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About The Hong Kong Institute of Chartered Secretaries

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

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June 2018

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

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Circulation: 8,200
Annual subscription: HK$2,600 (US$340)
To subscribe call: (852) 3796 3060 or
email: enquiries@ninehillsmedia.com

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ISSN 1023-4128

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Contents

Cover Story

The future of shareholder meetings 06

Claire Corney, Senior Managing Director – Regulatory & Market Initiatives, Global Capital Markets, Computershare, looks at how technological developments can get the annual general meeting back on track as the premier opportunity for effective shareholder engagement.

In Focus

Climate risk – the investors' perspective 14

Maya de Souza, Senior Manager – Policy Research, Business Environment Council Ltd, looks at a powerful driver for better climate risk management – investor pressure.

Corporate Governance

Weighted voting rights: balancing innovation and governance 18

James Lau JP, Secretary for Financial Services and the Treasury, the Government of the HKSAR, reviews the arrangements under Hong Kong's new listing regime for companies to list with a weighted voting rights structure on the main board of the Stock Exchange of Hong Kong.

International Report

Board structures in Hong Kong, Germany and Japan – a governance perspective 22

This article looks at the experience of three jurisdictions with different board structures to assess what influence board structure has on governance outcomes.

Technical Update

New capital raising rules 28

Herbert Smith Freehills LLP reviews the Hong Kong Stock Exchange's new regulatory framework for capital raisings by listed companies.

TCSP licensing: your questions answered 32

The Companies Registry responds to questions raised by members of the Institute regarding Hong Kong's new trust and company service providers licensing regime.

HKICS News

President's Message 04

Institute News 36

Student News 42

Bulletin Board 46

New horizons

Our journal this month looks at the future of the annual general meeting (AGM). I will leave you in the good hands of our contributing authors for more on this and the other governance topics addressed by this month's journal, as I would like to turn to some important developments of relevance to our members and profession.

Next year our Institute will be celebrating the 70th anniversary of the presence of The Institute of Chartered Secretaries and Administrators (ICSA) in Hong Kong, as well as the 25th anniversary of the establishment of our Hong Kong Institute. We have planned for a Corporate Governance Week in September this year as a major event leading to next year's 25th and 70th double anniversary celebrations. The Corporate Governance Week will commence on 8 September with a Corporate Governance Paper Presentation Competition and Awards Presentation among undergraduates in Hong Kong. This will be followed by a series of Enhanced Continuing Professional Development seminars in Mainland China, and the release of a research report on environmental, social and governance reporting and performance of Hong Kong listed companies, jointly conducted by our Institute, CLP Holdings Ltd and KPMG China. The week will culminate with our 11th biennial Corporate Governance Conference with The Secretary for Financial Services and the Treasury of the Government of the HKSAR, The Honourable James Lau JP, as the Guest of Honour and the Chairman of the International Integrated Reporting Council Professor Mervyn King as the Keynote Speaker. The week will conclude with a masterclass by Professor King to Institute students in Hong Kong on 15 September.

I hope you can join us in these many corporate governance–themed events, in particular our Corporate Governance Conference to be held on 14 September 2018, with corporate visits on 15 September. The conference is on the theme of 'Corporate Governance: The New Horizon' and will provide an excellent one-stop-shop opportunity to get ahead of the curve regarding the many frontier issues that are transforming the landscape within which we work.

Looking further ahead, I would also like to take this opportunity to update you on the progress of the strategic initiatives of ICSA. ICSA has obtained its members' and the Privy Council's consent to offer the Chartered Governance Professional qualification. In addition to those grandfathered and awarded the qualification, our Institute will award both designations of Chartered Secretary and Chartered Governance Professional to all successful students from January 2020.

The launch of the new Chartered Governance Professional designation is just one of a number of strategic initiatives designed to reposition our Institute and profession for the future. Another of these initiatives is the proposed change of name of the International Institute to The Chartered Governance Institute. The rationale for this change is discussed in detail in the 'proposed name change' section of the International Institute's website: www.icsaglobal.org. I recommend you take a look at this discussion, along with the 'President's Report to Members March 2018' (see the 'Governance' section of the International Institute's website), which updates us on the decisions of the International Council at its meetings held in Jersey in the Channel Islands on 22 and 23 March 2018, and on the proposed road ahead.

The overwhelming majority in favour of the new Chartered Governance Professional designation at the 2017 ICSA AGM was a good indicator of the support for the ICSA strategic changes among our membership. These changes certainly have my full support and the support of our Council here in Hong Kong. We believe that the worldwide focus on good governance presents us with an opportunity to improve the recognition of the roles we perform as Chartered Secretaries and governance professionals. We are exploring the possibilities for a new name for our Institute here in Hong Kong in both English and Chinese to ensure we are under the governance banner. I would like to add that we are resolved to ensure that the quality of our membership is safeguarded, the value of the company secretary identity is preserved and our recognition under relevant Hong Kong laws, rules, regulations and codes is unaffected.

So what are the next steps? The name change for the International Institute will be subject to a vote at the ICSA AGM planned for 19 September of this year. The formal Notice of Meeting is expected to be available to members in early August. In the meantime, the term of David Venus FCIS as International President comes to an end on 1 July this year. He will be replaced at the helm by our very own Past President Edith Shih FCIS FCS(PE). I would like to congratulate Edith on her election to the presidency and, given her impressive track record in steering our own Institute during her four-year term, I have every confidence that she will be exactly the person we need to guide us through the transition to the renamed and reinvigorated profession of the future.

David Fu FCIS FCS(PE)

新里程

今期月刊探讨周年股东大会的未来发展。关于这课题，以及今期月刊其他有关管治的课题，请详阅各位作者的文章。在这里，我想谈谈有关公会会员和公司秘书专业的一些重要发展。

明年将是英国特许秘书及行政人员公会(ICSA)在香港设立属会70周年，以及香港特许秘书公会成立25周年。我们准备在今年9月举办企业管治周，以这项大型盛事为明年双重志庆的活动揭开序幕。企业管治周于9月8日开始，首项活动是香港大专生企业管治论文及演讲比赛；其后将在中国内地举行一系列强化持续专业发展讲座，以及发表有关环境、社会及管治报告及香港上市公司表现的研究报告，该项研究由公会、中电控股有限公司及毕马威中国携手进行。企业管治周的压轴节目，是两年一度的企业管治研讨会，由香港特区政府财经事务及库务局局长刘怡翔太平绅士担任主礼嘉宾及国际综合报告委员会主席Professor Mervyn King担任主讲嘉宾；最后以9月15日由Professor King为公会学生举行的讲座作结。

希望各位能参与上述各项以企业管治为主题的盛事，尤其是2018年9月14日举行的第十一届企业管治研讨会及9月15日的企业实地考察。研讨会的主题是「企业管治新里程」，集中讨论多项正改变我们的运作环境的重要课题。

再往前看，我想藉此机会向大家报告ICSA的策略性计划的进展。ICSA已取得会员及枢密院的同意，可颁授特许管治专业人员的资格。公会将由2020年1月起，向所有合资格学员颁授特许秘书和特许管治专业人员的资格，而一些现有会员则可豁免申请，即获颁授有关资历。

ICSA有多项策略性计划，旨在为公会及公司秘书专业重新定位，迎接未来；推出特许管治专业人员新资格，只是其中一项。其他计划包括把国际公会的名称更改为「特许管治公会」，改名的目的，在国际公会的网站www.icsaglobal.org内'proposed name change'一栏有详细讨论。我建议大家浏览有关讨论内容，并阅览会长2018年3月致会员的报告（见国际公会网站'Governance' 一栏），当中记述国际理事会于2018年3月22及23日在海峡群岛泽西的会议所作的决定，以及建议的未来路向。

在2017年的ICSA周年会员大会中，绝大部分会员赞成推出特许管治专业人员新称号，正好显示会员支持ICSA的策略性转变。我和香港公会的理事会当然也全力支持这些转变。我们相信世界各地对良好管治的关注为我们带来机会，让我们作为特许秘书和管治专业人员所担当的角色得到更广泛的承认。我们正探讨可否为香港的公会采用新的中英文名称，在管治的旗号下运作。我还想补充，我们有决心保证会员的质素，维持「公司秘书」身分的价值，并确保相关香港法律、规则、规例及守则对我们的承认维持不变。

下一步将怎样走？国际公会更改名称，须待今年9月19日ICSA周年会员大会表决。正式的开会通知，预计将于8月初发给会员。同时，David Venus FCIS的国际会长任期将于今年7月1日届满，继任人正是我们的前会长施熙德律师FCIS FCS(PE)。我谨祝贺施律师当选为会长。施律师担任公会会长四年间，成绩斐然；专业在更改名称、重新注入活力之际，我深信她正是带领我们过渡至将来的适当人选。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

The future of shareholder meetings

Against a background of falling attendance at annual general meetings (AGMs) globally, Claire Corney, Senior Managing Director – Regulatory & Market Initiatives, Global Capital Markets, Computershare, looks at how technological developments can get the AGM back on track as the premier opportunity for effective shareholder engagement.

AGMs have traditionally been a central feature of shareholder engagement with their investee companies. AGMs provide the opportunity for shareholders small and large to listen to the board, ask questions and participate in the official business of the company. However, the AGM has come under pressure, with questions raised about its continuing relevance. In a recent article in the *Financial Times*, Jamie Dimon, Chair and CEO of JP Morgan, called annual shareholder meetings 'a complete waste of time' and 'a joke'. He added that the AGM has become 'hijacked by people who have only political interests and don't have any interest in the future health of the company' (*Financial Times* 27 February 2018, 'Jamie Dimon calls shareholder meetings complete waste of time').

Is this really fair? Let's consider some current issues with AGMs.

Are shareholder meetings a waste of time?

Globally, a significant majority of meetings have fewer than 100 attendees, and in many markets the attendance level is declining. Smaller companies may see only a handful of attendees, if any. Meetings often last an hour or less, with some wrapped up in minutes. There are notable exceptions however. For example, companies in Germany typically have meetings that run a full day and attract larger crowds. Hong Kong and Mainland China have actually seen increasing attendance (for meetings where there are more than 100 attendees), however only a relatively small proportion of attendees actually vote.

In markets such as the US, the UK, Australia, Canada and South Africa, the majority of shareholder voting occurs prior to the meeting. Several markets have however expressed concerns about current proxy voting processes and an overall decline in voting participation rates. Various reviews and reforms have been initiated (see Table 1: Regulatory reform in shareholder voting). Again, there are exceptions to the dominance of proxy voting. Germany, Denmark, Hong Kong and Mainland China show greater levels of in-meeting voting, suggesting that local market dynamics influence voting patterns. Globally, companies with more concentrated ownership can see higher levels of in-meeting voting. Also, the lingering use of 'show of hands' voting, where only attendees can vote, on a one-person one-vote basis, impacts voting data.

A further consideration, to acknowledge Mr Dimon's concerns, is that a number of AGMs are being disrupted by special interest activists. It might be argued that the actions of some activists drown out the regular business of the AGM.

These considerations do present some challenges to the role of the AGM and raise the question of whether it is just a compliance box that companies must 'tick' rather than serving a substantive governance purpose in those markets where attendance is declining. Yet even in the US and other markets facing such concerns, retail and institutional investors continue to express their view that they value AGMs as their primary opportunity to have contact with the board and management, and to hear them present the company's position.

Highlights

- virtual and hybrid meetings offer great potential for democratising AGMs, significantly increasing the number of shareholders who have the opportunity to participate
- technology should be used in a way that preserves shareholders' rights and their capacity to engage with the company, replicating the benefits of in-person attendance
- as technological developments continue and companies and shareholders become more familiar with non-physical formats, the question may well become whether physical-only meetings can still be considered best practice

Why then are so few shareholders attending, across so many markets? To my mind, it suggests that the issue is not really whether AGMs are a waste of time, but instead a broader question of how to better deliver effective engagement through them.

The AGM of the future

The format and process of the AGM needs to be reimagined to accommodate the needs of shareholders and companies alike in an international, diverse and increasingly technologically savvy environment. Rethinking the AGM needs to particularly address accessibility to the meeting, as well as considering ways to update the format and content in a way that better engages shareholders in the business goals of the company. Regulators should also consider laws that facilitate innovative technological solutions to support the conduct of meetings and improve the overall shareholder voting process.

Accessibility

Traditional AGMs are held in a fixed physical location, which impacts shareholders' ability to attend. Domestically, attendance can be hindered by extreme weather events, for example in Hong Kong, or the geographic scale of countries like the US or Australia. Also AGMs are often clustered together within a tight window in each market, sometimes with many on the same day, impacting the ability of investors to attend all their investee companies. Cross-border investment adds to this.

One clear solution to this is the application of advances in technology to the conduct of meetings. The emerging adoption of virtual (online only) and hybrid (online and in-person) meetings is a major step in improving the capacity for shareholders to participate without incurring the challenges of physical attendance. Properly deployed and controlled, technology can improve the interaction between companies and their shareholders at the meeting. Even where meetings continue to be well attended, the case for democratising access is worth consideration.

Companies are already increasingly making digital options available to shareholders. These include e-communications and electronic proxy voting, as well as the use of technology such as electronic 'admission' cards and in-room voting apps at the meeting. There is often an increase in voting when shareholders are provided with easy-to-use digital solutions.

Online meeting solutions are a logical next step in the deployment of technology for shareholders, addressing accessibility. The US has led adoption of virtual and hybrid meetings with a significant increase in usage in the past couple of years, although absolute numbers remain low for now. There is also growing interest from companies in many other international markets. Indeed, Computershare in Australia conducted its own AGM as a hybrid for the first time in 2017. The Australian Stock Exchange is currently consulting on revisions to its Corporate Governance Council's Principles and Recommendations, including proposals that companies with large or geographically diverse investor bases consider use of technology, such as hybrid meetings, to facilitate shareholder participation in the AGM.

Despite broad recognition of the benefits of this advance, some investors have raised questions about the use of virtual-only meetings. Concerns have included losing the ability to 'look the board in the eye'; a perceived risk that the company will be able to avoid 'difficult' questions; and some questions about stability of the technology in its early phases. Investor groups such as the Council of Institutional Investors (CII) in the US and proxy advisors including Institutional Shareholder Services (ISS) have indicated that, while they support the use of hybrid meetings, they recommend against virtual ones at present.

> “companies and shareholders need to consider how best to use the AGM to facilitate company–shareholder dialogue and deliver strong governance outcomes”

At least in the US, companies thus far have however exhibited a preference for virtual meetings. In addition to improving attendance, virtual meetings can reduce costs associated with holding an AGM. By contrast, hybrid meetings may increase meeting costs as both online and physical formats must be supported. As the technology improves and reduces costs, the question about at what point it is cost effective for more companies to use hybrid meetings will arise.

Criticism of companies that adopt virtual-only meetings is largely focused on brand-name companies and controversial

19th ACRU ANNUAL CORPORATE AND REGULATORY UPDATE

~Thank You~

The Hong Kong Institute of Chartered Secretaries (HKICS) proudly announces that close to 1,900 Chartered Secretaries and governance professionals attended its 19th Annual Corporate and Regulatory Update conference on 5 June 2018.

Our sincere gratitude to the Companies Registry, the Equal Opportunities Commission, the Hong Kong Exchanges and Clearing Limited, the Securities and Futures Commission, all sponsors, supporting organisations and participants in making HKICS's largest annual conference a success.

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Table 1: Regulatory reform in shareholder voting

Several markets have initiated reviews and reforms to shareholder voting, particularly proxy processes, to better facilitate shareholder participation and vote integrity.

Australia	2012 Discussion Paper on: *The AGM and Shareholder Engagement*, by Corporations & Markets Advisory Committee (pending government response) 2017 *Technology Neutrality in Distributing Company Meeting Notices and Materials Proposal*, by Commonwealth Treasury (pending government response)
Canada	2017 Council of Securities Administrators: *Staff Notice 54-305 Meeting Vote Reconciliation Protocols*
European Union	2016 amendments to the *Shareholder Rights Directive*, including provisions in relation to shareholder identification, communications, exercise of voting and other rights and issuance of vote confirmations
US	2010 *Concept Release on Proxy Reform*, by Securities & Exchange Commission (SEC) (pending SEC action) 2015 *Proxy Voting Roundtable on Universal Proxy Ballots and Retail Participation in the Proxy Process*, by SEC (pending SEC action)

meetings in the US. This should be contrasted with the low and declining attendance levels at the majority of US AGMs, including among institutional investors (despite the positions taken by CII, ISS and others). Companies with little to no investor attendance in prior years have seen increased shareholder participation through the virtual format.

The investor concerns do speak to the importance in using this technology in a way that preserves shareholders' rights and their capacity to engage with the company, replicating the benefits of in-person attendance. Steps can be taken to establish effective meeting procedures that protect shareholder participation and ensure transparency in the conduct of the meeting.

Virtual and hybrid meetings offer great potential for democratising AGMs, significantly increasing the number of shareholders who have the opportunity to participate. However adoption is at an early stage. Companies and investors, and their respective service providers, should continue to work together to establish best governance practice for the conduct of the meeting. Regulatory input might also be appropriate if companies and investors cannot find sufficient common ground.

The following considerations offer guidelines to enhance shareholders' experience at virtual and hybrid meetings. It is worth stressing that there is no 'one size fits all'; just as with the physical AGM, each company should consider its needs, the profile of its investors and the nature of the business of the particular meeting.

1. ***Establish and communicate protocols for managing shareholder questions.*** Some methods to address investor concerns about the handling of the Q&A component of the virtual meeting include:

    - use online tools to share all questions, along with the methodology applied, to the group and prioritise topics
    - consider using an independent moderator for the Q&A, and
    - commit to responding to any remaining unanswered questions online after the meeting, or explain why a question cannot be answered.

2. ***Use video.*** Many virtual and hybrid meetings use audio only. Video better replicates the valued ability to 'see' the board and management in action and may ease transitional discomfort with the online format. Cost remains a consideration for many companies however, and for smaller companies it may be disproportionate.

3. ***Establish fair and transparent protocols for handling shareholder proposals.***

4. ***At hybrid meetings use poll voting only and not 'show of hands'.***

5. ***Test the technology.*** Ensure your service provider uses 'best in class' systems; some companies are

trialling technology at their physical AGM, prior to adopting a virtual or hybrid format.

Companies also need to ensure that they have the legal authority to conduct a virtual or hybrid meeting. Table 2 shows the current position for a range of jurisdictions (see Table 2: Regulatory facilitation of virtual and hybrid meetings in international markets). In some cases, the law is not explicit and authority is subject to interpretation. In the UK for example, only one company has conducted a fully virtual meeting thus far (Jimmy Choo in 2016), with a number of others pursuing hybrid meetings. Questions regarding interpretation of the law for virtual meetings has caused companies to hold off for now and regulators should consider taking action to improve legal certainty in this area.

In addition, companies need to ensure that their Articles of Association, or other constitutive documents, and other relevant provisions such as stock exchange listing rules permit the meeting format.

Before moving on, we should acknowledge that other technologies are emerging and should also be monitored for their potential to improve the conduct of the AGM. The evolution of blockchain

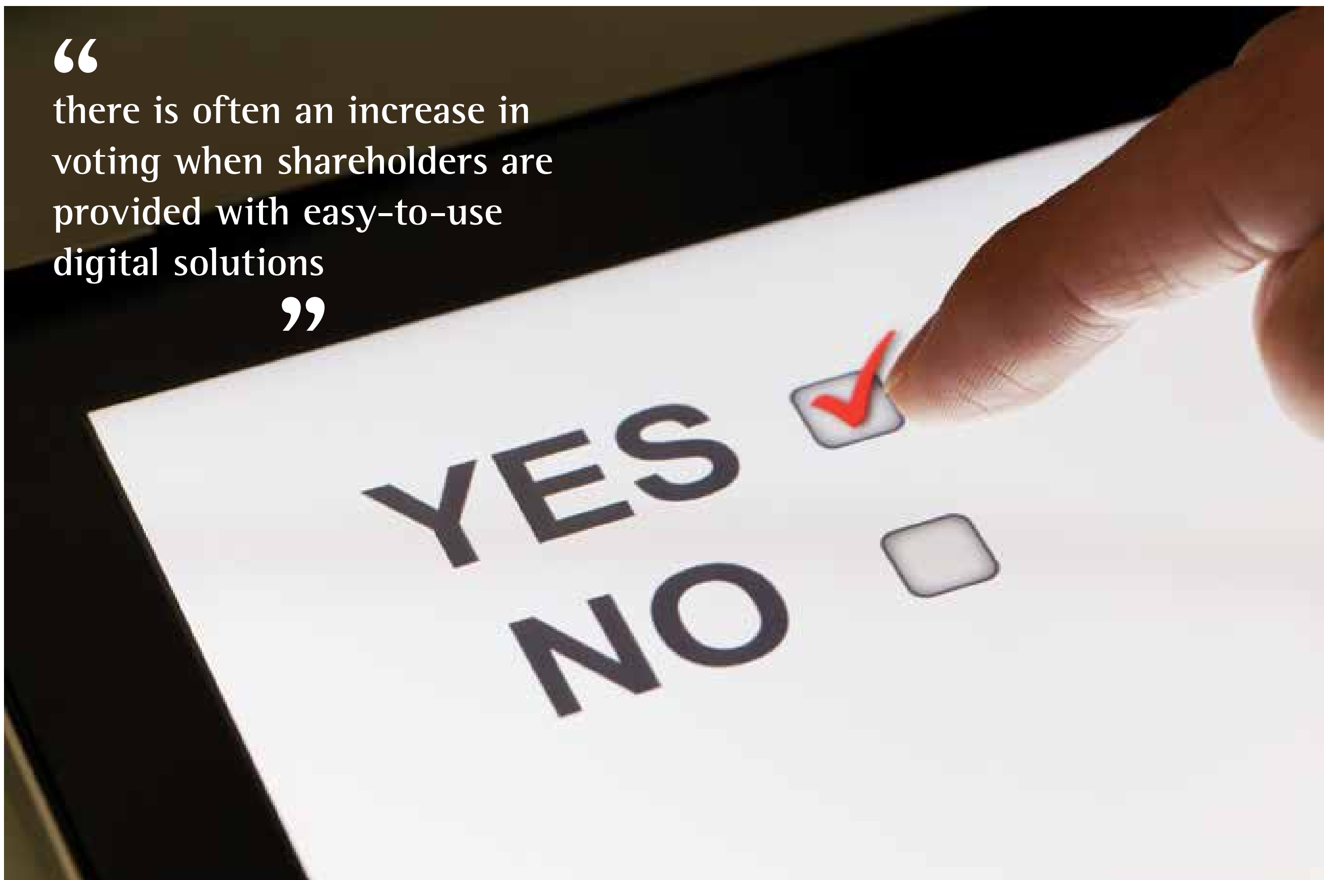
Table 2: Regulatory facilitation of virtual and hybrid meetings in international markets

Country	Virtual meetings permitted	Hybrid meetings permitted
Australia	No	Yes*
Canada**	Yes	Yes
Denmark	*Yes*	*Yes*
China	No	Yes
Germany	No	Yes
Hong Kong	No	Yes
Ireland	Yes	Yes
Italy	No	Yes
Netherlands	No	Yes
New Zealand	Yes	Yes
South Africa	Yes	Yes
Spain	Yes	Yes
Sweden	No	Yes
UK	Yes*	Yes*
US***	Yes	Yes

** In these countries, the legislative provisions are not explicit and authority is drawn from interpretation of the law.*

*** At the time of writing this article, seven out of 10 provinces, one out of three territories and federal law allow virtual and hybrid meetings, while one province and the remaining two territories allow only hybrid.*

**** At the time of writing this article, it appears that more than half of the US states allow virtual shareholder meetings, whereas a number of states plus the District of Columbia appear to allow only hybrid meetings. Numerous state law provisions however are not definitive and may be subject to interpretation.*



technology in particular, subject to much current discussion, may lead to additional mechanisms to facilitate participation in the AGM. The key principle regardless of platform is continuing to deploy improved technology to enhance the meeting experience. We may also eventually see technology drive changes in the rules surrounding meetings, for example it remains to be seen how the increase in electronic proxy voting combined with adoption of online meetings may impact voting deadlines.

Engaging investors' interest at the AGM

Technology is one key mechanism to better engage shareholders and facilitate their participation in the AGM. Companies also need to consider the content of the meeting, and how to best adapt it to engage shareholders. Again, the right approach will be very specific to each company. Strategies can be developed to create an appealing meeting that goes beyond 'compliance' requirements by educating shareholders on, and indeed marketing, the company's business(es).

For example, Wesfarmers in Australia has increased shareholder attendance through a format that engages shareholders in its various business lines alongside the official meeting. The meeting was also webcast, combining the use of technology with reimagined meeting content.

Rethinking the AGM

AGMs remain an important governance and engagement tool. Companies and shareholders need to consider how best to use the AGM to facilitate company–shareholder dialogue and deliver strong governance outcomes. Technological developments and innovative formats can improve access to, and conduct of the meeting, and effectively communicate companies' business goals to shareholders. As technological developments continue and companies and shareholders become more familiar with non-physical formats, the question may well become whether physical-only meetings can still be considered best practice.

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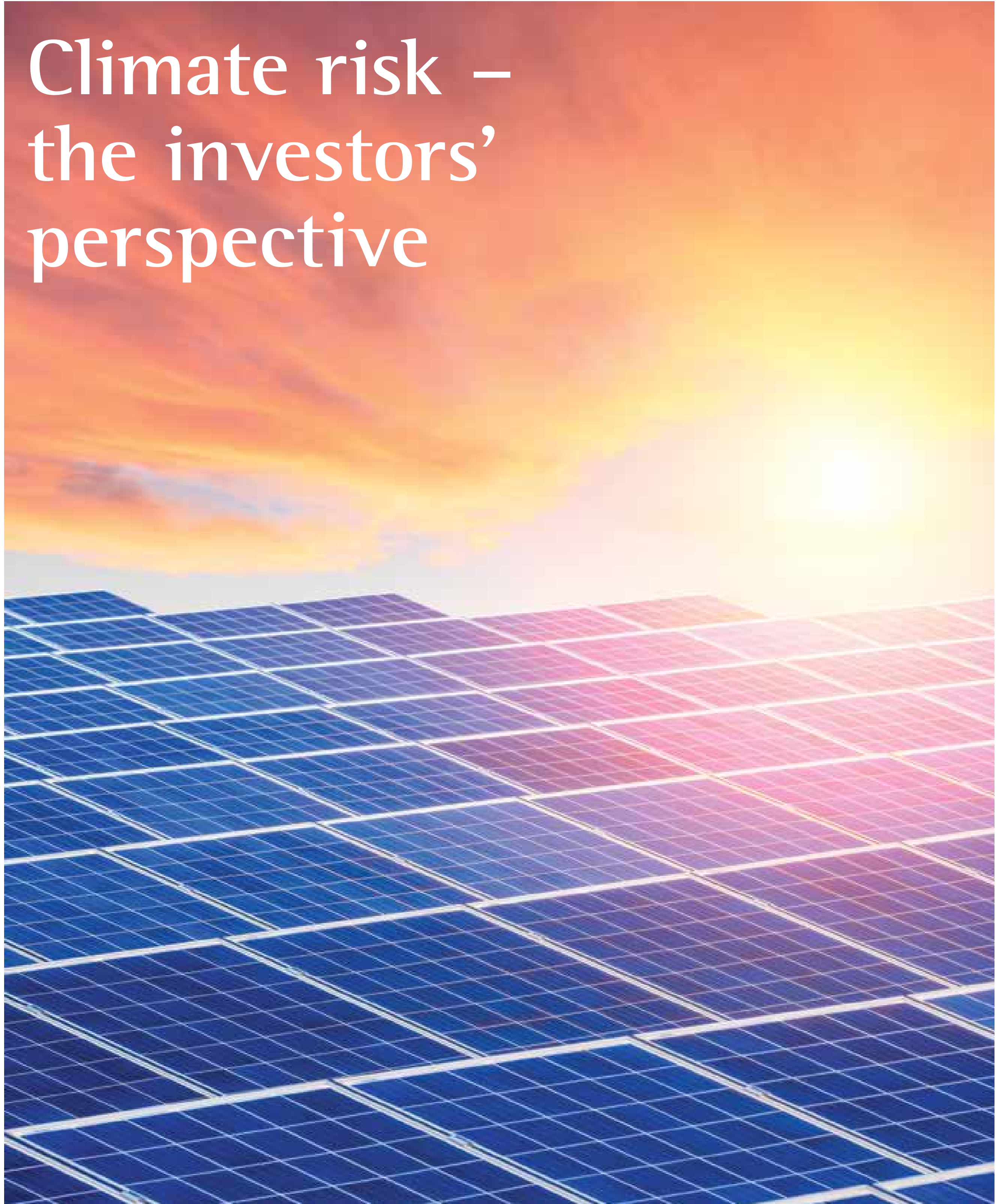
Climate risk – the investors' perspective



In a follow-up to her November 2017 article in this journal on the role company secretaries can play in addressing climate risk, Maya de Souza, Senior Manager – Policy Research, Business Environment Council Ltd, looks at a powerful driver for better climate risk management – investor pressure.

In my previous article, I explained why company secretaries need to start ensuring climate risk is on their board's agenda, the importance of thinking over longer-term horizons to ensure social well-being, and the benefits of transparency and disclosure for healthy markets. This article now looks at these issues from the finance sector perspective.

There are few of us here in Hong Kong who will have missed the increasing excitement about Hong Kong becoming a centre of green finance, catching the wave, but what is this all really about? Is it just about the sell-side: issuing green bonds and developing green projects that require finance? What about the buy-side, often referred to as responsible or impact investment? Is that one of those changes where catching the wave will be great, but being under it potentially crushing?

In this article, I explain why this shift to greening finance is critical globally and in Hong Kong, and what this involves in practice with reference to the 'buy-side' or responsible investment. This is not only about corporates issuing green investment instruments, like green bonds, but about investors taking into account environmental considerations in their investment decisions and engaging with the companies they invest in. I draw on the views that arose from a recent workshop by the Business Environment Council Ltd (BEC) on how to factor climate risk into decision-making.

To continue with the surfing analogy, we can all see the wave of responsible investment coming. It's not so far away any more. The report by the People's Bank of China (PBC) and the United Nations Environment Programme (UNEP), Establishing China's Green Financial System (PBC/UNEP report), was one of the early signs in this region. Though it shouldn't be forgotten that the Asia Responsible Investment Association, set up here in Hong Kong, preceded this by many years. The Principles for Responsible Investment (PRI) have also been around for some time. But the PBC/UNEP report was still vastly influential as it reflected China's recognition that capital needed to be harnessed to ensure a substantial shift away from existing infrastructure. It brought the finance sector centre stage in terms of protecting our environment and ensuring a stable climate.

The PBC/UNEP report covered green bonds, which we are beginning to be familiar with locally. But it went way beyond this, covering green rating systems and a green stock index. These initiatives are strongly connected with responsible investment. Hong Kong's Financial Services Development Council has established a Green Finance Working Group. Its recommendations as to early action by the government and other institutions on green bond issuance have been taken up – and also to some extent by the buy-side.

So is the green finance wave growing?

The latest figures show that 80% of investors are now factoring environmental, social and governance (ESG) considerations into investment decisions. Hong Kong also has its own Sustainable Finance Initiative seeking to catalyse investor action. Action specifically about climate is also on the increase. Climate Action 100+ is a five-year initiative led by investors to engage with the world's largest corporate greenhouse gas emitters to improve governance on climate change, curb emissions and strengthen climate-related financial disclosures. To date, 279

Highlights

- investors are increasingly taking into account environmental considerations in their investment decisions and engaging with the companies they invest in
- managing climate risk is not just about doing good or reducing impact to avoid bad publicity – it is essentially about managing financial risk
- companies need to factor in social and environmental responsibility as their social 'licence to operate' evolves

investors with nearly US$30 trillion in assets under management have signed on to the initiative.

But why is this happening? Firstly, the finance sector has come to realise that climate risk is not about doing good or reducing impact to avoid bad publicity. It is essentially about managing financial risk, taking on board the dependency of social and economic well-being on a healthy environment. This was the message of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) report. Put simply, the message of this report is that climate change creates two broad risks: physical impacts and transitional risk relating to changing policy and behaviour. If these risks are not factored into valuations, asset values may be entirely incorrect. We see increasing recognition of climate risk being financial risk at a senior level within asset management companies. For example, just at the end of April 2018, Helen Morrissey, Director, Legal & General Investment Management, said, 'Climate change risk is a financial risk – in the last six years, coal companies have lost 75% of their value.'

Secondly, more and more institutional investors, especially from Europe and Australia but also increasingly in Asia, are beginning to factor in social and environmental responsibility as expectations within the investor community change or the social 'licence to operate' evolves. It is in part about recognising the wider social welfare of beneficiaries. For example, in terms of pension fund beneficiaries, having a regular income but high vulnerability to extreme weather may not be in their best interests. The rules on director and trustee fiduciary duties are changing, so that it is becoming quite clear that non-financial risks can be taken into account by trustees and in some cases must be taken into account as they are in fact financial risks. For example UNEP's recent report says 'failing to consider long-term investment value drivers, which include ESG issues, in investment practice is a failure of fiduciary duty.' 124 signatories from 22 countries have already signed a statement acknowledging this duty, including five from Hong Kong.

So if Hong Kong investors fail to factor in climate risk they could be holding assets simply not worth their apparent value.

But of course factoring in climate risk isn't an easy process. How do you decide when a company is climate resilient? How do you get the information you need? Organisations like PRI and the Investor Group on Climate Change are providing tools and guidance. In December 2017, for example, the Asia Investor Group on Climate Change (AIGCC) published its Guide on Integrating Climate into Investor Strategy (AIGCC Guide).

At a recent workshop held in March this year by the BEC, in partnership with AIGCC, PRI, International Capital Market Association and Hong Kong Institute of Qualified Environmental Professionals, asset managers were brought together to help develop their understanding of how to factor in risk. The most important tool brought into the discussion was the framework put forward by the TCFD, which sets out four primary considerations relating to companies and provides detailed guidance on how to take each on board:

1. governance
2. strategy
3. risk management, and
4. metrics and targets.

The learning that emerged from the workshop, drawing on the explanation of the TCFD and other tools, is summarised below as six key steps for an asset manager to take.

1. Map your portfolio

A good starting point is to map your portfolio and assess the basics: this is the carbon footprint of your investment

Online resources

- Financial Stability Board – Task Force on Climate-Related Financial Disclosures (www.fsb-tcfd.org)
- Principles for Responsible Investment (www.unpri.org)
- RS Group (www.rsgroup.asia)
- United Nations Environment Programme – the Inquiry (http://unepinquiry.org)
- Asia Investor Group on Climate Change (http://aigcc.net)
- Intergovernmental Panel on Climate Change (www.ipcc.ch)

> "the finance sector has come to realise that climate risk... is essentially about managing financial risk, taking on board the dependency of social and economic well-being on a healthy environment"

portfolio, the geographical location of your assets and key climate risks that may impact them, and some policy mapping too. But remember the latter can change quickly. There are many ways to understand your carbon footprint with a number of indicators that can be used, from nature of company activity, for example mining, to CO_2 emissions per unit of output. As to an initial understanding of physical risks in different parts of the world, the Intergovernmental Panel on Climate Change scenarios are the best place to begin.

2. Assess the strategies of individual companies

Adopt a forward-looking assessment approach that takes into account the plans and strategies of individual companies. This aligns with the TCFD approach to look at the company's targets and strategies. CDP (previously Carbon Disclosure Project) data and MSCI analyses can also be helpful. Specific questions include whether the company has robust plans to reduce its greenhouse gas emissions.

3. Assess companies' climate risk resilience

Look at the readiness of individual companies to cope with climate risk. This includes looking at its governance, which means considering amongst other things whether the board is taking responsibility for action on this front – is it providing strategic oversight on climate risk? Practical questions to ask include what is on the risk register, whether the company has any climate relevant key performance indicators and whether it has third-party verification of data.

4. Understand companies' risk exposure

Use stress-testing methodologies such as scenario analysis to understand the risk exposure of individual companies. Uncertainty can lead to investors ignoring these considerations – but these tools try to remedy this, offering a means of understanding a range of scenarios and exploring resilience within those different scenarios. It's about taking on board what some call 'black swans', but which are more like 'black elephants' – as people are aware of them but may prefer to ignore, as they are complex and hard to address. There are many practical issues here including understanding insurance availability and its limitations.

5. Develop your investment strategy

Managing risk well involves not only understanding it and evaluating it but developing a robust strategic position in response. The AIGCC Guide mentioned above sets out a neat and simple four-component framework for a strategy covering: people, policies, processes and public disclosure. Questions here would include when to divest or not invest and when to actively engage with companies. We heard from participants that in some cases active engagement can be just as impactful. It may also involve developing targets for investment in non-fossil fuel power or policies as to certain exposed sectors.

6. Be transparent

The need for transparency follows from all the above. The importance of approaching this with integrity and accuracy was emphasised at the workshop.

Riding the wave

So to be ready for the wave and avoid being overly exposed to risk. It is important that Hong Kong's finance sector – asset owners, asset managers and analysts – equips itself with the knowledge and know-how needed. This is to assess how climate risk affects investment portfolios and how to develop strategies to minimise risk and identify opportunities. Both physical and transitional risks need to be taken into account: in effect, climate change in its full sense needs to be incorporated into risk management and strategy. As to how to do this, tools and frameworks have been developed. It is now a question of investors beginning – learning by doing – using risk assessment frameworks for their funds and putting in place strategies to manage risk and capture opportunities.

Maya de Souza

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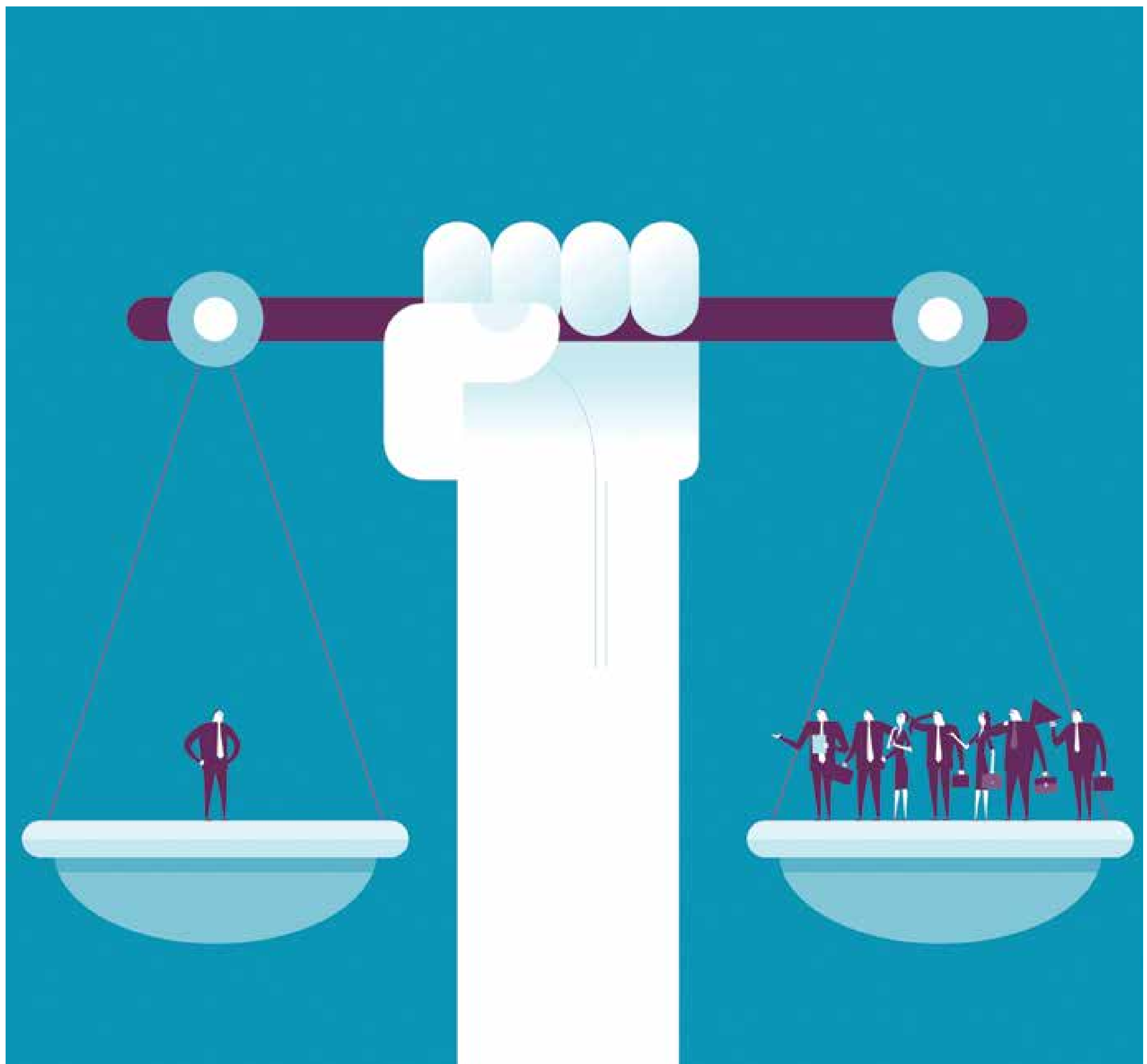
The author's previous article 'Climate change – not my problem?' is available in the November 2017 edition of e-CSj: http://csj.hkics.org.hk.

Weighted voting rights: balancing innovation and governance



James Lau JP, Secretary for Financial Services and the Treasury, the Government of the HKSAR, reviews the arrangements under Hong Kong's new listing regime for companies to list with a weighted voting rights structure on the main board of the Stock Exchange of Hong Kong.

The unstoppable wave of innovation and technology, the so-called 'Industrial Revolution 4.0', is a global phenomenon that has fundamentally changed the world's economic structure and way of living. Many sizable new economy companies have emerged around the world and also many unicorns – start-up companies with valuations over US$1 billion at initial public offering (IPO). An estimate suggests that at end-March 2018, China alone had more than 150 unicorns, and over 30 of them appeared in the first quarter of this year. So you can see the pace of development. In Hong Kong, we are conscious that our capital markets and economy need to evolve to keep pace with such a sea change.

Hong Kong's new listing regime, which came into effect on 30 April 2018, allows high-growth and innovative companies to list with a weighted voting rights (WVR) structure on the main board of the Stock Exchange of Hong Kong (the Exchange). The new listing regime was adopted following two rounds of consultation conducted by the Exchange. In the first round, the Exchange put forward a concept paper on a proposed new board. A total of 360 valid responses were received, and an overwhelming majority was supportive of the need to widen the listing criteria on the current board to attract a more diverse range of issuers.

In the second round, the Exchange put forward specific proposals to amend its listing rules to facilitate the listing of companies from emerging and innovative sectors. Again, most of the 283 responses received supported the Exchange's proposals in general. In the end, the Exchange also made some modifications to address industry concerns.

Hong Kong's new WVR regime

Under the amended listing rules, companies with a WVR structure would be required to have a minimum expected market capitalisation of HK$10 billion at listing and, if below HK$40 billion of market capitalisation, would need to have at least HK$1 billion of revenue in their most recent audited financial year. This market capitalisation requirement is higher than conventional listing entities.

Also, the company must be an innovative company and the applicant must demonstrate a track record of high business growth. The applicant must also have previously received meaningful third-party investment from at least one sophisticated investor, which must remain at IPO.

While the listing door is open to companies with a WVR structure, what is equally important are the appropriate safeguards we have put in place to protect the investing public.

Ring-fencing. Only new applicants will be able to list with a WVR structure, and the Exchange will seek to ensure that companies do not use artificial means to circumvent this. After listing, issuers with WVR structures will be prohibited from increasing the proportion of WVRs in issue.

Restrictions for WVR beneficiaries. At present, WVR beneficiaries must be individuals who have an active executive role within the business and who are contributing to a material extent to the growth of the business. WVR beneficiaries

Highlights

- Hong Kong's new listing regime allows high-growth and innovative companies to list with a weighted voting rights structure on the main board of the Stock Exchange of Hong Kong
- the new regime includes a number of safeguards to protect investors, in particular the requirement for key matters such as the appointment or removal of independent non-executive directors or auditors, to be decided on a one-share one-vote basis
- the government seeks to achieve a proper balance between encouraging market evolution to meet development needs and maintaining market quality and investor protection

must be directors of the issuer at listing and remain as directors afterwards.

Limits on the power of WVR beneficiaries. A class of shares conferring WVRs in a listed issuer must not entitle the beneficiary to more than 10 times the voting power of ordinary shares. In relation to the question of a possible privatisation, I should add that WVR shareholders, as controlling shareholders, will not be able to vote, and a privatisation proposal can be blocked by one tenth of the independent shareholders.

Protection of non-WVR shareholders' right to vote. Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must be no higher than 10% of the voting rights on a one-share one-vote basis.

Key matters must be decided on a one-share one-vote basis. These include changes to the listed issuer's constitutional documents, whichever forms they are; variation of rights attached to any class of shares; the appointment or removal of independent non-executive directors; the appointment or removal of auditors; and the voluntary winding-up of the issuer.

The corporate governance committee requirement. An issuer with a WVR structure must establish a corporate governance committee that comprises only independent non-executive directors. This committee will review and monitor potential conflicts of interest between the issuer, a subsidiary of the issuer or shareholders of the issuer on the one hand and any beneficiary of WVR on the other. The board of directors needs to consider the recommendations of the corporate governance committee fully and it needs to comply or explain. This is a requirement that we have strengthened after the consultation exercise in light of concerns expressed.

Enhanced disclosure requirements. The listed equity securities of an issuer with a WVR structure must have a stock name that ends with the stock marker 'W'. An issuer with a WVR structure must also include the warning 'A company controlled through weighted voting rights' on the front page of all listing documents, periodic financial reports, circulars, notifications and announcements. The issuer should describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders prominently in its listing documents and periodic financial reports. And an issuer with a WVR structure must also identify the beneficiaries of WVRs, disclose the impact of a potential conversion of WVR shares into ordinary shares on its share capital, and disclose all circumstances in which the WVRs attached to its shares will cease in its listing documents and in its interim and annual reports.

Event-based sunset clauses. The WVRs attached to a beneficiary's shares will cease upon transfer of the beneficial ownership of those shares or the control over the voting rights attached to them. The WVRs attached to beneficiaries' shares will also lapse permanently if a WVR beneficiary dies, ceases to be a director, or is deemed by the Exchange to be incapacitated for the purpose of performing his or her duties as a director, or is deemed to no longer meet the requirements of a director set out in the listing rules.

Protecting investors

Some in the investor community are concerned that, despite the safeguards highlighted above, there is still not enough protection for investors. This is particularly true in light of the increasing popularity of passive funds that invest in indices by default without consideration of share class structures. In fact, the IPO of a technology company in the US last year that offered shares with no voting rights at all triggered various index companies to launch consultations on the inclusion of WVR shares in their indices. By the way, such zero voting right WVR structure is not permitted in Hong Kong.

Now, market index companies have taken different approaches on this subject. FTSE Russell concluded that new constituents in their indices would be required to have no less than 5% of the company's aggregate voting rights owned by unrestricted shareholders. S&P Dow Jones announced that it would not allow companies with dual-class structures to be part of some of its high-profile indices, such as the S&P 500 Index. And the MSCI suggested that it would adjust the weights of stocks with WVR structures in their indices so as to reflect the unequal voting rights. These measures would to a certain extent mitigate the issue for passive index funds.

Another issue often raised by investors is the absence of a class-action regime in Hong Kong, which some believe would provide a key investor protection measure. Having said that, only a small number of respondents to the Exchange's consultation considered the introduction of a class-action regime to be a prerequisite for permitting the listing of WVR companies in our market.

> "enhanced corporate governance is an integral part of the safeguards in our expanded listing regime"

On the contrary, some market participants are concerned that there is a higher risk of frivolous cases being brought forward if a class-action regime was introduced in Hong Kong. I would also note that class-action cases in the US were most often brought in relation to the disclosure of information and not for the abuse of control that possibly arose under a WVR structure. In the UK, class action is limited to cases in the Competition Appeal Tribunal, a specialist judicial body whose function is to hear and decide cases involving competition or economic regulatory issues.

When it comes to the practice in Hong Kong, the courts have unfettered discretion under the existing rules to issue appropriate orders to try actions involving decisions made by the management of WVR companies. The court may, by order, consolidate or try two or more claims on the same occasion. Relevant court cases indicate that the court has discretion in deciding whether or not to consolidate the actions.

In addition, the court can handle proceedings involving the same interest of numerous persons through 'representative proceedings' when a plaintiff proposed to represent in the proceeding meets the threefold test of establishing 'a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs'.

The court is also empowered, on the application of the plaintiffs, to appoint a defendant to act as representative of the other defendants being sued. A judgment or order given in representative proceedings will be binding on all persons so represented. So this is quite close in a way to the effect of a class action.

A third issue sometimes raised by investors is the absence of a time-defined sunset clause for WVR beneficiaries in our listing regime. I would like to point out that the US and the UK do not have a requirement for compulsory sunset clauses. And there are also views in Hong Kong that a time-defined sunset clause may not be in the best interest of the company or its shareholders because it may trigger a change in control at a listed issuer at an arbitrary date in future. This could potentially create excessive uncertainty for shareholders and prospective investors as that date approaches. The Exchange has taken these various views into account and has come up with a set of event-based sunset provisions in order to provide a right balance in protecting investors and the WVR beneficiaries.

There are others who think that the current safeguards we have in place are too tight. Some suggest corporate beneficiaries of WVRs should be allowed. This is a very complex subject. And questions arise on whether there is appropriate ring-fencing for corporate WVR holders, better protection for investors against such 'perpetual' rights, the availability of a suitable sunset requirement, and other restrictions on the exercise of corporate WVR rights. The Stock Exchange of Hong Kong plans to launch a consultation later this year to further explore this option and we would welcome your comments and contributions.

Maintaining competitiveness and quality

In conclusion, we will continue to keep in view the global economic environment and conduct timely reviews of our listing regime, so as to maintain the competitiveness and quality of our market. Enhanced corporate governance is an integral part of the safeguards in our expanded listing regime, and we seek to achieve a proper balance between encouraging market evolution to meet development needs and maintaining market quality and investor protection.

This article is adapted from a speech by Mr Lau at the Speaker Luncheon of The Hong Kong Institute of Directors on 17 May 2018. Mr Lau will be the Guest of Honour at the Institute's upcoming Corporate Governance Conference 2018.

Board structures in Hong Kong, Germany and Japan – a governance perspective

This article looks at the experience of three jurisdictions with different board structures to assess what influence board structure has on governance outcomes.

While global business is becoming increasingly intertwined, due to historical and cultural reasons the basics of board structure are not harmonised but differ in different countries. The authors, who come from Hong Kong, Germany and Japan, explain the single-tier, dual-tier and hybrid board structures found in these jurisdictions, respectively, and the corresponding directors' roles and responsibilities thereto. The analysis will give directors an understanding of the considerations applicable to different board structures in these jurisdictions, as well as their specific roles in such environments, and it will shed some light on the elusive quest of which board structure is better for good governance.

Hong Kong: a single-tier board structure

In Hong Kong, the shareholders are collectively regarded as owners of a Hong Kong company and they appoint the directors (who act for the company but not any individual shareholder in general). Aside from the requirement for directors to be aged over 18 and above, for there to be at least one natural person director for a privately held company and for all directors to be natural persons for listed companies, there is little in terms of qualification requirements for the appointment as directors to a Hong Kong company. The board structure may therefore be said to be flexible in Hong Kong, albeit with a requisite degree of personal responsibility given that a company with only corporate directors is no longer permitted, following enactment of the new Companies Ordinance (2014), as a measure of good governance.

As Hong Kong adopts the single-tier board structure (as with most common law jurisdictions including Australia, Singapore, the UK and the US), all directors belong to one board. This structure is often seen as typical for a 'shareholder-driven' governance system, especially in the UK and the US. While in practice certain directors can be designated as independent, non-executive or executive directors, or known by any other titles, they remain indistinguishable in terms of their responsibilities. For example, listed companies must have at least one third (and not less than three) of their directors as independent non-executive directors on the board. But the imposition of the independence requirements does not distinguish the accountability of the director from any other directors.

The major function of the board is to oversee the execution of company strategy, while the shareholders, subject to the constitutional documents, perform an overall empowerment and monitoring role over the board of directors for the interests of shareholders collectively. As such, the power of appointments, except for filling in casual vacancies at the board of directors, vests with the shareholders' meeting. This board system works well, as the roles and responsibilities are well defined under the constitutional documents and the Companies Ordinance. With the prevalence of family and Chinese state ownership of major listed companies, concentrated ownership means that many boards reflect the interests of these major shareholders. Research on the topic of concentrated ownership has shown that, because of the long-term views adopted by the company and its management, minority shareholder investment returns do not necessarily suffer and at times can be higher than diversified ownership companies.

All directors owe the same duties to the company to which they are appointed. That is, they must consider the best interests of the company in their dealings for the company to a standard commensurate with what a reasonable director in their position would do, or in the case of specialised directors with higher knowledge, to a standard commensurate with the skills and knowledge they possess. In short, directors have a high degree of

Highlights

- the dual-tier board system separates the two very different functions of boards (managing the business, and monitoring and supervising that management function) into two different boards
- collective responsibility of directors irrespective of their specific status or function is a feature common to both single-tier and dual-tier boards
- in all three jurisdictions reviewed, there has been an increasing emphasis on the need for independent directors

responsibility and cannot hide under any title given to them. Further, at law there are limitations to indemnities, ratification and directors' and officers' insurance that can be purchased to cover directors' exposures to personal liabilities.

This means that directors must be well versed in law and good governance practices as risk mitigation prior to taking any appointments as directors for Hong Kong companies, especially listed companies. There are additional obligations imposed under Hong Kong's listing rules and securities law, and the Securities and Futures Commission (SFC) is taking a front-loaded and direct enforcement approach against directors' misfeasance, including breaches of directors' duties. With the possibility of shareholder derivative actions under the new Companies Ordinance and the recent stance of the SFC towards listed issuers, the authors would rank director duties and responsibilities as serious.

Germany: a dual-tier board structure

In Germany, shareholders are collectively regarded as owners of a company. Germany adopts a dual-tier board structure for stock corporations, known as Aktiengesellschaft (AG). Countries with similar dual structures include China, Indonesia, Russia and South Africa. In addition to the powers reserved to the shareholders' meeting, the day-to-day powers in a German AG are split between an executive board or management board (Vorstand) and a supervisory board (Aufsichtsrat). The latter is appointed by the shareholders (except for the employee representatives therein) – a structure often seen as a prototype of stakeholder orientation. No person (for example the CEO or CFO) can be a member of both the management and supervisory boards – with the management board members being roughly equivalent to the executive directors, and the supervisory board members similar to non-executive directors. There are no independent directors required for either of the boards.

The management board consists of at least one member. It has the role to independently manage and represent the company. It has full responsibility for the day-to-day business and its powers are only restricted by existing law, the Articles of Association and rules of procedure. Its members are jointly responsible for the management of the company. Even when they are assigned specific functions or business sectors, each member of the management board remains accountable for the management of the entire company. Management board members have to exercise general control in the interest of the company, including the duty to also inquire in areas assigned to colleagues (for example, the CEO). They cannot excuse themselves by purely focusing on their assigned duties. Also, the management board's authority as representative of the company towards third parties cannot be limited. Specifically, its members cannot be given any direct instructions by shareholders except for certain consents required for matters like mergers and acquisitions and budgets through the supervisory board where the shareholders have an influence.

The supervisory board, with a minimum of three members, appoints, supervises and advises the management board. The supervisory powers include supervision over financial statements, management actions and reports, audit matters and the calling for extraordinary shareholder meetings where required. Also, investments over certain thresholds typically require supervisory board approval. The board's work can be organised in committees, and typically large companies would at least have a nomination and an audit committee. All supervisory board members are fully responsible for committee acts and decisions whether they are committee members or not. The supervisory board also represents the company in all legal issues against the management board, but it otherwise does not take on a representative role. For example, the chairman of the supervisory board of a German AG will not directly engage with investors – this is left to the management board members, normally the CEO and CFO.

There are no specific requirements regarding the qualifications and selection of management board members beyond their ability to observe the duties of care and loyalty of a diligent and prudent business person. Under Germany's 'business judgement rule', decisions made by the management board shall be for the benefit of the company. For the supervisory board, a proportion of one third or one half of the seats is allocated to employee, representatives for companies above 500 or above 2,000 employees, respectively, and special voting rights can be given to the chairman.

There is no statutory-backed corporate governance code for listed companies, as in Hong Kong. Rather, a voluntary and widely followed code for listed companies (Deutscher Corporate Governance Kodex) exists with the intention of convergence to wider international standards. Germany follows a 'comply or explain' regime where misrepresentations, including for disclosures made, can have legal consequences. Under German jurisdiction, liability towards the company, whether listed or not, is generally unrestricted and

> academic reviews and empirical studies find only limited evidence of convergence in governance across countries, and then mostly in form rather than substance

unlimited for both the management and supervisory board members, and current practice sees more and more activity in this field. The authors would therefore rank director duties and responsibilities as increasingly serious.

Japan: a hybrid board system

In Japan a joint-stock company, known as kabushiki kaisha (KK), is the most common type of corporate form. While there are varieties of governance structures available for KK, all types of KK must have a shareholders' meeting and at least one director. The directors are appointed by the shareholders' meeting. All directors must be natural persons, and apart from certain limited disqualification causes (for example having a criminal record), there are no statutory requirements relating to director qualifications, while all directors of a KK can be foreign nationals or residents. Each director owes the duty of care as a good manager and the duty of loyalty to the company, and is liable to the company for damages caused by its breach thereof, with the business judgment rule being applicable. The liability of non-executive directors may be limited by a contract with the company.

All large public companies must have a board of directors consisting of at least three directors, out of which the board must appoint a representative director who represents the company. The role of the board of directors (of the traditional model) stipulated by law is to make decisions on business execution and to monitor the execution of business (both management and monitoring roles), while the execution of business itself is effected by the representative director and other executive directors appointed by the board of directors. Traditionally, it has been typical for Japanese companies to have most members of the board as executive directors usually internally promoted from the employees, which makes it more of a management-focused board rather than one focused on monitoring. In order mainly to strengthen the monitoring and supervisory role of the board, new rules requiring external or independent directors, along with the new board structures stated below, have been introduced in recent years.

In contrast to Hong Kong and Germany, Japan provides multiple options for the board structure, and for large public companies there are now three options available for the board:

1. the board of statutory auditors model
2. the three committees model, and
3. the audit and supervisory committee model.

The ratio of each model among listed companies is: (1) 79.8%, (2) 2%, and (3) 18.2%, according to Tokyo Stock Exchange (TSE) research (see Tokyo Stock Exchange Listed Companies White Paper on Corporate Governance 2017, available online at: www.jpx.co.jp/english/news/1020/b5b4pj000001nivy-att/2017.pdf).

The board of directors with the statutory auditors (kansayaku) model is the traditional and most common structure for large public companies. This model requires, in addition to the board of

directors, that there be a board of statutory auditors. The board of statutory auditors consists of three or more statutory auditors appointed by the shareholders' meeting, of which more than half must be external statutory auditors. Although there are two boards, this is quite different from the German dual-tier board structure. The major role of the statutory auditors is to audit the performance of the directors, covering both business and financial auditing, and each statutory auditor is to perform the role independently. They must report to the shareholders' meeting on the outcome of the audit, while they have the right to investigate the company's business and assets and must attend the board of directors' meetings and express their opinion when necessary. If the statutory auditors find a violation of law or the articles of incorporation by the directors, they must report it to the board of directors and may seek a court order to stop it if such violation is likely to cause significant damage to the company. Unlike the German supervisory board, the statutory auditors do not have rights to appoint or remove the representative and other executive directors.

The board of directors with the three committees model was introduced in 2003. This requires the nomination, audit and remuneration committees under the board of directors to have three or more directors, of whom more than half must be external directors. Under this model, the execution of business is carried out by executive officers appointed by the board and the main role of the board is monitoring their performance. However, unlike a typical supervisory board in other jurisdictions (for example Germany), this model allows the directors to be appointed as the executive officers concurrently. Only a small number of listed companies have adopted this model (around 2%). A major reason is said to be the reluctance to include external directors' significant involvement in the nomination and remuneration of the directors under this model.

The final model of the board of directors is the audit and supervisory committee model, introduced in 2015. This requires an audit and supervisory committee consisting of three or more non-executive directors, of whom more than half must be external directors. The role of the committee is similar to that of the statutory auditors, except that it is also required to give its opinion on the nomination, removal and remuneration of the non-member directors and may express this opinion at the shareholders' meeting. This model allows the board to delegate a significant portion of its decision-making to the representative and other executive directors for more timely and efficient decision-making, and to focus more on monitoring and supervising thereof, which is said to be one of the major reasons for its status as the second most popular model and is the incentive to adopt this model over the conventional model.

As to the external director requirement, a statutory 'comply or explain' rule was introduced in 2015, which requires a listed company without any external director to explain the reason for this. Additionally, the TSE rule requires a listed company to have more than one independent director or statutory auditor and, with the introduction of the corporate governance code in 2015, a company listed in the first or the second section of TSE is required to explain the reason if it does not have more than two independent external directors. The scope of 'independent' by definition is more limited than that of 'external'.

Conclusion: contextual models

While it is often argued that the cross-border application of corporate governance requirements drives much of the convergence visible today, the authors offer a different perspective. Although there is indeed a substantial development of both regulatory frameworks and practices going on, different backgrounds seem to shape the respective paths taken by different jurisdictions. The structure of boards in different regions is a mere reflection of this.

Thus, it is no surprise that academic reviews and empirical studies find only limited evidence of convergence in governance across countries, and then mostly in form rather than substance. Still, some forces behind the development of corporate governance seem the same – such as a quest for greater governance efficiency and legitimacy towards capital markets. This complex and dynamic environment makes the role of the director both challenging and interesting – and it should ensure that studying cross-country governance will remain a captivating and instructive field.

Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research
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Lei Shing Hong Ltd

CHARTERED SECRETARIES 特許秘書

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The roles of company secretaries have evolved from performing only compliance and administrative functions to having a much more strategic and deliberative role as an organisation's governance advisor. The level of responsibility calls for a thorough knowledge of the business of the organisation and of the laws, rules and regulations that govern its activities. It also requires astute judgment and considerable confidence.

HKICS is pleased to have primarily Mrs April Chan, Past President and Chairman of Technical Consultation Panel of the Institute and Inaugural President of Corporate Secretaries International Association Limited (CSIA), to present a series of practical workshops to facilitate company secretarial and governance professionals at their various stages of careers to appreciate the dynamic and evolving roles of company secretaries. The workshops comprise four parts with 14 modules (details attached) and each module will be conducted in small interactive groups. Applicants are free to choose those modules which are of interest to them to attend.

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New capital raising rules

Herbert Smith Freehills LLP reviews the Hong Kong Stock Exchange's new regulatory framework for capital raisings by listed companies.

Hong Kong's listing rules are to be amended from Tuesday 3 July 2018 to enhance the regulatory framework for capital raisings by listed issuers.

The rule changes target highly dilutive capital raisings by disallowing rights issues, open offers and placings under specific mandates which would result in a material value dilution of 25% or more (individually or cumulatively over a rolling 12-month period) unless exceptional circumstances exist. Placings of warrants under a general mandate will be disallowed. The use of general mandates for the placing of convertible securities will only be permitted where the initial conversion price is no less than the benchmarked price of the shares at the time of the placing.

The Stock Exchange is also implementing a number of changes to the regime for rights issues and open offers to ensure fair and equal treatment for all shareholders. These include removing the existing exemption from the connected transactions regime for connected persons underwriting a rights issue or open offer and changes to the underwriting requirements.

The listing rule changes, summarised in more detail below, have been made to address regulatory concerns about certain transactions by listed companies where the Securities and Futures Commission and the Stock Exchange have questioned whether the transactions were fair to minority shareholders or may have adversely affected the orderly market for securities trading.

Summary of the key changes to the listing rules

Below is a summary of the key changes to the listing rules which will become effective on 3 July 2018.

Restrictions on rights issues, open offers and specific mandate placings

The listing rules will be amended to add a new Rule 7.25B which restricts rights issues, open offers and placings under a specific mandate which would result in a 'theoretical dilution effect' of 25% or more. The theoretical dilution effect is defined as the difference between the 'theoretical diluted price' and the 'benchmarked price' of the shares.

- 'Theoretical diluted price' means the sum of (i) the issuer's total market capitalisation (by reference to the 'benchmarked price' and the number of issued shares immediately before the issue), and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.
- 'Benchmarked price' means the higher of (i) the closing price on the date of the agreement involving the issue, and (ii) the average closing price in the five trading days immediately prior to the earlier of (1) the date of the announcement of the issue, (2) the date of the agreement involving the issue, and (3) the date on which the issue price is fixed.

Highlights

- the rule changes target highly dilutive capital raisings
- the changes are intended to ensure fair and equal treatment for all shareholders
- the changes are part of a general tightening of regulation to maintain the quality and integrity of the Hong Kong market

> the Stock Exchange may be prepared to waive the restriction where there are exceptional circumstances, for instance if the issue is part of a rescue proposal for a company in financial difficulties

In calculating the theoretical discount effect, an issuer must aggregate any other rights issues, open offers or placings under a specific mandate announced within the 12 months prior the date of the announcement of the proposed issue (or prior to such 12-month period if dealings in the shares announced earlier commenced within that 12-month period) together with any bonus securities, warrants or other convertible securities granted or to be granted in relation to such capital raisings. The Stock Exchange has issued FAQs to assist the market in calculating the cumulative dilution effect.

The Stock Exchange may be prepared to waive the restriction where there are exceptional circumstances, for instance if the issue is part of a rescue proposal for a company in financial difficulties.

Under a new Rule 7.27C, the Stock Exchange retains discretion to withhold approval for (or to impose additional requirements on) any rights issue, open offer or specific mandate placing not falling under Rule 7.27B if, in the Stock Exchange's opinion, the issue is inconsistent with the general principles in the listing rules (including that shareholders are treated fairly and equally). Rule 7.27C gives examples of a very large issue size or price discount as terms which may trigger this rule.

Rights issues and open offers no longer need to be fully underwritten

Existing Rules 7.19 and 7.24 will be amended to provide that rights issues and open offers, respectively, do not need to be underwritten. This will give greater flexibility to issuers where the underwriting costs associated with a rights issue or open offer are prohibitively high.

Where a rights issue or open offer is underwritten, the amended Rule 7.19 provides that the underwriters will need to be licensed under the Securities and Futures Ordinance (with a Type 1 licence and include as their ordinary business the underwriting of securities) and be independent from the issuer and its connected persons. This will help ensure that there are no conflicts of interest in structuring such transactions.

Alternatively, controlling or substantial shareholders can also act as underwriters (provided arrangements are made to compensate non-subscribing shareholders). However, as discussed in the next paragraph, the current exemption from the connected transactions regime for a connected person underwriting an open offer or rights issue is to be removed. Therefore, where a connected person is to act as underwriter or sub-underwriter, independent shareholder approval will be required, together with an independent financial advisers' opinion on the underwriting agreement.

Removal of existing exemption from the connected transaction regime for connected persons acting as an underwriter for a rights issue or open offer

Rule 14A.24(6) is to be amended to clarify that underwriting or sub-underwriting an issue of securities is included under the definition of 'transactions'. Rule 14A.92(2)(b), which currently provides the underwriting exemption from the connected transaction regime, is to be repealed. From 3 July 2018, where a controlling shareholder is to underwrite a rights issue or open offer, Chapter 14A will need to be complied with and an independent financial adviser appointed to opine on the terms of the arrangement. This reflects the Stock Exchange's view that connected persons are in a position to exercise significant influence over such capital raising exercises and could transfer benefit to themselves.

New requirement for minority shareholder approval for all open offers (save those conducted under a general mandate)

A new Rule 7.24A will be added which provides that minority shareholder approval is required for all open offers save for those where the securities will be issued under a general mandate. Rule 7.27A provides that minority shareholder approval requires the approval of shareholders excluding controlling shareholders, or where there are none, directors (excluding non-executive directors) and the chief executive, and their respective associates). The Stock Exchange also reserves the right to require certain other parties to abstain from voting.

This reflects the Stock Exchange's view that open offers provide less protection for shareholders compared to rights

issues. An independent financial adviser's opinion on the offer will be required.

Upgrade of existing optional arrangements for the disposal of unsubscribed shares in a rights issue or open offer to compulsory requirements
Currently Rule 7.21 and Rule 7.26A set out optional provisions for excess application arrangements or compensatory arrangements for rights issues and open offers, respectively, to deal with unsubscribed securities. From 3 July 2018, these rules will become mandatory requiring the issuer to either put in place excess application arrangements or compensatory arrangements. Where the issue is underwritten by a controlling or substantial shareholder, the listing rules are to be amended to require that the issuer must put in place compensatory arrangements.

Limits on the excess applications made by controlling shareholders and their associates
Rule 7.21(3)(b) and Rule 7.26A(3)(b) are to be added in respect of rights issues and open offers, respectively, to require that excess applications made by controlling shareholders and their associates are to be disregarded where they exceed the total number of shares offered less such persons' assured entitlements. This change will still allow a controlling shareholder to apply for all the shares not taken up by the other shareholders but will eliminate any perceived advantage the controlling shareholder may have from knowing subscription levels.

Restricting placings of warrants and convertible securities under a general mandate
A new Rule 13.36(7) will prohibit placings of warrants and options for cash consideration under a general mandate. After 3 July 2018, such transactions will require a specific mandate.

Additionally, new Rule 13.36(6) provides that an issuer will only be able to conduct a placing of convertible securities using a general mandate where the initial conversion price is no less than the benchmarked price (as defined in Rule 13.36(5)) of the underlying shares at the time of the placing. Rule 13.36(5) defines the benchmarked price to be the higher of (a) the closing price on the date of the relevant placing, and (b) the average closing price in the five days prior to the earlier of the announcement of the placing, the date of the placing agreement or the date on which the placing price is fixed. Where there is a price discount to the benchmarked price, a specific mandate will be required.

Mandatory disclosure of use of proceeds in interim and annual reports
Paragraph 11(8) of Appendix 16 of the listing rules will be amended to require disclosure of the use of proceeds in a company's interim and annual reports for all equity fundraisings with prescribed information required, including a detailed breakdown and description of the use of proceeds (or proposed use where any amount is unutilised) and whether the proceeds have been used in accordance with the originally announced intentions.

Restrictions on share subdivisions and bonus issues
A new Rule 13.64A will restrict share subdivisions and bonus issues if, following the adjustment, the company's share price would be less than HK$1 (based on the lowest daily closing price of the shares in the six-months prior to the announcement of the subdivision or bonus issue). This is to prevent companies from splitting shares to a level where the low share price is more susceptible to price volatility. The threshold of HK$1 was set following feedback on the consultation paper.

Other developments on the horizon

These changes are part of a general tightening of regulation in Hong Kong driven by recent regulatory concerns about questionable market conduct by certain listed companies and a desire to maintain the quality and integrity of the Hong Kong market. At the same time as it consulted on the above changes relating to capital raisings, the Stock Exchange also issued a consultation paper on proposed amendments to the delisting framework, which considers delisting criteria to facilitate the delisting of companies that have been suspended for a prolonged period of time.

The Stock Exchange has also indicated that further consultations will follow as the regulators take steps to maintain Hong Kong's market quality and reputation. Future consultation exercises will focus on other regulatory hot topics including backdoor listings and ongoing listing criteria.

Herbert Smith Freehills LLP

The Stock Exchange's consultation conclusions setting out the amended listing rules, together with relevant FAQs, are available on the Hong Kong Exchanges and Clearing Ltd website: www.hkex.com.hk.

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TCSP licensing: your questions answered

The Companies Registry responds to a number of questions raised by members of the Institute regarding Hong Kong's new trust and company service providers licensing regime.

On 1 March 2018, the Anti–Money Laundering and Counter–Terrorist Financing Ordinance (AMLO) (Cap 615) introduced a new requirement for trust and company service providers (TCSPs) to be licensed by the Registrar of Companies. This requirement, along with the requirement for TCSP licensees to comply with the statutory customer due diligence and record-keeping requirements, takes effect on 1 March 2018.

Members of the Institute have been in the forefront of the compliance efforts in relation to the new TCSP licensing regime. The Institute formally presented members' questions to the Companies Registry, and the Institute is grateful for the Companies Registry's responses given in this article.

The new TCSP licensing regime, together with the new requirement for Hong Kong private companies to create and retain a verified significant controllers register, is part of the government's effort to enhance Hong Kong's regulatory regime to combat money laundering and terrorist financing.

TCSP activities in group situations

Question 1

Listed and private groups sometimes have a sister company within the group to deal with administrative matters, including those matters falling within the definition of TCSP activities for the benefit of the group. Our members raised the question of whether such a sister company will be required to obtain a TCSP licence and be subject to the compliance requirements related thereto.

In this connection, the Companies Registry issued a FAQ stating that, where a sister company serves other members of the group on TCSP related activities, there may be a need for a TCSP licence, irrespective of whether there is payment or not to the sister company. This depends on whether the sister company is carrying on the TCSP activities 'by way of business'.

This FAQ has resulted in a lot of questions among our members as it appears to be answering a question with a further question of whether the TCSP activities is 'by way of business'. Our members note that a sister company is required to obtain a business registration certificate as it carries on business. But is carrying on business equivalent to carrying on TCSP activities by way of business? The Institute has previously sought clarification on this question.

If we take reference to the discussions under the FAQ relating to trust companies, it is stated that: 'According to case law, the question of whether the provision of a service amounts to the carrying on of a business is a question of fact and degree to be answered upon a consideration of all the circumstances. In considering whether a person is providing a trust or company service by way of business, it is relevant to take into account whether the person:

a. undertakes one or more of the activities of a TCSP

b. advertises or publicises his or her business activity or receives referrals from other companies

c. aims to make a profit when he or she carries out the activity, and

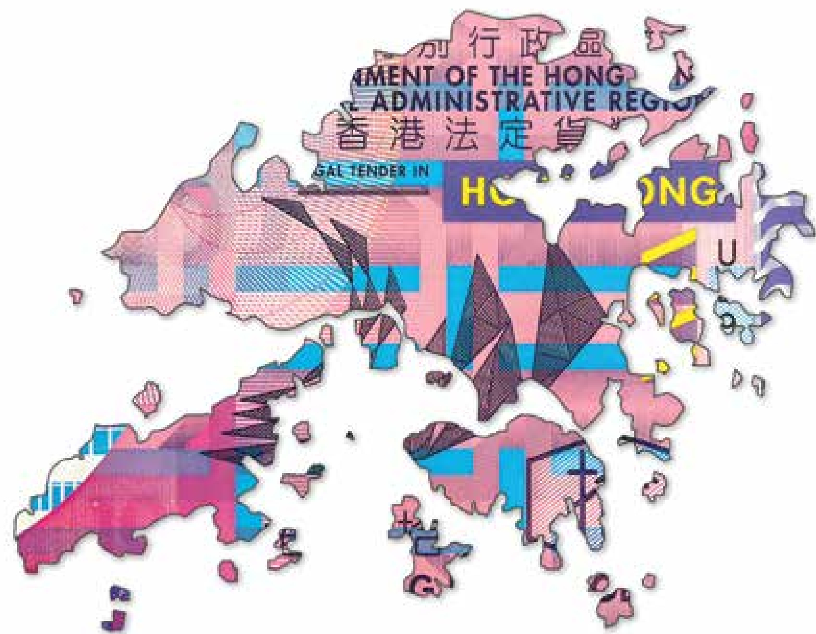
d. carries out the activity with reasonable or recognisable continuity.'

For a sister company (b) and (c) are not the dominant purposes, since the activities are for group support. We believe that there should be similar explanation of the case law and practical analysis for a sister company serving a group function. In this connection, Institute members have obtained opinions from leading law firms that, where a sister company fulfils TCSP-related group functions for the group and its affiliates, this could hardly be said to be 'by way of business'. In any event this is not intended to be the mischief addressed by the relevant legislation. While the advice to individual members may be fact dependent, what, for example, is the purpose of requiring an internal group service company to have a compliance

Highlights

- a person who carries on a trust or company service business in Hong Kong (unless exempted under Section 53B of the AMLO) is required to apply for a licence
- the Companies Registry confirms that a member of a group of companies that provides company services solely to other group members would not normally be required to apply for a TCSP licence
- as a process agent will provide a service address in Hong Kong to its client, the service provided by a process agent falls within the definition of 'trust or company service'

> the new TCSP licensing regime... is part of the government's effort to enhance Hong Kong's regulatory regime to combat money laundering and terrorist financing



officer/money laundering reporting officer within a group? We urge the Companies Registry to provide an explanation of the application of 'by way of business' and to provide a practical regulatory approach to this issue.

Companies Registry's response

In considering whether a person is providing a trust or company service by way of business, reference can be made to FAQ number 7 under the topic 'licensing requirements for trust or company service providers'. FAQ number 8 under the same topic gives an example of when a TCSP licence is not required. FAQ numbers 7 and 8 should be read together. As regards your comments, we generally agree that a member of a group of companies that provides company services solely to other group members would not normally be considered to be providing the services by way of business and would not normally be required to apply for a TCSP licence. FAQ number 8 will be revised to cover this aspect. If a company is in doubt, it should seek independent professional advice. It should be noted that the general position of FAQ number 8 does not apply to affiliates of a group of companies.

Question 2

The Companies Registry provides the following practical analysis for trust companies: 'If a company acts as the trustee for a trust, charges for the service, publicises the service and carries on the activity continuously, it is clear that the company is carrying on a business and needs to obtain a licence.' On the other hand, a licence is unlikely to be required if a person accepts a one-off appointment by a friend or relative to act as a trustee of a trust in a personal capacity and with no commercial gain. Does this extend to a trust company accepting a one-off appointment whether paid or unpaid? Does it also extend to a sister trust company serving a group function?

Companies Registry's response

A person who carries on a trust or company service business in Hong Kong is required to apply for a licence. Please also see our response to the previous question. Subject to the facts of each case, as the provision of trust services would usually involve third parties, a company that provides trust services to other companies within the same group is required to apply for a TCSP licence.

Question 3

If the main business of a company is investment holding, but it occasionally provides company secretarial services including provision of a named company secretary to former subsidiary companies with or without fees, please advise if such a company is required to obtain a licence as a company services provider.

Companies Registry's response

A person who carries on a trust or company service business in Hong Kong (unless exempted under Section 53B of the AMLO) is required to apply for a licence. The definition of 'trust or company service' is set out in Section 1 of Part 1 of Schedule 1 to the AMLO (Cap 615).

Question 4

Does a Hong Kong company need to obtain a licence for the provision of a registered office, business or correspondence address for its group companies on the basis that the office is leased by that Hong Kong company and used by the other group companies with or without any lease agreement and payment of rental charges?

Companies Registry's response
Please see the response to question 1.

Question 5
Does a Hong Kong company need a licence to provide services as a process agent for the service of process in any proceedings before the Hong Kong courts to another group company? Would it make a difference if the process agent does not get paid for its services?

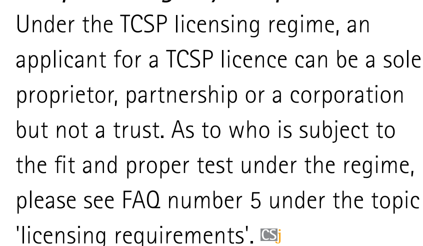
Companies Registry's response
Please see the response to question 1. The definition of 'trust or company service' is set out in Section 1 of Part 1 of Schedule 1 to the AMLO (Cap 615), and covers the provision of a registered office, business address, correspondence or administrative address for a corporation, partnership or any other legal person or legal arrangement. As a process agent will provide a service address in Hong Kong to its client, the service provided by a process agent falls within the definition of 'trust or company service'.

TCSP licensing

Question 6
For TCSPs that carry on business activities for external clients (and not within an internal group and its affiliates), there are usually a number of group companies that take up appointment with clients. There is no doubt that such companies should apply for a TCSP licence. But in many instances, there will also be persons and entities nominated to discharge the functions of, say, being nominee directors for a client. For persons who are employees, the FAQs make it clear that there is no need for the person to obtain a TCSP licence. However, there is confusion as to whether companies nominated by the group to take up aspects of the TCSP business would be required to obtain a TCSP licence. This is an important issue for TCSP businesses. There appears to be no difference between the situation of an employee of an internally nominated company assisting the group to perform TCSP services, and a TCSP providing external client services.

Companies Registry's response
If a company carries on a trust or company service business in Hong Kong, it is required to apply for a TCSP licence. Whether the company is appointed by another company to provide the trust or company services for any particular clients is not a relevant factor.

Question 7
Should the ultimate owner of a discretionary trust seek TCSP licensing and does the ultimate owner need to be approved under TCSP licensing?



Companies Registry's response
Under the TCSP licensing regime, an applicant for a TCSP licence can be a sole proprietor, partnership or a corporation but not a trust. As to who is subject to the fit and proper test under the regime, please see FAQ number 5 under the topic 'licensing requirements'.

The Companies Registry's responses to members' questions relating to the new significant controllers register requirement were published in last month's Technical Update article (CSj, May edition, pages 32–34). More information relating to the TCSP licensing requirements is available on the Companies Registry, 'Registry for Trust and Company Service Providers' website: www.tcsp.cr.gov.hk. The Companies Registry has also set up a dedicated hotline at: 3142 2822, to answer public enquiries.

Revised FAQ number 8

Following further representations, the Institute is grateful to the Companies Registry for the update to FAQ number 8 on 'Licensing requirements for trust or company service providers' (www.tcsp.cr.gov.hk/tcspls/portal/faq). The Companies Registry has added the following to the FAQ number 8 answer: '...where a member of a corporate group provides company services solely to other group members, it would not normally be considered to be providing the services by way of business and would not normally be required to apply for a TCSP licence.'

The original answer to this FAQ (now found in the first paragraph) is to be regarded as an example only, and the above quoted passage proposes the overall general proposition which governs group services for corporate group members.

The Institute would like to express gratitude to the Companies Registry for providing the updated FAQ. The Institute is also grateful to David Fu FCIS FCS(PE), Neil McNamara FCIS FCS, Edith Shih FCIS FCS(PE), President and Past Presidents of the Institute respectively, and Samantha Suen FCIS FCS(PE) and Mohan Datwani FCIS FCS(PE) of the Secretariat for their work on this important matter.

Professional Development

Seminars: April 2018

11 April
How to implement effective governance for charitable trusts in Hong Kong

Chair: *Philip Miller FCIS, Institute Professional Development Committee member and Technical Consultation Panel member, and Senior Assistant Company Secretary, The Hongkong and Shanghai Banking Corporation Ltd*
Speaker: *Stefano Mariani, Counsel, Deacons*

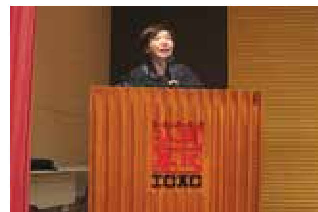
12 April
Essential corporate insolvency law and practice for business managers

Chair: *Frances Chan FCIS FCS, Institute Professional Services Panel member, and Founder and Director, K Leaders Business Consultants Ltd*
Speaker: *Ludwig Ng, Senior Partner, ONC Lawyers*

16 April
HK-listed, offshore-incorporated: shareholders at war

Chair: *Arthur Lee FCIS FCS, Institute Council member and Membership Committee member, and Assistant President & Company Secretary, CGN New Energy Holdings Co Ltd*
Speakers: *Timothy Haynes, Partner; Regina Fan, Counsel; and Stuart D'Addona, Senior Associate; Walkers*

17 April
'Ethics legacy' – roles of senior management in corporate governance



Speaker: *Mabel Chu, Senior Community Relations Officer, Hong Kong Business Ethics Development Centre, ICAC*

23 April
Pre-IPO trust planning and employee stock option plans (re-run)

Chair: *Ernest Lee FCIS FCS(PE), Institute Council member and Audit Committee Chairman, and Partner, Audit & Assurance, Deloitte China*
Speaker: *Karen Cheung, Director – Business Development, Corporate & Private Clients, Vistra Hong Kong*

24 April
Exclusive agreements and competition law: a case study

Chair: *Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical & Research*
Speaker: *Dr Sharon Pang, Principal, Deacons*

25 April

Structuring a private investment fund and the latest developments

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

Speakers: Penelope Shen, Partner, Kwok Yih & Chan, and Maggie Kwok, Partner, Harneys

26 April

SFC enforcement action against listed companies and their officers – the latest developments

Chair: Duffy Wong FCIS FCS BBS JP, Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong (former body of the Institute), and Consultant, Ho, Wong & Wong, Solicitors & Notaries, in association with Roedl & Partner, in association with Chu & Lau

Speakers: Timothy Loh, Managing Partner, Francis Comtois, Administrative Partner, and Greg Heaton, Senior Consultant, Timothy Loh LLP

Online CPD (e-CPD) seminars

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
20 June 2018	6.45pm–8.15pm	Company secretarial practical training series: bank accounts and fund flow in China (re-run)	1.5
21 June 2018	6.45pm–8.15pm	China outbound investment regulatory developments	1.5
26 June 2018	6.45pm–8.15pm	Corporate governance: are we behind the curve in Asia?	1.5
27 June 2018	6.45pm–8.15pm	What is good ESG reporting? What is in demand?	1.5
28 June 2018	4.00pm–5.30pm	How to avoid and handle employment disputes (re-run)	1.5

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

Membership

Members' activities highlights: April and May 2018

28 April
Community Service – beach cleaning

29 April
HKICS dragon boat team – dragon boat lovers races

3 May
Members' Networking – grooming for professionals (re-run)

10 May
Mentorship Programme – social gathering

18 May
Welcome drinks for graduates and associates

New graduate

Congratulations to our new graduate below.

Chong Chun Fung

Forthcoming membership activities

Date	Time	Event
19 June 2018	6.45pm–8.15pm	Members' Networking – happy workplace: stress management
14 July 2018	9.45am–12.30pm	Mentorship Training – master relationship through communication hints workshop (by invitation only)
4 and 11 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class A)
11 August 2018	9.45am–12.00pm	Community Service – volunteer training
18 and 25 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class B)

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

Membership/graduateship renewal for 2018/2019

The membership/graduateship renewal notice, together with the debit note, for the financial year 2018/2019 will be posted to members and graduates in July 2018. The Council, having taken into consideration the current financial resources of the Institute, has resolved to maintain the annual subscription fee for members and graduates at the same level as in 2013/2014. Members and graduates should settle the payment as soon as possible, but no later than Sunday 30 September 2018. Failure to pay by the deadline will constitute grounds for membership or graduateship removal.

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

Advocacy

President attends Labour Day Reception

On 27 April 2018, Institute President David Fu FCIS FCS(PE) attended a Labour Day Reception organised by the Office of the Secretary for Labour and Welfare of the Government of the Hong Kong SAR. The Reception was officiated by the Chief Executive of the Government of the Hong Kong SAR, Carrie Lam GBM GBS.

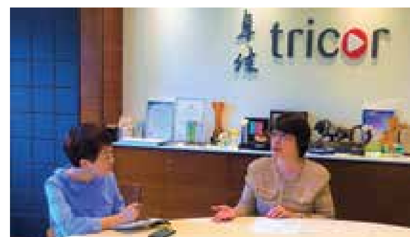
Academic Cocktail 2018

On 14 May 2018, the Institute held its Academic Cocktail – an annual event which aims to foster closer working relationships with representatives from local universities and educational institutions. A total of 65 guests attended the event. Institute President David Fu FCIS FCS(PE) thanked the tertiary institutions for their staunch support in promoting the Chartered Secretarial profession, and highlighted the Institute's strategic initiatives of the new qualifying programme for both the Chartered Secretary and the Chartered Governance Professional qualifications. Institute Treasurer and Education Committee Chairman Dr Eva Chan FCIS FCS(PE) also provided updates on upcoming activities from the Education & Examinations Department.

Advocacy (continued)

HKICS Past President interviewed by *Sing Tao Daily*

Institute Past President, the first-ever female HKICS Prize awardee, and the Chief Executive Officer – China & Hong Kong, Tricor Group, Natalia Seng FCIS FCS(PE), was interviewed by *Sing Tao Daily* on the impacts of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) since it came into effect on 1 March 2018. Cap 615 introduces a new licensing requirement for trust or company service providers (TCSPs) overseen by the Companies Registry (CR). An article relating to the interview was published in the A2 Main News section of the *Sing Tao Daily* on 8 May 2018.



At the interview

The Institute was one of the first organisations to set the standards of the anti-money laundering and counter-financing of terrorism (AML/CFT) for members on TCSPs regulation with the launch of its AML/CFT Charter initiative in 2016. The Institute will continue to work closely with CR in regard to the TCSPs and AML/CFT regulations.

For details of the interview and Institute's AML/CFT Charter, please visit the Institute's website: www.hkics.org.hk. For details of the CR's new licensing regime, please visit the CR's website: www.cr.gov.hk.

Nominations for the HKICS Prize 2018

Nominations are now open for the HKICS Prize 2018. This is an opportunity to recognise individuals who have made significant contributions to the Institute and the Chartered Secretarial profession during their careers. Members are invited to submit nominations. The nomination deadline is Saturday 29 September 2018.

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

HKICS Corporate Governance Week – mark your diary

2019 marks the 70th anniversary of the presence of ICSA in Hong Kong and the 25th anniversary of the establishment of the Institute. The Institute is organising a Corporate Governance Week (CG Week) from 8-15 September 2018, as a major event leading to next year's celebration. A series of activities, including: a Corporate Governance Paper Presentation Competition and Awards Presentation; ECPD seminars in Mainland China; the release of a research report on environmental, social and governance with CLP Holdings Ltd and KPMG China; the 11th biennial Corporate Governance Conference with corporate visits; and a masterclass by Professor King to Institute students in Hong Kong will be organised.

For details, please refer to the event flyer of the CG Week on page 43.

The HKICS 11th biennial Corporate Governance Conference

The Institute's 11th biennial Corporate Governance Conference (CGC 2018) will be held on 14 September 2018 at the Ballroom, JW Marriott Hotel, Hong Kong, with The Secretary for Financial Services and the Treasury of the Government of the HKSAR, The Honourable James Lau JP, as the Guest of Honour, and the Chairman of the International Integrated Reporting Council Professor Mervyn King as the Keynote Speaker, followed by site visits on 15 September 2018. CGC 2018, themed 'Corporate Governance: The New Horizon', brings together thought leaders from the corporate governance, legal, regulatory, risk and finance, and other fraternities, locally and internationally to share perspectives on corporate governance with the participants to deal with the challenges ahead. CGC 2018 is one of the key events organised by the Institute during its CG Week.

For details of the CGC 2018, please visit the Institute's website: www.hkics.org.hk.

Visit to HKUST

On 23 May 2018, Institute Past President and ICSA Senior Vice-President Edith Shih FCIS FCS(PE) led a delegation from the Institute comprising: Institute Chief Executive Samantha Suen FCIS FCS(PE); Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE); and Senior Manager of Professional Development Ken Yiu ACIS ACS(PE), to visit and discuss potential collaboration with The Hong Kong University of Science and Technology (HKUST). Parties to the discussions from HKUST comprised: Acting President Professor Wei Shyy; Vice-President for Institutional Advancement Adjunct Professor Sabrina Lin; Professor of the Department of Finance Roger King; and Assistant Professor of the Department of Accounting Allen Huang.

During the visit

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

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

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

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

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International Qualifying Scheme (IQS) examinations

June 2018 examination reminder – postponement application

Candidates who are absent from a scheduled IQS examination due to illness must submit a satisfactory medical certificate to apply for examination postponement. Such application must be submitted to the Institute within three calendar weeks from the end of the June examination, that is, by Friday 29 June 2018.

December 2018 examination schedule and enrolment

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

Policy – payment reminder

Studentship renewal

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

Exemption fees

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

Studentship

Studentship activities highlights: April and May 2018

26 April
The annual scholarship award ceremony at Hong Kong Shue Yan University

2 May
The scholarship and bursary donors' tea reception 2017–2018 at Hong Kong Baptist University

30 April
HKICS professional seminar at the Technological and Higher Education Institute of Hong Kong

3 May
HKICS professional seminar at The Open University of Hong Kong

CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries (HKICS) is proud to present:

Corporate Governance Week 2018

CG week
8–15 September 2018

Please attend and engage with aspiring talents, company secretaries, governance leaders and regulators on key corporate governance (CG) issues for new perspectives.

8 September:
CG Paper Competition, Presentation and Awards

12–14 September:
Enhanced Continuing Professional Development Seminars, Hohhot, Mainland China

13 September:
KPMG/CLP/HKICS ESG Research Report release

14 September:
Biennial Corporate Governance Conference (CGC) 'Corporate Governance: The New Horizon'

- Guest of Honour – The Hon James Lau, Secretary for Financial Services and the Treasury
- Keynote speaker - Prof Mervyn King – Chairman, International Integrated Reporting Council

15 September:
CGC Corporate Visits

15 September:
HKICS Students' Masterclass - Prof Mervyn King

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

www.hkics.org.hk

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

Studentship (continued)

Student Ambassadors Programme (SAP) attendance at annual general meetings

4 May
At CLP Holdings Ltd

10 May
At Swire Pacific Ltd

8 May
At Hutchison Telecommunications Hong Kong Holdings Ltd

17 May
At China Mobile Ltd

10 May
At CK Hutchison Holdings Ltd

Rewarding the Extraordinary

CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries Prize 2018

Call for Nominations

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

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

The nomination deadline is Saturday 29 September 2018.
Please visit www.hkics.org.hk or contact Louisa Lau at 2830 6008 or email to member@hkics.org.hk for details.

Please act now!

SFC concludes consultation on disclosure requirements for discretionary accounts

The Securities and Futures Commission (SFC) has released its consultation conclusions on proposed disclosure requirements for intermediaries providing discretionary account management services. The disclosure requirements, with clarifications detailed in the conclusions paper, will be implemented through amending the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct).

Under the proposed requirements, intermediaries providing discretionary account management services will be required to disclose benefits receivable from product issuers, as well as trading profits they make from products purchased from or sold to third parties for their clients. The requirements address potential conflicts of interest arising from incentives provided by product issuers.

'The new disclosure requirements enhance transparency whilst enabling investors to make better informed decisions,' said Julia Leung SBS, the SFC's Deputy Chief Executive Officer and Executive Director of Intermediaries. 'They also make it easier for investors to compare benefits that discretionary account managers will receive from product issuers,' she added.

The amendments to the Code of Conduct, set out in Appendix A to the conclusions paper, were gazetted on 25 May 2018 and will come into effect six months following gazettal. The SFC will publish frequently asked questions to provide further guidance to the industry.

The consultation conclusions are available on the SFC website: www.sfc.hk.

Exchange publishes proposed delisting and other rule amendments

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has published its conclusions from responses to its Consultation Paper on Delisting and Other Rule Amendments. It will implement the proposals with minor modifications in response to the comments received.

'The purpose of the rule amendments is to establish a framework to facilitate timely delisting of issuers that no longer meet our continuing listing criteria and provide certainty to the market on the delisting process,' said David Graham, HKEX's Chief Regulatory Officer and Head of Listing. 'We believe the amendments will encourage issuers to work towards resuming trading in their shares as soon as possible when trading has had to be suspended. We expect the number and duration of prolonged suspensions of trading in issuers' listed securities to decline,' he added.

Under the Main Board Listing Rules, the changes add a separate delisting criterion to allow the Exchange to delist an issuer after a trading suspension of 18 continuous months. The changes also allow the Exchange to:

1. publish a delisting notice stating its right to delist an issuer if the issuer fails to resume trading within the period specified in the notice, or

2. delist the issuer immediately in appropriate circumstances.

The changes also remove Practice Note 17, which sets out a three-stage delisting procedure for issuers without sufficient operations or assets that will no longer be needed after the new delisting process takes effect. Other rule amendments:

1. remove a bright line trading halt requirement where a major (or above) transaction has not been announced by an issuer, in which case a trading suspension may still be required if the transaction is inside information, and

2. expedite the process for the Exchange directing resumption of trading, with a view to keeping any trading suspension to a minimum.

The listing rule amendments will become effective on Wednesday 1 August 2018. The consultation conclusions are available on the HKEX website: www.hkex.com.hk.

Exchange reviews ESG disclosures

The Exchange has published the findings of its review of listed issuers' Environmental, Social and Governance (ESG) reports.

The review involved analysing the disclosures made by 400 randomly selected issuers with financial year-end dates of 31 December 2016, 31 March 2017 and 30 June 2017. The Exchange reports that overall the level of compliance with the ESG Guide was high, although the quality of reporting varied. At one end of the spectrum, the Exchange reports, there was some excellent reporting, both in terms of detail and clarity, while at the other end, there were some ESG reports that appeared to show that a 'box-ticking' approach had been adopted.

Findings of the review included those set out below.

- All sample issuers published their ESG reports within three months of publication of their annual reports.
- Over 80% of sample issuers complied with the disclosure requirements in nine of the 11 aspects, covered by the ESG Guide. There are a total of 11 aspects in the ESG Guide requiring general disclosure on a comply or explain basis of policies and, in some cases, information on compliance with the relevant laws and regulations that have a significant impact on the issuers, and 94% complied with seven aspects.
- 'Use of Resources' had the highest compliance rate, at 98%, whilst 'Product Responsibility' had the lowest, at 73%.

To further improve the quality of their ESG reports, and for issuers to benefit from the process of ESG reporting, issuers would do well to include the key information set out below.

- The issuer's or the board's commitment to ESG, management's approach to ESG and how they relate to the issuer's business.
- The board's evaluation and determination of ESG risks and how it ensures that appropriate and effective ESG risk management and internal control systems are in place.
- The process for stakeholder engagement, which is central to materiality assessment and enables the company and its directors to communicate with their stakeholders.

'As ESG reporting continues to develop, expectations will grow for issuers to better communicate ESG information. Going forward, we will continue to conduct periodic reviews of issuers' ESG reporting with the primary objective of helping to improve future reports so as to meet stakeholders' expectations,' said David Graham, HKEX's Chief Regulatory Officer and Head of Listing.

Issuers are reminded that the comply or explain requirement for the ESG Guide's Environmental Key Performance Indicators applies to financial years commencing on or after 1 January 2017.

The report, entitled 'Analysis of Environmental, Social and Governance Practice Disclosure in 2016/2017', is available on the HKEX website: www.hkex.com.hk.

Proposed amendments to the Securities and Futures (Professional Investor) Rules

The SFC has released consultation conclusions on proposed amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) to standardise the rules for prescribing professional investors. The amendments allow portfolios held in joint accounts with non-associates and in investment corporations wholly owned by an individual to count towards meeting the threshold to qualify as a professional investor. 'Portfolio' is defined in the PI Rules as a portfolio comprising securities, certificates of deposit issued by banks or money held by custodians for a person. The PI Rules define the term 'associate' as the spouse or any child of an individual.

The categories of professional investors will be expanded to include corporations which have investment holding as their principal business and are wholly owned by one or more professional investors,

as well as corporations which wholly own another corporation which is a qualified professional investor. In addition, alternative forms of evidence will be allowed to demonstrate qualification as a professional investor. These refer to public filings made under legal or regulatory requirements and certificates issued by custodians. Certificates issued by auditors or certified public accountants will be allowed for all professional investors.

'The changes to the rules for prescribing professional investors are in the best interest of the industry to ensure a level playing field and consistent application of the regulations,' said Julia Leung SBS, the SFC's Deputy Chief Executive Officer and Executive Director of Intermediaries. 'They will introduce consistency and flexibility and this will better serve the interests of both firms and their clients,' she added.

The proposed amendments have already been gazetted and will be submitted to the Legislative Council for negative vetting. Subject to the legislative process, the SFC expects the amended rules to come into effect on Friday 13 July 2018.

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

SFC publishes proposed OFC rules and code

The SFC has released consultation conclusions on the proposed Securities and Futures (Open-ended Fund Companies) Rules (OFC Rules) and Code on Open-ended Fund Companies (OFC Code), which set out detailed legal and regulatory requirements for the new open-ended fund company (OFC) structure. The Securities and Futures Ordinance was amended in 2016 to provide a legal framework for OFCs in Hong Kong and empowers the SFC to make subsidiary legislation and issue codes and guidelines in relation to the regulation of OFCs. The new OFC structure enables investment funds to be established in corporate form in Hong Kong, in addition to the current unit trust form.

After considering market feedback, the SFC will implement the proposals set out in the consultation paper (the proposals include requirements relating to an OFC's formation, its key operators, ongoing maintenance, termination and winding-up), with certain modifications and clarifications. These include streamlining the approval requirements for private OFCs and setting out a one-stop arrangement for the establishment, ongoing corporate filings and termination of OFCs.

'The introduction of a new corporate fund structure will enrich the choice of investment vehicles and facilitate the distribution of Hong Kong funds internationally,' said Ashley Alder JP, the SFC's Chief Executive Officer. 'We will continue to enhance market infrastructure to enable Hong Kong's sustained growth as a full-service international asset management centre and a preferred fund domicile.'

The OFC Rules and the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (The OFC Fees Regulation is made by the Secretary for Financial Services and the Treasury of the Government of the HKSAR and provides for the fees chargeable by the SFC and the Companies Registry in respect of OFCs), both subsidiary legislation under the Securities and Futures Ordinance, have been gazetted and will be submitted to the Legislative Council for negative vetting. Subject to the legislative process, the OFC regime is targeted to come into effect on Monday 30 July 2018.

The OFC Code will be gazetted following the completion of the legislative process for the OFC Rules and OFC Fees Regulation. It is intended that the Securities and Futures (Amendment) Ordinance 2016, OFC Rules, OFC Fees Regulation and OFC Code will have the same commencement date. The SFC will provide guidance to the industry on the implementation of the regime.

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

Hong Kong ESG Reporting Awards 2018

Hong Kong ESG Reporting Awards ("HERA") is a not-for-profit initiative, recognising ESG reporting leaders in Hong Kong and celebrating their best practices.

Aiming to build trust among stakeholders, HERA is open to both listed and non-listed companies in Hong Kong who have exceptional practices in sustainability reporting and is judged by an independent panel of judges with distinguished backgrounds.

Awards submission deadline :
31 July 2018

Announcement of finalists :
31 August 2018

Awards ceremony & cocktail reception :
20 September 2018

For awards submission, please visit www.hkesgawards.com or call +852 3990 0794.

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The programme has achieved recognition from a variety of professional bodies, allowing graduates to practice in the fields. For further details about the requirements, eligibility for professional recognition and accreditation please visit **http://www6.cityu.edu.hk/slw/academic/postgraduate_llmarbdr.html#LLMArbDR_03** for further details.

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The programme is offered in both full-time and combined modes, thus allowing students to have the flexibility of planning their studies as they deem fit. As of 2018, the School of Law is offering admission scholarships to potential students based on their merits. The online application for programme admission for 2018/19 has now commenced. Please refer to **http://www.sgs.cityu.edu.hk/programme/P41** for further details.

For more information on the programme structure, please visit **http://www.cityu.edu.hk/pg/201718/programme/LLMARBDR.htm** for further details.

Application Deadline for LLMArbDR Programme, intake 2018/19: 30 June 2018 (local)

Contact CityU Law School at

Tel: **(852) 3442 8008** Email: **lwgo@cityu.edu.hk** Website: **www.cityu.edu.hk/slw**