.

At the dinner

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.

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.

Postgraduate Programme in Corporate Governance in Shanghai – student orientation

The 2017/2018 intake of the Postgraduate Programme in Corporate Governance (PGPCG) offered by The Open University of Hong Kong in Shanghai, commenced in September 2017. An orientation for the PGPCG students was held at the East China University of Science and Technology (ECUST/上海华东理工大学) in Shanghai on 4 November 2017. During the orientation, Institute Education and Examinations Director Candy Wong introduced the Institute and its studentship registration policy to the attending students.

At the orientation

Studentship

HKICS Academic Advisory Panel luncheon

The Institute's Academic Advisory Panel (AAP) luncheon was held on 30 November 2017. The luncheon was hosted by Institute Council member and Education Committee Chairman David Fu FCIS FCS(PE), Education Committee Vice-Chairman Polly Wong FCIS FCS(PE) and Education Committee member Winnie Li FCIS FCS; and attended by Chief Executive Samantha Suen FCIS FCS(PE), Education and Examinations Director Candy Wong, as well as 12 representatives from local universities and tertiary educational institutions. The luncheon provided a platform for discussion on the Institute's recent developments and other related educational matters.

AAP members

Guests (in alphabetical order)

Professor Dennis Chan, Associate Professor of Business Education, Department of Accounting, Hong Kong University of Science and Technology

Dr Suwina Cheng, Assistant Professor, Department of Accountancy, Faculty of Business, Lingnan University

Professor David C Donald, Professor, Faculty of Law, The Chinese University of Hong Kong

Professor Kevin Lam, Head and Professor, Department of Accountancy, Programme Director of BBA-CG Programme, Hang Seng Management College

Dr Peter Lau, Associate Dean, School of Business, Hong Kong Baptist University

Professor CK Low FCIS FCS, Associate Professor in Corporate Law, CUHK Business School, The Chinese University of Hong Kong

Dr Christina Ng ACIS ACS, Principal Lecturer, Faculty of Business and Economics, The University of Hong Kong

Dr Mark Ng, Associate Head, Department of Business Administration, Hong Kong Shue Yan University

Anna Sum FCIS FCS, Senior Lecturer, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong

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

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

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

Policy – payment reminder

Studentship renewal

Students whose studentship expired in November 2017 are reminded to settle the renewal payment by Thursday 25 January 2018.

Exemption fees

Students whose exemption was approved via confirmation letter in October 2017 are reminded to settle the exemption fee by Saturday 27 January 2018.

CHARTERED SECRETARIES
特許秘書

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

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

Open to undergraduates of all degree disciplines and HKICS Registered Students

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 Eva Cheung at 2830 6019 or student@hkics.org.hk.

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