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September 2018

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



## The case for change

Adapting to a  
changing landscape

CGC 2018

Reporting on the SDGs

Edith Shih interview



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## September 2018

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

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

Circulation: 8,200

Annual subscription: HK\$2,600 (US\$340)

To subscribe call: (852) 3796 3060 or

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ISSN 1023-4128

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The Institute Secretariat offices in Hong Kong and Beijing will have the following special holiday arrangement during the Mid-Autumn Festival.

Hong Kong office – closed from 4.00pm on 24 September and closed on 25 September.

Beijing Representative office – closed on 24 September and resumes normal hours on 25 September.

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## The case for change

First of all, I would like to offer thanks to those of you who attended our Institute's members' forums held on 21 and 22 August and our general meeting held on 29 August. The general meeting came too late for the print deadline for this month's edition of *CSj*, but I will be addressing the result of the meeting in next month's President's Message.

The subject of my message this month will of course be our Institute's flagship event – our biennial Corporate Governance Conference (CGC) – which will be held at the JW Marriott Hotel on Friday 14 September. You can find the programme and speaker line-up on the conference website: [www.hkicscgc.com](http://www.hkicscgc.com). This year's CGC will be the culmination of our Corporate Governance Week, organised in the lead up to the Institute's double anniversary (next year marks the 70th anniversary of our local presence and 25th anniversary of becoming an independent local professional body).

Our 11th CGC comes at an unprecedented time of change and, under the theme 'Corporate Governance: The New Horizon', the forum will look at the implications of the many different trends and issues that will be shaping our lives and work in the years ahead. How will the accelerating pace of technological change, the so-called Industrial Revolution 4.0, impact

our profession? How can we get ahead of the curve on issues such as data privacy, compliance, cybersecurity, virtual shareholder meetings, board diversity, social media risk, or the need to transition to a low-carbon economy? I don't think anyone has easy answers to these questions but the one thing that is certain is that no change will not be an option.

This is nowhere more evident than in the changing expectations regarding corporate social responsibility – the subject of our cover story this month and a topic that will be discussed in the first session of the CGC. Companies today can no longer buy themselves an excellent reputation as worthy corporate citizens by donating money to build a new school or hospital. This type of passive corporate philanthropy has been surpassed by the new expectations on companies to be active collaborators in addressing complex challenges that would formerly have been regarded as outside the remit of a commercial entity, such as global poverty, inequality and climate change.

Our cover story this month makes the business case for embracing this new approach – apart from anything else, employees, customers and investors are all driving this change. Moreover, there happens to be a perfect framework ready and waiting for companies wishing to be actively involved in the global sustainable development agenda – the UN Sustainable Development Goals (SDGs). Few companies in Hong Kong are currently aligning their corporate sustainability strategies with the SDGs and our cover story offers practical advice on how to unlock the value of the SDGs.

Before I go, I would like to highlight for your attention another article in this

month's journal – the In Profile interview with Edith Shih, the newly elected President of the Institute of Chartered Secretaries and Administrators (ICSA International). Edith needs no introduction in this journal, having played a leading role in steering our Institute and profession here in Hong Kong over the last two decades, as both President and member of the Council of our Hong Kong Institute, among other positions.

I cannot think of a person better qualified to guide us through the important transition our Institute, both internationally and locally, is making. I urge all of you to read Edith's first letter to members on ICSA webiste: [www.icsaglobal.org](http://www.icsaglobal.org), regarding the proposed change of name of the international Institute at its upcoming Annual General Meeting (AGM) to be held in Toronto on 19 September. As Edith points out, the new name – 'The Chartered Governance Institute' – retains the historical reference to our Chartered status which has been a mark of quality that has defined us for over 125 years, but it also looks to the future – a future where our Institute embraces a wider membership base and is better able to promote the leading role our members play in improving governance standards around the world.

I look forward to working closely with Edith on taking forward the common strategic objectives of both our international and local Institutes. In the meantime, I urge you to read the AGM papers and supporting documents and cast your vote at the Toronto AGM for the future of our profession.

A handwritten signature in black ink, appearing to read 'David Fu'. The signature is fluid and cursive, written in a professional style.

David Fu FCIS FCS(PE)

# 迎接改变

首先，感谢会员出席8月21及22日的会员论坛及8月29日的会员大会。会员大会举行时，今期CSj月刊的付印期限已过，我将在下期会长的话报告大会结果。

今期向大家报告的，当然是公会的旗舰盛事——两年一度的企业管治研讨会(CGC)。今年的研讨会，将于9月14日在万豪酒店举行，当天程序和讲者阵容可于研讨会网页：[www.hkicscgc.com](http://www.hkicscgc.com)浏览。明年将是特许秘书及行政人员公会(ICSA)在香港成立70周年，以及香港特许秘书公会成立为本地独立专业组织25周年；我们准备举办企业管治周，为明年庆祝双周年的活动揭开序幕，而CGC将是企业管治周的压轴节目。

第11届CGC举行之际，正值多变之时。研讨会的主题是「企业管治新里程」，讨论多项即将改变我们未来的生活和工作的趋势和课题。科技发展急速，工业革命4.0对特许管治人员有何影响？在资料私隐、合规、网络安全、虚拟股东大会、董事会成员多元化、社交媒体风险、配合低碳经济发展等方面，我们如何驾驭种种变化？相信这些问题没有简单的答案，但可以肯定的是，一成不变并非出路。

最明显的例子，是人们对企业社会责任的期望有所改变。这是今期月刊封面故事的主题，也是CGC第一节讨论的课题。今天的企业，不能单靠捐款建设新学校或医院这些被动的善行，就买得良好企业公民的好名声。人们对企业有了新期望，希望他们积极合作处理复杂的挑战，例如全球贫穷、不平等、气候变化等，而这些课题，以往都不视为商业机构所应涉猎的范畴。

今期的封面故事，说明这个新方向商业理据。其中一个考虑因素，是雇员、客户和投资者都在促成这个转变。此外，目前有一个完备的框架——联合国可持续发展目标(SDGs)，可供有意积极参与推动全球可持续发展的公司采纳。目前以自身的可持续发展策略配合SDGs的香港公司不多，今期的封面故事提供实用的建议，帮助机构发挥SDGs的价值。

最后，我想一提今期月刊的另一篇文章，就是国际ICSA新当选会长施熙德律师的专访。施律师曾任公会会长及理事会成员，亦担任其他职务，过去20年一直带领公会及香港特许秘书专业的发展，相信在这里不必多作介绍。

要带领公会经历本地和国际层面的转变，我想不出比施律师更合适的人选了。我促请会员细阅施律师致会员于ICSA网站的第一封函件：[www.icsaglobal.org](http://www.icsaglobal.org)，内容关乎国际公会更改名称的建议，这建议将于国际公会9月19日在多伦多举行的周年会员大会中提呈。正如施律师所指，新名称「特许管治公会」既指出国际公会历史上的特许地位，保留125年来的品质标志，同时具备前瞻性，说明国际公会接纳更多不同范畴的会员，突显会员在提高全球管治标准方面的倡导角色。

我期待与施律师紧密合作，达致国际公会和本地公会的共同策略性目标。请大家参阅周年会员大会的文件和其他相关文件，在多伦多周年会员大会中，为特许管治专业人员的未来投票。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

# Unlocking the business value of the SDGs





Few Hong Kong companies have aligned their business strategy with the UN Sustainable Development Goals (SDGs). Pat Dwyer, Founder and Director, The Purpose Business, looks at how companies can overcome some of the constraints impeding businesses from unlocking the value of the SDGs.

They may be marking their third anniversary in 2018, but in Hong Kong the Sustainable Development Goals (aka the SDGs or Global Goals, see 'Online links' for the webpage of this and subsequent websites) rarely show up outside sustainability report launches and school campaigns. Designed to address the world's biggest challenges – poverty, inequality and climate change – the 17 SDGs have been adopted by 193 countries of the UN and are a blueprint for collaboration between government, business and civil society.

Globally, there are examples that show how alignment of business strategy with the SDGs helps deliver on a company's vision. Food conglomerate Pepsico's 'performance with purpose' agenda, for example, maps the company's 'product, planet and people' goals, as well as key performance indicators (KPIs) that allow them to make measurable and valuable contributions to goals shared by the global community. In Asia, companies like Vitasoy have done the same, mapping their own two fold strategy of 'making the right products and making products the right way' that directly maps to SDG 2 (Zero Hunger), SDG 3 (Good Health and Well-Being), and SDG 12 (Responsible Consumption and Production).

Businesses can do more beyond the strategy, however. For example, they can influence consumption habits, demand transparency in the supply chains, promote awareness and education,

and even support policy changes. Each of these themes showcase not just what industry can do alone but, more importantly, can create greater value for business by being part of a global development agenda. They not only fill a gap in the market but can introduce meaningful products and services, promote innovation, create more jobs and ensure the long-term viability of economies contributing to overall growth and development.

Why is it that very few Hong Kong companies have truly unlocked the value of the SDGs and made them part of business as usual? Many companies talk about their commitment to inclusive development and long-term sustainable growth, yet very few use the SDGs as a tool to make it a reality.

The challenge, perhaps, is getting past the 17 goals, 169 targets and more than 230 indicators. That's a lot to consider and while the SDGs are macro enough to be

applied to businesses as diverse as airlines, hospitals, media companies, hotel chains and even zoos, this generalist approach can make it difficult for companies in complex and cyclical businesses to identify with them.

In order to start, businesses should recognise that they cannot – and are not being asked to – act unilaterally. We've all heard of the importance of the big 'C' – collaboration. Everyone seems to claim it, but very few have invested in understanding what collaboration truly entails. It isn't just about going into a six-month project on gender diversity with two charities. Neither is it only about passively sponsoring a three-year initiative on integrated coastal management. True collaboration requires acknowledging other partners as equals – where non-profits are no longer just donee institutions. Rather, they can be regarded as local context experts, issue managers or research partners. Suppliers become business partners delivering on

## Highlights

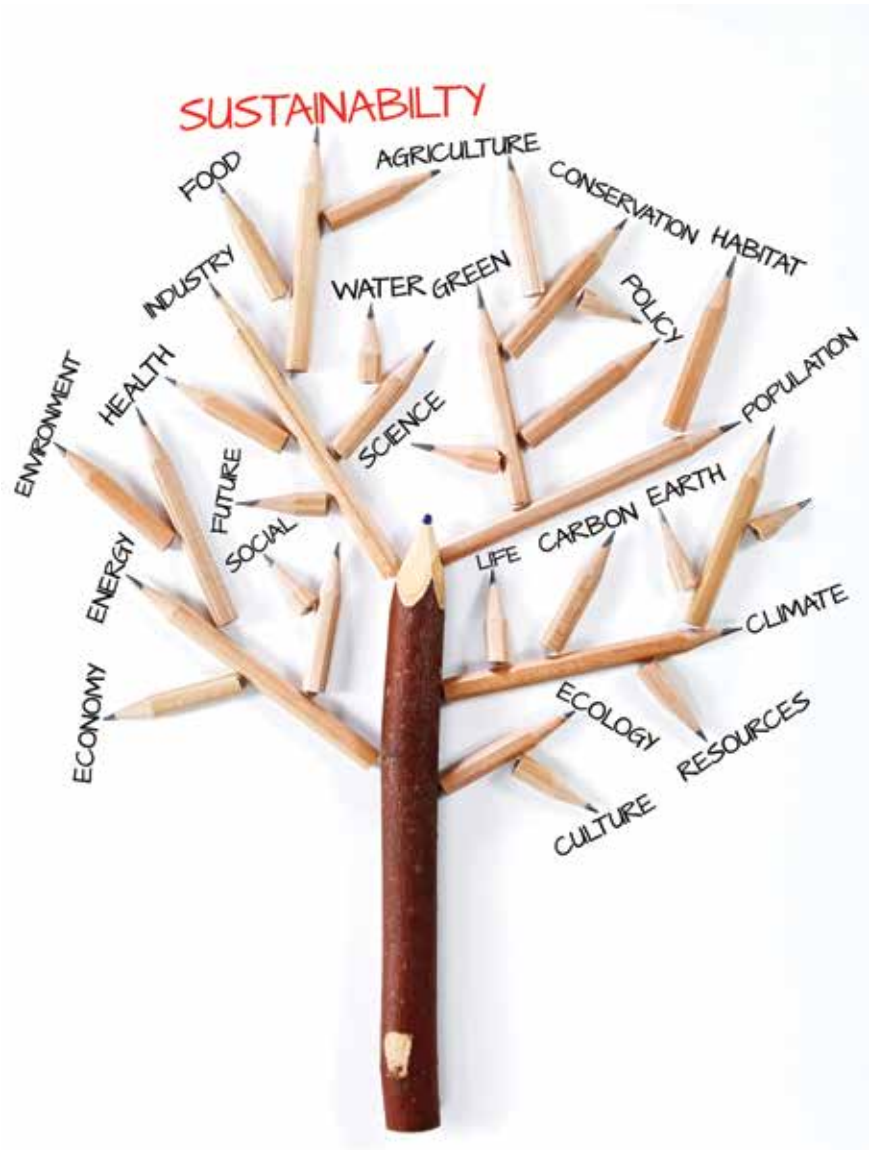
- the SDGs aim to address some of the world's most complex challenges of poverty, inequality and climate change
- using the SDGs as a framework for measuring environmental and social impacts drives transparency and engagement towards a global sustainable development agenda
- genuine commitment to the SDGs is demonstrated by a company's willingness to set science-based targets

“  
**alignment of business  
 strategy with the SDGs  
 helps deliver on a  
 company’s vision**  
 ”

shared goals of customer satisfaction and responsible consumption. Real collaboration begins with trust in the people we work with. So, why is it so hard?

In March, UN Global Compact and Accenture Strategy released a special edition of their *CEO Study* focusing on transforming partnerships for the SDGs. The report builds on the 2017 *CEO Study*, in which 95% of business leaders said they felt a personal responsibility to ensure their company has a core purpose and role in society, and 87% saw cross-sector collaboration and partnerships as the critical means to accelerate progress towards Agenda 2030 and the SDGs. Yet while there is earnest desire to work on sustainable development, the report shows that there are factors that impact the private sectors' ability to collaborate with other stakeholders in delivering on sustainable development. Businesses find that, internally, they do not have the capability or expertise to dedicate and manage partnerships, while pursuing collaboration entails a departure from policies and structures that have long been in place – impeding the intrapreneurial thinking that new management styles espouse.

Collaboration therefore becomes a viable option to mitigate limitations that the business community faces and still



deliver on the SDGs. The question is, how can companies get started?

**1. Find partners for leadership**

Companies should generally know what their most material issues are, especially when it comes to environmental and social impacts. These are the urgent and critical issues that are important to business operations and stakeholders. A food and beverages company may focus on water quality and accessibility, while an apparel brand may prioritise labour practices and responsible sourcing. Both companies should also seek to understand climate issues, as well as resilience and adaptation as they remain vulnerable to impacts on business operations. Businesses

have a responsibility to manage these issues well so that risks are reduced or mitigated. Equally, they should focus on identifying opportunities to enhance overall value through decent economic and environmental practices.

Let's look at some examples of how a business addresses these risks using internal capabilities, either through more responsible operations or through governance structures. The core business of China Light & Power (CLP) aims to support SDG 13 (Climate Action) and SDG 7 (Affordable and Clean Energy). Where there are gaps in delivering on the SDGs, companies may consider working with other institutions to augment their capabilities. CLP's

commitment to developing more women in engineering has led CLP India to work directly with National Power Training Institutes to increase hiring pools. Group wide, CLP has launched a network of female engineers from India, Australia, Mainland China and Hong Kong to meet regularly and work on continued career development and mentoring programmes. Since its launch, CLP now has 174 women in engineering positions.

**2. Commit to measuring impact**

Apart from the fact that the SDGs aim to address some of the world's most complex challenges of poverty, inequality and climate change, they are celebrated

because of the inclusive process it took to create them. It is a celebrated outcome for the UN, garnering insights from governments, business corporations and investors, civil society and citizens. As such, it calls on every single one of those four stakeholders to respond, and to ensure that it measures impact and reports on progress. Otherwise, how are we to know whether we have achieved our objectives in this 2030 Agenda for Sustainable Development?

Business thrives on measuring impact, reporting and tracking progress around a target. This is why companies set out quarterly goals, annual plans and 5-10

year strategies. Everyone in business uses some form of KPI to measure outcome, whether in the form of talent management systems, productivity indices or financial and sales targets.

Despite this, the *CEO Study* mentioned earlier indicates that '97% of the CEOs surveyed believe that, for multilateral organisations to better engage the private sector and enhance impact on the SDGs, they must more effectively measure, track and communicate value'. The challenge perhaps is for business to balance the way it discloses and reports progress, whether it includes good or bad news.





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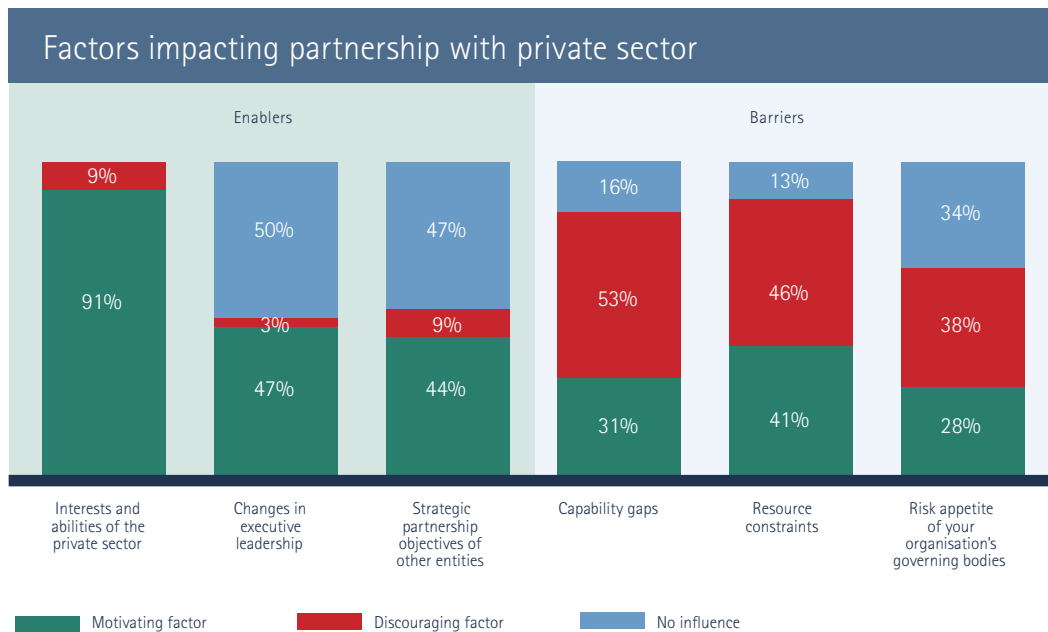
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Source: *The UN Global Compact and Accenture Strategy CEO Study*

If companies are truly committed to corporate governance as they state they are in their annual reports and company overview documents, then they have to uphold transparency to various stakeholders at all times. Shareholders expect accountability on the return on investment. Customers, business partners, employees and, increasingly, investors want to know how business operations are evolving so as to minimise environmental impacts, improve the quality of communities invested in and uphold human rights.

The UN Principles for Responsible Investment published a report on how investors are interested in the SDGs but have key constraints including 'inadequate risk-return profiles, lack of data and insufficient investee company transparency on environmental, social and governance (ESG) issues'. Beyond ESG data, which is the subject of most sustainability reports, there is a greater

need to demonstrate how these issues are being managed and governed.

We know that if you don't measure, you cannot manage. Using the SDGs as a framework for measuring impact drives transparency and engagement towards a global sustainable development agenda. The Sustainable Development Knowledge Platform provides a starting point for managing specific areas of impact across the SDGs. For example, Swire Pacific highlights its approach to investments to align with SDG 9 (Industry, Innovation and Infrastructure) where they invest in augmenting industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean technologies and industrial processes. The return on investment hinges on cost-efficiency savings, for example with Cathay Pacific's investment in fleet that are lighter, more cost-efficient and require less maintenance than previous aircraft, bringing a 25% improvement

in fuel efficiency. Cathay Pacific is also acquiring 20 alternative fuel aircraft over the next four years. This addition to the fleet supports the airline's commitment to achieving the goal of carbon neutral growth from 2020 onwards.

A common theme across all these best practices is the need to set targets. Targets, especially when stretched, stimulate internal engagement, innovative thinking, overall collaboration, new investments and, ultimately, performance. Leading companies are setting science-based targets, defined according to greater industry context, rather than what seems convenient or achievable internally. Globally, there are now 448 companies taking science-based climate action and about 124 who have approved science-based targets. For companies unsure where to start, the new Global Reporting Initiative and UN Global Compact report provides a three-step framework specifically to help embed the SDGs into existing business and reporting processes.

### 3. Share!

If collaboration is the goal, then communication is the key. Many organisations deliver on meaningful progress for social good but few tell their stories authentically and with purpose. Some companies claim to be wary of greenwashing accusations, and rightfully everyone should avoid that. However, with leadership comes responsibility – to share, communicate and inspire others to do the same.

An authentic narrative, based on issues that are material to your business and which demonstrates measurable progress and positive impact beyond the bottom line is key to successful communications. The SDGs provide an excellent opportunity and accessible framework to start meaningful conversations about how your company is faring in its ESG activities, and communicating authentically on these issues can grow a positive corporate reputation.

Yet impactful communications do not occur by accident or without effort. It takes a determined and considered approach, and this starts not with paying for individual campaigns, but rather by embedding this in your everyday work.

Start by educating employees on key issues that matter to them – whether that be single-use plastics or air quality. It is time to encourage learning and development teams and communications colleagues to be champions of key environmental and social issues that are important to them. At AES Vietnam, for example, employees consistently drive the highest standards of occupational health and safety practices to the point of helping the agencies and contractors they work with to adopt the same values-based mindset and culture. The company has a reputation for the highest standards in hygiene, as well as healthy and safe work environments, and for its diverse workforce.

Because of its international reach, the SDGs provide an engagement model that cuts across individuals, companies, organisations or government bodies to be part of a movement for positive change. They provide an international common language and framework that businesses can use to demonstrate their value throughout their value chain.

Since the launch of the SDGs, Huawei has taken them as a framework to demonstrate its contributions through the ICT sector. With a mission to 'bring digital to every

person, home and organisation for a fully connected, intelligent world', Huawei believes that ICT is a critical contributor and enabler of the SDGs, helping to quicken their reach and achievement, and has reported on how investment in ICT can affect countries' performance on the SDGs and reinforce the strong link between a country's capability to deliver on the SDGs and its performance on ICT.

### Conclusion

There is an opportunity for business to develop large-scale solutions to addressing the world's biggest development challenges. Hong Kong businesses have a role to play and by taking a closer look at unlocking the value of the SDGs, they can find themselves in a position to drive meaningful partnerships and overall leadership. This starts with a strong understanding of a company's most material environmental and social issues.

Having a good set of corporate governance practices is critical to ensure that transparency and accountability to all stakeholders is attained, especially when it comes to the way environmental and social risks are managed. At the same time, successful planning, implementation, measurement and authentic communications can only happen with strong governance. Strong governance means better, healthier businesses, and bringing the SDGs into your approach can help demonstrate your progress and contributions to a better, healthier world too.

### Pat Dwyer

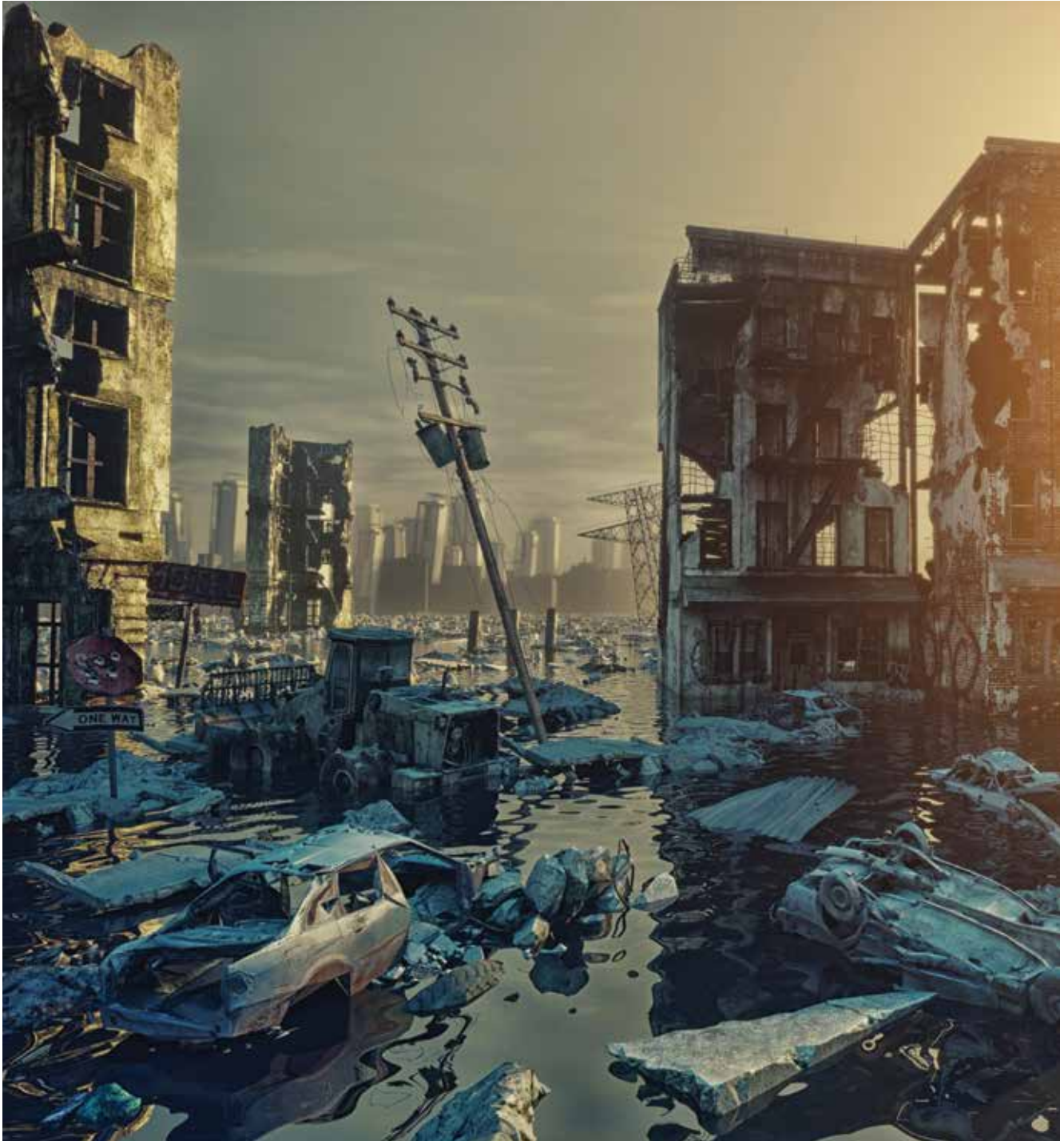
*Founder and Director, The Purpose Business*

*The author can be reached at: [pat@thepurposebusiness.com](mailto:pat@thepurposebusiness.com).*

### Online links

- The Global Goals for Sustainable Development ([www.globalgoals.org](http://www.globalgoals.org))
- The UN Global Compact and Accenture Strategy CEO Study ([www.accenture.com/hk-en/insight-un-global-compact-ceo-study](http://www.accenture.com/hk-en/insight-un-global-compact-ceo-study))
- Sustainable Development Knowledge Platform (<https://sustainabledevelopment.un.org>)
- Science Based Targets ([www.sciencebasedtargets.org](http://www.sciencebasedtargets.org))
- Integrating the Sustainable Development Goals into Corporate Reporting: A Practical Guide ([www.unglobalcompact.org/library/5628](http://www.unglobalcompact.org/library/5628))

# What if...?



In the second and final part of their article on climate-related risk, Dr Glenn Frommer and Theodora Thunder, Principals, The Sustainability Partnership, introduce and examine the role and value of scenario analysis in identifying, assessing and quantifying the risks of climate-related impacts.

The disclosure of an organisation's forward-looking assessments of climate-related issues is of growing importance for investors and other stakeholders to understand how vulnerable the individual organisation is to climate issue risks, and how such vulnerabilities are or would be addressed. The consequences to the bottom line are increasingly hard to ignore. The Task Force on Climate-related Financial Disclosures believes that scenario analysis provides a powerful and viable tool for companies to assess the potential business, strategic and financial implications of the risks and opportunities and to disclose them, as appropriate, in their financial reporting.

#### Why scenario analysis?

Scenario analysis is a well-established analytical methodology that helps to look at alternative future possibilities and to reflect on the plausibility of outcomes and the implications. It puts decision makers in a position to be proactive versus reactive to events that matter in the future of their organisations. However, scenarios do not predict the future nor are they a product, but rather are processes to map a more sustainable future. They are challenging to undertake but prove useful in illuminating the drivers of change. For example, global warming impact on business continuity is now a substantial component within risk portfolios, but with an uncertain trajectory of impacts and timing. By using scenario analysis to address the uncertainty, companies can estimate the range of consequences by looking at the possibilities of global warming moving

above or below the 2°C target set by the Paris Agreement as a basis for their risk assessment. By conducting analysis in this way, managers can achieve better appreciation of 'unquantifiable' risks when planning strategy. This is akin to 'looking into the crystal ball' or, in the words of former US Defence Secretary Donald Rumsfeld, working with 'known knowns', 'known unknowns' and, the worst case scenario, the 'unknown unknowns'.

Scenario analysis can help organisations:

- consider issues, such as climate change, which have possible outcomes that are highly uncertain
- enhance the strategic conversation about the future by considering, in a more structured manner, scenarios that are different from business-as-usual
- frame and assess the potential range of plausible business, strategic and financial impacts from climate change and the associated

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scenario analysis is about the decisions made today that create the company of tomorrow  
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management actions that may need to be considered, and

- identify markers that monitor the external environment and recognise when the environment is moving toward a different scenario state or a different stage along a scenario trajectory to prepare a robust business response.

Scenario analysis can also help investors in understanding the robustness of organisational strategies and financial plans and in comparing risks and opportunities across organisations.

#### Highlights

- scenario analysis can be a powerful tool for managing strategy in an uncertain environment
- scenario analysis puts decision makers in a position to be proactive to events that matter in the future of their organisations
- considering physical risk scenarios is particularly relevant for companies in Hong Kong

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#### Exposure to physical risks

While scenario analysis can be used to look at the future possibilities for both transitional and physical risks, the latter is currently more relevant to Hong Kong companies. Physical risks can be either acute or chronic. The former are short term and event driven, such as storm surges and extreme heat waves, whereas the latter are the effects of longer term shifts in climate patterns, such as sea level rises, drought or rising air temperatures.

Conducting physical risk scenarios are particularly relevant for organisations with long-lived and fixed assets; locations or operations in climate-sensitive regions such as coastal and flood zones; reliance on the availability of water; and/or having their value chains exposed to these situations or circumstances. Such risks in some way affect most Hong Kong industries and companies either directly or through their supply chain.

Physical risk scenarios generally identify extreme weather threats of moderate or higher risk and typically focus on the consequences over shorter time frames, such as the life cycle of their respective assets or liabilities. These can vary across sectors and organisations. For example, flooding and intense storm

surges in Hong Kong have a history of damaging buildings and infrastructure and disrupting operations, transport, city services and business continuity. The unknown risk factors linked to climate change are the intensity and frequency of such events. Atlantic hurricanes Sandy, Harvey, Irma and Maria are examples of the damage that is increasingly likely as storm intensity and frequency increases. Impacts of such magnitude are now firmly on exposed cities and corporate risk radars as far more likely to occur as global warming continues on its current trajectory.

#### Scenario building blocks

Conducting useful scenario analysis starts with asking the right questions around the identified risk. For example, are questions rooted in the future, not the past? What are the core drivers of each scenario? Often three to four scenarios are constructed, which propose outcomes ranging from business as usual to more severe risk developments. An impact-uncertainty matrix is helpful in mapping the forces that are most relevant across the different scenarios. Scenario narratives are then developed and internally assessed. Important to the process of building and narrating scenarios is the development of

monitorable progress indicators linked to each scenario. These can include both fixed markers, for example a monetary value exceeded, and overall trends such as global warming exceeding the 2°C threshold under the Paris Agreement. Observing these can indicate the particular scenario's trajectory and alert management to changes in the risk strategy programme.

With these developed scenarios, management can disclose with some degree of confidence how resilient, qualitatively or directionally, the organisation's strategy and financial plans may be against the range of impacts due to climate change related issues. Disclosure of this type of information helps investors, the financial community and other stakeholders understand the robustness of an organisation's forward-looking strategy and financial plans across a range of possible future scenarios. Such a narrative also enhances the internal understanding of operating in environments in which long-term thinking, flexibility and contingency planning are necessary. Presented with a range of possible future trajectories, management decisions are better informed.

#### Learning from others

While this article does not explore the 'how to' of scenario analysis, we refer readers to the actual process and value of scenario analysis in a relevant example for Hong Kong, illustrated in the recent Union of Concerned Scientists' report, *Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate* ([www.ucsusa.org](http://www.ucsusa.org)). This scenario analysis study estimates the risks for US coastal real estate from



sea level rise, and the challenges and choices communities and owners face now and in the decades to come. The study employs three scenarios – high, medium and low rises – to assess the growing risks and consequences to property owners, developers, financiers, communities and the economy from the disruptive flooding of the coastal real estate sectors due to sea level rise. The outcomes, even with best-case scenario, cite USD billions in asset value lost, unaffordable mortgages and even denial of insurance coverage, as well as outright loss of an asset. This is a chronic physical risk study that has parallel implications

and warnings for Hong Kong's own waterfront properties.

**Conclusion**

Properly used, scenario analysis can be a powerful tool for managing strategy in an uncertain environment and supporting more thoughtful and proactive business decisions. It brings insight to the potential futures in which an intervention will operate, what a company will need to do to succeed in each future and what needs to be done to make that success possible. Scenario analysis is about the decisions made today that create the company of tomorrow. By addressing rather than

minimising uncertainty, businesses can choose and direct a more sustainable pathway for their development.

**Dr Glenn Frommer and Theodora Thunder, Principals**

*The Sustainability Partnership*

*The Sustainability Partnership advises companies on the end-to-end management of environmental, social and governance issues and their reporting.*

*For further information contact: Thunder@streeter.com.hk.*



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Edith Shih FCIS FCS(PE), former President of The Hong Kong Institute of Chartered Secretaries, was elected International President of The Institute of Chartered Secretaries and Administrators in July this year. She talks to CSj about her aspirations in this new role.

*You are the first Asian female to become International President of The Institute of Chartered Secretaries and Administrators (ICSA). Do you think that's a sign of a more inclusive and more globally orientated approach at the ICSA?*

'There has in fact been one female president before, Joan Bingley from the UK, Republic of Ireland and Associated Territories (UKRIAT) division. She wrote to me on the day I became president. I was very appreciative of that gesture and will make arrangements to meet with her when I am in London. There has also been a male Asian president from Singapore. But, certainly, I am the first Chinese female to take up this role.

In many ways, I think I just happened to be in the right place at the right time. Things have changed since the reforms to the ICSA which brought in the proportionate voting rights in accordance with the number of members each division has. This gave the International Council a new life since the representation of the divisions became more equal.

The ICSA is an international institute. We have about 30,000 members in about 80 countries around the world, but we have not forgotten our roots in the UK. We are "Chartered" and that's why we are special. There is still an affinity with the UK since this reminds us of our heritage.'

*Could we discuss the key areas you would like focus on as International President?*

'In my first President's Report to Members

I set out five areas – diversity, inclusivity, relevance, quality and value. The first two, diversity and inclusivity, will involve reaching out to potential members in different sectors of governance or secretaryship. Most ICSA members are working for private sector companies, but there are some working for charities and NGOs, and some are working in specialist areas such as insurance.

Relevance is of course very important and that's exactly why we are becoming an institute for governance professionals – we are no longer only the company scribe. And in doing so, we have to continue to maintain the mark of quality our Institute stands for.

Regarding value, I want to ensure that the ICSA provides value for money. The previous two Councils and Presidents had to focus on issues such as harmonising the Institute, reviewing our qualifying programme, introducing the new Chartered Governance Professional (CGP) designation and Affiliated Membership,

and then seeking members' approval for these initiatives. Addressing these issues was a big achievement. While I will also be dealing with some of these issues, I would like to deal with some of the issues we didn't have time to attend to previously.

For example, we have a very small operating budget of around £335,000 per annum. This is made up of contributions from each of the divisions in accordance with their membership and studentship bases. I want to make sure that every cent is spent properly and I want to see how we can raise additional financing, for example by seeking sponsorship. Our recently published inaugural thought leadership paper and video, *21st Century Annual General Meeting*, was able to obtain some sponsorship funds.

I don't want the international Institute to compete with the divisions for sponsorship funds, but there could be a fair split of funds where the international Institute has worked together with a local

## Highlights

- The Institute of Chartered Secretaries and Administrators (ICSA) is an international institute with about 30,000 members in about 80 countries around the world but retains its heritage as a 'Chartered' body in the UK
- Edith Shih's agenda as the newly elected International President of ICSA will include boosting the diversity, inclusivity, relevance, quality and value of the Institute
- the focus on diversity and inclusivity will involve reaching out to potential members in different sectors of governance or secretaryship

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division on a project that creates revenue. We have a project lined up, for example, in collaboration with the Institute here in Hong Kong. We plan to organise our first corporate governance conference in China next year in March to coincide with our ICSA Council meeting in Beijing.

Bringing more transparency to the way the ICSA operates, particularly in relation to spending and funding, will be another focus. I want to make sure that I am not the only person to decide on spending; I want real involvement of the Vice-Presidents and members of the Executive Committee, or even Council if appropriate. There are currently two Vice-Presidents and I have already asked one of them to focus on the finances of the Institute. The other one will be looking after constitutional and administrative issues. I will try my very best to harmonise the interests of everyone so that we can really work together for the good of the entire Institute. To this end, I want to create more opportunities for communication between the President, the two Vice-Presidents and the Director General, and also with council members.'

*You mentioned the new CGP designation – can you update us*

*on the roll out of this designation globally?*

'For me governance is the umbrella that covers both the work of Chartered Secretaries and Governance Professionals, since the work of a Chartered Secretary is all about governance. That's the bigger picture. I have always had to explain to people who are not in this field what a Chartered Secretary or a company secretary does. I have to tell them I am not the personal secretary outside the boss's office. I believe calling ourselves "Governance Professionals" gives people a better idea of what we do, but I think the approach taken in Hong Kong, and I have to thank Samantha Suen, the Chief Executive of the Hong Kong Institute, for coming up with the idea of bundling the CGP and Chartered Secretary (CS) qualifications, is a good route to take.

So, going forward we don't have to worry about whether we are Chartered Secretaries or Governance Professionals – we are both. The regulators in Hong Kong are fully on side. When we went to talk to the Hong Kong Exchanges and Clearing Ltd and Securities and Futures Commission about these changes, they said "going forward, people are not going

to misunderstand you for what you are, or for what you are not".

*Have other ICSA divisions also adopted this route – bundling the CGP and CS designations?*

'The adoption of the CGP designation is not compulsory so different divisions have taken different approaches. UKRIAT, the largest division, Canada, Malaysia, Singapore and our division, have opted to bundle the CGP and CS designations. UKRIAT and Hong Kong together represent close to half of the total membership of ICSA. Australia and New Zealand have opted to offer separate CGP and CS designations. South Africa and Zimbabwe will not be offering the CGP for the time being, since they have a different system. In Zimbabwe, for example, Chartered Secretaries are very accounting-based.'

*Will the different routes taken by ICSA divisions cause portability problems for the qualification? If a member in Australia only has the CGP qualification, for example, would he or she be able to work in Hong Kong?*

'The ICSA CS and CGP qualifications are certainly transportable internationally. However, as rules and regulations are

different and there is no one-size-fits-all governance practice in most, if not all, jurisdictions, we have to ensure our members are conversant with the local laws, rules and regulations wherever they are. Accordingly, even now every division has its screening process. So if you come to Hong Kong from abroad, the Institute here would look at your qualification and might ask you to take a particular paper or two so that you will be comparable to members in Hong Kong. Other divisions do the same, otherwise we wouldn't be able to ensure that our international members carry the same knowledge base as the local members.'

*What impression did you get during the consultation forums on the CGP and the rebranding exercise with members in Hong Kong – do you think members here see their future as governance professionals?*

'Generally the new strategy has been well received. There were some members concerned about losing the Chartered Secretary identity and we recognise that concern. This is a process. For me these changes are about recognising our wider role since we are practising governance every day.

I would like to add that Hong Kong is one of the growing divisions of ICSA. We are very fortunate because we have a very strong stock exchange and capital market. Every new listed company requires a company secretary and companies getting listed, particularly where they have subsidiary companies, will very quickly need a team. Many companies small enough to use a service provider will grow big enough to also need a team. Professional and consulting firms such as trust or corporate service providers also require large numbers

of our members to provide advice and secretarial and governance support services to their clients.

So there is consistent demand for Chartered Secretaries in Hong Kong and people who come through the door to become a Chartered Secretary and Governance Professional will not have difficulty finding a job. I am forever hiring. In conjunction with our vibrant stock market, there is also the huge PRC market to consider. Actually, PRC companies now make up over 65% of the market capitalisation and over 80% of the turnover value of the Hong Kong stock market. Moreover, we should not only consider the H-share companies listed in Hong Kong – all companies in China would welcome good governance of course.'

*When will the new qualification programme be ready in Hong Kong?*

'The basic framework in Hong Kong has been agreed, namely, students will be taking examinations in seven papers – the basic four papers and then a further one CS and two CGP papers. However, the Hong Kong Institute would rather be fully prepared before launching the new qualification. You need to have the syllabus and the study materials with local variants in place, and you also need to have the examiners who will set the questions and the markers and reviewers. Some divisions might implement their new qualification programmes as early as 1 January next year; for Hong Kong the roll out is going to be January 2020.'

*Will there be local language variants in the qualification programmes adopted in different ICSA divisions?*

'When I was President of the Hong Kong Institute, we were considering offering the IQS examinations in Chinese

to eliminate the language barrier for potential students in the PRC. But since then we have had numerous PRC students passing the examinations in English at our examination centres in Beijing and Shanghai, and with flying colours. So for now we are continuing with the English-language examinations. Perhaps there is also a psychological advantage to this – it reinforces the fact that this is an international qualification. The students obtaining our qualification in this way are still relatively few, but the numbers are growing. Also, in conjunction with the Open University of Hong Kong and the East China University of Science and Technology, we are now offering a Master of Corporate Governance degree programme in Shanghai as a route into our profession.

Maybe in due course there will be local language variants of the qualifying programme of ICSA. This is relevant for potential students in other countries around the world of course, but it will be a major job. I think we ought to ensure the new qualifying programme is fully established and running well before we really look into that.'

*How similar will Hong Kong's qualifying programme be to that of UKRIAT?*

'In recent years, ICSA Council encourages divisions to collaborate whenever possible. This also conserves resources. As our laws and ways of looking at secretarial and governance practices are similar, UKRIAT, Canada, Malaysia, Singapore and Hong Kong will have very similar qualifying programmes. The examination system and paperwork in these five divisions will be more or less the same, except that each division will have variants in terms of the content of the syllabuses based on local rules, regulations and practices.'

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*You mentioned the potential change of name of the Hong Kong Institute – can you update us on this?*

‘There are proposals for a new name of the Hong Kong Institute, but this issue is still evolving. As you probably know, the International Institute has proposed to change its name to “The Chartered Governance Institute.” This will be voted on at the upcoming ICSA Annual General Meeting (AGM) in Toronto on 19 September. The Hong Kong/China division will be looking into a possible name change after the ICSA AGM.’

*You are the Chair of the ICSA Thought Leadership Committee – could we talk about this aspect of the ICSA’s work?*

‘The Committee was set up in late 2016. As I mentioned, the inaugural project (the 21st Century AGM paper) has now been published, together with our recent paper on shareholder engagement. We have also released a paper on artificial intelligence and how technology will affect Governance Professionals and Chartered Secretaries going forward. Technology will have an impact on many aspects of our work and we need to be training our members now

for the kind of work they will be doing in the years to come – our members will certainly need to be a lot more technology savvy. There will also be a minute-taking report that will probably be dispatched in the fourth quarter. We have other topics in the pipeline on diversity, board evaluation, board accountability and the newly revised UK corporate governance code.’

*Would you like to see the ICSA expand its geographical reach?*

‘I am currently doing a lot of outreach activities. Since I became International President on 1 July, I have been to Malaysia, South Africa and Zimbabwe. I am sure I will also be doing outreach work in the other divisions soon. I would also like to be able to look at territories that are beyond the nine divisions of the ICSA. We have been helping Taiwan to set up their own governance institute, for example, and their legislation now recognises the role of the company secretary. We have also had close links with our counterparts in Indonesia and Thailand!’

*How would you like to see the relationship going forward with the*

*Corporate Secretaries International Association (CSIA)?*

‘CSIA is an association, it is not a qualification awarding institute like ICSA, but it has a reach beyond the ICSA. It includes the US and India, for example. I would like to see ICSA and CSIA collaborating more going forward. There is a lot of work we could do together, such as lobbying the World Trade Organisation to give recognition to our qualification.’

*Edith Shih was interviewed by CSj Editor, Kieran Colvert.*

*In addition to her role as International President of ICSA, Edith Shih FCIS FCS(PE) is Executive Director and Company Secretary of CK Hutchison Holdings Ltd, Past President of HKICS and holds key roles in numerous panels and committees of public services, regulatory and professional bodies.*

*The publications mentioned in this article are available online at: [www.icsaglobal.org](http://www.icsaglobal.org).*



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# Treading in uncharted waters

Richard Leung JP, Barrister-at-Law, and Tommy Cheung, Barrister-at-Law, Des Voeux Chambers, give a brief introduction to Hong Kong's Competition Ordinance and assess what approach the courts in Hong Kong have taken so far in this largely uncharted area of law.

Hong Kong joined with over 130 jurisdictions around the world in having a cross-sector competition regime when the full provisions of the Competition Ordinance (Cap 619) (the Ordinance) came into force on 14 December 2015. The Ordinance regulates agreements that may harm competition (the First Conduct Rule) and abuse of substantial market power (the Second Conduct Rule) across the Hong Kong economy. Furthermore, merger control for the telecommunications industry was provided for in the Merger Rule.

This article first explains the major competition rules established by the Ordinance, the enforcement procedures for them and their significance to the business sector. It then offers an update on the local competition case law to assess what approach the Competition Tribunal and other courts in Hong Kong have taken so far in interpreting this new law.

## The competition regime

### 1. Starting point: anticompetitive conduct

There are three major competition rules under the Ordinance. The First Conduct Rule is set out in section 6(1) of the Ordinance. It prohibits an undertaking (any entity engaged in economic activity) from making or giving effect to (1) an agreement, or (2) a decision of the association of undertakings of which the undertaking itself is a member, or (3) a concerted practice if the object or effect of such agreement, decision or concerted practice is to prevent, restrict or distort competition in Hong Kong. The most common examples of anticompetitive agreements are cartels, where competitors agree to cooperate rather than to win customers via natural competition, by anticompetitive means such as price fixing, bid rigging, market sharing and output restriction.

The wording in the statute bears closer study. For example, the broad notion of

an 'agreement' includes any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings (section 2(1) of the Ordinance; Guideline on the First Conduct Rule, para 1.6). That means an undertaking may have agreed to an anticompetitive arrangement even where it failed to object sufficiently to the arrangement when attending a meeting leading to it. 'Concerted practice' is a form of cooperation, falling short of an agreement, where undertakings knowingly substitute practical cooperation for the risks of competition. Parallel behaviour by competitors in the market is not necessarily concerted practice, so long as there is no sufficiently precise and coherent proof to justify such behaviour being the result of concerted action by the undertakings.

The Second Conduct Rule is set out in section 21(1) of the Ordinance. It





prohibits an undertaking that has a very substantial degree of power in a market from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. In determining whether an undertaking has a substantial degree of market power, matters listed in section 21(3) of the Ordinance, amongst other relevant matters, should be considered. The listed matters include:

- the market share of the undertaking
- the undertaking's power to make pricing decisions, and
- barriers to entry to competitors into relevant markets.

Examples of abuse of substantial market power are predatory pricing, tying and bundling, refusal to deal and exclusive dealing.

The Merger Rule is established by schedule 7 and takes effect pursuant to section 162 of the Ordinance. It prevents an undertaking from directly or indirectly carrying out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong. Nevertheless, the rule only applies where an undertaking that holds a carrier licence within the meaning of the Telecommunications Ordinance (Cap 106) is involved in a merger.

## 2. Enforcement of the competition rules

The Ordinance establishes a dual administrative and judicial system. The administrative duties (for example the application of the competition rules, complaints, investigations and settlements) are carried out by the Competition Commission (the Commission), while the judicial enforcement of the rules is performed by the Competition Tribunal (the Tribunal) on the application by the Commission.

## 3. Why do the competition rules matter?

The significance of the competition rules is twofold. First, the rules have an impact on all of Hong Kong's major economic

sectors, including the construction, financial services, telecommunications and broadcasting, retail and transport sectors. Second, undertakings that contravene the rules may face serious consequences. They may face fines up to 10% of the turnover (revenue before deduction of expenses) during the year of contravention. If that contravention occurs for more than three years, the cap is at 10% of the turnover of the three years with the highest turnover (section 93(3) of the Ordinance). Moreover, persons involved in a contravention of the rules may face fines and the Tribunal may even disqualify the company directors of the involved undertakings (in the case of companies) for up to five years (sections 101–102 of the Ordinance).

### The case law

Since the operation of the Ordinance, the case authority on competition law in Hong Kong has been developing gradually. The first four written decisions covered below concern different procedural challenges arising in the first case before the Tribunal, and the jurisdiction of the Tribunal and the standard of evidence in a case before the Court of First Instance of the High Court (CFI).

## Highlights

- the Competition Tribunal has shown its readiness to provide extensive protection to confidentiality in competition law proceedings so as to encourage the development of competition law and potential complaints
- the Tribunal will not permit parties alleged to have committed anticompetitive conduct to avail themselves of procedural tactics to conceal evidence that may be detrimental to their case in substantive hearings
- the disclosure obligations applicable to the Competition Commission will be the standard applicable to the prosecution in criminal proceedings

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[the Taching Petroleum] case demonstrates the court’s unwillingness to give summary judgment whenever the defendant has a triable issue unless the plaintiff can give concrete evidence to prove otherwise

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### 1. The Nutanix case

Proceedings were brought against Nutanix Hong Kong Ltd (Nutanix), BT Hong Kong Ltd (BT) and three other companies over alleged bidrigging in a tender exercise conducted by the Hong Kong Young Women’s Christian Association (YWCA) in mid-2016 for the supply and installation of IT server system. Employees of Nutanix and BT were accused of inviting friends from the other respondent companies to submit dummy bids to meet the number of tenders required under YWCA’s procurement policy. The Commission sought pecuniary penalties and a declaration that each of the respondents had infringed the First Conduct Rule.

**Confidentiality protocols** – in *Competition Commission v Nutanix Hong Kong Ltd & Ors (CTEA 1/2017, 28 March 2017)*, the Commission made an application pursuant to rule 37(1) of the Competition Tribunal Rules (Cap 619D) (CTR) for confidential treatment of three categories of information contained in the Originating Notice of Application against the public, including:

1. the prices submitted in the tenders
2. the identities of the individuals employed or formerly employed by the YWCA and the respondents, and

3. the identity of the complainant.

The Tribunal granted the confidentiality treatment sought, having considered the factors as required under rule 37(6) CTR, including:

1. the public interest
2. legitimate business interests of the undertaking (for commercial information)
3. interests of the natural person (for information on private affairs of the person), and
4. the interests of justice.

In support of the decision, the Tribunal reasoned that tender prices are commercial information and not generally available in the public domain. It also recognised that the current and former employees were not parties to the proceedings and disclosure of their identities, at least before any findings were made, may cause them unnecessary harm. The identity of the complainant was also of little significance to these proceedings and unnecessary disclosure may become a disincentive for potential complainants.

**Further confidentiality protocols** – in *Competition Commission v Nutanix*

*Hong Kong Ltd & Ors (CTEA 1/2017, 12 June 2017)*, a decision was handed down pursuant to the first case management conference of the same case abovementioned. The principal issue was whether the order of a confidentiality protocol should direct that all documents produced in the context of the proceedings must be used in connection with the proceedings, or only those parts of the said produced documents which have been validly redacted should be subject to such restriction.

The Tribunal opted for the first alternative on the basis that the precise manner in which the confidentiality order interacts with any implied undertaking at common law was not wholly clear. It further opined that while the practice could be developed, a form of wording offering wider protection of confidentiality should be adopted at this stage, leaving collateral use subject to the parties’ consent or the direction of the Tribunal.

**Admissible evidence** – *Competition Commission v Nutanix Hong Kong Ltd & Ors (CTEA 1/2017, 3 October 2017)*, concerned applications by Nutanix and BT under section 45(2) of the Ordinance to strike out references to certain statements made by their employees from the Originating Notice of Application, and for associated orders to debar the Commission from adducing into evidence or relying upon all such statements in the substantive hearing. Section 45(2) of the Ordinance provides that no statement made by a person in explaining a document or answering a question is admissible against that person in proceedings unless it was adduced or asked by that person or on that person’s behalf.

The Tribunal dismissed their applications upon proper construction of the relevant statutes in light of their context, purpose and considerations of fairness and policy. The Tribunal observed that the employees, instead of Nutanix and BT, were the subjects of the notices issued under section 42 of the Ordinance by the Commission to require the employees to attend interviews and answer questions. Accordingly, the Tribunal decided that the employees were not giving answers 'on behalf of' Nutanix and BT and that records of interviews could not be excluded on the ground of self-incrimination.

**Disclosure obligations of the Commission** – the same decision (*Competition Commission v Nutanix Hong Kong Ltd & Ors (CTEA 1/2017, 3 October 2017)*) addressed the application for orders of discovery against the Commission as it refused to produce a number of classes of documents. The Tribunal decided that a generous ambit of disclosure should apply and that the standard applicable to the Commission would be the standard applicable to the prosecution in criminal proceedings, which would include disclosure of all relevant unused materials. Accordingly, documents, except those which are protected by informer privilege and without prejudice privilege, were ordered to be produced.

In passing, trial of this case has recently been completed. A judgment is expected to be delivered soon by the President of the Competition Tribunal. It will be interesting to watch out for the results of the first competition case ever tried in Hong Kong, as well as subsequent appeal(s) if any.

## 2. The Taching Petroleum case

In *Taching Petroleum Company Ltd v*

*Meyer Aluminium Ltd (HCA 1929/2017, 17 May 2018)*, the plaintiff sued the defendant for the price of diesel oil sold and delivered to the defendant. The only defence raised was based on alleged price collusion between the plaintiff and another fuel supplier, Shell. In particular, the defendant contended that the diesel oil supply contracts between the parties were tainted by illegality for breaching the First Conduct Rule and were therefore unenforceable. Moreover, the defendant counter-claimed for damages being the amount overcharged as a result of the collusion.

This decision concerns the plaintiff's application for summary judgment. The CFI first found the defendant's allegation of plaintiff's contravention of the First Conduct Rule not wholly without substance. The decision was based on:

1. the prima facie evidence of parallel pricing over a prolonged period between the plaintiff and Shell
2. the (as yet) uncontradicted evidence that the list price and fixed discount in the sales to the defendant being confidential information, and
3. the absence of any relevant evidence from the plaintiff to show that the defendant's express or implied assertions of fact were beyond belief or to set out or explain what had happened.

Having recognised there were triable issues in relation to the defendant's illegality defence, the CFI dismissed the plaintiff's application and directed the defendant's allegation to be transferred to the Tribunal pursuant to section 113(3) of the Ordinance.

### Key takeaways from the decisions

The first two decisions of the Nutanix case show the Tribunal's readiness to provide extensive protection to confidentiality in competition law proceedings so as to encourage the development of competition law and potential complaints while preventing undue prejudice to private commercial and personal information.

The decision relating to the application by Nutanix and BT to strike out references to certain statements made by their employees signifies the Tribunal's refusal to allow parties alleged to have committed anticompetitive conduct to avail themselves of procedural tactics to conceal evidence that may be detrimental to their case in the substantive hearing.

The decision relating to the application for orders of discovery against the Commission indicates the importance for extensive discovery, similar to criminal standards, on the part of the Commission, despite the large volume of internal reports and relevant documents unless protected otherwise by privilege(s).

The final decision (the Taching Petroleum case) demonstrates the court's unwillingness to give summary judgment whenever the defendant has a triable issue unless the plaintiff can give concrete evidence to prove otherwise, which is consistent with the usual approach of the courts in dealing with summary judgment applications. Moreover, triable allegations based on Ordinance before the courts shall be transferred to the Competition Tribunal, but can always be transferred back to the courts in the interests of justice.

**Richard Leung JP, Barrister-at-Law, and Tommy Cheung, Barrister-at-Law**  
*Des Voeux Chambers*

# Virtual banks – new guidance



## Sara SM Or, Partner, Mayer Brown, reviews the revised guidelines issued by the Hong Kong Monetary Authority on the authorisation of virtual banks.

On 30 May 2018, the Hong Kong Monetary Authority (HKMA) issued a revised *Guideline on Authorisation of Virtual Banks* (the Guideline). In principle, a virtual bank is subject to the same authorisation criteria and requirements as a conventional bank. In addition to the *Guideline on Minimum Criteria for Authorisation*, which applies to conventional banks, the Guideline provides specific guidance on how the HKMA will apply the minimum authorisation criteria set out in the Seventh Schedule to the Banking Ordinance (the Ordinance) to a virtual bank.

The Guideline is issued as part of the package of initiatives to bring about a new era of smart banking in Hong Kong. The aim is to encourage the development of virtual banks in Hong Kong, with the objectives of promoting application of financial technology and facilitating financial inclusion. The revision of the Guideline demonstrates the HKMA's willingness to adapt appropriately to cater for features unique to the operation of virtual banks, whilst preserving the security of the financial system of Hong Kong and its position as a major international financial centre.

The Guideline was first issued in year 2000. The principles and requirements in the initial version are clarified and enhanced in the revised version. Major requirements, key updates and refinements include those set out below.

### Ownership

- Both financial and non-financial companies may apply to own and operate a virtual bank in Hong Kong.

- Virtual banks are expected to operate in the form of locally incorporated banks, in line with HKMA's policy for banks that operate significant retail businesses.
- If the person holding more than 50% of the share capital of the virtual bank is not a bank or a financial institution in good standing and supervised by a recognised authority (in Hong Kong or a comparable jurisdiction), the virtual bank must be held through an intermediate holding company incorporated in Hong Kong. This enables the HKMA to impose supervisory conditions over such intermediate holding company.

### Physical presence

- Virtual banks must maintain a physical principal place of business in Hong Kong, but establishing a physical local branch is not mandatory.

### Minimum capital requirement and fees

- The minimum paid-up capital requirement is HK\$300 million. The same requirement is applicable to all licensed banks.

- Virtual banks should not impose any minimum balance requirements or low-balance fees on customers.

### Ongoing supervision

- Virtual banks will be subject to the same set of supervisory requirements as conventional banks. The HKMA will adopt the risk-based approach as in the case of conventional banks, and will be technology-neutral. By prescribing principle-based requirements, including the Guideline, the HKMA will be able to apply the requirements to virtual banks with regard to the actual operations and technology-driven business model of each virtual bank, and adapt and enhance the existing standards applicable to conventional banks as appropriate.

### Record keeping

- Virtual banks must keep a full set of their books, accounts and records, and the HKMA has the right of access for the performance of its supervisory functions, whether the records are kept in Hong Kong or elsewhere.

## Highlights

- in principle, a virtual bank is subject to the same authorisation criteria and requirements as a conventional bank
- applicants for virtual bank licences will be expected to devote extensive resources to working closely with the regulator
- the revision of the Guideline demonstrates the HKMA's willingness to adapt appropriately to cater for features unique to the operation of virtual banks

“  
**the aim [of the Guideline] is to encourage the development of virtual banks in Hong Kong, with the objectives of promoting application of financial technology and facilitating financial inclusion**



**Technology risk and risk management**

- In addition to information security, the HKMA emphasises the importance of system resilience and business continuity management for virtual banks, and virtual banks should ensure that the related controls and measures are 'fit for purpose'.
- A virtual bank applicant is required to submit an independent assessment report on the adequacy of its planned IT governance and systems as part of its application, and a final report covering an overall evaluation of its information systems before commencing operation.

**Business plan**

- A virtual bank applicant must be able to present a credible and viable business plan, as opposed to a concept.
- A virtual bank applicant should also demonstrate sustainability in its business model. The HKMA will disapprove any predatory tactics and rapid business expansion, which put undue strains on systems and risk management capability.

**Exit plan**

- A virtual bank applicant is required to provide an exit plan to address the scenario that its business becomes non-viable. The exit plan should provide for unwinding the business in an orderly manner without causing disruption to customers or the financial system.
- The exit plan should cover matters such as how and when the plan would be triggered, who could trigger it, and channels to be used to repay depositors and the source of funding for making the payments.

In addition to the above, the Guideline also contains principles covering other aspects of a banking operation, such as consumer protection and outsourcing. The HKMA is reviewing its existing prudential requirements to streamline any possible frictions in the use of digital banking services, and also working with the Privacy Commissioner for Personal Data to provide greater clarity on how the existing personal data protection requirements will apply in the context of online banking. Where appropriate, the HKMA is expecting to provide further

guidance with respect to existing anti-money laundering and know-your-customer requirements.

In evaluating the applications received, the HKMA will give due regard to the extent to which the authorisation of the applicant will promote fintech and innovation, new customer experience and financial inclusion in Hong Kong. Priority will be given to applicants that can demonstrate:

- adequate financial, technology and other relevant resources
- credible and viable business plan to provide new customer experience and promote financial inclusion and fintech development
- appropriate IT platform to support business plan, and
- readiness to commence operation soon after a licence is granted.

The HKMA began accepting applications for virtual bank licences in February 2018. Applicants interested in being in the first batch of applications to be processed should submit a substantially completed application to the HKMA by 31 August 2018. The HKMA is expecting to start granting licences to virtual banks towards the end of 2018 or in the first quarter of 2019. As virtual banking is a relatively new type of banking business model, applicants will be expected to devote extensive resources to working closely with the regulator.

**Sara SM Or**

*Partner, Mayer Brown*

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- SEP 2018** / PwC Hong Kong | Developments on HK Tax and TP – Challenges & Opportunities for Businesses  
/ ListcoPRO Services Limited | Practical sharing on Setting up Internal Controls to mitigate the risk of breaching Listing Rules Compliance (Notifiable / Connected Transaction)
- OCT 2018** / Baker & McKenzie | SFC's recent enforcement approach – Trading suspension of listed companies  
/ Deloitte ToucheTohmatsu | Crisis Management – Are you ready for crisis?  
/ PwC Hong Kong | Sustainability Reporting – Reporting of Environment KPIs
- NOV 2018** / PwC Hong Kong | Procurement Excellence: Making sure you get the balance right aligning the spending to the business strategy  
/ KPMG | Valuation of listed companies
- DEC 2018** / Optima Capital Limited | Recent development of Reverse take-over transaction of listed companies

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# Employers beware

The latest guidance note produced by the Institute's Competition Law Interest Group focuses on how employment practices need to adapt to Hong Kong's emerging competition regime.





Hong Kong's competition regime is still in its formative stage. The conduct rules of the Competition Ordinance are now in their third year of operation, but substantive rulings by the Competition Tribunal are only now beginning to emerge to indicate more clearly how the provisions of the ordinance will be interpreted.

On the other hand, the Competition Commission has issued guidance on key issues in competition compliance and has highlighted particular areas where business practices in Hong Kong may be in breach of competition law. The Commission published a bulletin earlier this year, for example, highlighting its concerns regarding certain employment practices, particularly in relation to terms and conditions of employment that may be deemed to injure free competition within Hong Kong for the procurement of labour (Advisory Bulletin, 9 April 2018, available on the Commission's website: [www.compcomm.hk](http://www.compcomm.hk)).

The third guidance note produced by the Institute's Competition Law Interest Group (CLIG), now available on the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk), highlights these potentially problematic employment practices to protect organisations and governance professionals against their liability risks under the Competition Ordinance.

### Employment contracts

Employment contracts restricting an employee from joining competing companies after the termination of the contact are not uncommon in Hong Kong. The Institute's guidance note warns that these non-compete clauses, particularly if they are of an unduly long duration, may be considered to

breach the Competition Ordinance. The guidance recommends that 'restrictions on employees should go no further than is necessary to protect the legitimate business interests of the employer, such as preserving customers, clients and confidential information'. The guidance adds that legal advice should be sought if a non-compete period exceeding six months is proposed.

### Agreements with competitors in relation to employees

The Institute's guidance also emphasises the need for organisations to independently determine the employment terms and conditions they offer employees. The Competition Commission's Advisory Bulletin points out that 'Undertakings that reach an agreement in relation to any aspect or element of compensation or exchange of information about their intentions in this respect are, effectively, fixing the price of labour.' The Commission's Guideline on the First Conduct Rule makes it clear that the concept of 'entering into an agreement' will be broadly interpreted. This does not have to be a written agreement, for example, but could be an understanding or verbal promise between the parties involved.

Organisations need therefore to be particularly vigilant about anything that could be interpreted as being an agreement or concerted practice in relation to the terms and conditions of employment and the hiring of employees. The guidance note points out that 'non-poaching agreements', where organisations agree not to solicit or hire each other's employees, fall into this category. Moreover, the sharing of competitively sensitive information, such as the terms and conditions employers' offer their employees, is likely to be deemed a concerted practice. Compensation in this context is not limited to salaries and wages but can include benefits and allowances such as insurance benefits, housing allowances, relocation support, severance payments or long-service payments.

The Institute's guidance note therefore advises organisations to avoid communicating, whether deliberately or inadvertently, such information to other employers. This has implications for organisations which conduct, or engage third parties to conduct, salary surveys. To minimise the risk of contravening the Competition Ordinance, the guidance note suggests that any such surveys

## Highlights

- the third guidance note produced by the Institute's Competition Law Interest Group (CLIG) highlights potentially problematic employment practices that may be in breach of the Competition Ordinance
- the Competition Commission has recently published an advisory bulletin on employment practices, indicating that it is focusing on this area
- organisations need to be particularly vigilant about anything that could be interpreted as being an agreement or concerted practice in relation to the terms and conditions of employment and the hiring of employees

“  
**the company secretary needs to be aware of particular emerging issues and to raise competition law compliance generally as an agenda item with the chairman/board, where appropriate**  
 ”

should collect historical salary data from a pool of companies, collating the data and distributing it in an aggregate and anonymised form.

Incidentally, employees can exchange information on salaries and benefits with other employees. The Competition Commission does not consider an employee (as distinct from a self-employed sole trader) to be subject to the conduct rules under the Competition Ordinance. Moreover, trade unions may act on behalf of their members in collective bargaining with employers, as these fall outside the scope of the Competition Ordinance.

**Be warned**

The CLIG guidance note also highlights, for the benefit of employers and governance professionals, the significant penalties on companies and individuals for breaches of Hong Kong's competition law. The maximum fine for each contravention of the competition rules is 10% of the turnover of the company group in Hong Kong for each year in which the contravention occurred, up to a maximum of three out of the last five years (based on the years with the highest turnover).

A hefty fine is not, however, the only risk to consider. The CLIG guidance note warns that there is also the risk of follow-on liability in Hong Kong. Companies found

to have breached the rules may also be exposed to follow-on damages action by persons who have suffered loss or damage as a result of the breach.

Moreover, businesses should also consider the risk of multi-jurisdictional investigations and enforcement. Brent Snyder, Chief Executive Officer, Competition Commission, in interview with this journal, said this is 'one of the most significant developments in competition enforcement over the last 20 years' (see the In Profile interview, *CSj*, May 2018 edition). He added that he had personally worked on cases where companies had paid fines in four or five or even more jurisdictions.

Another liability risk highlighted by the CLIG guidance relates to the policy of the Competition Commission to target individuals as well as companies to ensure compliance. In the same *CSj* interview, Mr Snyder commented that 'companies can only act through their employees, and my view is that if you want to deter companies from acting illegally you have to deter the officers, directors and employees. That means seeking sanctions against them. Holding individuals accountable will be a part of our cases going forward.'

Directors can be banned from being a director or managing a company for up

to five years, irrespective of whether or not they were personally involved in the breach. The CLIG guidance points out that company secretaries may themselves be held personally liable if they are found to have knowingly been concerned in a breach of the Competition Ordinance. They also face the risk of imprisonment if they commit a criminal offence under the Competition Ordinance.

Such cases usually relate to obstructing a regulatory investigation by the Competition Commission, such as:

- providing false or misleading information to the Competition Commission
- failing to produce documents in response to a lawful request
- destroying or falsifying documents, or
- obstructing a search by the Commission.

**The message for governance professionals**

The Institute's Interest Groups, established under the Technical Consultation Panel in 2016, have a remit to look into key areas of corporate governance and company secretarial practice with a view to producing guidance to the Institute's members and the wider profession and community. Following this remit, the latest CLIG guidance note addresses the need for all governance professionals, and for company secretaries in particular, to ensure that competition compliance receives the attention it needs from the board.


'The company secretary needs to be aware of particular emerging issues and

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 have knowingly been  
 concerned in a breach  
 of the Competition  
 Ordinance**  
 ”

to raise competition law compliance generally as an agenda item with the chairman/board, where appropriate,' the

Guidance states. Given the clear indication that the Competition Commission will have a focus on the need to ensure employment practices do not contravene the Competition Ordinance, company secretaries would be well advised to ensure the board and the company is aware of the heightened liability risks in this area.

'Companies should therefore conduct a competition audit, establish appropriate rules and regulations and work to adopt overall competition law risk mitigation with appropriate internal team(s),' the guidance note states. At the minimum, organisations need to understand the relevant provisions of the Competition

Ordinance, the powers of the Competition Commission, and be ready to deal with issues such as dawn raids and requests for information. 

*The guidance note reviewed in this article is available from the Publications section of the HKICS website: [www.hkics.org.hk](http://www.hkics.org.hk). More information on the Competition Commission's recommendations relating to employment practices, in particular the Commission's Advisory Bulletin of April 2018 and its Guideline on the First Conduct Rule, is available on the Commission's website: [www.compcomm.hk](http://www.compcomm.hk).*

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## Professional Development

### Seminars: July and August 2018

9 July

Get to know the Hong Kong takeovers code



*Chair: Michelle Hung FCIS FCS, Institute Membership Committee member and Technical Consultation Panel member, and General Counsel and Company Secretary, COSCO Shipping Ports Ltd*

*Speakers: Jason Sung, Partner; and Justin Seto, Senior Associate; Herbert Smith Freehills LLP*

10 July

The competition ordinance – its implementation and updates



*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: Richard Leung FCIS FCS, Barrister-at-law; and Tommy Cheung, Barrister-at-law; Des Voeux Chambers*

12 July

Strategic communication skills for company secretaries



*Chair: Louisa Lau FCIS FCS(PE), Institute Registrar*

*Speaker: Agnes Cheng, Trainer, Tricor Consulting Ltd*

13 July

Company secretarial practical training series: company meetings and AGM



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

20 July

Practical company secretarial workshops: part 1 – how to manage board meetings effectively, module 2 – board dynamics at meetings



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

24 July

Corporate fraud and misconduct – SFC's recent cases and approach



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

*Speaker: Kenneth Luk, Senior Director, Enforcement, Securities and Futures Commission*

**26 July**

**Anti-money laundering/  
counter-financing of  
terrorism seminar for trust  
and company services  
providers**



*Chair: Maurice Ngai FCIS FCS(PE), Institute Past President, and  
CEO, SWCS Corporate Services Group (Hong Kong) Ltd*

*Speakers: Mickey Wai, Assistant Secretary for Security, Narcotics  
Division, Security Bureau; Ryan Man, Senior Inspector  
of Police, Joint Financial Intelligence Unit; and Mohan  
Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior  
Director and Head of Technical & Research*

**27 July**

**Practical company secretarial  
workshops: part 2 – getting  
to know your board, module 3  
– board composition and  
succession planning**



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

**3 August**

**Practical company secretarial  
workshops: part 2 – getting  
to know your board, module 4  
– board directors**



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

### Online CPD (e-CPD) seminars

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

### ECPD forthcoming seminars

Date	Time	Topic	ECPD points
26 September 2018	4.00pm–5.30pm	Structuring a private investment fund and the latest development (re-run)	1.5
28 September 2018	2.30pm–5.45pm	Qualifications of listing in Hong Kong and roles played by professional parties in an initial public offering	3
28 September 2018	6.45pm–8.45pm	Company secretarial practical training series: company dissolution	2
5 October 2018	6.45pm–9.30pm	Company secretarial practical training series: change in directors, officers, committees and other corporate positions (re-run)	2.5

For details of forthcoming seminars, please visit the CPD section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

## Membership

### New graduates

The Institute would like to congratulate our new graduates listed below.

Au Pui Yee	Chung Cheuk Man	Lai Charics Cheuk Yan	Wong, Virginia
Au-Yeung Tsz Kit	Chung Hoi Yan	Law Yu Ting	Wong Wai Kan, Edith
Chan Sze Yan	Chung Sang Mi	Lee Pui Pui, Crystal	Yau Kit Han, June
Chan, Vinci	Fung Kwan Ho	Leung Kim Ching	Ye Han
Chan Wing Ki	Fung Mei Sin, Pamela	Mak Ho Ting, Veedy	Yeung Chui Yan
Chen Yingyue	Fung Pui Yuen	Un Lai Man	Yip Wai Man
Cheng Wai Han, Charmaine	Ho Sin Ying	Wong Hoi Man	Yoa Jonathan Leon
Cheung Lok Yi	Huang Zijing	Wong Kin Shing	Yung, Tiffany
Chow Suet Fung	Jin Dan	Wong Miu Wai	

### New fellow

The Institute would like to congratulate the following fellow elected in July 2018.

#### Yu Tengqun FCIS FCS

Mr Yu is currently the Vice-President, Secretary to the Board, General Legal Advisor and spokesperson of China Railway Group Ltd (Stock code: 390). He is a professor-level senior economist and a qualified PRC lawyer.

Prior to joining the company, Mr Yu held various positions including: Vice-Representative of International Labor Association Work Safety and Health Committee of United Nation's 93th International Labor Conference, Arbitrator of China International Trade Arbitration Committee of China, Arbitrator of Beijing Arbitration Committee, Deputy Dean and Supervisor of Expert Committee of Belt and Road Initiative (China) Court of Arbitration, Supervisor of the Arbitration Center of China Construction Association, Chief Secretary of the Law Branch and Standing Committee Member of the All-China Youth Federation, Vice-President of China Youth Entrepreneurs Association, Vice-President of China Securities Law Research Society, Supervisor of the Secretary to the Board Work Committee and Deputy Secretary of the Listed Companies Association of Beijing, Vice-President of Corporate Governance Research Commission of the China Practices Act Society and Vice-Supervisor of the Rights Work Committee of the China Enterprises Union.

### Final reminder: Membership/graduateship renewal for the 2018/2019 financial year

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

*Members and graduates who have not received the renewal notice should contact the Institute's Membership section immediately at: 2881 6177, or email: [member@hkics.org.hk](mailto:member@hkics.org.hk).*

## Members' activities highlights: August 2018

4 and 11  
August 2018  
Fun & Interest  
Group – bowling  
training (Class A)



11 August 2018  
Community Service  
– volunteer training



19 August 2018  
Ap Lei Chau small  
dragon boat races



## Forthcoming membership activities

Date	Time	Event
1 September 2018	10.00am–12.30pm	Members' Networking – local skincare factory visit
11 September 2018	6.45pm–8.30pm	Mentorship Programme – 2nd social gathering (by invitation only)
16 September 2018	8.00am–4.00pm	16th Summer Vigour Mini Dragon Boat Race 2018
18 September 2018	12.45pm–2.00pm	Members' Networking – 由夏入秋養生貼士
22 September 2018	10.00am–12.30pm	Fun & Interest Group – cake baking for Mid-Autumn Festival
8 October 2018	6.00pm–9.00pm	HKICS annual convocation 2018 (by invitation only)
21 October 2018	8.15am–1.00pm	Community Service – Pink Walk For Breast Health 2018

For details of forthcoming membership activities, please visit the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

## Advocacy

### Student Ambassadors Programme summer interns

The Institute invited companies and organisations to offer summer internship positions to undergraduates participating in the Institute's Student Ambassador Programme (SAP). The internship period lasted for a maximum of eight weeks, from June to August 2018, with the aim of promoting the Chartered Secretarial profession to the young generation in Hong Kong. This year, a total of 23 student ambassadors, who were undergraduates from nine local universities and educational institutions, received summer internship offers from 12 companies, listed in alphabetical order below. In addition, three student ambassadors earned their work experience at the Institute.

- Alter Domus Hong Kong Ltd
- APF Partners Corporate Services
- CK Hutchison Holdings Ltd
- Companies Registry
- East Asia Sentinel Group
- Intertrust Resources Management Ltd
- LT Business Consultants Ltd
- McCabe Secretarial Services Ltd
- PricewaterhouseCoopers Ltd
- SW Corporate Services Group Ltd
- TMF Group, and
- Vistra (Hong Kong) Ltd.

*The Institute would like to thank these organisations for their support of the programme.*





### HKCPS Yuen Long District Secondary School Students Internship Programme

The Institute supports the growth of young people through a number of projects and internship opportunities. The Institute, which has been a member of The Hong Kong Coalition of Professional Services (HKCPS) since 2011, once again supported the HKCPS Yuen Long District Secondary School Students Internship Programme and arranged for two Form 5 students from the Yuen Long District to work at the secretariat as summer interns for two weeks from 16 to 27 July 2018. The students found the exposure practical and valuable.



*At the Institute*

A few employers of Institute members, including China Aircraft Services Ltd, CLP Holdings Ltd, GTI Holdings Ltd and Reanda EFA Secretarial Ltd, also participated in this meaningful project. A total of 31 internship opportunities was offered to these students.

### HKICS student focus group discussions on new qualifying programme and services

On 6 and 11 August 2018, about 10 Institute students attended two student focus group discussions organised by the Institute.



*At the focus group meeting*

The focus groups discussed and shared views on the new Chartered Governance Professional and Chartered Secretary qualifications, new qualifying programme (NQP), transition arrangements from the International Qualifying Scheme examinations to NQP, and support services for students, with Chief Executive Samantha Suen FCIS FCS(PE) and Registrar Louisa Lau FCIS FCS(PE).

## The Hong Kong Institute of Chartered Secretaries

# 2018 Annual General Meeting

Thursday, 13 December 2018 at 6.30pm

### Call for nominations for Council election

Members are invited to nominate candidates for election to Council of the Institute at the 2018 AGM. The Articles of Association of the Institute provide that Fellows who are ordinarily resident in Hong Kong and the Mainland are eligible to stand for election. More details are available on the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

Members please  
mark your diary  
and join us at the  
AGM.

## Advocacy (continued)

### ASEAN Corporate Secretaries Network update

#### ACSN second board meeting

The ASEAN Corporate Secretaries Network (ACSN), which brings together the Institute and four other professional organisations for corporate secretaries in Indonesia, Malaysia, Singapore and Thailand, held its second board meeting in Bangkok, Thailand, on 8 August 2018. Institute Chief Executive Samantha Suen FCIS FCS(PE) attended the meeting as the representative of the Institute, which is an associate member of ACSN. It was agreed, amongst other things, that Professor Tan Wee-Liang FCIS of Chartered Secretaries Institute of Singapore, would continue to be the President of ACSN until 31 December 2019. Moreover, a webinar will be held in November for knowledge sharing, while the third board meeting and a conference will be held in Singapore in 2019.



At the ACSN second board meeting

#### ACSN Professional Exchange Programme

On 9 and 10 August 2018, more than 20 corporate secretaries from Indonesia, Malaysia, Singapore, Thailand and Hong Kong attended the second ACSN Professional Exchange Programme (PEP) in Bangkok. The PEP started with presentations on 'Corporate Governance Developments in Thailand' by the Securities and Exchange Commission of Thailand and Thai Institute of Directors (IOD); 'Collective Action Coalition against Corruption' by IOD; and 'Listing Regulation and Shareholder Communications' by the Stock Exchange of Thailand (SET) and The Thailand Securities Depository Co Ltd. The participants also visited the Investment Discovery Museum at SET.



At the Stock Exchange of Thailand

In the afternoon, Ms Suen, representatives from other ACSN members, and SET representatives, participated in the third Roundtable Forum on 'Quarterly Reporting Framework and Corporate Governance Code Review' for PEP members. They shared the practices and developments in these two areas in their home jurisdictions.

On 10 August, the PEP participants visited PTT Oil Business Academy and Amazon Inspiring Campus in Ayutthaya, Thailand, to learn about ESG projects. All in all, it was an excellent platform for participants to learn about corporate governance frameworks and practices in Thailand, as well as to network with other corporate secretarial practitioners in Asia.



At the roundtable

*The Institute would like to thank ACSN and Thai Listed Company Association for organising the ACSN board meeting and PEP.*

### Members' forums on new initiatives of HKICS and ICSA

On 21 and 22 August 2018, the Institute organised two members' forums for about 400 members on the new initiatives of the Institute and The Institute of Chartered Secretaries and Administrators (ICSA). Institute President David Fu FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE), shared with members the latest updates and matters to be discussed at the General Meeting of the Institute in Hong Kong on 29 August 2018, as well as the Annual General Meeting of ICSA to be held in Toronto on Wednesday 19 September 2018. Members also shared their views on the new initiatives during the forums.

*For more details, please visit the News section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk). For enquiries relating to the Annual General Meeting of ICSA, please contact ICSA by email: [www.icsaglobal.org/enquiry](mailto:www.icsaglobal.org/enquiry).*



At forum A



At forum B

**Double Anniversary**

CHARTERED SECRETARIES  
特許秘書

*Gala Dinner*

Guest of Honour:  
**Edith Shih FCIS FCS(PE)**  
International President, ICSA & Past President, HKICS

CELEBRATING  
**70 & 25**  
YEARS  
ANNIVERSARY

*Mark your diary!*

**Thursday, 17 January 2019**  
Convention Hall, Hong Kong Convention and Exhibition Centre

[www.hkics.org.hk](http://www.hkics.org.hk)

## Advocacy (continued)

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### Welcome lunch with MCG Shanghai Graduates of Class 2016 – 2018

On 27 July 2018, the Institute organised a welcome lunch for 17 graduates of the class of 2016–2018 Master of Corporate Governance Programme in Shanghai of The Open University of Hong Kong (OUHK). Institute President David Fu FCIS FCS(PE) delivered a welcome address to the participants, and ICSA International President and Institute Past President Edith Shih FCIS FCS(PE) presented the HKICS Edith Shih Corporate Governance Scholarships to the six most outstanding graduates of the Programme in recognition of their academic achievement.

OUHK Professor Alan Au FCIS FCS, Dr Anthony Ko, Dr Nigel Leung and Anna Sum FCIS FCS; East China University of Science and Technology Professor Lu Xi-Wen attended the lunch. Other

Council and committee members attending this event included: Dr Maurice Ngai FCIS FCS(PE), Bernard Wu FCIS FCS, Michelle Hung FCIS FCS, Kitty Liu FCIS FCS, Angela Mak FCIS FCS, Philip Miller FCIS and Rachel Ng ACIS ACS.

In order to encourage Mainland students to join the Chartered Secretarial profession, when this Programme started in 2016, Ms Shih generously donated HK\$240,000 to the Institute's charitable foundation – 'The Hong Kong Institute of Chartered Secretaries Foundation Limited' to set up the HKICS Edith Shih Corporate Governance Scholarship for the five-year scholarship scheme dedicated to students of this OUHK Programme.



*At the lunch*



*At the lunch*

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### HKICS attends Government's 2018 Policy Address Consultation

On 15 August 2018 Institute Council member and Audit Committee Chairman Ernest Lee FCIS FCS(PE) attended the 2018 to 2019 Policy Address Consultation session organised by the Financial Secretary's Office of the Hong Kong SAR Government to solicit views from professional bodies for the formulation of policy initiatives for the 2018 to 2019 Policy Address.



# Introduction of Chartered Governance Professional qualification

We are delighted to announce that at the general meeting of The Hong Kong Institute of Chartered Secretaries (the Institute) held on Wednesday, 29 August 2018 at 6.30 pm, the Special Resolution regarding the amendment of Articles of Association of the Institute was passed. The new Articles of Association introduced, amongst other things, the Chartered Governance Professional qualification to sit alongside the long-established Chartered Secretary qualification.

Following the passing of the Special Resolution, the Institute will commence awarding the Chartered Governance Professional qualification in September 2018 under the ICSA grandfathering policy set out below.

- All Fellows, and Associates with 5 years as an Associate, will be 'grandfathered' as Chartered Governance Professionals on the Commencement Date (1 May 2018).
- All persons elected as a Fellow after the Commencement Date and before 31 December 2020 will automatically be 'grandfathered'.
- All Associates as at 31 December 2020 will be 'grandfathered' at that date regardless of when they were elected as Associates.
- All students that fulfil their examination requirements via an approved collaborative Masters programme up to 31 December 2020 will be 'grandfathered' upon election as an Associate (or Fellow if not elected as an Associate first), whenever that occurs.
- All students that have completed their examinations under the current International Qualifying Scheme, new qualifying programme (NQP) or collaborative Master's programmes not elected as a member prior to 31 December 2020, will be 'grandfathered' upon election as an Associate (or Fellow if not elected as an Associate first). Associates and Fellows who graduate having taken one or more examinations under the NQP or collaborative Master's programmes to be introduced in due course, will not be 'grandfathered'. (Note: They will enter the NQP for both Chartered Secretary and Chartered Governance Professional qualifications and therefore, will not be 'grandfathered'.)

More details will be available on the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

## International Qualifying Scheme (IQS) examinations

### December 2018 examination schedule and enrolment

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

### Syllabus update – Corporate Administration

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

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

### IQS study pack updates

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

*For questions relating to the online study packs, please contact the Institute secretariat at: 2830 6006, or email: [student@hkics.org.hk](mailto:student@hkics.org.hk).*

*For technical questions relating to the PrimeLaw account, please contact Wolters Kluwer's customer service: [HK-Prime@wolterskluwer.com](mailto:HK-Prime@wolterskluwer.com).*

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

The Institute's SAP programme continues to be an effective platform to introduce the Chartered Secretarial profession to local undergraduates. Members are invited to contribute as mentors of student ambassadors. Interested members please contact Eva Cheung (Education & Examinations) for details at: [eva.cheung@hkics.org.hk](mailto:eva.cheung@hkics.org.hk), or 2830 6019. A tea reception for mentors and mentees will be organised on 6 October 2018 to kick off the SAP 2018/2019.

### Policy – payment reminder

#### Studentship renewal

Students whose studentship expired in July 2018 are reminded to settle the renewal payment by Monday 24 September 2018.

#### Exemption fees

Students whose exemption was approved via confirmation letter in July 2018 are reminded to settle the exemption fee by Wednesday 26 September 2018.

## IQS examination June 2018

The Institute would like to congratulate the students who passed their examinations in the June 2018 diet.

### Pass rates

Subject	Pass rate
<b>Part I</b>	
Strategic and Operations Management	19%
Hong Kong Corporate Law	32%
Hong Kong Taxation	41%
Hong Kong Financial Accounting	57%

Subject	Pass rate
<b>Part II</b>	
Corporate Governance	23%
Corporate Administration	34%
Corporate Secretaryship	26%
Corporate Financial Management	28%

### Subject prize and merit certificate awardees (June 2018)

Subject	Subject prize awardees
Hong Kong Financial Accounting	Tong Ka Ki
Hong Kong Corporate Law	Chu Ka Yin, Tiffany Ku Ka Wai Law Hei To, Vela Ng Wing Man Pi Pang Ngai Tse Kit Ying Wong Nga Sim

Subject	Merit certificate awardees
Corporate Administration	Au Ching Ho Chung Yan, Joanne Huang Nga Yi Tam Mei Po Tse Siu Ho
Corporate Governance	Chan Kin Kwan Lee Pui Kei, Kris So Wing Chun
Hong Kong Corporate Law	Lai Man Pun Ko Ching Fung So Wing Chun
Hong Kong Financial Accounting	Pang Hoi Man
Hong Kong Taxation	Sun Hoi Yan Tsoi Hoi Yin Yue Weiyu

## Listing regulation update

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The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has published a consultation paper (the Review Structure Consultation) seeking public feedback on proposed changes to the review structure in relation to Listing Committee (LC) decisions.

In September 2017, the Exchange and the Securities and Futures Commission (SFC) concluded their joint consultation – *Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation*. It was stated in the joint consultation conclusions that the Exchange would conduct a separate consultation on the review system for decisions of the LC in 2018.

The proposals in the Review Structure Consultation aim to enhance governance within the Exchange's structure for

reviewing LC decisions and promote transparency, accountability and consistency in decision-making. The Exchange's proposals can be summarised as set out below.

1. Revise the current two-level review structure for decisions of material significance made by the LC. These decisions include rejection of a new applicant's listing application solely on the ground of unsuitability for listing, cancellation of listing and imposition of certain disciplinary sanctions. Such decisions will be subject to only one level of review and the Listing Appeals Committee would be discontinued.
2. Establish a new independent review committee (the new Review Committee) consisting entirely of outside market participants with no current LC members

or representatives of the SFC or HKEX to replace the Listing (Review) Committee and the Listing (Disciplinary Review) Committee.

3. To enhance the transparency and accountability of the Exchange's decision-making process, decisions of the new Review Committee for non-disciplinary matters will be routinely published.

The consultation paper also provides details of provisions for the SFC's power to request a consideration or review of any matter, including a decision of the LC by the new Review Committee.

*The consultation paper and related information is available from the HKEX website: [www.hkex.com.hk](http://www.hkex.com.hk). The deadline for responses is 12 October 2018.*

## Governance upgrade

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The Exchange has published conclusions from its consultation on the Corporate Governance Code and related listing rules. *The Consultation Conclusions on Review of the Corporate Governance Code and Related Listing Rules* (consultation conclusions) reports strong support for the proposals in the consultation paper and the Exchange has decided to implement new measures to:

- strengthen the transparency and accountability of the board and/or nomination committee and election of directors, including independent non-executive directors (INEDs)
- improve transparency of INEDs' relationships with issuers
- enhance criteria for assessing independence of potential INED candidates
- promote board diversity, including gender diversity, and
- require greater dividend policy transparency.

*The new measures take effect on 1 January 2019 through amendments to Corporate Governance Code and related listing rules.*





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**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 Honourable James Lau, Secretary for Financial Services and the Treasury
- Keynote Speaker - Professor Mervyn King – Chairman, International Integrated Reporting Council

**15 September:**

CGC Corporate Visits

**15 September:**

HKICS Students' Masterclass - Professor Mervyn King

Corporate Governance:  
**The New Horizon**

Corporate Governance Conference 2018



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For more information,  
please contact:  
2881 6177 or email:  
[ask@hkics.org.hk](mailto:ask@hkics.org.hk)

## Guidance for boards, directors and company secretaries

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The *Guidance for Boards and Directors* (Guidance), recently published on the HKEX website, includes useful guidance and recommendations for boards, directors and company secretaries in Hong Kong.

### Guidance for boards and directors

The section on boards and directors contains practical advice to boards and directors on their roles and responsibilities. It covers directors' duties and board effectiveness, board committees, board diversity – including gender diversity – and corporate governance for weighted voting rights issuers.

The Guidance encourages successful listing applicants to appoint INEDs at least two months prior to listing. To supplement its director training programme launched by way of webcasts, the Exchange will provide further training on directors' duties this year by way of online training.

'INEDs play an increasingly important role in assuring investor confidence. The amended listing rules will enhance the transparency of the INED appointment process and empower shareholders with more information about INED candidates, including their time commitments due to any current board responsibilities and their potential contribution, before shareholders' voting at the annual general meeting,' said David Graham, HKEX's Head of Listing.

### Guidance for company secretaries

The section on the company secretary's role and function recommends that, when selecting a company secretary, issuers should consider whether the candidate is of the right calibre and of sufficient seniority for the issuer given its size and complexity of operations. The guidance

also recommends that company secretaries must keep up to date with regulatory and legal developments relevant to the issuers they serve.

The Guidance highlights the responsibility of the company secretary to:

- help issuers construct and maintain a sound and effective corporate governance framework and, in particular, a set of risk management and internal control systems to ensure regulatory compliance
- be aware of developments in laws, rules and regulations that may affect the issuer's business and operation
- be proactive and think about issues that may arise, and provide advice to the board in accordance with the laws, rules and regulations
- ensure that the board receives continuous training on regulatory developments that are relevant to the issuer's business developments and needs, and
- provide compliance advice to the board and senior management in the decision-making process.

In addition, the guidance discusses the company secretaries' role as a crucial conduit of communication within issuers and externally to shareholders and regulators.

Finally, the Guidance discusses the issues relevant to when the company secretary role is outsourced to an external service provider. It recommends that, if the board

is relying on an outsourced professional or external service provider as company secretary, it must ensure that such outsourced professional or external service provider has the resources to follow closely with the issuers' daily affairs, such that it can perform its duties properly.

It also highlights the following factors for issuers that engage external service providers as company secretaries:

- the external service provider may not have day to day knowledge of the issuer's affairs
- there may be time gaps in communication, particularly those that may be time sensitive, for example the Exchange's enquiries to the issuer on potentially price-sensitive market rumours, and
- some external service providers may be acting as company secretaries of a large number of listed issuers. Issuers may need to consider whether the external service provider would be able to devote sufficient time to the issuer's affairs.

The Guidance also recommends that, when appointing an external service provider as a company secretary, issuers should designate a senior executive as a contact person within the issuer who will work closely with the external service provider.

*The 'Guidance for Boards and Directors' is available on the HKEX website: [www.hkex.com.hk](http://www.hkex.com.hk).*



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