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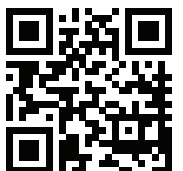
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Going digital

It would be hard to think of any area of our professional practice which has not been affected by new technology; corporate reporting is certainly no exception. The new possibilities for corporate communication as a result of technological developments seem to grow by the day. Not only do companies have a wider range of media channels to deliver more frequent and targeted messaging to their stakeholders, but they also do not need to limit themselves to the standard text and photo formats of the past. The new era is one of corporate videos and interactive data visualisation tools on social media platforms, websites and company blogs, and even 'gamification' – where companies create 'games' based around scenarios relevant to the company's story.

For governance professionals, these developments need to be followed very closely to ensure that we can assist managers and directors in navigating the new corporate reporting era. Our cover story this month reminds us that, while engaging with new possibilities, we need to bear in mind that certain things have not changed. The regulatory requirements relevant to corporate reporting have not vanished overnight and, in the arena of environmental, social and governance reporting, requirements have significantly tightened in recent years.

Before we assume that the era of the glossy annual report will soon be over, we should consider that the fundamentals of good corporate reporting remain the same. Effective reporting, for example, still requires a good knowledge of who your stakeholders are and what they find most material about your business. The new media will inevitably help in this respect, since companies can access a much wider data source by tracking stakeholder activities on online platforms.

Another fundamental element of corporate reporting that remains as important in the digital era as it was in the preceding era, is the need for companies to take a strategic approach to the reporting endeavour. Our cover story makes the point that a good annual report exercise can inform a company about its own strategic priorities. The exercise is not only about informing stakeholders, but can also be a valuable tool for the company to create a link between disclosures and performance and continued growth.

New media and tech tools can certainly enable companies to be a lot more creative with how they tell their story, and to target that story better to different groups of stakeholders, but we need to enter this new space with our eyes open. Our concerns, as governance professionals, should be to ensure that the risks, as well as the opportunities, are well understood and managed.

A good example of this is social media governance – a growing area of practice for us. No sizeable company today can afford to neglect social media channels as conduits of corporate disclosures and as a forum for stakeholder engagement. Social media sites have become a global forum where stakeholders look for the latest market news and engage in relevant debates. But companies need to be aware of the risks involved in engaging in this space, and they need to have the necessary internal policies, training and controls to ensure that they can effectively respond when rumours go viral.

I believe that the role we play as governance professionals doing what we have always done – ensuring accurate and timely disclosure – will increase in value in the new era of corporate reporting. Indeed, the value of reliable sources of information increases as people become more familiar with the risks of crowdsourced news and false memes. Ensuring that governance principles are applied to the corporate reporting exercise in the years ahead will be a key element of our value proposition.

A handwritten signature in black ink, appearing to read 'David Fu', with a stylized flourish at the end.

David Fu FCIS FCS(PE)

数码转型

特 许秘书的工作，无一范畴不受新科技影响，公司报告当然也不例外。随着科技发展，企业传讯的方式层出不穷。公司既可从多种媒体途径中选择，更频繁地向其利益相关方发放目标讯息；也不用受限于过往的标准文字及图片模式。在这新时代，可透过社交媒体平台、网站和公司网志发放机构短片和提供数码形象化互动工具；更有甚者，一些公司会以机构的故事为本，以游戏的形式表达讯息。

管治专才必须密切留意这方面的发展，以便协助管理层和董事掌握新时代的公司报告模式。今期的封面故事提醒我们，在选择新的传讯模式时，须紧记有些事情并无改变。有关公司报告的规定没有一夕消失，而环境、社会及管治报告的规定近年亦大幅收紧。

因此，在假定印刷精美的年报的时代快将结束前，我们应紧记，良好公司报告的基本元素仍然不变。例如要有效达到报告的目的，便须知道利益相关方是谁，以及他们认为公司业务的哪些方面最重要。当然，新媒体在这

方面能助一臂之力，公司可接触更广泛的资讯来源，在网上平台追踪利益相关方的活动。

在数码时代仍不失其重要性的另一个公司报告基本元素，是有需要为企业报告工作制订策略。今期的封面故事提出一个论点：良好的年报工作，可让公司了解自己的策略重点。拟备年报不仅是为了向利益相关方报告；透过这项工作，公司也可有珍贵的机会，把披露与业绩和持续增长联系起来。

新媒体和各种科技工具，肯定可让公司以更创新的方式表达自己，并更有效地接触不同类别的利益相关方；但在进入这新领域时，我们须保持警惕。作为管治专才，我们应确保充份了解和管理相关的风险和机遇。

在我们的工作上日形重要的社交媒体管治，便是个好例子。今天有相当规模的公司，都不能忽略以社交媒体披露公司资料 and 与利益相关方联系。社交媒体平台已成为全球论坛，利益相关方在这里寻找最新的市场资讯，并

参与相关讨论。但公司须留意透过这途径联系利益相关方的风险，有需要制订所需的内部政策、提供培训和设立管控措施，确保在谣言经网络迅速传播时能有效回应。

相信在公司报告的新时代，我们作为管治专才的价值将渐渐提升：公司有赖我们继续一贯的工作，确保披露准确及时。而随着人们日益认识群众提供的新闻和网络上的虚假消息所涉的风险，可靠的资讯来源更形珍贵。确保未来的公司报告秉持管治原则，是我们主张的重要价值。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

Sustainability reporting in the digital age



Rebecca Walker Chan, Sustainability Advisor, The Purpose Business, argues that while new communication tools and channels can give sustainability reports more impact and relevance to their audience, the fundamentals for successful sustainability reporting remain the same.

Since 2016, publicly traded companies in Hong Kong have been required to supply a report to The Hong Kong Stock Exchange about their approach to managing environmental, social and governance (ESG) aspects of their business. Why? Annual updates on ESG performance help stakeholders better understand how a company measures, manages and communicates how it conducts its business. With the aim of increasing transparency, sustainability reports enable companies to take stock of their operations, set goals and manage change more effectively.

These reports are published annually and where a company fails to make a required disclosure it must explain why. As a result, thousands of ESG or sustainability reports have been written and even more man-hours have been put into these annual disclosures. Depending on a company's attitude to the value of non-financial reporting, this annual requirement has become either a blessing or a curse. For those who have a wider sustainability strategy, reporting is simply part of managing progress and transparency, and it has obvious value. For those who are doing it for pure compliance, it quickly becomes an extracurricular activity with little-to-no resources allocated to it and a burden.

The value proposition

Writing a good sustainability report – one that goes beyond compliance, is part of a wider corporate strategy, and is valued beyond box ticking – is a product of a concentrated and collaborative

effort to assess and communicate ESG topics with stakeholders. This becomes an add-on to an already full docket of responsibilities for in-house staff who may not have the training or educational background to know how to collect and analyse environmental data, engage stakeholders and write a comprehensive report. Considering all this effort, who even reads these sustainability reports?

Regulators care about transparency and ESG information has become increasingly important to smart and purposeful investors. Simultaneously, the expectations of stakeholders for more regular and accessible information through various channels is changing. Yet companies are not reaching target stakeholders. Based on feedback from several stakeholder engagement exercises; it is clear that some stakeholders read selected sections of a report and only a few read the reports in full upon their annual release (or even after). A lot of time, money and effort goes into the reporting process, yet if

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millennials are more likely to watch and engage on a YouTube video than read a PDF
”

companies fail to discuss the important and relevant ESG issues, stakeholders lose interest.

What has changed?

While ESG reporting is slowly becoming more mainstream, not much has changed in how annual ESG reports are shared. There have been forecasts about changes in reporting styles and new tech-savvy data management, as well as predictions regarding a surge of interest in integrated reporting and hopes that these reports would lead to palpable change in how businesses treat their employees, the environment and stakeholders. A happy balance can be for

Highlights

- the future offers a glimpse of 'living reports' where data is updated regularly, offering real-time data and transparency that is stakeholder driven
- companies can create multiple compelling narratives for a range of audiences that are authentic and can be adapted and positioned for new and evolving communications channels such as social media
- ultimately sustainability reporting remains a measurement tool that should inform company strategy by creating a link between disclosures and performance and continued growth

companies to develop a blend and not be limited to one annual report, sharing disclosures in different reports focused on the distinct needs of a range of target audiences.

All your stakeholders should be able to find something relevant to them in your full report. After all, ESG reporting is intended to provide a balanced view of all of business impacts. However, it is not fair nor right to bundle audiences into single stakeholder groups. An employee may also be an investor, an environmental activist, a community member and a customer simultaneously. By carefully considering who the report is for, the intended messages can be crafted accordingly. Ideally, this does not mean first deciding that the report is for investors or employees and then

loading the content to fit that group. Instead it means deeply analysing the data and developing your story, and then discerning which audience will make the most from it and channeling it their way. For example, an investor might be more keen to read about governance and risk management, whereas a young consumer might be more interested in employee engagement and a local charity might want to learn more about community investment initiatives.

This is where some purposeful and directed communications and better understanding of stakeholder's interests come in handy and can be used for a greater impact. For ESG reporting to be made as important as any other business reporting, it has to come in a format and channel suitable to its audience.

The current trend is to adjust the format of your sustainability report, along with the style and frequency of reporting. In recent years, more companies have turned to online publishing, which helps save paper and can enable cross-website referencing and sharing. Other innovations include sustainability dashboards with real-time data and using social media to share ESG messages. There is definitely a value for reporters to adopt these new channels and move towards more frequently updated web-based reporting. Technology-enabled integrated reporting allows businesses to explore and benefit from the interconnections between the strategic and economic performance side of operations and the socio-environmental aspects at the same time. This can enable 'living reports' where data is updated regularly, offering real-time data and transparency that is stakeholder driven.

Corporate Reporting Dialogue

In Hong Kong, most sustainability reports need to adhere to the environmental, social and governance reporting guidelines issued by The Hong Kong Stock Exchange (the Exchange). Many companies base their reporting on the Global Reporting Initiative (GRI) Standards, which overlap with and expand on the Exchange's requirements. Beyond these, other frameworks such as the UN Guiding Principles Reporting Framework, CDP (formerly the Carbon Disclosure Project), and the newly launched Financial Stability Board's Task Force on Climate-related Financial Disclosures all encourage the integration of non-financial metrics into financial reporting.

This array of reporting frameworks has caused some confusion in the market. To help address this, the Corporate Reporting Dialogue has been established to respond to market calls for greater coherence, consistency and comparability between corporate reporting frameworks, standards and related requirements. This effort should create better alignment in the corporate reporting landscape and make it easier for companies to prepare effective and coherent disclosures that meet the information needs of capital markets and society.

*More information is available on the Corporate Reporting Dialogue website:
<http://corporatereportingdialogue.com>.*

New medium same message?

A key point in sustainability communications – as with all things sustainability-related – is that transparency builds trust. Companies in Hong Kong should be engaging stakeholders with messages about their environmental and social impacts, and taking part in a multi-party dialogue that promotes continuous responsible growth year on year. Sharing ambitions, direction and challenges demonstrates authenticity, as well as providing more opportunities to engage and learn from stakeholders. It helps to build stronger communications and can strengthen reputation beyond an ESG report. This involves creating multiple compelling narratives for a range of audiences that are authentic and can be adapted and positioned for new and evolving communications channels, such as social media.

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the style and format of
the report matter far
less than the content
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By understanding stakeholders, a company can more easily create content that resonates – millennials are more likely to watch and engage with a YouTube video than read a PDF. The more visibility the better, but the content of your reporting needs to share responsible practices, commitments, successes and failures. Used positively and proactively, social media can be useful for communicating progress. In this age of constantly updated and always available information, it seems reasonable that sustainability reports be shared across a range of platforms. This can be a big ask, however, particularly in places where many corporate communications and marketing teams still don't seem to grasp how risky a poorly thought out campaign can be. Effective use of social media channels requires a clear strategy, constant content updates, creative engagement techniques and a support team to field user comments and questions. It is unlikely that most social media account managers are adequately knowledgeable about greenhouse gas emissions, water reduction initiatives or the impact of community engagement efforts to effectively keep stakeholders informed.

A tool for progress

Sustainability reporting is a measurement tool that should inform company strategy

by creating a link between disclosures and performance and continued growth. Hong Kong companies tend to wait until something is complete, boxed and gift-wrapped for perfect delivery before they talk about it. However, ESG reports should be an open-handed invitation to readers where they are given a glimpse of the company's purpose. It is an opportunity for companies to prove to their stakeholders that they deserve to stay in business by sharing an introspective view of what matters most. This means progressing beyond compliance-based reporting, this means taking responsibility for poor performance and it means continually raising the bar year by year. The style and format of the report matter far less than the content. But embracing new communications tools and approaches can give your report more impact and relevance for your audience – and that makes the future of reporting exciting.

Rebecca Walker Chan, Sustainability Advisor

The Purpose Business

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

Focus on the fundamentals

The art of corporate reporting has changed dramatically over the last decade. This article has looked at some of the new communication channels and formats that sustainability teams may consider using to improve the exposure and impact of their reports. It is important, however, not to lose sight of the fundamental value proposition of sustainability reporting.

Below we suggest some essential questions for sustainability teams to consider when developing their next report.

- Why are you reporting?
- What is the use of the report and what value can you pull from the reporting process?
- Who are your main readers or audience?
- What is it about your company that they are most interested in?
- What is your story?
- What are you comfortable disclosing now and will you continue to be comfortable disclosing it in the future (because once it's out there you cannot retract it)?

Quality ESG reporting: a reader's guide

How well would your environmental, social and governance (ESG) report hold up under the critical analysis of an ESG professional? Dr Glenn Frommer and Theodora Thunder, Principals, The Sustainability Partnership, share some insights into what they look for in a good ESG report.



Expectations from ESG reporting and reports have moved on from decorative 'green walls' and fun days shared with the community. The environment, social inclusion, regulatory compliance, supply chains and stakeholder voices now dominate the ESG reporting landscape. While non-financial reporting is increasingly mainstream, many companies have yet to deliver the substantive and relevant information that adds value to a company's sustainability development.

A good non-financial report explores management thinking beyond the balance sheet exercise. Regardless of the standards or platforms used – such as the UN Sustainable Development Goals (SDGs), Global Reporting Initiative (GRI), International Integrated Reporting Council (IIRC), and the Task Force on Climate-related Financial Disclosures (TCFD) – the report essentially complements an organisation's annual financial reporting. It expands on the social and environmental dynamics in context of the business strategy, management's decision-making and the operating environment. And, increasingly, it explores the impact created by the company's business and culture, as impact speaks to the value of the outcomes from business strategy and decisions.

Non-financial reports today increasingly adopt the material risks management approach, directed mainly to the financial community, investors, shareholders, internal management and main stakeholders. This approach necessarily aligns with the strategy and programmes that advance the company's specific business model. Reports can also be structured for industry or peer group purposes, or as a reputation management

exercise. While these supplement the annual financial reporting and tick the right boxes, the messaging and value to performance can be overtaken by their intent.

A reader's critical assessment

As readers of non-financial reports from the governance and financial perspectives, our professional interest is to be able to assess a report for its ESG content and value regardless of platform, standards or intent. The following points prove helpful in critically assessing the value of a non-financial report.

1. Report structure

The priority and order of reading an ESG report should be the same as an annual financial report: Chairman's statement, CEO statement and the ESG metrics. These are then followed by the substantiating information (for example management discussions and analysis) on programmes, events, initiatives and outcomes that support and explain the first three sections.

2. The Chairman's statement

The Chairman's statement should be about company vision, strategy and direction. It covers the 'big picture' issues that affect

“
the CEO statement is a strategic statement, not a laundry list of activities

”

the reader's perception of the company in terms of achieving (for example, progress/regression) the stated vision and business purpose. Importantly, the Chairman's statement should inspire trust. A critical reader, for example, would look for evidence of good governance and ask why one should trust the management team to steward the organisation in a sustainable direction. The report should answer this beginning with the Chairman's statement.

3. The CEO statement

The CEO statement should clearly set out the business strategy and how well or not, it is being implemented. It should give a clear indication of management's understanding of the material risks and opportunities attached to the strategy, the context in which the

Highlights

- while non-financial reporting is increasingly mainstream, many companies have yet to deliver the substantive and relevant information that adds value to a company's sustainability development
- a good report focuses principally on the company's material environmental, social and governance issues and their management that affect operations and future business development
- a critical reader would look for evidence of good governance and ask why one should trust the management team to steward the organisation in a sustainable direction

“
expectations of ESG reporting and reports have moved on from decorative ‘green walls’ and fun days shared with the community
 ”

company operates in the market and the actions taken by the management team to enact effectively the strategy. The CEO statement includes the broader/ more significant social, economic and environmental impacts of strategy implementation. This can include the longer-term impacts that potentially affect business and stakeholder decisions that sit outside of the immediate reporting time period. Importantly, the CEO statement is a strategic statement, not a laundry list of activities.

4. The metrics

The ESG metrics that measure performance against regulatory guidelines and voluntary industry standards such as GRI, the Sustainability Accounting Standards Board and, more recently, the TCFD. These are important as the metrics reflect the effectiveness of governance and other systems, and give measurable insight into internal, peer group and industry performance. While aligning with the financial reporting exercise, it is preferable to see sustainability performance measured in terms of trends (three years or more) due to the nature of the programmes that manage environmental and social issues. Climate change risk mitigation, for example, could well need a 5-10 year horizon to

effectively assess the decisions currently taken and the justification of the resources allocated. The rationale for such decisions therefore needs solid evidence-based management discussions to support them.

5. The management discussion and analysis section

The management discussion section, or series of sections, is about the systems, policies and actions undertaken that support and explain the business strategy and demonstrate performance within that context. A good report focuses principally on the company's material ESG issues and their management that affect operations and future business development (for example environmental and social risks, supply chain management, regulatory compliance, stakeholder issues, workforce, etc). Discussions explain performance, policies, operations and any changes that create significant impact from previous years, or possibly, in future years. Discussions should also elaborate on the 'comply or explain' of mandatory regulations and give insightful explanation of performance in regards to the standards and guidelines (GRI, IIRC, TCFD, SDGs, etc) the reporter chooses to use to position the sustainability journey. While being elective and providing guidance, discussions of these standards serve to elaborate on the context in which business operates and the measured impact that the company has on stakeholders. For example, reporting on SDG Goal 12: Ensure Sustainable Consumption and Production Patterns, points to the commitment to address supply chain management in terms of manufacturing practices and materials, recycling and resources use. This indicates to the reader the future strategy, business plans, programmes and targets to address exposures or risk within the supply chain.

The importance of coherence and clarity

Readers of ESG reports seek to understand the underlying corporate journey, the commitment and strategy to manage risks and opportunities, as well as the decisions that define a company's sustainable development pathway. In addition to the points above, a skilled reader would also keep the questions below in mind when reading a report.

- Is the document consistent in its message and story? This starts from the Chairman's statement and moves through to the more detailed explanation of performance results.
- Does the story and subject matter connect all sections so that the information is integrated and easily identified in relation to other sections?
- Do the metrics convey timely information concisely, and are they clearly explained and easy to understand?
- Is the report well presented, concise, balanced and void of green wash and irrelevant stories?

Because it is a voluntary exercise, a non-financial report can be structured to fit the individual corporate purpose (investment, peer review, industry ranking, internal management capabilities, etc) and therefore can be confusing to read. The above points however, serve as a baseline approach to any report in how to understand and review a report and assess its value as a corporate document.

Dr Glenn Frommer and Theodora Thunder, Principals

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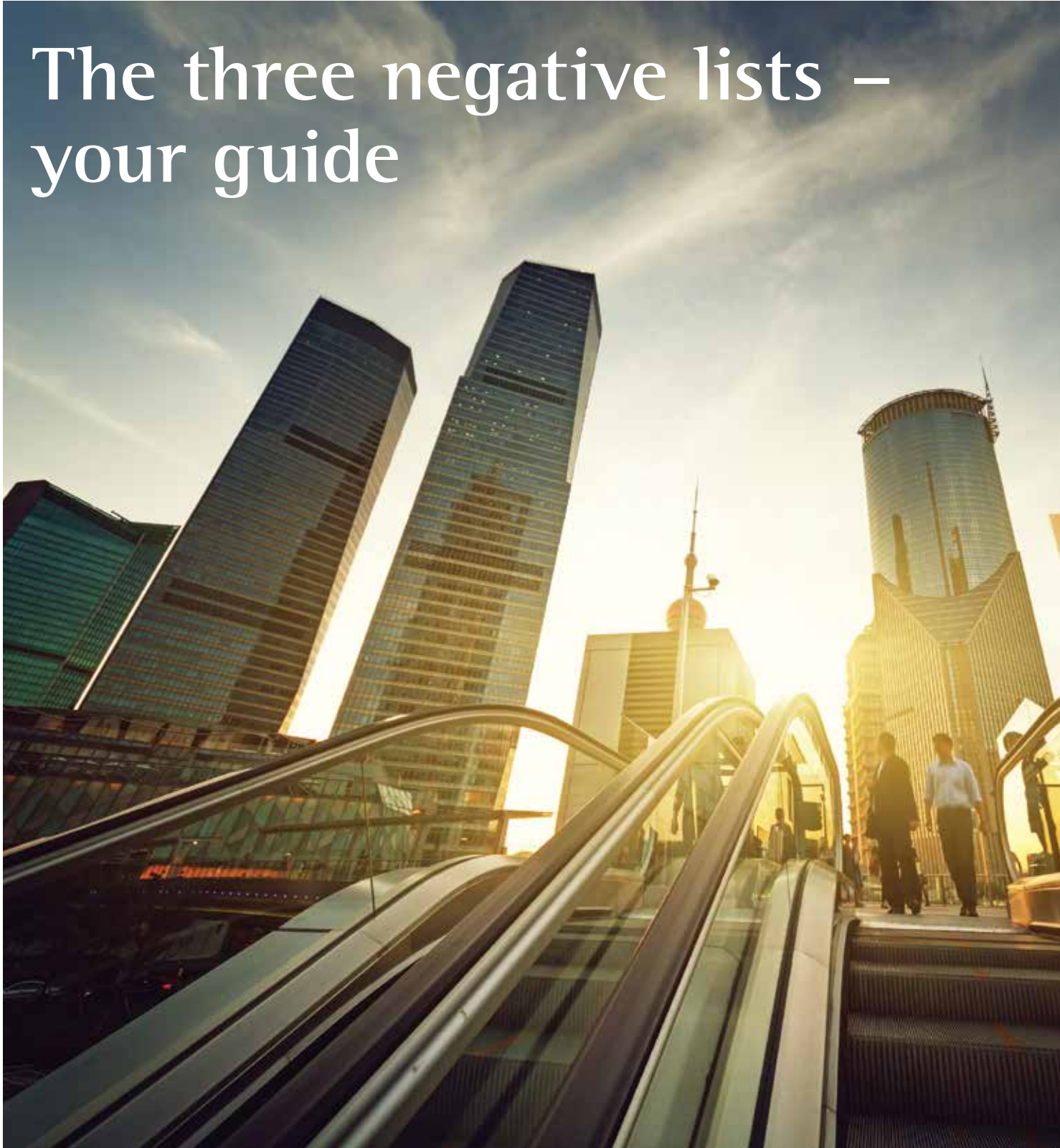
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The three negative lists – your guide





Echo Li, Head of Corporate Secretarial, TMF East China, explains how to apply the three negative lists that define the current prohibitions and restrictions on business activities in Mainland China.

Mainland China is a dynamic market undergoing constant change and reform as it continues to open up more business activities to foreign companies. There are three negative lists and it is vital for all businesses in Mainland China to be aware of the lists that apply to their business. The 'negative lists' are frequently referred to when doing business in Mainland China. They should be the first port of call when looking to commence new business activities in the country as they define both which activities are prohibited and which activities require specific prior government approval.

With rules and regulations under constant review, it is always advisable for companies to work with local experts to ensure that they do not fall foul of the law at this very first step.

1. The negative list on market access

The latest version of this list, issued on 25 December 2018, marks the full implementation of the market access negative list system in Mainland China, which is now applicable to all companies,

both domestic and foreign owned. Any company can operate business activities that do not appear on the negative list (although foreign-owned companies are also subject to the additional negative lists detailed below). The list is in three sections. The first is an explanation of the scope of the list, followed by the list of activities that are prohibited for non-governmental bodies and finally those that require prior government approval for a company to be permitted to undertake the activity. The two appendices reference the specific regulations that apply to the prohibitions and restrictions, where full details can be found.

This system reinforces the decisive role of the market in allocating resources and, by granting equal rights and opportunities to all market players under one set of rules, reinvigorates investment in business. It also advances government reforms related to the examination and approval system, investment mechanism, supervisory mechanism, social credit system, and the reward and punishment mechanism.

Highlights

- the negative lists should be the first port of call when looking to commence new business activities in Mainland China
- they define both which activities are prohibited and which activities require specific prior government approval
- foreign companies need to monitor changes to the negative lists on a regular basis since they are regularly updated

“ the 2018 version of the FTZ negative list further opens up the markets to investors and cancels limitations in some industry sectors ”

The list includes 151 industry items, 581 administrative measures and 147 industry sectors listed that require prior government approval – the qualification criteria and required technical standards are also provided.

Investors are prohibited from carrying out activities in violation of *The Catalogue for Guiding Industry Restructuring*, issued by the National Development Regulatory Commission, and non-financial companies may not conduct financial-related business or have a business scope or a company name that includes any sensitive wording relating to finance, banking, insurance or other similar sectors. Investors are also prohibited from carrying out activities in violation of *The Catalogue on Prohibition on Internet Market Access*, such as public sale of prescribed medicines via the internet or courier and there are restrictions on activities of internet loan brokerage firms.

The list is a consolidation of current guidance, rules and regulations previously spread across many different government bodies. It applies to both

foreign and domestic investors and provides a general guide as to which rules and regulations they should refer to. It supports the principle of market openness; any industries not listed on the negative list are open to all market players with equal access, except that for foreign investors there may be additional restrictions under the other government lists discussed below.

2. The negative list on foreign investment access

The *Special Administrative Measures for Access of Foreign Investment (Negative List) (2018 Edition)* (FDI negative list) specifically applies to all companies in Mainland China that are controlled by overseas investors. This is the seventh edition since its first introduction in 1997. The list must be adhered to by all foreign investors before establishment of their businesses in Mainland China. Like the negative list on market access, it too has a list of prohibited activities and a section detailing business activities that will require specific approval from the government authorities before a foreign investor can undertake the activity.

3. The negative list on foreign investment access in pilot free trade zones

The *Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2018 Edition)* (FTZ negative list) is the fifth edition of this negative list that first originated in 2013, reflecting the pace of change to regulations in Mainland China. It applies to all foreign-invested businesses that operate within one of the designated Free Trade Zones (FTZ) within Mainland China. It has the same structure as the other two lists with a set of prohibited activities and a section

defining activities that can be undertaken given prior government approval.

Compared with the FDI negative list discussed previously, the 2018 version of the FTZ negative list further opens up the markets to investors and cancels limitations in some industry sectors. It cancels limitations on petroleum and gas exploration, expands the trial policy on the telecoms industry to all FTZs nationwide and cancels Chinese party majority ownership requirements for agencies for the performing arts. Establishment of an Artistic-culture Performance Group is now permitted as an Equity Joint Venture provided it is with Chinese party majority ownership.

Where to start

It is advisable for foreign companies to check the FDI negative list first, except where they intend to operate within a FTZ, when the broader and less rigorous FTZ negative list should take precedence. It is generally only sensible to open within a FTZ if the business activities are focused on traditional FTZ functions, such as transit trade or logistics, or if the main industry has been set lower qualification criteria in a FTZ area. The negative list on market access must then be referenced to ensure that the business activities are not more generally prohibited or restricted.

With three lists to reference, each of which undergoes regular change, and a sea of underlying rules and regulations to wade through, it is always advisable to have local expertise in Mainland China to help you navigate safely and efficiently to your business destination.

Echo Li, Head of Corporate Secretarial
TMF East China

A bird's eye view

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

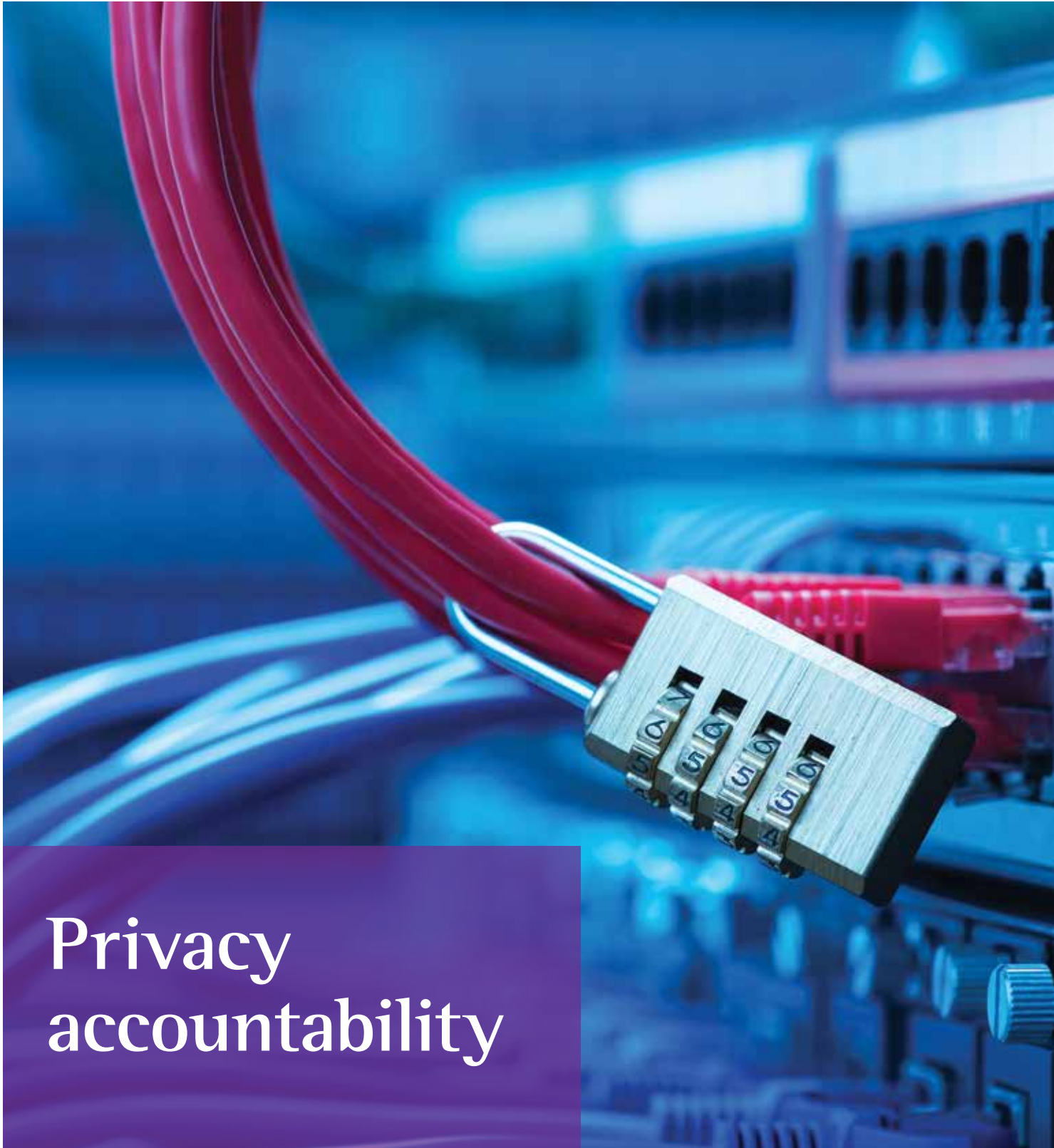
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Privacy accountability



A new study released by the Office of the Privacy Commissioner for Personal Data assesses how well organisations in Hong Kong have implemented the accountability principle through their Privacy Management Programmes.

A new study released by the Office of the Privacy Commissioner for Personal Data assesses how well organisations in Hong Kong have implemented the accountability principle through their Privacy Management Programmes.

Between October and November 2018, the Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) examined 26 organisations from different sectors (including insurance, finance, telecommunications, public utilities and transportation) to understand their implementation of Privacy Management Programmes (PMPs) within their organisations.

The results of the survey are now available in the *2018 Study Report on Implementation of Privacy Management Programme by Data Users*, recently released by the PCPD.

The examination was part of the global Privacy Sweep exercise of the Global

Privacy Enforcement Network. This is the sixth consecutive year for the PCPD to participate in the Privacy Sweep. The theme of the Privacy Sweep 2018 was 'privacy accountability'. Eighteen privacy enforcement authorities from around the world, including the PCPD, participated in the Sweep exercise. The exercise aimed to assess how well organisations have implemented the accountability principle through their PMPs and their ability to manage privacy risk in all business processes.

The organisations were selected due to their size and the vast amount of personal data held by them. The findings show that, despite the fact that the accountability principle is not a legal requirement, the performance of the participating Hong Kong organisations in implementing voluntary PMPs is satisfactory. In particular:

- all participating organisations have an internal data privacy policy and

Highlights

- organisations should embrace personal data protection as part of their corporate governance responsibilities
- organisations should apply personal data protection best practice as a business imperative throughout the organisation, starting with the boardroom
- organisations should devise written procedures for handling data breach incidents, including the mechanism and practice for assessing whether a data breach notification should be given to affected individuals and regulatory bodies

“
 nearly 40% of the participating organisations have room to improve in their procedures for notifying affected individuals and reporting to the regulatory authorities in the event of a data breach
 ”



such policy has been embedded into their everyday practices

- over 90% of the participating organisations have designated personnel at a sufficiently senior level responsible for privacy governance, and
- 96% of the participating organisations ensure that their staff members are given comprehensive training to ensure their understanding of organisational privacy policies, procedures and best practices.

The findings reflect the weight given by the participating organisations to personal data privacy protection, as well as the resources they are willing to give this area. Nevertheless, the report reveals that nearly 40% of the participating organisations have room to improve in their procedures for notifying affected individuals and reporting to the regulatory authorities in the event of a data breach, and close to 20% of the participating organisations' inventories of maintaining personal data were yet to be improved.

'Organisations have to accept that personal data that they hold belongs to the customers. Customers provide their personal data to organisations based on a relationship of trust. Therefore, organisations are responsible for handling personal data in accordance with three data stewardship values, namely being respectful, beneficial and fair, in order to meet customers' expectations', The Privacy Commissioner for Personal Data, Hong Kong (Privacy Commissioner), Stephen Kai-yi Wong said.

Privacy Sweep 2018 echoes with the research report *Ethical Accountability Framework for Hong Kong, China*, under the Legitimacy of Data Processing Project, which was released in October last year by the PCPD. That report advocated the above-mentioned three data stewardship values and the goals of the privacy accountability.

To assist organisations in complying with the requirements of the Personal Data Privacy Ordinance (the Ordinance) and enjoying fairness, respect and benefit with their customers and employees, the Privacy Commissioner has the following

recommendations to organisations in the implementation of their PMPs.

- **Provide adequate data protection training** – organisations should ensure that their staff members understand the requirements under the Ordinance and observe the organisation's policy in relation to personal data handling. If amendments are made to the organisation's policy in relation to personal data handling or the Ordinance, the organisation should notify its staff immediately.
- **Conduct a regular audit** – to ensure that the policies and practices of the organisations are in compliance with the Ordinance and to identify whether there is room for improvement.
- **Devise written procedures for handling of data breach incidents** – in relation to the factors to be considered, including the mechanism and practice for assessing whether a data breach notification should be

given to affected individuals and regulatory bodies.

- **Maintain a comprehensive personal data inventory** – each department of an organisation should prepare its own inventory of personal data held.
- **Maintain a record of data flow** – recording data flow can facilitate organisations to easily check and retrieve relevant information in future when necessary.

The Privacy Commissioner advocates that organisations should develop their own PMP, embrace personal data protection as part of their corporate governance responsibilities and apply them as a business imperative throughout the organisation, starting with the boardroom. The Privacy Commissioner emphasises that nowadays organisations should ditch the mindset of conducting their operations to meet the minimum regulatory requirements only. They should instead be held to a higher ethical standard, and adopt the PMP as a strategic framework to assist them in building a robust privacy infrastructure that is supported by an effective ongoing review and monitoring process to facilitate the compliance with the requirements under the Ordinance.

Source: The Office of the Privacy Commissioner for Personal Data

The '2018 Study Report on Implementation of Privacy Management Programme by Data Users' is available on the Office of the Privacy Commissioner for Personal Data website: www.pcpd.org.hk.

What is the Privacy Sweep?

The Privacy Sweep mentioned in this article is an annual intelligence gathering operation organised by the Global Privacy Enforcement Network (GPEN). The joint study is carried out by data protection regulators across the globe and the 2018 study looked at how well organisations have implemented the core concept of accountability into their own internal privacy policies and programmes.

Globally, while there were examples of good practice, it was found that a number of organisations had no processes in place to deal with the complaints and queries raised by data subjects and were not equipped to handle data security incidents appropriately. Participating GPEN members, including Hong Kong, made contact with 356 organisations in 18 countries during the Privacy Sweep exercise and came to the conclusions set out below.

- When it comes to monitoring internal performance in relation to data protection standards, many organisations were found to fall short, with around a quarter who have no programmes in place to conduct self-assessments and/or internal audits.
- Organisations were generally found to be quite good at giving data protection training to staff, but often failed to provide refresher training to existing staff.
- The organisations that indicated that they have monitoring programmes in place generally gave examples of good practice, noting that they conduct annual audits or reviews and/or regular self-assessments.
- Nearly three quarters of organisations across all sectors and jurisdictions had appointed an individual or team who would assume responsibility for ensuring that their organisation complied with relevant data protection rules and regulations.
- Over half of the organisations surveyed indicated that they have documented incident response procedures, and that they maintain up to date records of all data security incidents and breaches. However, a number of organisations indicated that they have no processes in place to respond appropriately in the event of a data security incident.

The international report resulting from the latest Privacy Sweep exercise, 'GPEN Sweep 2018 – Privacy Accountability', can be accessed on the website of the Information Commissioner's Office, UK: <https://ico.org.uk>.

Managing disputes – top tips for Hong Kong companies



Paul Starr, Suraj Sajnani, Dong Long, King & Wood Mallesons, give some top tips for Hong Kong companies' dispute management following the signing of a ground-breaking arrangement that broadens the scope of judgments which may be enforced between Mainland China and Hong Kong.

On 18 January 2019, the Government of the Hong Kong Special Administrative Region and the Supreme People's Court of the People's Republic of China signed a ground-breaking arrangement that broadens the scope of judgments which may be enforced between Mainland China and Hong Kong, namely, the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (New Arrangement). At the time of writing, the New Arrangement is not yet in force and is due to come into effect on a date yet to be nominated.

While Hong Kong is within the PRC, Mainland China and Hong Kong are separate legal jurisdictions. As such, judgments from the Mainland can only be enforced in Hong Kong, and vice-versa, by way of a special arrangement. Currently, the *2006 Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned* (2006 Arrangement) permits such enforcement, but only if certain, often difficult to satisfy, criteria are met. Those criteria include that:

- a. the judgment must be for money only, and
- b. the judgment must arise out of a choice of court agreement which

essentially requires that the parties had entered into an exclusive jurisdiction agreement (Choice of Court Agreement), prior to the dispute, agreeing that all disputes would be referred exclusively to PRC or Hong Kong courts, as the case may be.

The New Arrangement significantly broadens the scope of judgments that may be enforced between the two jurisdictions. Its top eight features are listed below.

1. The New Arrangement operates by way of an excepted list, which means that all legally effective commercial and civil judgments are enforceable other than in specific areas listed in the Arrangement. Those areas include: bankruptcy/insolvency, family, matrimonial, probate, maritime, and certain patent/intellectual property cases. For commercial disputes, the exclusion of bankruptcy/insolvency is most significant as this means that enforcement against a cross-border
2. Monetary and non-monetary judgments can be enforced under the New Arrangement. Importantly, this would include orders for specific performance. However, anti-suit injunctions or interim relief from Hong Kong courts and preservation measures from PRC courts are not enforceable under the Arrangement.
3. A court where enforcement is sought may, before or after accepting an application for enforcement, impose property preservation measures.
4. The New Arrangement only applies to 'legally effective judgments', which in the case of the Mainland means a second instance judgment or a first instance judgment which cannot be appealed, or for which the appeal time limit has expired. For Hong Kong, even if a judgment remains

Highlights

- the New Arrangement applies to a much broader scope of judgments than those which were enforceable under the 2006 Arrangement
- the New Arrangement does not strictly require an exclusive jurisdiction clause in the underlying contract in order for cross-border enforcement under the arrangement to be pursued
- one helpful tool to consider is a corporate governance manual on contracts for employees to follow

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The New Arrangement signals yet another step in the direction to solidify Hong Kong’s role in the Belt and Road Initiative and Greater Bay Area as the prime location for dispute resolution
”



appealable, it is still enforceable. However, enforcement may be stayed pending the appeal.

5. The party requesting enforcement must seek from the court where judgment was originally sought a certificate that the judgment is legally effective and enforceable, and in the case of a default judgment, certification that the party against whom enforcement is sought was properly summoned.
6. The 'Choice of Court Agreement' requirement under the 2006 Arrangement has been abolished. In its place is a jurisdictional test which can be satisfied without parties' prior agreement to an exclusive jurisdiction clause, at the time of contract formation. In essence, provided that the place where enforcement is sought did not have exclusive jurisdiction of the dispute and the courts of the place where

judgment was granted properly exercised jurisdiction (by way of one of the means referred to in the New Arrangement), the jurisdictional test is satisfied.

7. Similar to the approach taken for enforcement of arbitral awards pursuant to the New York Convention, there are limited grounds upon which enforcement can be refused, including: improper exercise of jurisdiction, fraud, breach of natural justice, and breach of basic principles of law or public policy.
8. Costs and interest awards can be enforced under the New Arrangement.

Dispute resolution management tips

When the New Arrangement comes into force, Hong Kong and Mainland China will have several versatile schemes under which to mutually recognise and enforce judgements, arbitration awards, and

other civil and commercial decisions. The most significant change from the 2006 Arrangement to the New Arrangement is the scope of judgments that can be enforced – the New Arrangement applies to a much broader scope of judgments than those which were enforceable under the 2006 Arrangement as it does not strictly require an exclusive jurisdiction clause in the underlying contract in order for cross-border enforcement under the arrangement to be pursued. Non-contractual causes of action may now also be pursued and enforced cross-border under the New Arrangement. This is particularly significant in light of the limited mechanisms and consequent difficulty generally encountered when enforcing judgments from other jurisdictions in Mainland China.

The following dispute resolution management tips will hold Hong Kong companies in good stead to take advantage of the benefits of the various cross-border enforcement



mechanisms available, including the New Arrangement.

Ensure the inclusion of robust and appropriate governing law and dispute resolution clauses

At the time of contract formation, negotiation and drafting of governing law and dispute resolution clauses should be afforded as much weight as secondary commercial terms. They can be the difference between a speedy, effective resolution process at the time of dispute which allows commercial relationships to be maintained, and an arduous, ineffective, public dispute. The following are our tips to achieve commercial certainty, cost-control and effective resolution.

- Make an intentional, well-thought out choice of governing law. Often parties agree to a governing law because of perception of the state of law, without considering its appropriateness to the specific contract, for example the choice of 'English law'. However, in a Hong Kong-Mainland cross-border trade matter, the choice of English law may result in higher costs at the time of dispute resolution due to the need to find English law qualified lawyers and experts to assist in resolution of the matter.
- Specify the language of the dispute resolution process and of documents to be used in that process. A huge amount of time and costs can be saved by agreeing to language requirements that parties will be comfortable with at the outset, without arguing about this at the time of dispute or being tied down to an inappropriate express choice of language or a default choice of language in court/arbitration rules that necessitates astronomical translation costs.
- Most of the time, consistent or connected dispute resolution clauses provide the best cost-control for resolution of disputes arising out of related contracts. These allow for comprehensive resolution of disputes which may arise out of different agreements and which may otherwise be subjected to different resolution fora (for instance, a dispute resolution clause under a trade agreement may point to Hong Kong arbitration, but that under a related financing agreement may point to New York courts). Under certain arbitration rules, the parties may consolidate disputes so as to achieve time and cost efficiencies, and a consistent result.
- As a matter of course, ensure that dispute resolution opinions are sought, in addition to standard legal opinions, to safeguard against being tied into an inappropriate
- Choose a dispute resolution mechanism that is appropriate for the matter. Choices can include: exclusive court litigation (allowing enforcement under the New Arrangement); arbitration (allowing cross-border enforcement under the Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and Hong Kong (Mutual Arbitration Enforcement Arrangement); mediation (potentially allowing enforcement through the yet-to-be signed United Nations Commission on International Trade Law (UNCITRAL) Convention on Enforceability of Settlement Agreements Resulting from International Commercial Mediation); or other less common forms of resolution. The above methods can also be crafted in a 'tiered' format so as to allow parties first to attempt quicker, less formal and less costly methods, before embarking upon more formalised methods.
- Consider whether the benefits of alternative dispute resolution can be reaped for the deal at hand. For instance, arbitration affords parties with more flexibility, confidentiality, and party autonomy, while providing the benefits of cross-border enforcement. Arbitration may also avoid the dilemma of having to consider whether the ultimate enforcement court has

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The New Arrangement significantly broadens the scope of judgments that may be enforced between Mainland China and Hong Kong
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or 'Frankenstein' clause which borrowed elements from various drafts or precedents but does not work for the deal at hand, resulting in skyrocketing costs and time for parties at the time of dispute.

Use of corporate governance manuals

To ensure that a consistent approach will be taken within a company through possible changes in management, one helpful tool to consider is a corporate governance manual on contracts for employees to follow. The manual should include the information listed below.

1. The company's primary or preferred position on dispute resolution: litigation, arbitration, etc. This may change depending on a number of factors, one of which includes the identity of the counterparty. If it is a Mainland Chinese entity, or a Hong Kong company with a Mainland China parent (or the ultimate control of which is within Mainland Chinese parties), a company may have

one approach, such as Hong Kong litigation which can be enforced under the New Arrangement. However, for counterparties from other countries, the company might choose arbitration to allow enforcement in various other countries.

Consider putting together a flowchart for company personnel's reference that will include the company's default or preferred position on contracting and dispute resolution mechanisms and reminders to seek proper internal and/or external legal advice at the various appropriate junctures on specific issues.

2. What the primary language of transaction documents is. Again, from a legal perspective, this can change costs significantly when seeking advice or dealing with disputes.
3. The maximum liability the company will take on.

4. Whether parent company guarantees are provided and what are the circumstances/thresholds for the provision thereof.

Significance of the New Arrangement

As stated above, the New Arrangement is not yet effective and will come into effect on a date to be nominated. Upon its entry into force, it will terminate the 2006 Arrangement, which will continue to apply only to Choice of Court Agreements signed before the commencement of the New Arrangement. The New Arrangement will apply only to enforcement of court judgments and does not affect the recognition or enforcement of arbitral awards, which continue to be enforced through the Mutual Arbitration Enforcement Arrangement.

The New Arrangement signals yet another step in the direction to solidify Hong Kong's role in the Belt and Road Initiative and Greater Bay Area as the prime location for dispute resolution,

Model dispute resolution clause

The following is an example of a comprehensively-drafted dispute resolution clause based on the model arbitration clause of the Hong Kong International Arbitration Centre (HKIAC), within which we have identified elements to the clause that will help with the efficient conduct of any dispute resolution process. While several of these matters, as a matter of procedure, can be agreed after a dispute has arisen, they almost never are because of the warring states of the parties which form upon the genesis of a dispute.

Any and all disputes arising out of or in connection with this Agreement, including the existence, validity, interpretation, performance, breach, or termination thereof¹ shall be referred to and finally resolved² by arbitration administered by the HKIAC³ under the HKIAC Administered Arbitration Rules in force at the time the Notice of Arbitration is submitted⁴. The seat of the arbitration shall be Hong Kong⁵. The Tribunal shall be a three-person Tribunal. Each party shall nominate one arbitrator and the two party-nominated arbitrators shall nominate the presiding arbitrator⁶.

The language of the arbitration shall be English⁷. The law of this arbitration clause shall be Hong Kong law⁸.

As one can see, the above clause includes the following elements.

1. Identifies the scope of disputes very broadly, so that there will be little room to argue that a particular claim does not fall into the dispute resolution clause.
2. Includes the words 'finally resolved' when referring disputes to arbitration, such that there is no room to argue that a decision made by a Tribunal is subject to further appeal.
3. Selects the administering arbitration institution.
4. Specifies the arbitration rules applicable to the arbitration proceedings. This may be done by reference to a specific set of rules, for example the HKIAC 2018 Rules, or agreeing that the rules at the time that the Notice of Arbitration is filed shall apply.
5. Specifies the seat of the arbitration.
6. Sets out the procedure for selecting and appointing arbitrators. In most institutional rules, however, there is usually a set of rules that will help determine the tribunal in the absence of specific party agreement.
7. Specifies the language, and *only one* language, of the arbitration. Lack of agreement about the language of the arbitration or the agreement of more than one language will both lead to unnecessary time and costs being incurred. When considering which language to be used for the arbitration proceedings, have regard to the language of the contract, the likely language of communication between the parties (that is, the likely language that evidence and documentation will be in).
8. Specifies the law of the arbitration clause, to avoid arguments on applicable law to the arbitration clause – there are arguments to support various positions.

ahead of other jurisdictions which are not privy to any special agreements whereby national judgments can be enforced against assets in Mainland China. Indeed, this role has been confirmed in the PRC Government's Outline Development Plan for the Guangdong-Hong Kong-Macau Greater Bay Area.

The New Arrangement adds to the growing range of assets for Hong Kong companies looking to resolve their Belt and Road and Greater Bay Area disputes in Hong Kong, such as the recent Hong Kong International Arbitration Centre 2018 Rules.

Paul Starr, Suraj Sajnani and Dong Long
King & Wood Mallesons

More information (including a briefing on Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and Hong Kong) is available on the King & Wood Mallesons website: www.kwm.com.

Right to silence

Can you remain silent upon receiving a Section 181 notice? Wynne Mok, Partner, and Jonathan Kao, Associate, Slaughter and May, highlight the implications of the recent judicial review application – *AA & Anor v The Securities and Futures Commission*.



Cooperation amongst regulators around the world has become increasingly important to effectively deal with cross-border crime and misconduct. The Securities and Futures Commission (the SFC) has entered into cooperation arrangements with various foreign counterparts whereby investigative assistance can be rendered to one another and intelligence can be exchanged.

Section 186 of the Securities and Futures Ordinance (Cap 571) (the SFO) provides the SFC with the legislative gateway to assist an overseas regulator which performs a similar function in the latter's investigation by exercising its investigative powers under Part VIII of the SFO. Provided that the conditions for providing investigative assistance are met, and subject to certain safeguards, the SFC may disclose materials which it has compelled a person to provide in Hong Kong to an overseas regulator.

One of the safeguards is that, if a person is required to give an explanation by the SFC and if he claims privilege against self-incrimination before giving the explanation, the requirement for the explanation and the explanation itself cannot be disclosed to the foreign regulator for use in criminal proceedings against that person in the foreign jurisdiction.

The SFC's exercise of its investigative powers to assist its Japanese counterparts, together with the constitutionality of Section 181, has recently been subject to judicial challenge. Section 181 empowers the SFC to demand licensed persons to provide routine trading information. However, uncertainty arose as to whether Section 181 overrides privilege against self-incrimination, which is an integral part of the right to a fair trial protected by

Article 10 of the Bills of Rights (BOR10) and extends to answers compulsorily obtained before criminal proceedings are instigated.

Background to the judicial review

The first applicant of the judicial review application is an investment manager of a hedge fund (the Fund) licensed by the SFC and the second applicant is one of its Responsible Officers. In early 2014, the SFC received a report from a licensed corporation regarding suspected market manipulative activities by the Fund in relation to the shares in Nitto Denko Corporation (Nitto Denko) listed on the Tokyo Stock Exchange. It then issued a notice under SFO Section 181 (the Notice) asking the first applicant to provide information about the Fund, including the identity of its clients and particulars of all trades in Nitto Denko shares or warrants executed by the first applicant or on behalf of the Fund at the material times. The SFC subsequently commenced a formal investigation against the applicants.

The first applicant duly responded to the Notice and also the notices subsequently issued by the SFC pursuant to Section 183 of the SFO by providing the information requested. Indeed, the first applicant

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uncertainty arose as to whether Section 181 overrides privilege against self-incrimination, which is an integral part of the right to a fair trial protected by Article 10 of the Bills of Rights
”

volunteered more information to the SFC. In these responses, the first applicant did not assert any claim of privilege against self-incrimination. On the other hand, the second applicant claimed privilege against self-incrimination when later answering questions at the SFC interviews.

Following the issue of the Notice, the SFC informed the Japanese Financial Services Agency (FSA) that it had received a suspicious transaction report concerning the Fund. The FSA and the Securities and Exchange Surveillance Commission (SESC)

Highlights

- subject to certain safeguards, the Securities and Futures Commission (SFC) may disclose materials which it has compelled a person to provide in Hong Kong to an overseas regulator
- in theory, one can remain silent upon receipt of a Section 181 notice if circumstances permit, but recipients are unlikely to have any choice but to comply with it
- in order to claim privilege against self-incrimination, it must be shown that the information required by the SFC would expose the person providing it to self-incrimination in criminal proceedings

(together, the Japanese regulators) later made a request for the SFC's investigative assistance. In response to this request, the SFC disclosed the trading information provided by the first applicant pursuant to the Notice, as well as responses to some subsequent investigation notices. A FSA officer also sat in an interview of the SFC with the second applicant with his consent.

Soon after this interview, the SESC announced that it had recommended to the Japanese Prime Minister and the Commissioner of FSA to issue an administrative monetary penalty in light of its findings of the first applicant's market manipulation concerning the trades of Nitto Denko shares. The FSA, in subsequent administrative proceedings, made an administrative monetary penalty order in the sum of approximately JPY684 million against the first applicant. The SFC's investigation, on the other hand, is still ongoing.

Constitutionality of Section 181

The applicants sought to challenge the actions of the SFC on a number of grounds. The ground of more general significance is the complaint that Section 181 is intended to abrogate the privilege against self-incrimination, as read in context with the other sections under Part VIII which contain powers to compel production of materials and information for investigative purposes and override privilege against self-incrimination. As far as these other provisions (that is, Sections 179, 183 and 184B) are concerned, Section 187 stipulates that when compelled to answer, a person may claim privilege against self-incrimination and, if he so claims, the answer provided by him shall not be used against him in criminal proceedings. To the extent that Section

181 does not provide such direct use prohibition, it encroaches the provisions of BOR10 and is unconstitutional.

The Court accepted both the SFC's and the Secretary of Justice's submission that Section 181 does not abrogate privilege against self-incrimination and a recipient of a Section 181 notice can invoke the privilege when circumstances permit. The assertion of the privilege against self-incrimination may constitute a 'reasonable excuse' for non-compliance with the requirement imposed under Section 181. This is different from the corresponding provisions in Sections 179, 184 and 184D which expressly remove possible self-incrimination from the scope of the 'reasonable excuse' defence.

The Court also considered that, even if there is any intrusion on the privilege against self-incrimination under Section 181, such intrusion would not be disproportionate thus rendering Section 181 unconstitutional. The Court took into account the fact that Section 181 only applies to a specific class of persons who have voluntarily engaged in a regulated commercial activity and are therefore expected to abide by the requirements of the regulatory regime, and the type of information to be provided is limited. The nature and limitation of that provision, as the Court ruled, provides a measure that is no more than reasonably necessary for accomplishing the legitimate aim of ensuring that the financial markets of Hong Kong operates fairly and honestly.

Then, does it mean that a subject of a Section 181 notice can remain silent and rely on the 'reasonable excuse' defence to resist compliance with the notice if he thinks that the information provided may incriminate himself? Indeed, even the

Court in *AA v the SFC* accepted that such a circumstance would be rare. The notion of 'reasonable excuse' does not encompass a privilege that is unavailable on the facts. For instance, one cannot assert the privilege over pre-existing materials that have an existence independent of the will of the recipient of the notice. The rationale behind was explained by Ribeiro PJ in *HKSAR v Lee Ming Tee (2001) 4 HKCFAR 133* – 'the purpose of the privilege is to respect the will of the accused to remain silent, thereby ensuring that the accused is not compelled to provide proof of his or her guilt'.

Section 181(2) sets out the categories of information which can be demanded by the SFC pursuant to Section 181, which include particulars of clients and transactions and the instructions given. This information can be derived from existing records kept by licensed persons, rather than being 'materials created in response to an investigation which come into existence by an exercise of will pursuant to a testimonial obligation imposed upon the party'. As such, no privilege against self-incrimination can be exercised.

Further, in order to claim privilege against self-incrimination, it must be shown that the information required by the SFC would expose the person providing it to self-incrimination in criminal proceedings. The SFC may exercise its powers under Section 181 for the purpose of enabling or assisting it 'to perform a function under any of the relevant provisions', which include the provisions in the SFO. As such, if a licensed corporation is required to provide information for the SFC to ascertain whether there is any regulatory compliance issue, and the information is subsequently used in disciplinary

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the Court’s decision clarifies that Section 181 of the Securities and Futures Ordinance does not abrogate the privilege against self-incrimination
 ”

or administrative proceedings against the licensed corporation, the privilege against self-incrimination protected by BOR10 would not even be engaged.

Whether or not the administrative proceedings commenced by the FSA against the first applicant were in fact criminal in nature is another issue in dispute in *AA v the SFC*. The applicants’ complaint was that the information provided by the applicants to the SFC was forwarded to the Japanese regulators for use in criminal proceedings against the first applicant and therefore their rights guaranteed under BOR10 were infringed. They argued that whilst the proceedings in Japan were classified as ‘administrative’ there, they were criminal in nature given the severity of the penalty imposed.

The Court observed that the nature of the foreign proceedings in which the compelled materials were used is an issue of Hong Kong law. The classification of the proceedings in foreign jurisdiction is not decisive. The Court would have to apply the three criteria set out in *Koon Wing Yee v Insider Dealing Tribunal (2008) 11 HKCFAR 170*. The three criteria are:

1. the classification of the offence under domestic law
2. the nature of the offence, and
3. the nature and severity of the potential sanction.

The Court in *AA v the SFC* examined the Japanese legal provisions under which the FSA took action against the first applicant and applied the aforesaid three criteria to determine if the Japanese proceedings were indeed criminal in nature. The Court concluded that, while the provision is classified as administrative rather than criminal under Japanese law, taking also into account the nature of the provision, which in Hong Kong can be both civil or criminal in nature, as well as the sanction, which was calculated by a formula intended to reflect the disgorgement of profits and therefore was not penal in nature, the jurisdiction exercised by the Japanese regulators is civil in nature. It followed that the materials which the applicants had been compelled to furnish were not used in criminal proceedings against the first applicant.

Whilst rejecting the applicants’ grounds for judicial review, the Court considered the applicant made a valid point that if the privilege against self-incrimination is available to a recipient of a Section 181 notice, the SFC should accordingly warn and caution such person of the privilege. The SFC is expected to take steps to address this lack of warning in the future.

Conclusion

This decision clarifies that Section 181 does not abrogate the privilege against self-incrimination. In theory, one can remain silent upon receipt of a Section 181 notice if circumstances permit.

However, in reality, given the nature of the provision and the information to be required under the notice, recipients of the notice are unlikely to have any choice but to comply with it, unless they can prove they have any other reasonable excuse for the non-compliance).

Having said that, this case also serves to remind us that if, in response to a Section 181 notice, recipients want to volunteer further information which is outside the scope of the information the SFC is entitled to under Section 181(2), they should think twice before doing so. They should consider and seek legal advice on:

- their role in the inquiry
- whether there is any chance that they would be under investigation
- how the regulator would use the information
- whether the information offered could be used against them in administrative or criminal proceedings
- the possibility of the involvement of foreign regulators
- how the foreign regulators would utilise the information, and
- whether the information could be used in any foreign proceedings, civil or criminal.

Wynne Mok, Partner, and Jonathan Kao, Associate

Slaughter and May

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Professional Development

Seminars: February and March 2019

1 February

Practical company secretarial workshops: part 4 – what you can do more, module 14 – financial oversight & analysis



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

18 February

Employee share incentive plan (PRC SAFE rules and regulation)

Speakers: Oliver Ng, Managing Director; and Alix Chan, Director; BOCI Securities Ltd

19 February

Effective communication with stakeholders



Chair: Dr Eva Chan FCIS FCS(PE), Institute Council member and Education Committee Chairman, and Head of Investor Relations (IR), C C Land Holdings Ltd

Speaker: Guy Mason, Chief Communication Officer, Simitri Group International

22 February

Company secretarial practical training series: continuing obligations of listed company: practice and application



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

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

26 February

How individual income tax amendment affects Hong Kong residents with effect from 1 January 2019



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

Speaker: Leo Li, Principal, PRC Tax, BDO Tax Ltd

27 February

Directors & officers' duties in various situations



Chair: Y T Soon FCIS FCS(PE), Executive Director, Corporate Services, Tricor Services Ltd

Speaker: Ricky Ho, Director, Risk Advisory Services, AVISTA Group

1 March

Business valuations for listed companies



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

Speakers: William Yuen, Director, Ascent Partners Valuation Service Ltd

6 March

Hybrid meeting in action



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

Speakers: Vivek Aranha, Managing Director, Link Market Services Hong Kong/Orient Capital Hong Kong; Will Malan, Head of Client Partnerships and Business Information; and Julie Chu ACIS ACS, General Manager – Client Services; Link Market Services Hong Kong

12 March

Disclosure, risk management and capital market: how can listed companies improve its ESG competence



Chair: Stella Lo FCIS FCS(PE), Institute Council member and Membership Committee Chairman, and Group Company Secretary, Guoco Group Ltd

Speaker: Brian Ho, Partner, Climate Change and Sustainability Services, EY

Online CPD (e-CPD) seminars

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
29 April 2019	6.45pm–8.45pm	Risk management beyond compliance	2
30 April 2019	6.45pm–8.15pm	Hong Kong's perspectives of green finance – from ESG integration of equities to green bond issuance	1.5
6 May 2019	6.45pm–8.15pm	Directors & officers' duties in various situations (re-run)	1.5
9 May 2019	6.45pm–8.15pm	Low & simple? Dispelling common myths about Hong Kong tax	1.5
10 May 2019	6.45pm–8.15pm	Improving the disclosures in annual reports of Hong Kong listed companies – key financial reporting matters for company secretaries (re-run)	1.5

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

Professional Development (continued)

CSP lunch meeting

A lunch meeting of the Institute's Company Secretaries Panel (CSP) was held on 12 March 2019 with Ada Chung, JP, Registrar of Companies, and her colleagues Hilda Chang, Registry Manager (Trust and Company Service Providers); Marianna Yu, Registry Manager; Ellen Chan, Deputy Principal Solicitor (Company Law Reform) and Roger Wong, Deputy Registry Manager, as guests. The CSP serves as an informal platform for regulators to discuss issues of common interests with company secretaries of the top 50 market cap listed companies in Hong Kong, most of whom are Institute members.



At the meeting

TCP lunch meeting

A meeting of the Institute's Technical Consultation Panel (TCP) was held on 13 March 2019. The meeting was chaired by Institute Past President April Chan FCIS FCS, who was the Inaugural President of Corporate Secretaries International Association of which the Institute is a founder member. The TCP serves as a platform for Institute members and relevant professionals to provide the Institute with technical support on issues of common interest to the company secretary and governance profession. Currently, seven interest groups have been formed under the TCP to address and publish guidance notes on various areas of focus for Chartered Secretaries and Chartered Governance Professionals.



At the meeting

Membership

New graduates

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

Chan Hei	Ho Ka Man	Lee Po Yan	Wong Ka Chi
Chan Ka Ki	Ho Ka Wai	Lo Sin Ying, Joyce	Wong Tsz Yan
Chan Lai Man	Ho Sze Wah, Cecilia	Lo Siu Ting	Wong Wai Lam
Chang Kwan Yip, Quillan	Hung Chung Hing	Ng Ching Hang	Yau Ching Mei
Chapman, Evelyn Po Yin	Ip Kai Kwong	Ng Kwai Fa	Yip Lee Nee
Chau Ying Mei, Hilda	Kam Chui Ling	Pau So Yi	Yu Man Yan
Cheung Sau Lan	Ko Yin Chun	Sam Yuen Sze	Yuen Ka Man
Cheung Yan Yan	Kwan Man Ying	So Chit Fun, Lydia	Yuen Lai Sheung
Cheung Yuen Shun	Lam Ka Yi	Suen Ho Ling	Zhang Tao
Chu Mei Yi	Lau Pui Ka	Tam Wai Yan	Zheng Xiao Lin, Kevin
Chun Pui Sze	Lau See Heng	Tse Kit Ying	Zhou Danqing
Chung Ching Yin	Lau Wing Lim	Wan Pui Ka, Kerry	
Hau Jing Kwan, Iris	Lee Mei Shan	Wong Hoi Ki, Charlotte	

New Associates

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

Ang Nga Sze, Rachel	Ho Ka Yan	Li Yinnu	Wong Hei Lui
Chan Ching Laam	Ho Kin Ching	Lin Wei	Wong Hiu Ching
Chan Hei Lam	Hung Lai Fai	Lo Chung Shun	Wong Shin Yee
Chan Shing Tak	Kam Chui Han	Mak Wai Yin	Wong Shun Wai
Chan Yin Man	Ku Wai Sheung	Ng Shun Fai, Irene	Xu Chaoran
Cheng Pui Yan	Kwok Man Kin	Ng Yin Ling	Yau Ying Ying
Cheng Wing Po	Kwok Ming Ying	Pang Kwok Kin	Yeung Lai Ting
Cheung Kam Yan	Kwong Hiu Woon, Corwin	Pi Pang Ngai	Yeung Tsz Kit, Alban
Cheung Yuk Tak	Lam Wai Tsing	Siu Heng Yee	Yeung Wai Kin
Chong Chun Fung	Lau Chun Ying, Priscilla	Tam Yiu Fai	Yeung Wai Yan
Choy Le Quan	Lau Hiu Wa	Tang Wai Chun	Yip Chui Mei
Choy Suet Yee, Shirley	Lau Tsz Wai	Tsang Chi Ming	Yip Man Ching
Chu Hoe Tin	Lee Na	Tsang Tsz Ying	Yip Sin Mei
Chung Yee Man, Yvonne	Lee Shuk Man	Tsang Yick Kan	Yu Hoi Zin
Fung Tsz Long	Lei Ka Ying	Tseong Ka Wai	Zhang Xiao
Hau Lok Ting	Leung Kin Yan	Tsui Ka Ling	
Heung Manson	Li Wai Nok, Oscar	Un Lai Man	

New Fellows

The Institute would like to congratulate the following Fellows elected in January and February 2019.

Guo Huawei FCIS FCS

Dr Guo is currently the Secretary to the Board of Directors and Company Secretary of COSCO SHIPPING Holdings Co Ltd, which is listed on the Shanghai Stock Exchange (SH stock code: 601919) and the Hong Kong Stock Exchange (HK stock code: 1919). He is mainly responsible for the corporate governance, compliance, investor relations and media relations. He is also the Deputy Chairman of the Board of Supervisors of the China Association for Public Companies. Dr Guo graduated

from Northern Jiaotong University in 1997 with a doctoral degree in economics, and is a senior economist.

Dylan J Williams FCIS FCS

Mr Williams is the Senior Vice-President of Legal and Company Secretary for Sands China Ltd (stock code: 1928). He is responsible for leading the company's team of lawyers and legal support staff who advise the company on a broad range of legal issues across three jurisdictions – Macau, Hong Kong and Mainland China. He also oversees the secretariat function, including compliance with Hong Kong Stock Exchange listing rules and managing

the functioning of the company's board of directors.

Mr Williams is a New York-qualified lawyer. Raised in Hong Kong, he obtained his law degree in England before returning to Hong Kong. He is a supporter of the FreeBSD project and an Ashtanga yoga practitioner.

Maa Kwo-juh FCIS FCS

Mr Maa is the Chairman of the Governance Professionals Institute of Taiwan and is also a Certified Public Accountant in Taiwan. He commits to advocating for corporate governance, provision of training for governance

Membership (continued)

professionals, effectiveness evaluation of boards of directors, as well as promoting an advanced and mature governance environment in Taiwan.

Mr Maa joined KPMG as a Partner in 1992 and retired in 2017 with over 25 years of audit and financial professional experience. He also acted as Chairman and CEO of KPMG Taiwan from 2005 to 2010.

You Zugang FCIS FCS

Mr You is currently the Secretary to the Board of Directors of Xinhua Winshare Publishing and Media Co Ltd, (stock code: 0811), a Director of Bank of Chengdu Co Ltd, and a member of the Institute of International Internal Auditors. He is mainly responsible for company information disclosure and compliance management. In 2005, Mr You joined the

senior management of the company and has accumulated extensive experience in initial public offerings, mergers and acquisitions, compliance management and corporate governance areas. Mr You is an accountant and obtained a master's degree in business administration from Renmin University of China in 2002.

Members' activities highlights: March 2019 2 March

Governance Professional Mentorship Programme – Training for Mentors and Mentees



Forthcoming membership activities

Date	Time	Event
6 and 13 April 2019	1pm–2.30pm	Fun & Interest Group – Strength and Stretching Training (Class A)
6 and 13 April 2019	2.45pm–4.15pm	Fun & Interest Group – Strength and Stretching Training (Class B)
16 April 2019	12.30pm–2pm	Networking Luncheon – 'Cyberport: Hong Kong's global tech hub/golden opportunities for Governance Professionals'
8 May 2019	6.45pm–8.30pm	Mentorship Programme – social gathering (by invitation only)
11 May 2019	10.30am–12pm	Fun & Interest Group – Balloon twisting workshop
15 May 2019	6.45pm–8.30pm	Welcome Drinks for new Fellows, Associates and graduates (by invitation only)

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

Application for concessionary subscription rate for 2019/2020

As a professional body established by members and for members, the Institute continues to offer concessionary subscription rates to members who fall into the criteria listed below.

1. Retired Rate *(New policy approved by the Council to be effective from 1 July 2019)*

This applies to members who:

- are fully retired from employment and will not be returning to gainful employment (neither full-time nor part-time); and
- are not receiving an income derived directly from labour or skill; and
 - have attained age 55 and are members of ICSA/HKICS of at least 25 years on or before the beginning of the financial year (i.e. 1 July); or
 - have attained age 60 on or before the beginning of the financial year (i.e. 1 July).

Once approved, the retired rate will be granted from the following year and onwards, no re-application is required.

2. Reduced Rate *(New policy approved by the Council to be effective from 1 July 2019)*

This is defined as a temporary relief for members/graduates, and applies to those who:

- have been unemployed for a minimum of six months prior to

application or the beginning of the following financial year (i.e. 1 July); or

- have ceased to receive income and/or remuneration due to health conditions (with substantial and sufficient supporting document(s) provided) for a minimum of three months prior to application or the beginning of the following financial year (i.e. 1 July); or

- have encountered circumstances which the Membership Committee considers fit to grant the reduced rate.

Reduced rate applications are approved on an annual basis.

From year 2019/2020 onwards, members/graduates will be eligible for the reduced rate for a maximum total of five years. Reduced rates granted on or before year 2018/2019 will not be counted towards this five year limit.

Should members/graduates wish to continue to apply for reduced rate for more than a total of five years, adequate explanation and/or documentary proof must be provided to the Membership Committee for consideration.

3. Hardship Rate

This applies to members/graduates who:

- have ceased to receive income and/or remuneration due to medical conditions for at least two years prior to application (with substantial and sufficient supporting document(s) provided); or

- other circumstances which, the Membership Committee considers fit to grant the hardship rate.

Hardship rate applications are approved on an annual basis.

4. Senior Rate

This applies to members who have reached the age of 70 or above before the beginning of the financial year (1 July 2019). Senior rate is granted to eligible members automatically without prior application.

Important Notes:

- For the above 1) Retired Rate, 2) Reduced Rate, and 3) Hardship Rate, applications must be submitted to the Membership Section on or before Friday, 31 May 2019. All applications are subject to the approval of the Membership Committee, the decision of which is final.
- A retired/reduced/hardship rate member who has i) returned to a gainful employment (whether full-time or part-time); and/or ii) received income derived directly from labour or skills should pay the subscription at full rate for the current financial year.

The application forms for concessionary subscriptions can be downloaded from the Membership section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Rose Yeung: 2830 6051 or Vicky Lui: 2830 6088, or email: member@hkics.org.hk.

Advocacy

RBSP Meetings

The Institute organised four Regional Board Secretary Panel (RBSP) meetings in Shanghai, Beijing, Guangzhou and Chongqing on 23 and 24 January, 21 and 22 February 2019 respectively. A total of 116 board secretaries and equivalent personnel participated and discussed relevant issues under the theme: 'Latest regulatory updates and practical experience sharing on board governance'. The meetings were followed by dinner gatherings which provided good opportunities

for participants to forge connections with one another and exchange knowledge and experiences.

The Institute would like to express sincere thanks to Fosun International Ltd, China National Petroleum Corporation, Guangzhou Automobile Group Co, Ltd, and Chongqing Iron and Steel (Group) Co Ltd, for their support in hosting these events.



Meeting in Shanghai



Meeting in Beijing



Meeting in Guangzhou



Meeting in Chongqing

The Hong Kong Institute of Chartered Secretaries Foundation Ltd – Fundraising Report 2016–2018

The Fundraising Report 2016-2018 of The Hong Kong Institute of Chartered Secretaries Foundation Ltd (the Foundation) has been published. The Foundation was established by the Institute on 5 January 2012 as a company limited by guarantee under the Hong Kong Companies Ordinance. The Foundation is a registered charity under Section 88 of the Hong Kong Inland Revenue Ordinance (Charity reference 91/11348).

The Foundation would like to thank all donors and sponsors for their generous donation and support. For details of the Fundraising Report 2016-2018, please visit the About Us section of the Institute's website: www.hkics.org.hk.

2019 HSUHK Founders' Day cum University Naming Dinner

On 16 March 2019, Institute President David Fu FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE) participated in the 2019 Founders' Day cum University Naming Dinner of The Hang Seng University of Hong Kong (HSUHK) at the JW Marriott Ballroom. The event was to commemorate HSUHK as the first self-financing tertiary institution to be granted university status under the HKSAR Government's roadmap for becoming a private university.

The Institute would like to express its congratulations to HSUHK for its achievement.



At the dinner

Stakeholder networking luncheon with practitioners in governance, risk and compliance

On 18 March 2019, the Institute hosted a stakeholder networking luncheon with members and practitioners in the corporate governance, risk management and compliance fields. At the luncheon, Institute President David Fu FCIS FCS(PE) thanked all participants for their continual support, and ICSA International President and Institute Past President Edith Shih FCIS FCS(PE) gave a brief update on the development of ICSA. Institute Chief Executive Samantha Suen FCIS FCS(PE) also gave a presentation on the Institute's new initiatives. This luncheon served as an excellent opportunity for participants to exchange views on recruitment, development and retention of Chartered Secretaries and Chartered Governance Professionals.

A survey was conducted before the luncheon to understand market perceptions and demands for talent in the profession.

Meeting with HKEX Global Issuer Services Department

On 14 March 2019, representatives of the Institute met with the Issuers Services team of Hong Kong Exchanges and Clearing Ltd (HKEX) to explore how HKEX may, through a dedicated platform, support issuers' investor relations needs. Attending the meeting from the Institute were Institute President David Fu FCIS FCS(PE); Vice-President David Simmonds FCIS FCS; Member of the Company Secretaries Panel Kevin Hui FCIS FCS; and Senior Director and Head of Technical & Research, Mohan Datwani FCIS FCS(PE). Issues relevant to Chartered Secretaries and Chartered Governance Professionals such as the latest developments relating to Hong Kong's proposed uncertificated securities regime, investor stewardship and hybrid meetings were discussed. The HKEX representatives were: Managing Director, Head of Global Issuer Services Christina Bao; Senior Vice President, Global Issuer Services Silvia Chen; Assistant Vice-President, Market Development Arnold Poon; and Juliet Zhu, Associate, Market Development.

Most respondents found the Institute's qualification relevant to their work and their companies intended to recruit more talent in the coming year. They also indicated that they are willing to join the Institute's mentorship programme as mentors, to contribute to the Institute's volunteer services and provide summer internship opportunities for university students.



Advocacy (continued)

HKICS Governance Professionals Preview Day

On 23 February 2019, the Institute held its third 'Governance Professionals Preview Day' at the Harbour Grand Hong Kong. This event received an overwhelming response with over 200 participants attending, including Institute students and members, undergraduates of local universities and academics. The Preview Day aimed to provide an overview of what Chartered Secretaries and Chartered Governance Professionals are and their roles, and the career possibilities that both qualifications may offer.

The Preview Day began with an opening speech by Institute Council member and Chairman of the Education Committee Dr Eva Chan FCIS FCS(PE), who highlighted the importance of governance professionals in today's changing business environment and the immense career opportunities of this profession. Institute Chief Executive Samantha Suen FCIS FCS(PE) addressed the career path of governance professionals and the route to qualification. The first member sharing session was moderated by Institute member Daniel Chow FCIS FCS, along with panelists comprising Dr Eva Chan, Mingsy Chan ACIS ACS and Teresa Lau ACIS ACS. They shared their career paths and working experience with the participants. The second sharing session was facilitated by Ella Chow, a student of The Hang Seng University of Hong Kong, together with other Institute members Daniel Leung FCIS FCS(PE) and Crystal Lee ACIS ACS, and Institute students

Charlotte Chee and Cecilia Wang. They discussed their aspirations for their future careers as company secretaries and governance professionals.

An interview with Institute member Christopher Lui ACIS ACS, who is also a company secretarial practitioner, was conducted during the event.

In the afternoon, two workshops on interview preparation, and professional image grooming and dressing were presented by Michael Page and Mary Kay (HK) Co Ltd respectively. A small group sharing session by Institute members was arranged to provide the participants with practical tips on exploring their careers in the Chartered Secretary and governance profession. An onsite internship interview session was also arranged by Tricor Services Ltd for selected candidates.

The Institute would like to thank Tricor Services Ltd for being the light lunch sponsor; BDO for being the coffee break sponsor; PwC and Baker McKenzie for being sponsors; and the Companies Registry, Michael Page and Mary Kay (HK) Co Ltd for being supporting organisations of this event. The Institute would also like to thank all helpers (including Institute members, students and undergraduates) for their contributions to the Preview Day.





International Qualifying Scheme (IQS) examinations

May 2019 diet examination schedule

	Tuesday 28 May 2019	Wednesday 29 May 2019	Thursday 30 May 2019	Friday 31 May 2019
9.30am–12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2pm–5pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

IQS Study Packs (online version)

The updated version of the IQS study pack for Corporate Secretaryship has been made available from 24 August 2018. Updated versions of the other three study packs (Corporate Governance, Corporate Administration and Hong Kong Corporate Law) are also available online. A summary of the updates for each study pack can be viewed under the News section of the Institute's website and the PrimeLaw platform. For further questions regarding the online study packs, please contact Leaf Tai: 2830 6010, or email: student@hkics.org.hk. For technical questions regarding PrimeLaw, please contact WoltersKluwer Hong Kong's customer service by email: HK-Prime@wolterskluwer.com.

Syllabus update – Corporate Administration

The topic of 'Hong Kong Competition Law' has been included in the Corporate Administration syllabus (effective from the December 2018 examination diet). Students may refer to the 'IQS Syllabus' under the International Qualifying Scheme section of the Institute's website and Chapter 14 of the Corporate Administration study pack for this new topic (Hong Kong Competition Law).

Tips from subject prize awardees

Subject prize awardees from the December 2018 IQS examination diet shared their study experiences and tips on preparing for the IQS examinations.

Ng Ching Hang (subject prize awardee, Corporate Governance)

Miss Ng graduated with a BBA bachelor's degree from The Chinese University of Hong Kong. She is currently working as a supervisor in the corporate services division of a professional firm.

This was Miss Ng's second attempt at the IQS examination on Corporate Governance. She found that the examination effectively built up her knowledge in company secretarial

practices so that she is able to have in-depth discussions with her superiors who always appreciate her input. When encountering problems where she needs to source additional information, she is able to perform effective research using the knowledge gained from the examinations. Miss Ng believes that the Chartered Secretary qualification is essential to her career development in the company secretarial field.

For examination preparation, Miss Ng enrolled in the Examination Preparatory Course organised by HKU SPACE to obtain a basic understanding of the relevant subject. The lecturers were willing to share their experiences and guide students in analysing difficult case studies. Besides this, by studying the previous

examination diets she found it was easier to understand what kind of answers were expected by analysing the questions. When Miss Ng found concepts to be unclear and insufficient explanations given, she would refer to the textbooks and reports recommended by the Institute and lecturers. Studying the recommended readings by the Institute and reports by listed companies was also useful.

Miss Ng emphasised that it is important to have a study timetable. She first glanced through the study materials by topic and consolidated them into notes. Thereafter, she studied the consolidated notes in-depth a few months before the examination and reviewed these repeatedly in the month prior to the examination.

Huang Na (subject prize awardee, Hong Kong Financial Accounting)

Ms Huang graduated with a master's degree in English from Sun Yet-sun University in Mainland China. She is currently working in the executive office of a listed company and taking charge of company secretarial affairs of overseas subsidiaries and joint ventures.

This was Ms Huang's first attempt at the IQS examination on Hong Kong Financial Accounting. She finds the Chartered Secretary qualification to be very useful in her current job as some business partners are listed companies in Hong Kong and one is a local company that is likely to list in the future. The process of getting the qualification was a good way for her to learn.

Her strategy in preparing for the examination was time management. Ms Huang spent three months to prepare for the examination: the first month and a half on learning and reading the study pack and recommended books and the remaining time on studying past papers. She summarised questions that appeared in past examination papers to create an ideal writing strategy for each question. Her advice for students is to learn from the examination skills and experience of students who had already passed the examination, especially the subject winners.

Zhang Tao (subject prize awardee, Corporate Administration)

Mr Zhang graduated with a BBA degree in Mainland China. He is currently working as an assistant to the CEO in a private company in Mainland China.

The main reasons why Mr Zhang decided to pursue the Chartered Secretary qualification are that he has previously worked with a Hong Kong listed company and is currently responsible for the duties of a company secretary. He has taken the opportunity to apply IQS-related knowledge in his work which he finds helpful in achieving improved performance, such as in dealing with MPF affairs.

This was Mr Zhang's second attempt at the IQS examination on Corporate Administration. Without taking any preparatory courses or examination technique workshops, he found that the past papers and the student pack were very helpful for examination preparation. The study packs from the Institute provided him with a basic framework of the knowledge required by the subject.

Studentship

'Passing the Torch' project 2019

The Institute has partnered with the Hong Kong University of Science and Technology (HKUST) to run the 'Passing the Torch – from values of business ethics and governance to actions project' (薪火相传之商业道德与治理之行动转化) for 2019. This project, sponsored by The Hong Kong Institute of Chartered Secretaries Foundation Limited (the Foundation), aims to promote better knowledge of business ethics and corporate governance among undergraduates.

In March 2019, 19 HKUST students in four selected groups visited three secondary schools to pass on their knowledge (gained from a relevant HKUST course and guest lectures delivered by Institute Fellows and Associates in October 2018) to 166 secondary school students with interactive games.

Date	Secondary School	Institute Representatives
1 March 2019	Po Leung Kuk Lo Kit Sing (1983) College (保良局罗杰承(一九八三)中学)	Daniel Chow FCIS FCS; Institute Registrar Louisa Lau FCIS FCS(PE)
6 March 2019	Po Leung Kuk Choi Kai Yau School (保良局蔡继有学校)	Jerry Tong FCIS FCS
7 March 2019	PLK Tong Nai Kan Junior Secondary College (保良局唐乃勤初中书院)	Dr Mak Wai Ming ACIS ACS



At Po Leung Kuk Lo Kit Sing (1983) College



At Po Leung Kuk Choi Kai Yau School



At PLK Tong Nai Kan Junior Secondary College

HSUHK Careers Fair 2019

The Institute joined The Hang Seng University of Hong Kong (HSUHK) Careers Fair 2019 on 21 February 2019. An introduction to the Institute's Chartered Secretary and Chartered Governance Professional qualifications, and the Institute's Student Ambassadors Programme was provided to interested students. Students found the information shared to be very useful.



Lingnan University Career Exploration Day 2019

The Institute participated in the Lingnan University Career Exploration Day on 2 March 2019 where individual consultation was given to interested students. After the consultation, students had learned more about the Institute and the Chartered Secretary and Chartered Governance Professional qualifications.



HSUHK Scholarship and Award Presentation Ceremony 2019

Institute Registrar Louisa Lau FCIS FCS(PE) attended The Hang Seng University of Hong Kong Scholarship and Award Presentation Ceremony 2019 on 14 March 2019. Congratulations to the awardees of the HKICS Foundation Scholarship and Subject Prize 2017-2018!



Information Session for School of Law, City University of Hong Kong

An Information Session was held for students of the School of Law, City University of Hong Kong on 14 March 2019. Information about the Institute, the Chartered Secretary and Chartered Governance Professional qualification and the New Qualifying Programme was provided during the session.

Summer internship

The Institute invites companies and organisations to offer summer internship positions to local graduates under its Student Ambassadors Programme with the aim of promoting the Chartered Secretary and Chartered Governance Professional qualification to the younger generation in Hong Kong. The internship period is usually from June to August 2019 for a maximum period of eight weeks.

Members who are interested in offering summer internship positions this year, please visit the News section of the Institute's website. For further details, please contact Helen Fung: 2881 6177, or email: student@hkics.org.hk.

Studentship (continued)

New Qualifying Programme (NQP) (Reminder)

With effect from 1 January 2020, the New Qualifying Programme (NQP) will replace the current IQS. The first examination of the NQP will be held in June 2020. The NQP will comprise seven modules with two electives:

1. Hong Kong Company Law
2. Corporate Governance
3. Corporate Secretaryship and Compliance
4. Interpreting Financial and Accounting Information
5. Strategic Management
6. Risk Management
7. Boardroom Dynamics or Hong Kong Taxation (electives)

The Institute will announce details of the syllabus, reading lists, study packs and pilot papers for all the modules in the NQP to students in the near future.

Students who successfully complete the NQP will be admitted as graduates of The Institute of Chartered Secretaries and Administrators (ICSA) and The Hong Kong Institute of Chartered Secretaries (HKICS) and, upon eligibility to be elected as Associates, will be awarded the dual designation of Chartered Secretary and Chartered Governance Professional (see Note 1).

All students under the current IQS will be transited to NQP with effect from 1 January 2020 and will also be awarded the dual designation of Chartered Secretary and Chartered Governance

Professional when elected as Associates after completing either the IQS or NQP, or a combination of both, and becoming graduates of the ICSA and HKICS.

Note 1: Disclaimer: Membership of ICSA, as referred to in this document, is conditional upon agreement and contractual relations between HKICS and ICSA. Such agreement and contracts are subject to change and/or termination by either party and therefore, notwithstanding anything to the contrary in this document, HKICS cannot provide any assurance that membership of HKICS will lead to automatic membership to the ICSA, or can HKICS be held responsible if membership of ICSA is not granted even following completion of the IQS/NQP, and/or qualifying procedures being met.

Admission requirements

Similar to the IQS, only recognised degree and/or professional qualification holders will be eligible to apply for registration as new students under the NQP. Exemptions may be granted to relevant degree and/or professional qualification holders as appropriate. Further details of the Exemptions Policy under the NQP will be made available to all students in due course.

Examinations

From 1 January 2020, examinations will be held in the first week of June and the last week of November each year. The first examination for the NQP will be held in June 2020.

Existing students have two IQS examination diets (May 2019 and December 2019) to complete their outstanding papers under the IQS.

If you have any queries, please contact the Education and Examinations Section: 2881 6177, or email: student@hkics.org.hk.

Transitional arrangements

The last examination diet under the current IQS will be the December 2019 examinations. Students who have not completed their IQS examinations following the release of the IQS December 2019 examination results will be transited to the NQP.

The transitional arrangements from the existing IQS to the NQP are as follows:

IQS	NQP
Strategic and Operations Management	Strategic Management
Hong Kong Corporate Law	Hong Kong Company Law
Hong Kong Financial Accounting	Risk Management
Hong Kong Taxation	Hong Kong Taxation (elective)
Corporate Governance	Corporate Governance
Corporate Administration	Boardroom Dynamics (elective)
Corporate Secretaryship	Corporate Secretaryship and Compliance
Corporate Financial Management	Interpreting Financial and Accounting Information

The Institute will communicate with all students who will be transferred to the NQP on the outstanding module(s) that they will be required to complete under the new programme in January 2020.

Policy – payment reminder

Exemption fees

Students whose exemption was approved via confirmation letter in January 2019 are reminded to settle the exemption fee by Tuesday 23 April 2019.

Studentship renewal

Students whose studentship expired in February 2019 are reminded to settle the renewal payment by Tuesday 23 April 2019.

Offshore update

A number of offshore jurisdictions, including the British Virgin Islands (BVI) and Cayman Islands, have enacted domestic 'economic substance' legislation in response to initiatives on fair taxation by the Organisation for Economic Co-operation and Development (OECD).

The OECD Inclusive Framework on Base Erosion and Profit Shifting issued a document entitled *Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions* in November 2018. This initiative is designed to prevent shifting of profits derived from mobile business activities to 'no or nominal tax jurisdictions' without corresponding local economic activities. The document imposes a global standard that requires 'no or nominal tax jurisdictions' to introduce substantial activities requirements in order for their tax regimes not to be considered harmful tax practices.

The new legislation in BVI – The BVI Economic Substance (Companies & Limited Partnership) Act, 2018 – and in the Cayman

Islands – the International Tax Cooperation (Economic Substance) Law, 2018 – came into force on 1 January 2019. The legislation mainly requires entities to:

- conduct core income generating activities in the Islands
- have a physical office or premises or equipment located in the Islands
- have an adequate amount of operating expenditure incurred in the Islands, and
- have an adequate number of full-time employees or other personnel who are physically present in the Islands.

Existing companies will need to comply with economic substance requirements by 30 June 2019 and meet the reporting obligation within one year of 30 June 2019. New companies that are incorporated on or after 1 January 2019 must comply with the economic substance requirements immediately. However,

new companies have one year from the date of incorporation to meet reporting obligations.

The economic substance requirements apply to the following mobile business activities: headquarters, distribution centres, service centres, financing, leasing, fund management, banking, insurance, shipping, holding companies and the provision of intellectual property.

The tax authorities in the BVI and the Cayman Islands will share information about entities which fail to meet the economic substance requirements with the tax authorities of the jurisdictions in which the parent company, ultimate parent and ultimate beneficial owner of the relevant entity are located.

More information is available on the OECD website: www.oecd.org. The Cayman Islands guidelines on the application of its new law is available on the Cayman Islands Department for International Tax Cooperation website: www.tia.gov.ky.

New FAQ 14

Hong Kong Exchanges and Clearing Ltd (HKEX) has issued a new Frequently Asked Question (FAQ 14) relating to the new Sections 390(4) to (7) of the Companies Ordinance (Cap 622). The new FAQ clarifies that non-Hong Kong incorporated issuers would not be required to comply with the said new Sections 390(4) to (7), which require a list of the names of the directors of the subsidiaries of the holding company:

- i. to be kept at the holding company's registered office and be made available for inspection free of charge during business hours, or
- ii. to be made available on the holding company's website.

More information is available on the HKEX website: www.hkex.com.hk.

Property Alert

The Land Registry's e-Alert service for property owners has been renamed Property Alert with enhanced services. Subscribers to the service will receive notifications by email from the Land Registry when instruments affecting their properties have been lodged for registration, as well as when the instruments have been registered.

More information is available from the Land Registry website: www.landreg.gov.hk.



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