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December 2019

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The journal of The Hong Kong
Institute of Chartered Secretaries

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Global governance

Emerging trends

ESG update

Competition law

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of Chartered Secretary and Chartered Governance Professional in Hong Kong and throughout the Mainland. HKICS was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute – formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of The Chartered Governance Institute in 1990 before gaining local status in 1994 and has also been The Chartered Governance Institute's China Division since 2005. HKICS is a founder member of Corporate Secretaries International Association Limited (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice to corporate secretaries and governance professionals. HKICS has over 6,000 members and 3,200 students.

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December 2019

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

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

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 ISSN 1023-4128

Contents

Cover Story

The global future of governance 06

Edith Shih FCIS FCS(PE), International President, The Chartered Governance Institute, looks at emerging trends in governance.

In Profile

ESG: how economics drives change 10

Pat Nie Woo, Partner, Business Reporting and Sustainability, KPMG China, argues that making improved environmental, social and governance (ESG) performance an economic necessity will be our path to a more sustainable future.

In Focus

Double anniversary reflections 16

Three speakers lined up for a cocktail reception to celebrate the Institute's double anniversary share their reflections on the past and the future of the Chartered Secretary and Chartered Governance profession in Hong Kong and Mainland China.

Competition law enforcement 20

Connie HY Lee and Tommy Cheung, Barristers-at-Law, Des Voeux Chambers, consider the implications of Hong Kong's first two competition law enforcement actions, with a focus on the attribution of liability.

International Report

US-China trade war: responding to uncertainty 24

Colum Bancroft, Managing Director, AlixPartners, looks at the risks and compliance issues arising from market conditions resulting from the current US-China trade war.

Mainland Report

Changes on the horizon 28

Gabriela Kennedy, Partner, and Karen HF Lee, Counsel, Mayer Brown, discuss the implications of new draft measures relating to China's Cybersecurity Law.

Technical Update

Charitable organisations 32

Susan Lo FCIS FCS(PE), Executive Director of Corporate Services, Tricor Services Ltd, reviews the interpretation of a charitable organisation in Hong Kong.

Tax residency of Hong Kong corporations 38

Henry Kwong, Tax Partner, and Matthew Cheung, Tax Manager, Cheng & Cheng Taxation Services Ltd, guide us through the process of obtaining a Certificate of Resident Status in Hong Kong.



HKICS News

President's Message 04

Institute News 42

Student News 46



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It has been my great honour to serve as president of our Institute for the past two years. As you will see from our Annual Report 2019, now available on our website, our Institute is in good financial health. We made, together with our subsidiaries, an operating surplus of HK\$1.4 million in fiscal 2019. We have also passed several important milestones in the evolution of our profession and our Institute. In particular, we have launched the new dual Chartered Secretary and Chartered Governance Professional (CS/CGP) designation, and we have laid the groundwork for the launch of the Chartered Governance Qualifying Programme, which will replace the International Qualifying Scheme next month.

My successor in the presidency, however, will be taking over at a time of unprecedented challenges. 2019 has seen the most serious political and social unrest in Hong Kong in living memory. As if that was not enough, the ongoing Sino-US trade war, technological disruption and escalating risks from climate change continue to make the road ahead uncertain. The rapidly changing and increasingly treacherous landscape we find ourselves in has reinforced the need for members of our profession to be well prepared when it comes to future risks. This requires both access to reliable information and the prescience to understand what that

The road ahead

information is telling us about the challenges we will be facing in the years ahead. Our CPD services and publications, including this journal, play a key role in assisting us in this endeavour and our cover story this month provides a very useful briefing on the broad trends that will be shaping our business environment and our profession over the next decade.

The article is based on the opening address by Edith Shih FCIS FCS(PE), International President of The Chartered Governance Institute and a former President of our Institute here in Hong Kong, at Governance New Zealand's recent National Governance Conference. Edith looks at the impact of emerging technologies, the increased focus on non-financial aspects of corporate performance and reporting, and the shift to a multi-stakeholder model of governance. Taken together, these trends are indicative of a paradigm shift, not only here in Hong Kong but on a global scale, in our view of the very purpose of companies. The message is clear – organisations of the future, whether or not they take the traditional corporate form, will need to be better aligned with broader social interests.

I wish our next president every success at the helm of our Institute. Despite the many challenges ahead of us, there has never been a better time to be a governance practitioner. We will be at the epicentre of the many trends highlighted

above. This might seem a little daunting in terms of the heightened workload and responsibilities we will be taking on, but our Institute will continue to focus on providing relevant and practical support to members in their work.

One of the core aims of our Institute, both local and global, is to prepare our members for the emerging business environment. Next year (2020) will see the return of our biennial Corporate Governance Conference which has become a leading regional forum for debate and discussion on new developments in governance. I also urge members to regularly check on our website (www.hkics.org.hk) and our social media platforms, as well as the newly relaunched website of our international body (www.cgiglobal.org). These websites and social media platforms are your portal to the latest technical information and thought leadership offerings relevant to your work. They also provide access to our online professional community here in Hong Kong and right across the globe.

Finally, I would like to thank everyone who has worked with me during my tenure and I look forward to playing a continuing role in taking forward our professional goals.

David Fu FCIS FCS(PE)

未来展望

过去两年出任公会会长，我深感荣幸。正如2019年年报（见公会网站）所报告，公会的财务状况稳健，在2019财政年度，公会联同附属机构共录得营运盈余140万港元。在管治专业和公会的演化上，我们也经过几个重要里程碑，特别是推出了特许秘书和Chartered Governance Professional (CS/CGP) 的双重称衔，并为公会新的专业资格考试做好了准备工作，新的考试体系将于下月开始取代国际专业知识评审考试。

下任会长接棒的时候，公会正面临史无前例的挑战。2019年是记忆中香港政治与社会最动荡的一年，加上中美贸易战持续、科技发展扰乱既有秩序、气候变化带来更大风险，使前路更不明朗。面对瞬息万变、暗藏危险的未来，治理专业人员更需要为未来的风险做好准备，取得可靠的信息，并理解该信息对我们日后所面临的挑战有何启示。公会的持续专业发展计划及各种刊物，包括本月刊，在这方面起着重要的辅助作用；而今期的封面故事，就概括说明了未来十年影响营商环境和治理专业的各种趋势。

该封面故事，是以特许公司治理公会国际会长、香港公会前会长施熙德律师FCIS FCS(PE)最近在新西兰的全国治理会议上的开场发言为基础。施律师讲解了新科技的影响、人们对公司业绩及报告中非财务内容日渐关注的情况，以及向多方利益相关者治理模式的转换。这些趋势显示人们对公司成立目的的看法有了转变；这种转变不仅限于香港，在全球各地的情况也相同。当中的信息十分清楚：未来的机构，不管是否以传统的公司形式组成，都需要与较广阔层面的社会利益契合。

我祝愿下任会长成功领导公会。尽管面对种种挑战，现在是从事治理专业的最佳时机。我们将处于上文所述种种趋势的中心点。工作量增加，责任加重，也许有点令人生畏，但公会将继续为会员提供相关实务方面的协助，支援他们的工作。

公会的核心目标之一，是在本地和全球层面，帮助会员做好准备，以应对未来的营商环境。2020年再次举办两年一度的公司治理研讨会，这是讨论

治理新发展的重要地区论坛。我亦促请会员经常留意公会网站(www.hkics.org.hk)及社交媒体平台，以及国际总会新近启用的网站(www.cgiglobal.org)；这些网站和社交媒体平台，为各位带来与工作相关的最新技术资讯及领导思维的资料及活动，同时可让大家透过网上平台接触香港和世界各地的业内人士。

最后，我谨向任内曾与我共事的各人致谢。期望能继续协助贯彻公会的宗旨，为治理专业的目标努力。

傅溢鸿

傅溢鸿 FCIS FCS(PE)



The global future of governance

In October this year, Edith Shih FCIS FCS(PE), International President, The Chartered Governance Institute, delivered the opening address of Governance New Zealand's National Governance Conference. In this article, based on her speech, she looks at emerging trends in governance that will present great opportunities for practitioners able to keep up with the fast-changing landscape.

The theme of today's conference is 'The global future of governance'. I recall the oft-expressed warning against making predictions, especially about the future. It's extremely wise advice. Let me be amongst the many people who fail to follow it. I believe that we stand on the threshold of a revolution in governance. Indeed, I believe we are actually already in it. There are many elements to this revolution. In my brief remarks today, I would like to touch on some of these.

Capital market trends

The development of corporate governance in its modern form can be traced back to the early 1990s, notably the publication of the 'Cadbury Report' in the UK. Since then, and reflecting those origins, corporate governance in developed and developing economies has been marked by a strong focus on listed companies. However, we are seeing a widespread decline in the number and economic importance of public and listed companies relative to other capital-raising structures. Businesses and investors are increasingly turning to other structures such as venture capital, private equity, hedge funds, family offices and sovereign wealth funds.

Some of these structures have existed for many years; others, such as crowdfunding, are more recent. But, despite their massive growth and the importance of their role in the global economy, their governance has not been subject to the same degree of attention, transparency and oversight that has been devoted to listed companies. I expect this to change and I think it should change.

Governance processes, policies and disciplines will extend to organisations and entities that deliver a greater

range of economic, social, cultural and environmental value – whether in the private sector, the public sector or the third sector of non-governmental, charitable and community organisations. Any undertaking that plays a substantial role in the well-being of society, especially one which enjoys the privileges of external funding and limited liability, will become the subject of heightened expectations of good governance. This will make a positive difference.

By way of illustration, New Zealand is renowned for sporting excellence. It is a world leader in sports such as rugby, cricket and netball, to name just a few. It is also renowned for excellence in sports governance. The two are not unconnected. I understand that, as recently as the Cricket World Cup, some commentators attributed the relative performance of the New Zealand and Sri Lankan teams less to the talent of their individual players, but to the difference in the quality of governance of the two cricket authorities in developing and maximising that talent.

It is because of the expansion of governance expectations and standards to

“
I believe that we stand on the threshold of a revolution in governance. Indeed, I believe we are already in it.
”

a much wider field of entities that it is no longer appropriate to speak of 'corporate governance'. As the title of this conference rightly expresses, we must now think, speak and act in terms of 'governance', full stop.

Non-financial performance measures

I also expect governance to continue the trend of recent years to reach beyond accounting and financial concerns, and encompass much wider aspects of environmental and social performance. Perhaps as recently as 10 to 15 years ago it would have been rare for any company to report on its carbon emissions. Now, this would be expected of any responsible undertaking – as would reporting on its performance across a sweep

Highlights

- the focus on 'corporate governance' will shift towards a focus on 'governance' alone as heightened expectations of good governance expand to a much wider scope of non-listed organisations
- artificial intelligence will not undermine the relevance and importance of governance professionals – on the contrary, it will enhance the quality and value of what they bring to organisations
- emerging trends in governance are irreversible, expanding and accelerating but they present great opportunities for practitioners able to keep up to date with the fast-changing landscape

“any undertaking that plays a substantial role in the well-being of society... will become the subject of heightened expectations of good governance”



of deliverables, such as on diversity, supply chain management, community investment and much more. The scope of this reporting will only increase in the years to come.

The shift to a multi-stakeholder model

We will also see governance continue to recognise the duties owed by business not only to shareholders, but to a much larger group of stakeholders. Identifying those stakeholders, deciding upon the nature of the obligations owed to them, measuring performance in meeting those obligations and the manner of reporting will be a growing component of effective governance. The focus on delivery of shareholder value will gradually merge into a broader notion of sustainable corporate performance.

The impact of technology

Finally, the impact of new and emerging technologies on governance will be immense. This is the most difficult aspect of the future to foretell. I think, albeit with due hesitation, that this impact will have at least two dimensions.

The first is that governance standards and requirements will need to evolve rapidly to enhance the controls, performance and transparency of companies that are carrying on forms of business hitherto unknown. We are already seeing this in the way in which companies such as Google, Facebook and Amazon are subject to growing questioning and scrutiny. Those, and for that matter other longstanding businesses which adopt new technology, will face greater obligations in matters such as data management, data privacy and cyber security. They will also need strengthened governance processes in order to discharge those obligations.

Secondly, new technology will provide governance practitioners with better tools to perform their role. In the IT field we will progress rapidly from corporate secretarial software systems through governance management and reporting systems to the era of artificial intelligence (AI). I am unsure quite how AI will affect governance. However, I am absolutely sure that this will not undermine the relevance and importance of our work. On the contrary,

it will enhance our capabilities and, in so doing, the quality of what we do and the value we bring to all stakeholders.

Don't get left behind

All of the trends I have suggested have several things in common: they are irreversible, they are expanding, they are accelerating and they all present great opportunities. I say with confidence that there has never been a better time to be a governance practitioner and there has never been a better time to reflect on the future of governance. We cannot predict the future, but we can prepare for it.

Edith Shih FCIS FCS(PE)

International President, The Chartered Governance Institute

This article has been adapted from the opening address delivered by Edith Shih FCIS FCS(PE), International President, The Chartered Governance Institute, at Governance New Zealand's 2019 National Governance Conference held in Auckland on 1 October.



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From
1 January
2020

Chartered Governance Qualifying Programme (CGQP)

The Hong Kong Institute of Chartered Secretaries is pleased to announce the launch of the Chartered Governance Qualifying Programme (CGQP) as its new qualifying programme on 1 January 2020. CGQP will then replace the current International Qualifying Scheme.

CGQP empowers aspiring governance professionals to excel!

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Part 2

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Risk Management

Boardroom Dynamics (elective), or
Hong Kong Taxation (elective)

To find out more about the CGQP, please scan the QR code or visit the Studentship section of the Institute's website: www.hkics.org.hk or contact the Education and Examinations Section: 2881 6177.



For enquiry, please contact the Education and Examinations Section at 2881 6177 or email student@hkics.org.hk.



**ESG: how
economics
drives change**

Pat Nie Woo, Partner, Business Reporting and Sustainability, KPMG China, argues that making improved environmental, social and governance (ESG) performance an economic necessity will be our path to a more sustainable future.

With United Nations reports containing escalating warnings on the seriousness of the climate crisis, how do you rate the significance of threat we face globally and locally?

'We conducted a global CEO survey this year and climate change climbed to number one on the risk radar of global CEOs, which was surprising for us. I think there is a lot happening in the investment space and it impacts how CEOs and their companies look at it.

400 different climate records were broken in the northern hemisphere over this summer. How are we to meet the Intergovernmental Panel on Climate Change (IPCC) trajectory for the next 12 years if there aren't significant changes in regulation and in the cost of capital? Pressure is coming not only from investors but also from the regulators, as well as those who provide capital, the banks, insurance companies and finance companies. As the situation gets more severe, the outcry will increase, and governments and corporates will need to react.'

Do you see real commitment from the board level downwards?

'Though we have companies that are doing well or catching up, at this stage of the game Hong Kong remains at the box-ticking phase. This is because boards and the C-suite do not quite connect why this is relevant to their business and are struggling to understand that investors are starting to ask more pertinent questions. Look at general board composition in Hong Kong – not many directors understand ESG.

The cost of capital is also going to push the drive on ESG. HSBC this year initiated two schemes with Walmart and Puma whereby the score given to the suppliers of these two corporates will in turn determine the terms they will obtain from HSBC. Essentially, if a supplier is laggard in sustainability it is going to be harder to roll over existing terms and more expensive.

The regulators are also getting involved. For example, the Hong Kong Monetary Authority has made announcements on sustainable banking and is expected to require the industry to change its view of sustainable banking and green financing. If regulators start to put pressure on banks to initiate these measures, it would become a funding advantage for companies to increase their sustainability commitment. That really is when the message is going to start hitting home.'

What role can sustainability indexes play in driving better ESG performance?

'If you want to get to the premier league, getting on these indexes is important as

financial media like Bloomberg, major asset owners like pension funds and institutional asset managers will take a lot more notice of your organisation once you are on these ESG indexes.'

There are many indexes with different rating systems. Do we need a more standardised rating system?

'There is a lack of correlation. We are still at the initial stages of this development and it is sporadically used right now. However, as more people use the ratings there will be streamlining, and eventually we will get to the point of integrating and standardising these things. Look at financial accounting – it has been 200 years in development. Things move a lot faster now and it is still evolving. ESG elements have only become important in the last 10 to 15 years, and even more recently in Hong Kong.'

What has been the impact of the Task Force on Climate-related Financial Disclosures (TCFD)?

'The TCFD is ultimately a game changer because it is effectively looking at the

Highlights

- the pressure on the investment community, the corporates and the banks, will escalate over time – it would be foolhardy for anyone to think that they are immune to it
- change is coming as the cost of lending to carbon-heavy operations is going to significantly increase over time
- it is always economics that drives change – when the economics and the incentives are in line, people will do what is needed without being asked

financial risk of the financial institutions relating to climate change. They have to look at their loan books, their investments. Insurance companies have to look at their investments and the projects that they are financing. They will need a governance framework, a strategic framework, a risk assessment framework, on all of their core businesses. When that happens, any laggards on ESG that they are providing capital to, whether it involves investments, insurance or just plain loans, becomes a problem for them. Essentially, the TCFD will drive a lot more initiatives similar to the HSBC one mentioned above regarding Walmart and Puma, whereby financial institutions will not want to keep laggards on their books.'

TCFD is not just about the risk, it is also about opportunities. Are companies aware of the opportunities out there?

'I think companies are looking at opportunities and the better companies will be able to capture financing a lot more easily. There are many blue ocean strategies out there. Look at the automotive industry: countries have come out to say that they are going to eliminate petrol cars by a certain year. However, you have to look at not just the car manufacturers but the whole supply chain that supports it. Take Volkswagen for example, which is promoting its new apparently 'carbon-neutral' car. How can they make a carbon-neutral car if their supply chain partners are not also doing the same thing?

We are at that climate emergency phase. We have known about this for decades but progress has been very slow. We have seen Extinction Rebellion, people going

on strike, these things are just going to increase. The pressure on the investment community, the corporates, the banks, will just escalate over time. It would be foolhardy for anyone to think that they are immune to it.'

How would you tackle the issue of boilerplate sustainability reports?

'As the investment community matures, you can tell very quickly whether people are serious about ESG. Investors are starting to go directly to the top, to the CEOs and CFOs, to assess whether the C-suite are in tune with their ESG strategy and how it relates to their business.'

The latest ESG consultation of the Hong Kong Stock Exchange (SEHK) focuses on the governance aspects of ESG. It asks how closely directors and senior managers are engaged in these issues. Do they understand their non-financial risks? Do they understand the ESG opportunities out there? Do they understand the difference between physical risk and transition risk? When you talk about climate change, most people only think about the physical risks of typhoons and floods etc, rather than the risk to business models. We see change coming as the cost of lending to carbon-heavy operations is going to significantly increase over time.'

Should company secretaries be pushing ESG issues at board meetings?

'There still needs to be a lot of education. We have been doing a number of board training sessions with our clients. It is really the next generation of leaders that is asking for this as they see the importance of getting the message across. The message has to correlate with their core business or the older

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In the 12 years I have been doing this, I have tried the ‘this-is-the-right-thing-to-do’ argument and it does not work. The bottom line is what matters.

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generation will not be able to hear it as they will only hear it from a compliance standpoint. That is where the education needs to be – the developments in the investment community, the TCFD and how that is going to impact financing, as well as the costs of not doing anything due to physical and transitional risks due to climate change.'

The latest Hong Kong Stock Exchange consultation you mentioned proposes to make board oversight of ESG a mandatory disclosure – will this help to raise ESG up the board agenda?

'On how the board gets involved, we need to emphasise the 'how'. Of course you are going to get boilerplate disclosures. The company secretary needs to highlight this to the board in some way or form. Board education needs to be organised around it, explaining what this all means, and why the SEHK is doing it. I do see a gap in the understanding of ESG at the board level.'

We just issued a sustainability report for the Fashion Summit. We looked at 43 original signatories to the UN Fashion Charter, all of whom had committed to a 30% carbon reduction by 2030, but hardly any of them had disclosed supply chain data. The supply chain is the



biggest impact on all of these brands and a lot of these supply chain companies are based in this part of the world.'

What role will technology play in all of this?

'The technological solutions are all out there and have been for a long time. It has always been about making economic sense and economies of scale. Renewable energy is now at the price of carbon-heavy solutions – why? Because economy of scale is increasing. Why is the petrol car cheaper than electric cars? It is the economy of scale. The solutions are there, but the challenge is to make it economically viable because people always go for the cheaper option. That is where the TCFD comes in, making it more expensive for some, but less expensive for those who are ready for it. I do not think it is a technological problem, it is definitely an economic and scale challenge.'

If governments alone cannot hope to raise the necessary funds to transition to low-carbon infrastructures globally, can green finance fill the financing gap?

'Green financing is definitely one of the

good options out there. We have seen a growth in that market though it is still not seen as more competitive than the traditional bonds. Again this is because of scale, because the whole debt market amounts to trillions of dollars compared to 300 billion for green bonds. Over time as demand starts to outstrip supply the economics will start to work. Both public or private finance can be used as a vehicle to help with greening of infrastructure. The Mainland has gone through a similar process.'

Is there sufficient audit of green finance projects to ascertain that they are genuinely having a positive environmental impact?

'The standards are there, ISA 3000 for instance, but there isn't the regulatory framework to ensure that it is conducted properly. There has to be a minimum standard that people have to reach to be able to issue these reports; at the moment any company can write a non-financial assurance report.

The ESG consultation of the SEHK mentioned assurance from a best practice standpoint. They are mentioning assurance to indicate that this will be

a mandatory requirement sometime in the future. Before assurance becomes mandatory, what needs to be developed now is the regulatory framework. The question of who has oversight, the standards that are going to be used, and other details such as trust and transparency are critical.'

How do you expect ESG regulation to evolve in the next few years?

'I am optimistic because I think that the asset owners are the juggernaut that directly impacts the asset management industry, which then impacts the corporates, which then impacts the supply chain and the like. There are precedent cases: look at what happened in Japan. The government pension fund announced they were going to start using ESG as part of their investment decisions and the ESG investment industry grew from US\$8 billion to US\$2 trillion in four years. It is always economics that drives it. When the economics and the incentives are in line, people will do it without being asked.'

With the additional costs of outsourcing, how does this impact smaller companies?

'First of all, anybody can do a

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 where you put your
 money is effectively
 giving your vote on
 how you want the
 world to be run
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sustainability report in-house. You do not need to outsource it; there are a lot of boutique firms that can help you with that at minimal cost.

Yes, it is a burden because there is more that you need to do, but the question is, how much is it going to cost you if you do not do it? As I mentioned earlier, the direction the financial institutions are moving in may mean your sustainability practices might not qualify you for their facilities. If that means you end up going to the secondary market that is going to be a lot more expensive. If you are positioning yourself to get your financing from the financial institutions your business model must be sound, even if your business is small!

Do you think ESG performance will increasingly become a 'social licence to operate' issue – that is, companies will need to do the right thing by their community?

'To the millennials, yes this is important, but it all comes back to day-to-day behaviour, at the supermarket, at the clothing store. Is that consistent with what you are doing here? Where you put

your money is effectively giving your vote on how you want the world to be run. Until you burn a hole in someone's pocket, you are really not going to change things much. In the 12 years I have been doing this, I have tried the 'this-is-the-right-thing-to-do' argument and it does not work. The bottom line is what matters. Can we steer money to work for the better?'

Could you tell us about your own career and what steered you towards your role in sustainability?

'I am an accountant by training but left accounting in 2004 to work in the textile supply chain. That was when I started thinking about stewardship. It is not just about here and now, it is really about the future as well. I have kids and that became a driver to understand what it means to look out for the environment and society. It has been an essentially self-taught journey.

Let me share an anecdote. In 2008, my company issued a Global Reporting Initiative report and won an award from the Association of Chartered Certified Accountants. However, the reason we

won was because we were the first supply chain company to have entered an ESG report in that category. I was very surprised. We were in the Pearl River Delta, the factory of the world, yet we were the first company to produce such a report. I still also remember a gloomy day in January 2009 when nobody touched an ESG report we did for a fashion event in New York. I asked myself then if I was barking up the wrong tree. But I slogged on.

Those were hard years without which I would not be here talking to you now. Even as recently as 2018 we were not hearing a lot about ESG, but now everyone is talking about it and these practices are starting to make economic sense. Ultimately I think it has all come from personal conviction and I had to go through that trial by fire to get to this point!

Pat Nie Woo was interviewed by Sharan Gill, writer and lawyer, and Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries.

CONNECTING ASIA'S ECONOMIES

THE LEADING MIDSHORE BUSINESS AND FINANCIAL CENTRE



Labuan International Business and Financial Centre (Labuan IBFC) offers global investors and businesses the benefits of being in a well-regulated midshore international business and financial centre, which provides fiscal neutrality and certainty, in addition to being an ideal location for substance creation.

Located off the North West coast of Borneo, Labuan IBFC provides access to Malaysia's network of more than 80 double taxation agreements and boasts Asia's widest range of business and investment structures for cross-border transactions, international business dealings and wealth management needs.

Well-supported by a robust, internationally recognised yet business-friendly legal framework, Labuan IBFC operates within clear and comprehensive legal provisions and industry guidelines, enforced by its single regulator, Labuan Financial Services Authority.

With a focus on enabling cross-border transactions, providing risk management structures, Islamic financial services, commodities trading incentives and wealth management vehicles, we offer solutions to regional businesses going global or global businesses looking at penetrating Asia's burgeoning markets.



Double anniversary reflections

A cocktail reception to celebrate 70 years of The Chartered Governance Institute and 25 years of The Hong Kong Institute of Chartered Secretaries in Hong Kong had to be cancelled last month. The three speakers lined up for the event share their reflections with this journal on the past and the future of the Chartered Secretary and Chartered Governance profession in Hong Kong and Mainland China.

Ada Chung FCIS FCS, JP, Registrar of Companies, Companies Registry, The Government of the HKSAR

I would like to congratulate The Hong Kong Institute of Chartered Secretaries (the Institute) and The Chartered Governance Institute on this double anniversary year. As a leading international financial and business centre, Hong Kong attaches great importance to corporate governance. For companies to be successful, competitive and sustainable in the long term, good corporate governance is the key. A high standard of corporate governance is not only essential for individual companies, it is also crucial for maintaining the credibility, stability and competitiveness of a financial market.

While the Institute is officially 25 years old, its origin can be traced back to the year 1949 when about 20 members of The Institute of Chartered Secretaries and Administrators (ICSA) – now known as The Chartered Governance Institute – gathered together to form an informal association. Over the years, members of the Institute and its international body have played a key role in fostering good corporate governance in Hong Kong, through various initiatives and series of professional talks and training courses.

To cite some examples, the Institute has been organising its biennial corporate governance conference since 1998 and its Annual Corporate and Regulatory Update since the year 2000. To keep members abreast of the latest developments affecting the business community and the profession, the Institute has jointly organised conferences with overseas countries and jurisdictions to bring together experts locally and internationally to share experience.

Another notable achievement of the Institute is its successful work with young

people, including university and secondary school students. I commend the Institute's foresight in nurturing the younger generation and its efforts in organising, for example, the Student Ambassadors Programme and the 'Passing the Torch' programme.

The Institute has also been promoting international standards in anti-money laundering and counter-financing of terrorism (AML/CFT). It launched its AML/CFT Charter in 2016. As you may be aware, since 1991 Hong Kong has been a member of the Financial Action Task Force (FATF), an intergovernmental organisation which sets global standards for combating money laundering and terrorist financing. Beginning in 2018 and lasting for over a year, the mutual evaluation of Hong Kong was undertaken by an assessment team comprising 10 experts from FATF and the Asia/Pacific Group (APG) on money laundering.

The Mutual Evaluation report of Hong Kong was examined by FATF at its June Plenary held in Orlando, US and by APG at its August Plenary held in Canberra, Australia. The report was published by FATF in September this year and it assesses the compliance and effectiveness of

Highlights

- members of The Hong Kong Institute of Chartered Secretaries and its international body have played a key role in fostering good corporate governance in Hong Kong and the Mainland
- a high standard of corporate governance is not only essential for individual companies, it is also crucial for maintaining the credibility, stability and competitiveness of Hong Kong's financial market
- The Chartered Governance Institute has positioned itself as the qualifying and membership organisation for anyone involved in governance

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it is vital that company secretaries continue to perform their critical role in upholding good corporate governance and ensuring proper compliance in an ever-changing business environment

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Ada Chung, JP, Registrar of Companies

Hong Kong's AML/CFT regime against international standards. It confirms that Hong Kong has a strong legal foundation and effective system for combating money laundering and terrorist financing. Hong Kong has been assessed, and is the first member jurisdiction in the Asia-Pacific region, to have achieved an overall compliant result. The assessment result is an affirmation of our community's concerted efforts in upholding a robust AML/CFT regime. In this connection, I

wish to take this opportunity to thank the Institute and its members for all your hard work on this front and your valuable support in the mutual evaluation exercise, in particular, during the on-site evaluation of Hong Kong in November last year.

As part and parcel of the government's efforts in this regard, and with a view to further enhancing corporate governance and transparency, with effect from 1 March last year, all companies incorporated in Hong Kong are required under the Companies Ordinance to obtain and maintain up-to-date beneficial ownership information by way of keeping a Register of Significant Controllers. On the same date, a new licensing regime for Trust or Company Service Providers (TCSPs) commenced operation, with the Companies Registry taking up the role as the licensing authority. You may wish to know that up to the end of September, we have granted about 6,800 TCSP licences.

As you may be aware, currently there are more than 1.3 million companies registered in Hong Kong. In this year alone, up to the end of October, over 100,000 companies have been newly incorporated. In 2018, a total of about 3.6 million documents were delivered to the Companies Registry for registration. That amounts to a daily rate of nearly 14,000 documents, as compared to around 11,000 documents in 2017. Nothing could illustrate better than these figures the workload and importance of company secretaries. The huge number of documents which the Registry received shows firstly the importance of having all those documents/forms properly completed and filed in a timely manner to enhance transparency and in turn facilitate business; and secondly the importance of having a group of well-trained professionals to provide competent and proper advice

to companies and their officers on the regulatory requirements whenever necessary.

In the 2018 Corporate Governance (CG) Watch report published by the Asian Corporate Governance Association last December, Hong Kong ranked first in Asia and second in the Asia-Pacific region for corporate governance. In September, the Global Financial Centres Index once again ranked Hong Kong among the world's top three financial centres, behind only New York and London. In October, the World Economic Forum's Global Competitiveness Report ranked Hong Kong third, up from last year's seventh place. According to the World Bank's *Doing Business 2020* report, released on 24 October 2019, Hong Kong ranked third globally in the 'ease of doing business' category, moving up one place from last year.

I believe that good corporate governance, effective regulatory regimes and a high standard of professional services are essential factors contributing to these remarkable achievements in Hong Kong. It is vital that company secretaries continue to perform their critical role in upholding good corporate governance and ensuring proper compliance in an ever-changing business environment. I would like to thank the Institute for its continuous efforts in enhancing professional standards and promoting good corporate governance in Hong Kong.

Edith Shih FCIS FCS(PE), International President, The Chartered Governance Institute

This year we are celebrating the 70-year history of the Chartered Secretary and Chartered Governance profession in Hong Kong. We have come a long way, but I believe the most significant and strategic chapter in the history of our global institute is unfolding before us now.

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there has never been
a better time to be a
governance practitioner
”

Edith Shih, International President,
The Chartered Governance Institute

The ICSA changed its name to The Chartered Governance Institute on 16 September 2019 and launched a new website and corporate identity on 5 November 2019. This historic change of our 125-year-old institute reflects and embraces how our global membership of governance professionals has evolved over the past decade. The ethos and new visual corporate identity encompass a wider remit to support and qualify Chartered Secretaries, governance advisers, risk and compliance managers and non-executive directors – basically anyone who takes on governance responsibilities in our increasingly regulated and risk conscious societies.

The new name positions The Chartered Governance Institute as the qualifying and membership organisation for anyone involved in governance, and it is the only such institute that is Chartered. Our global institute is the only international organisation that can offer qualifications which empower a person with skills that transcend borders. It facilitates the international movement of governance professionals, ensuring membership portability. The Chartered Governance Institute also sets the standards of the profession globally and defines the future of good governance.

As the International President, I commend the good work done by our China Division in Hong Kong and the Mainland, as well as our other eight divisions across the world from Australia, Canada, Malaysia, New Zealand, Singapore and Southern Africa, to the UK, Republic of Ireland and Associated Territories and Zimbabwe.

Governance standards and requirements are evolving rapidly and so is our profession. This evolution is irreversible, and is expanding and accelerating as well. All these present great opportunities for qualified governance professionals. I say with confidence that there has never been a better time to be a governance practitioner. If you are not yet a Chartered Secretary or Chartered Governance Professional and are interested in the profession, please get in touch with our Institute to find out how to become qualified.

**David Fu FCIS FCS(PE), President,
The Hong Kong Institute of Chartered
Secretaries**

Our profession has come a long way since 1949, the year that the first informal grouping of members of The Chartered Governance Institute was established. Whilst we celebrate our past with pride, we also look forward to the bright future of our profession. Our Institute has been working to better align our brand with the core value we bring to organisations – the achievement of excellence in governance. The majority of our members in Hong Kong and the Mainland have already transitioned to the dual Chartered Secretary and Chartered Governance Professional (CS/CGP) designation. Next up will be the transition to our new qualifying programme – the Chartered Governance Qualifying Programme (CGQP) – which replaces the International Qualifying Scheme (IOS) in January 2020 with an

updated curriculum in applied governance, company law, corporate secretaryship and compliance, as well as a greater emphasis on risk management, strategy and boardroom dynamics.

Governance standards and requirements are evolving rapidly to enhance better controls, performance, transparency and sustainability of organisations, and so is our profession. The CGQP, our thought leadership reports and guidance notes, as well as continuing professional development training courses, will deliver the reinforced skill set governance professionals need in the ever-more dynamic and regulated business environment. We believe that these new strategic developments will enhance the capabilities of our current and future members, the quality of what we do and the value we bring to all stakeholders.

We cannot predict the future but we can prepare for it together. Whilst our Council is fully committed to steering our Institute towards the sustainable development of our profession in Hong Kong and the Mainland, we need the continual support of our members, our collaborative partners and stakeholders in different ways. May I extend our deep appreciation to your contribution to us in the past and reach out to you for your continuing help and support.

I would also like to take this opportunity to thank our sponsors and donors for their generous support. We established The Hong Kong Institute of Chartered Secretaries Foundation Ltd on 5 January 2012 as a company limited by guarantee and a registered charity under Section 88 of the Inland Revenue Ordinance. Its main objectives are to support education and research in the company secretarial and governance arena and publish reports and

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David Fu, President, The Hong Kong
Institute of Chartered Secretaries

articles, organise or sponsor non-profit making training courses and educational programmes, as well as provide awards and scholarships to people in need to pursue studies in company secretarial and governance related subjects. Over the years, the Foundation has received donations and sponsorships from our members, graduates and students, friends and friendly organisations, and in particular the Companies Registry. To mark the 25th anniversary of the establishment of our Institute in Hong Kong, our Council has unanimously decided to donate HK\$250,000 to the Foundation in support of its good work for the general public in the years to come.

*Ada Chung, Registrar of Companies,
Hong Kong Companies Registry;
Edith Shih, International President,
The Chartered Governance Institute;
and David Fu, President, The
Hong Kong Institute of Chartered
Secretaries; were to speak at the
HKICS Double Anniversary Cocktail
Reception planned for 11 November
2019 at The Hong Kong Club.*

Competition law enforcement

What can we learn from the first two competition law enforcement actions in Hong Kong?



Connie HY Lee and Tommy Cheung, Barristers-at-Law, Des Voeux Chambers, consider the implications of Hong Kong's first two competition law enforcement actions, with a focus on the attribution of liability.

Overview of the competition law regime

Hong Kong joined over 130 jurisdictions around the world in having a cross-sector competition enforcement regime when the full provisions of the Competition Ordinance (Cap 619) (CO) came into force on 14 December 2015. The CO regulates or provides for the following:

1. agreements which may harm competition (the First Conduct Rule)
2. abuse of substantial market power (the Second Conduct Rule), and
3. merger control for the telecommunications industry (the Merger Rule).

The Competition Commission (the Commission) is the regulatory body in Hong Kong that brings enforcement actions to the Competition Tribunal (the Tribunal).

First Conduct Rule

The First Conduct Rule is set out in Section 6(1) of the CO. It provides that an undertaking (that is, any entity engaged in economic activity; see Section 2(1) of the CO) – if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong – must not:

- make or give effect to such an agreement
- engage in such a concerted practice, or

- as a member of an association of undertakings, make or give effect to such a decision of the association.

Common examples of anti-competitive conduct targeted by the First Conduct Rule include cartels, which usually involve price-fixing, bid-rigging, market sharing and/or output restrictions.

Second Conduct Rule

The Second Conduct Rule is set out in Section 21(1) of the CO. It prohibits an undertaking which has a substantial degree of market power in a market from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

In determining whether an undertaking has a substantial degree of market power, the following matters listed in Section 21(3) of the CO will be considered:

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undertakings,
including natural
persons, that
contravene the rules
may face serious
consequences

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

Common examples of abuse of substantial market power include predatory pricing, tying and bundling, refusal to deal and exclusive dealing.

Highlights

- the May 2019 Competition Tribunal judgments on the first two enforcement actions involving a breach of the First Conduct Rule have far-reaching implications for the attribution of liability
- not only can employees be treated as part of an undertaking, agents and subsidiaries may well also be treated as part of the undertaking of a principal or parent
- Hong Kong is currently the only common law jurisdiction that applies a criminal standard of proof in enforcement actions seeking a pecuniary penalty for contravention of competition law

Merger Rule

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

The significance of the competition law regime

The significance of this new regime must not be overlooked.

First, the regime applies to all Hong Kong's economic sectors, including the construction sector, the financial services industry, retail sectors, the telecommunications and broadcasting sector and the transport industry (see Conor Quigley QC and Suzanne Rab, *Hong Kong Competition Law*; Hart Publishing, 2017, Chapter 7).

Second, undertakings, including natural persons, that contravene the rules may face serious consequences. They could face pecuniary fines of up to 10% of the turnover (that is, revenue before deduction of expenses) during the period of contravention. If that contravention occurs for more than three years, the cap is at 10% of the turnover of the three years with the highest turnover (see Section 93(3) of the CO).

Third, natural persons involved in a contravention of the rules may also face pecuniary fines. The Tribunal can also seek a disqualification order of up to five years against directors of the companies

involved in the infringement (see Sections 101–102 of the CO).

The two enforcement actions

On 17 May 2019, the Tribunal handed down its judgments on the first two enforcement actions involving a breach of the First Conduct Rule: (i) *Competition Commission v Nutanix Hong Kong Ltd and Others* [2019] HKCT 2 (the Nutanix decision), and (ii) *Competition Commission v W Hing Construction Co Ltd and Others* [2019] 3 HKLRD 46 (the W Hing decision).

The Tribunal ruled that the criminal standard of proof applies in enforcement actions seeking a pecuniary penalty for contravention of competition law. This set Hong Kong apart from the UK, Canada, New Zealand, Singapore and Australia as the only common law jurisdiction that applies a criminal standard of proof, in other words, beyond reasonable doubt. This is a very onerous standard for the Commission to meet. In particular, most competition law infringements are necessarily clandestine by nature.

These two landmark decisions also laid down many other significant rulings that have helped to shape the landscape of the new competition law regime. We will however focus on the doctrine of attribution of liability: (i) whether a rogue employee's contravention can bind his/her employer, and (ii) whether an independent contractor's contravention can bind a party.

The Nutanix decision

In this first enforcement action, the Tribunal found all but one of the five respondents – each of which was an IT company – liable for contravening the First Conduct Rule by engaging in bid-

rigging concerning a tender for the supply and installation of a new IT server system for YWCA in 2016. In brief, 'dummy bids' were arranged to be submitted in order to assist BT Hong Kong Ltd's bid.

This enforcement action has far-reaching implications for when liability of an employee can be attributed to an employer.

1. The conduct of submitting a dummy bid by a junior rogue employee of the third respondent (SiS International Ltd), whose general duties did not include submission of tenders nor provision of any binding quotation, was not attributable to SiS (see paragraphs 375 to 377 of the Nutanix decision).
2. In reaching this decision, the Tribunal formulated a somewhat new test for attribution of liability in Hong Kong, that is, the 'sufficient connection' test, stating that: 'There must be a sufficient connection between the acts of the employee in question and the undertaking so that the former can properly be regarded as part of the latter in the relevant context' (see paragraph 372 of the Nutanix decision).

The W Hing decision

The Commission brought the second enforcement action against 10 decoration contractors approved by the Hong Kong Housing Authority (HKHA) for decoration works of three new blocks of flats in public housing estates. The Commission's case was that the 10 respondents had allocated the floors they would work on and had used a joint flyer setting out basic packaged prices in providing decoration works in Phase 1 of On Tat Estate between June and November 2016.



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corporate entities in Hong Kong must familiarise themselves with the concept of an ‘undertaking’ as the perpetrator of a contravention of competition law that underpins the limits of an enforcement action
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All respondents – except the first respondent (W Hing) and the ninth respondent (Wide Project Engineering & Construction Co) – initially relied on the economic efficiency defence under Section 1 of schedule 1 to the CO. On the other hand, W Hing and Wide Project relied on the subcontractor defence in that they had subcontracted the entirety of the works to respective independent contractors for their own profit and loss, in exchange for a fee of HK\$200,000.

The Tribunal ruled that all respondents were liable for the contravention of the First Conduct Rule in the form of market sharing and price-fixing. In so ruling, the Tribunal also rejected the economic efficiency defence and the subcontractor defence.

Key lessons from the two enforcement actions

Notwithstanding the fact that some of the respondents in the first two enforcement actions are appealing against the decisions, the decisions have nevertheless provided important pointers for compliance purposes and internal control.

Corporate entities in Hong Kong must familiarise themselves with the concept

of an ‘undertaking’ as the perpetrator of a contravention of competition law that underpins the limits of an enforcement action. It is a very broad concept and can encompass several entities or even legal persons within an economic unit (see *Akzo Nobel and Others v European Commission* (C-97/08P) [2009], paragraphs 55–56; *Sasol and Others v European Commission* (re Candle Wax Cartel) (T-541/08) [2014] 5 CMLR 16, paragraphs 139–140). Not only are employees usually being treated as part of an undertaking, agents and subsidiaries may well also be treated as part of the undertaking of a principal or parent.

In the context of an employment relationship, an employer who has no knowledge of, or who has not authorised, a contravention carried out by an employee will only be able to escape liability if the employee’s duties had no sufficient connection with the acts that led to the contravention. In other words, the employee was clearly not put up to the very task in question.

Likewise, a party cannot disclaim liability by simply outsourcing the relevant works. The determining factor is whether there is unity in the conduct of the

relevant entities on the market. In the W Hing decision, the Tribunal held that, amongst others, the renovation work was promoted to the tenants in the name of W Hing and Wide Project, and the contracts with the tenants were also executed in the name of W Hing and Wide Project, who remain ultimately answerable to the HKHA. Therefore, W Hing, Wide Project and their respective subcontractors had to ‘act together’ in the provision of renovation services such that there was unity in their conduct on the market (see paragraph 317 of the W Hing decision).

In order to protect companies and employers, proper internal monitors and compliance procedures must be in place. There must be training for both management and staff in the major pitfalls related to competition law, and specific directives on these compliance or regulatory matters must be issued. Crucially, companies should only place people they can trust in important positions that provide access to sensitive information, including price information.

**Connie HY Lee, Barrister-at-Law, and
 Tommy Cheung, Barrister-at-Law**
Des Voeux Chambers

US-China trade war: responding to uncertainty

Colum Bancroft, Managing Director, AlixPartners, looks at the risks and compliance issues arising from market conditions resulting from the current US-China trade war.



The US-China trade war has caught the world's attention in recent months, and even more so recently with both the US and China continuing to increase tariffs on various categories of each other's products. Because of the inability to pass on the additional tariff costs fully to consumers, the profit margins of multinational companies' Chinese subsidiaries and Chinese exporting businesses are being squeezed, and pressure is on both managers and executives to meet internal and external targets.

Combined with the deleveraging of the Chinese economy, the expansion of tariffs creates a perfect storm of tension, leading to a marked increase in channel stuffing, round-tripping, falsified transactions, and other illicit means of inflating reported revenues and earnings. Companies must be prepared for the risks and compliance issues that may arise as attempts are made to reduce the impact from tariffs. One example of a method some companies are employing and its potential financial and compliance implications follows.

Selling goods through an intermediary

Some exporters, in order to manage and reduce the additional costs relating to

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companies must continually monitor the evolving risk landscape in order to maintain an effective compliance programme
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the tariffs, are coordinating with US importers. The arrangement may involve the China exporter setting up a trading company (the intermediary), or using an independent trading company (often based in Hong Kong), to sell its goods to the intermediary at a lowered price. This lower price is subjected to the 25% tariff duties which results in an effective lowered duty paid via the First Sale for Export programme. The First Sale for Export is a duty reduction programme designed to reduce the dutiable value of eligible products imported into the US and not the final price purchased by the US importer.

Instead of selling direct to the end customer, the exporters may sell

Highlights

- companies need to remain agile and adept at identifying the ever-evolving risks to their businesses as a result of the tariff increases
- regular enterprise-wide risk assessments – together with ad hoc reviews – need to be performed as part of a robust compliance programme
- boards of directors, audit committees and others charged with oversight need to be kept informed of key market and other developments impacting the business

Table 1: Before any tariffs

	A (SELL SIDE)	B (BUY SIDE)
Price sold – Cost, insurance and freight (CIF)	100	200
Cost of goods sold (COGS)		-100
Other costs		-75
Profit		25

Table 2: Tariffs at 25%

	A (SELL SIDE)	B (BUY SIDE)
Price sold (CIF)	100	200
COGS		-100
Tariffs @ 25%		-25
Other costs		-75
Profit		0

Table 3: Tariffs at 25% (using an intermediary)

	A (SELL SIDE)	INTERMEDIARY	B (BUY SIDE)
Price sold (ex-factory)	80	100	200
Insurance and freight	20		
COGS		80	-100
Tariffs @ 25% (of 80)			-20
Other costs			-75
Profit			5

products to an intermediary without knowing who the final customers are. Regulatory enforcement actions emphasise that compliance cannot be outsourced to third parties, with circumvention of regulations through third parties often expressly prohibited by statute. This places the onus on companies to take reasonable steps to ensure their supply chains and distribution channels remain compliant. Although the onward sales may not be subjected to the trade tariffs, if the products are ultimately sold to sanctioned countries or sanctioned persons, the exporters could end up in breach of the Office of Foreign Assets Control (OFAC) regulations. If an OFAC violation is confirmed, the penalties could be significantly higher than the premium paid on trade tariffs.

Due to the inherent bribery, misappropriation of assets, financial fraud and OFAC sanctions-related risks associated with the use of intermediaries, companies must continually monitor the evolving risk landscape in order to maintain an effective compliance programme.

Such a programme should include inculcating an organisation-wide culture of compliance through setting an appropriate tone-at-the-top and adequate training tailored to the business and appropriate to the position and seniority of those being trained, and holding individuals accountable for compliance failures. Also maintaining a robust third-party oversight programme, including appropriate levels and frequency of risk-based due diligence procedures conducted throughout the

supply chain and distribution channels, again with suitable consequences for lapses in third-party supervision.

In addition, and of particular importance in an environment of rapidly changing rules, regulations and market trends is the need for companies to remain vigilant and constantly monitor such changes and assess their impact on the entire range of financial, legal and regulatory risk exposure of the business – including, but not limited to, fraud, corruption, AML, sanctions, and data privacy and handling. Such ad hoc reviews should supplement the regular enterprise-wide risk assessments that need be performed with appropriate frequency as part of a robust compliance programme to ensure that the company's risk exposure is aligned with its board-approved risk appetite.

Prepare now

Both US and Chinese companies are facing a rough road ahead. The current market conditions make it difficult to understand how best to adjust short-, medium- and long-term plans in order to meet strategic objectives. A holistic approach is necessary to assess and respond to the regular and rapidly changing economic environment and risk landscape, and will require an evaluation of a wide range of strategic, operational, financial and other factors – including possible changes to operating models, trading terms, supply chain transparency, and steps taken to ensure compliant

mergers and acquisitions and business-as-usual activity.

In the current macro environment, it is more important than ever that boards of directors, audit committees and others charged with oversight have sufficient understanding of the company's business model, revenue and profitability drivers, as well as the accompanying risks and other dependencies, and are kept informed of key market and other developments impacting the business, to enable a strong governance structure to function effectively. Businesses should also consider drawing upon the combination of risk management experience and deep industry

knowledge of consultants who, through a combination of specialist expertise and use of cutting-edge technology, can provide real insight to help senior leaders to make fully informed decisions.

Only time will tell if US or Chinese consumers or companies will bear the brunt of the tariffs, but companies based in both locations need to remain agile and adept at identifying the ever-evolving risks to their businesses, and take actions to mitigate uncertainty and the impact of tariff increases.

Colum Bancroft, Managing Director
AlixPartners



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Changes on the horizon

New cross-border transfer restrictions
and personal information requirements
in the Mainland

As far as network operators are concerned, the definition is broad enough to essentially include any business that uses some form of IT infrastructure in China (that is, owns or operates a computer network, server or website in China), regardless of its industry sector.

Transfers of personal information and important data

Under the New Draft Cross-Border PI Measures and the New Draft Security Management Measures, a CII operator or network operator cannot transfer or disclose personal information or important data collected or generated during their operations in China to anyone outside China, unless:

- they have completed an official security assessment
- a contract is signed with the intended recipient (which must incorporate specific provisions stipulated by the New Draft Cross-Border PI Measures), and
- for personal information, the express and informed consent of the relevant individual is obtained.

In addition, prior authorisation from the relevant regulatory authority is also required for the cross-border transfer, disclosure, sale or publishing of important data by CII operators or network operators. The definition of 'important data' under the New Draft Security Management Measures only covers data – such as non-public government information, large-scale population data, genetic health data, geographic data and mineral resources data – which, if leaked, may directly affect national security, economic security, social stability, and

public health and security. The definition expressly excludes any information relating to the production, operation or internal management of an entity and personal information.

The above restrictions appear to have extraterritorial effect and may apply to companies that do not have a physical presence in China, but which have operations that involve the collection of personal information of Chinese residents. In particular, the New Draft Cross-Border PI Measures provide that if the business activities of any organisation located outside China results in the collection of personal information of persons located in China, then such organisation will be subject to the New Draft Cross-Border PI Measures as a network operator.

Under the previous draft measures, CII operators and network operators were required to carry out a self-assessment for the cross-border transfer of personal information, and an official security assessment by the relevant local authorities would only be necessary if certain thresholds were met or the transfer was being made by a CII operator. In contrast, the New Draft Cross-Border PI Measures now require all cross-border transfers of personal information by either a CII operator or network operator to undergo an official security assessment by the relevant Cyberspace Administration of China (CAC) branch office. There is currently no minimum threshold in relation to the application of this requirement. In addition, no express exceptions are made in relation to intra-group transfers.

The official security assessment must be conducted prior to the cross-border data transfer, and must be completed for each

different recipient. However, multiple or ongoing transfers to the same recipient will not require additional assessments. The assessment must be repeated every two years or whenever there is a change in the purpose, type or retention period regarding the data.

The documents that must be submitted by the CII or network operator when applying for an official security assessment will include a detailed report on the security risks and measures related to the transfer, the agreement with the intended recipient and a declaration form. If the results of the assessment reveal that the cross-border transfer could present a risk to national security, damage public interest or provide inadequate protection for the personal information, then the transfer will be prohibited. Whilst the CII or network operator can file an objection to the decision, there is currently no detailed appeal procedure set out in the New Draft Cross-Border PI Measures.

A record must be retained by CII operators and network operators for at least five years, which details all of their cross-border transfers of personal information. The local CAC office is obligated to carry out regular inspections of such records, and an annual report must also be submitted to the local CAC office regarding the CII or network operator's cross-border transfers and any related contract.

Lastly, prior to the sharing of personal information with a third party, under the New Draft Security Management Measures CII operators and network operators need to conduct an assessment of the potential security risks and obtain the express consent of the data subjects. This requirement is not expressly limited

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to cross-border transfers and does not exclude intra-group sharing of personal information – therefore it appears that it may also apply to domestic transfers and transfers within the same group. There are certain exceptions to this requirement, including situations where the data was collected from a public source and the sharing is not in violation of the data subjects' wishes, the data subject voluntarily published his personal information, it is necessary for law enforcement purposes or to protect national security, and so on.

Personal information

Outside the context of cross-border transfers, the New Draft Security Management Measures impose further obligations on CII operators and network operators in relation to personal information. Unlike the 'Information Technology – Personal Information Security Specification' (National Standard GB/T 35273-2017) (GB/T 35273-2017 信息安全技术个人信息安全规范) (PI Specification), and its draft amendments released on 1 February 2019, the New

Draft Security Management Measures (once finalised and brought into operation) will be legally binding and a breach could lead to various penalties (including the shutting down of business operations). The New Draft Security Management Measures introduce requirements such as the need to obtain explicit and informed consent of the data subjects (and specifically sets out the information that needs to be provided to the data subject), an obligation not to force or mislead data subjects to provide their consent (such as bundled consent or default consent), not to take any discriminatory actions based on the scope of consent provided by the data subject (for example, reduced service quality), comply with data access requests, implement data encryption and backup measures, and so on.

In addition, CII operators and network operators that collect important data or sensitive personal information for business purposes must also file with their local CAC office their rules for collection and use, and the

purpose, scope, volume, method, type and retention period of such data. The CII operators and network operators must also designate a person to be in charge of the data security for the important data and sensitive personal information.

Where to now?

The draft measures are likely to be finalised by the end of 2019. For now, companies that have a link to China (for example, business operations in China, networks in China, collecting information from Chinese residents, Chinese-hosted website, or vendors in China), are advised to conduct privacy and security audits to ensure compliance with the CSL. In particular, companies should carefully scrutinise where their data is held and engage in conversations with their supply chain.

**Gabriela Kennedy, Partner, and
 Karen HF Lee, Counsel**

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Charitable organisations

Registration of a charity in the form of a company limited by guarantee



Susan Lo FCIS FCS(PE), Executive Director of Corporate Services, Tricor Services Ltd, reviews the interpretation of a charitable organisation in Hong Kong, and explains the benefits and stipulations of forming a company limited by guarantee for charity purposes.

Introduction

A non-governmental organisation (NGO) or a non-profit organisation (NPO) is frequently used as an alternative description for a charitable organisation. However, in Hong Kong not all NGOs or NPOs (collectively described as NPOs below) are recognised by the Hong Kong Inland Revenue Department (IRD) as charitable organisations under Section 88 of the Inland Revenue Ordinance (IRO). This article examines how the IRD defines a charitable organisation (charity) in Hong Kong, the advantages of forming a company limited by guarantee (guarantee company) for charity purposes, the key statutory requirements relating to the registration of a guarantee company as a charity in Hong Kong, and the ongoing administration of such.

What constitutes a charity?

A charity is not exactly equivalent to an NPO, but a charity must be an NPO.

According to a tax guide issued by the IRD, a charity must be established for public benefit and for purposes that are exclusively charitable according to the law. Charitable purposes are classified into four areas:

- relief of poverty
- advancement of education
- advancement of religion, and
- other purposes of a charitable nature beneficial to the Hong Kong community.

While the purposes under the first three categories may be in relation to activities carried out in any part of the world, those under the fourth category will only be regarded as of charitable purpose if the activities are of benefit to the Hong Kong community.

Examples of charitable purposes and non-charitable purposes upheld by the courts in past cases are set out below for reference.

Charitable purposes

- relief of people living in poverty
- relief of victims of a particular disaster
- relief of sickness
- relief of the physically and mentally disadvantaged
- establishment or maintenance of non-profit-making schools
- provision of scholarships

- diffusion of knowledge of particular academic subjects
- establishment or maintenance of a church
- establishment of religious institutions of a public character
- prevention of cruelty to animals, or
- protection and safeguarding the environment or countryside.

Non-charitable purposes

- attainment of a political object
- promotion of the benefits of founders or subscribers
- provision of a playing field, recreation ground or scholarship fund for employees of a particular company or industry, or
- encouragement of a particular sport such as angling or cricket.

Highlights

- a charitable purpose must fall into one of four categories: relief of poverty, advancement of education, advancement of religion, or being of benefit to the Hong Kong community
- the most popular vehicle for establishing a charity is currently a company limited by guarantee (guarantee company)
- best practice recommendations relating to the registration of a guarantee company as a charity include compliance with statutory terrorist financing obligations

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Why use a guarantee company as a vehicle for a charity?

An organisation wishing to set up as a charity is subject to the jurisdiction of the courts in Hong Kong. The following are the common types of structure:

- a trust
- a society established under the Societies Ordinance (Cap 151)
- a guarantee company incorporated under the Companies Ordinance (Cap 622)(CO), and
- a statutory body incorporated under a specific Hong Kong Ordinance.

Of the above, the most popular vehicle for establishing a charity in recent years is a guarantee company. The key advantage is that this is a legal entity separate from its members, and the personal finances of the members running the charity are protected. The liability of its members is limited to the sum that they agree to contribute in the event of the charity being wound up. Setting up a guarantee company also paves the way for a clearer process for registration with the IRD and offers greater transparency of operation.

Registration of a charity in the form of a guarantee company

Registration of a charity in the form of a guarantee company is a two-step process.

For the purpose of incorporating the entity, the draft incorporation statutory returns and the draft articles of association, together with the appropriate incorporation and business registration fees, should be submitted to the Companies Registry (CR). There are no e-incorporation services available for such applications as the Registrar has to review the draft articles of association before giving approval for the incorporation. To have such an entity incorporated typically takes four to five weeks, even for a very smooth case.

An entity wishing to seek tax exemption status accorded by Section 88 of the IRO should submit to the IRD an application prior to or immediately after the entity has been incorporated. In addition to an application letter, the entity should also submit its certificate of registration, articles of association, list of directors, financial statements (if available) and list of the activities planned for the next 12 months from the date of establishment or date of application, as appropriate. In case the application is made prior to the entity's incorporation, the draft articles of association and the list of proposed directors should be submitted instead. The IRD will review the entity's articles to ensure that the following criteria are satisfied:

- stating precisely and clearly the entity's objectives
- limiting the application of the entity's funds towards the attainment of its stated objectives

- prohibiting distribution of the entity's income and properties amongst its members
- prohibiting members of the entity's governing body (for example, directors) from receiving remuneration
- specifying how the remaining assets should be dealt with upon dissolution (normally to be donated to other charities)
- avoiding conflict of interests in contract, arrangement and transaction, and
- requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.

If the IRD has any comments on the articles of association, the entity has to pass members' resolutions to amend the articles and resubmit the same for IRD approval. Many applicants, therefore, prefer to obtain IRD approval before formally incorporating the entity. After all conditions are fulfilled, the IRD will issue a written confirmation and include the entity's name in the list of charitable institutions and trusts of a public character recognised by the IRD as exempt from tax under Section 88 of the IRO, which is publicly accessible on the IRD's website. The whole process may take at least four to six months.

The tax advantages accorded to the charity include exemption from paying profits tax on all the income to be applied for charitable purposes, and exemption from stamp duty on transfer

of any immovable property or Hong Kong stock gifted to the charity and the annual business registration fee. In addition, the donors are granted a tax deduction from salaries or profits to the extent of the respective limitations.

It is vital that the charity does not start receiving donations until after the Section 88 tax exemption status has been granted, to avoid such income being subject to profits tax.

General compliance and annual filing requirements for guarantee companies

Under the CO, the statutory requirements that need to be observed by a guarantee company are similar to those applicable to a private limited company.

Private limited company. Set out below for reference are some basic compliance obligations for a private limited company, which also apply to guarantee companies, except for those provisions applicable only to a guarantee company:

- maintain a local registered address
- appoint a resident company secretary (individual or body corporate)
- appoint at least one director who is a natural person (over 18 years old)
- have at least one shareholder (individual or body corporate)
- notify the CR of any changes in the company's particulars recorded in the CR
- renew its annual business registration

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setting up a guarantee company also paves the way for a clearer process for registration with the Inland Revenue Department and offers greater transparency of operation
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- maintain proper accounting records and prepare annual financial statements
- appoint a practising accountant to audit the annual financial statements
- hold an annual general meeting at which the company's financial accounts are adopted
- file annual returns with the CR, and
- submit a profits tax return together the annual audited accounts to the IRD.

Guarantee company. Highlighted below are the key provisions applicable *only* to a guarantee company:

- must maintain at least two directors, and all of its directors must be natural persons
- may apply to the CR for a licence to dispense with the word 'Limited' or '有限公司' if the Registrar is satisfied that its objectives are restricted to



promoting commerce, art, science, religion, charity, and so on, and its profits are all applied to promoting objectives and no dividend payment would be made to its members

- must submit an annual return to the CR together with certified true copies of the relevant financial statements, directors' report and auditor's report within 42 days after the annual return date, which is nine months after the end of the company's accounting reference period, and
- need not pay the business registration fee or file a profits tax return with the IRD (if it has been recognised as a charity).

Although a charity is exempted from filing a profits tax return with the IRD, the IRD may conduct a periodic review of its charitable status.

Preventing the misuse of charities for terrorist financing

Hong Kong is a member of the Financial Action Task Force (FATF), which sets international standards on combating

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all charities are encouraged to demonstrate an understanding of money laundering and terrorist financing risks to which the organisation may be exposed
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money laundering (ML) and terrorist financing (TF). The Narcotics Division of the Security Bureau has issued 'An Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing' in order to mitigate any possible threat and to preserve the integrity of Hong Kong's charity sector. However, the risk of most charities in Hong Kong being abused for terrorist purposes is regarded as low, as

assessed in the HKSAR Government's *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report*.

All charities are encouraged to demonstrate an understanding of ML and TF risks to which the organisation may be exposed, as well as the statutory TF obligations, and to elaborate on the organisation's measures of good governance and donations,

programming and funding control and practices to mitigate ML and TF risks.

The 'Public Governance' series of guidance notes published by The Hong Kong Institute of Chartered Secretaries (see online resources below) give practical guidance on the governance of charitable organisations in Hong Kong. To guide charities to maintain good fund-raising management and good accounting practices, practice notes are also issued by the Social Welfare Department, the Home Affairs Department and the Food and Environmental Hygiene Department, and by the Independent Commission Against Corruption.

Susan Lo, Executive Director, Corporate Services
Tricor Services Ltd

Online resources (in order of appearance)

- Inland Revenue Department tax guide: 'Tax Guide for Charitable Institutions and Trusts of a Public Character' is available at: https://www.ird.gov.hk/eng/pdf/tax_guide_for_charities.pdf
- Companies Registry guidance note: 'Application for a Licence to dispense with the word "Limited" in the Name of a Company' is available at: https://www.cr.gov.hk/en/companies_ordinance/docs/Guide_Section103-e.pdf
- Narcotics Division, Security Bureau advisory guideline: 'An Advisory Guideline on Preventing the Misuse of Charities for Terrorist Financing' and related Appendix are available at: https://www.nd.gov.hk/pdf/guideline_e_20180929.pdf
https://www.nd.gov.hk/pdf/Appendix_e_20180929.pdf
- HKSAR Government risk assessment report: *Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report* is available at: https://www.fstb.gov.hk/fsb/aml/en/doc/hk-risk-assessment-report_e.pdf
- The 'Public Governance' series of guidance notes published by The Hong Kong Institute of Chartered Secretaries is available at: www.hkics.org.hk
- Social Welfare Department, Home Affairs Department and Food and Environmental Hygiene Department good practice guide: 'Good Practice Guide on Charitable Fund-raising' is available at: https://www.gov.hk/en/theme/fundraising/docs/good_practice_guide.pdf
- Independent Commission Against Corruption best practice checklist: 'Management of Charities and Fund-Raising Activities' is available at: http://www.icac.org.hk/filemanager/en/content_218/fund_raising.pdf

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Tax residency of Hong Kong corporations

What you need to know before applying for a Certificate of Resident Status in Hong Kong



Henry Kwong, Tax Partner, and Matthew Cheung, Tax Manager, Cheng & Cheng Taxation Services Ltd, guide us through the process of obtaining a Certificate of Resident Status in Hong Kong, a prerequisite for eligibility to claim tax benefits under a Double Taxation Agreement/Arrangement.

Given Hong Kong's increasing network of Double Taxation Agreements/Arrangement (DTAs), obtaining a Certificate of Resident Status (CoR) in Hong Kong in order to utilise the tax benefits under a DTA has become an important part of tax planning for multinational corporations and Chinese enterprises. Meanwhile, the Inland Revenue Department (IRD) of The Government of the HKSAR is taking a stricter approach when reviewing CoR applications. As such, it is important to understand the definition of a Hong Kong tax resident and the prevailing practice of the IRD before making a CoR application.

Definition of a Hong Kong tax resident

Several years ago, following the definitions stated in the DTA entered into by Hong Kong, being a Hong Kong incorporated company was sufficient to

qualify as a Hong Kong tax resident. As such, it was not difficult for a Hong Kong corporation to obtain a CoR.

However, in recent years – as many of you may be aware – following the international practice of avoiding treaty abuse and treaty shopping, the IRD now expects a corporation to build up substance in Hong Kong in order to qualify as a Hong Kong tax resident. In other words, a shell company without substance in Hong Kong is likely to be rejected by the IRD when making a CoR application.

The 'Departmental Interpretation and Practice Notes No 43 (Revised)' (DIPN 43) provides some of the IRD's latest views. In order to be a Hong Kong tax resident, a corporation has to be centrally managed and controlled in Hong Kong. Under DIPN 43, the IRD does not specify the exact amount of substance required,

Highlights

- before being eligible to claim tax benefits under a Double Taxation Agreement/Arrangement (DTA), a corporation should obtain a Certificate of Resident Status (CoR) in Hong Kong
- Hong Kong's Inland Revenue Department is now taking a stricter approach when reviewing CoR applications, requiring that a corporation is centrally managed and controlled in Hong Kong
- while a CoR is ordinarily valid for one year, in respect of the DTA between Hong Kong and the Mainland – and provided that the operations of the Hong Kong company remain substantially unchanged – validity is generally three years

Table 1: Withholding tax rates

Withholding tax	Without DTA	With DTA
Dividends	10%	5%
Interest	10%	7%
Royalties	10%	5%–7%

but will look at all facts regarding the management and operations of the applicant company in order to make a decision. It has also explicitly stated that the place of incorporation is not itself conclusive proof of where the central management and control is exercised.

Tax benefits under a DTA

Before we go into the detailed requirements of a CoR application, it would be fruitful to first examine the scenarios under which a CoR would be beneficial to a corporation. A Hong Kong tax resident would be better off if the tax liabilities stated in the DTA were less than that stated in domestic law. As at 30 September 2019, Hong Kong had entered into Comprehensive DTAs with 42 tax jurisdictions, including Japan, the United Kingdom and Indonesia. Please refer to the IRD's website for the full list of Hong Kong tax treaty partners.

Having said that, the most common DTA applicable to a Hong Kong corporation must be that between Hong Kong and the mainland of China (the Mainland). Table 1 summarises the differences in withholding tax rates on dividends, interest and royalty payments made by Mainland corporations to Hong Kong corporations, with and without the DTA.

These figures partly explain the reason

why multinational corporations opt to set up a Hong Kong holding company to invest in the Mainland. If a Hong Kong holding company qualifies as a Hong Kong tax resident and fulfils the Beneficial Ownership requirement under the Mainland's Public Notice [2018] No 9, it is highly likely that the Hong Kong holding company can enjoy a preferential tax rate of 5% on dividends received from its Mainland subsidiaries.

The preferential tax rate also applies to Mainland enterprises listing on the Hong Kong Stock Exchange. In the common red chip structure, a Hong Kong company would be set up to hold shares of Mainland operating entities. One of the main purposes for setting up a Hong Kong holding company is to reduce the withholding tax rate from 10% to 5% for profit repatriation from the Mainland to Hong Kong. The 5% withholding tax reduction would have a significant impact on the final amount of dividends receivable by investors.

On the other hand, Hong Kong corporations licensing its trademarks, licences or other intellectual properties to Mainland corporations can also enjoy a reduced withholding tax rate if it qualifies as a Hong Kong tax resident.

Other taxation benefits made possible

through obtaining CoR status are the elimination of double taxation and a more favourable definition of permanent establishment in the DTA.

Practical experience sharing

As mentioned above, the IRD will look at the place in which the central management and control of a corporation is exercised in order to determine whether a corporation is a Hong Kong tax resident or not. Based on our experience, the IRD will look at the following aspects when reviewing a CoR application:

- whether the directors of the corporation are based in Hong Kong
- whether the board of directors' meetings of the corporation are held in Hong Kong (that is, physical location of the directors at the time of the meeting will be taken into consideration)
- whether the corporation maintains an office and/or any other business establishment in Hong Kong
- whether the staff (particularly senior management personnel) of the corporation are based in Hong Kong, and
- whether the profits of the corporation are subject to Hong Kong profits tax.

As the IRD will consider all facts relevant to the management and control of the corporation as a whole, the above list is not intended to be exclusive and at the same time a corporation may not have to fulfil all of the above requirements to qualify as a Hong Kong tax resident. For



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each of the above factors, the IRD will first examine whether the corporation has built up the relevant substance in Hong Kong, and will then compare the substance built up by the corporation in Hong Kong and other tax jurisdictions.

Administrative procedures

Applications for a CoR are made on a calendar year basis, regardless of the accounting year-end date of the applicant. If the applicant would like to obtain the tax benefits under two separate DTAs, two separate applications have to be made, despite the fact that the requirements will be more or less the same. Application forms IR1313A (applicable to the DTA between Hong Kong and the Mainland) and IR1313B (applicable to all other DTAs entered into by Hong Kong) should be filled in and submitted to the IRD.

A CoR is generally valid for one year. To ease the administrative burden, a CoR in respect of the DTA between Hong Kong

and the Mainland is generally valid for three years, provided that the operations of the Hong Kong company remain substantially unchanged.

It takes around 21 business days for the IRD to process a CoR application. Should the IRD consider that it needs additional information and supporting documents to make a decision, it will issue an enquiry letter to the applicant. At that stage, the IRD does not provide a specific timeframe for reviewing the applicant's reply to the enquiry letter.

In view of the above, it is advised that:

- sufficient information and supporting documents should be submitted to the IRD with the initial application in order to avoid any delay in the application process, and
- as the CoR for the DTA between Hong Kong and the Mainland is valid for three years, an application for a

new CoR could be submitted well in advance, to allow a sufficient buffer time in the application process.

Last piece of advice

Based on our experience, a failed application renders it more difficult for a corporation to successfully obtain a CoR in the future, while a successful application tends to make future applications easier.

As such, we encourage corporations to look for tax advisors to examine whether the current status of the corporation would qualify it as a Hong Kong tax resident or not. If insufficient substance is maintained in Hong Kong, to enhance the chance of success, tax planning should be carried out before submitting a CoR application to the IRD.

**Henry Kwong, Tax Partner, and
Matthew Cheung, Tax Manager**
*Cheng & Cheng Taxation
Services Ltd*

Professional Development

Seminars: October and November 2019

10 October

Taking a closer look at the state of governance in Hong Kong and the Mainland



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

Speaker: Peter Greenwood MA FCIS FCS, Institute Technical Consultation Panel member, and Former Executive Director, CLP Holdings Ltd

14 October

Major BVI legal and practice developments in 2019



Chair: Richard Leung FCIS FCS JP, Institute Past President, and Barrister-at-law, Des Voeux Chambers

Speaker: Stephen Briscoe, Director, FFP (BVI) Ltd

15 October

Hong Kong resident status – a swinging pendulum?



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

Speakers: Wilson Cheng, Partner, Hong Kong Business Tax Services/Tax Controversy Services; and Cherry Lam, Partner, International Tax Services; Ernst & Young Tax Services Ltd

22 October

Listco 101: how to tackle queries from short sellers, auditors and regulators



Chair: Frances Chan FCIS FCS, Institute Professional Services Panel member, and Founder and Director, K. Leaders Business Consultants Ltd

Speaker: Barry Tong, Partner, Advisory, Grant Thornton Advisory Services Ltd

23 October

Tax residency certificate application and PRC individual income tax update



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

Speaker: Henry Kwong, Tax Partner, Cheng & Cheng Taxation Services Ltd

28 October

Company secretarial practical training series: continuing obligations of listed company: practice and application (re-run)



Chair: Carmen Lam FCIS FCS, Senior Lecturer, Corporate Administration and Secretaryship/Secretarial Practice, The Open University of Hong Kong

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

30 October
Is it the right time for an Employee Share Ownership Plan (ESOP)?



Chair: Alberta Sie FCIS FCS(PE), Institute Professional Services Panel member, and Company Secretary & Director, Reanda EFA Secretarial Ltd

Speakers: Wendy Ho FCIS FCS(PE), Institute Education Committee member, and Executive Director of Corporate Services; Eva Ngai FCIS FCS(PE), Director of Corporate Services; Tricor Services Ltd; and Alix Chan, Director, BOCI Securities Ltd

31 October
Enterprise risk management for environmental, social and governance-related risks



Chair: Kitty Liu FCIS FCS, Institute Education Committee member, and Company Secretarial Consultant, Law Department of the Hong Kong office, AIA International Ltd

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

1 November
Company secretarial practical training series: notifiable transactions: practice and application (re-run)



Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel member, and Associate Partner, Ernst & Young Company Secretarial Services Ltd

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

Online 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: cpd@hkics.org.hk.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
18 December 2019	6.45pm–8.45pm	Sexual harassment in the workplace	2
6 January 2020	6.45pm–8.15pm	The role of Hong Kong notaries public in helping business and citizens	1.5
8 January 2020	6.45pm–8.15pm	HKEX's Revised Listing Rules and the ESG reporting guide – updates and insights	1.5
9 January 2020	4.30pm–6.00pm	Women on boards: value all around	1.5

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

Membership

New graduates

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

Chan Chun Yu
 Chan Yung Chi, Shirley
 Kam Wai Yan, Vanessa
 Lam Lai Shan
 Lam Yu Hin, Alan
 Leung Chun Ming
 Leung Kit Ling, Elaine
 Lo, Eraine
 Tam Sik Wai
 Tang Siu Fung, Calvin
 Wong Chung Him

Forthcoming membership activities

Date	Time	Event
11 January 2020	8.45am – 5pm	Fun & Interest Group – Day-tour at Lai Chi Wo & Kat O

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

Advocacy

Training workshop for Secretariat team

The Institute tailored a half-day team dynamics training workshop for the Secretariat's senior management on 16 October 2019. The workshop included a non-judgmental personality assessment and a game-based business simulation involving strategic thinking, managing change, collaboration and negotiation techniques. The Secretariat team found the workshop very interesting and useful to help improve internal motivation, support, collaboration and communication.



HKMA Best Annual Reports Awards Presentation Ceremony 2019

As a representative of the Institute, Company Secretaries Panel member May Tsue FCIS FCS was invited by The Hong Kong Management Association (HKMA) to serve on the Panel of Adjudicators of HKMA's Best Annual Reports Awards 2019.

Subsequently, on 4 November 2019, Institute Council member Bernard Wu FCIS FCS and Ms Tsue participated in the HKMA's Best Annual Reports Awards 2019 Presentation Ceremony.

Advocacy (continued)

Annual training programme for H-share companies

The Institute's annual training programme for H share companies was held in Hong Kong between 12 and 15 November 2019. It was attended by over 55 board secretaries and senior executives from H share, A+H share and redchip companies. Speakers from Hong Kong Exchanges and Clearing Ltd, Independent Commission Against Corruption, Securities and Futures Commission, as well as experienced market practitioners and professionals shared their professional knowledge and hands-on experience on a range of

topics, including the latest regulatory developments, financial reporting standards, inside information disclosure, connected transactions, risk management, due diligence and media relationship management.

The Institute would like to thank all speakers, participants and the sponsor (Tricor Services Ltd) for their generous support of this event.





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International Qualifying Scheme (IQS) examinations

Examination Postponement Application

Candidates who could not attend a scheduled December 2019 IQS examination may submit a medical certificate to apply for examination postponement. All applications must be submitted to the Institute within three calendar weeks from the end of the December 2019 examinations, that is on or before Friday 27 December 2019.

Examination results slips

Students can now check their examination results online in their own login account at the Institute's website: www.hkics.org.hk. Starting from the December 2019 examination diet onwards, examination results will be made available on each candidate's own login account only. The examination results will no longer be sent to the candidates by mail.

Governance professionals information session

A governance professionals information session was held on 27 November 2019 for anyone interested in joining the Institute and obtaining the dual designation of Chartered Secretary and Chartered Governance Professional. Institute members Christine Chung FCIS FCS, Company Secretary, Virtual Banking by Standard Chartered Bank, and Cherie Mak ACIS ACS, Vice-President, SWCS Corporate Services Group (Hong Kong) Ltd, shared their work experience and routes to the dual qualification with the participants. Rory Herbert, the UK representative of the inaugural intern exchange programme between the Institute and the Worshipful Company of Chartered Secretaries and Administrators in London, acted as the facilitator for the sharing session. The participants found the sharing useful and inspiring.



Professional Seminar at The Hong Kong Polytechnic University

On 5 November 2019, Institute member Andrew Tsang FCIS FCS conducted a professional seminar on 'Directors' Duties' to 40 accounting major students of The Hong Kong Polytechnic University. Information about the dual designation of Chartered Secretary and Chartered Governance Professional was also provided to the students.



Information Session at City University of Hong Kong

An information session was held for students of the School of Law, City University of Hong Kong on 31 October 2019. Information about the Institute, the dual designation of Chartered Secretary and Chartered Governance Professional, the Chartered Governance Qualifying Programme (CGQP) and studentship registration was provided during the session.

HKICS new qualifying programme

With effect from 1 January 2020, HKICS will launch a new qualifying programme, the Chartered Governance Qualifying Programme (CGQP), which will replace the current International Qualifying Scheme (IQS). The first examination diet under the CGQP will be held in June 2020.

The CGQP consists of two parts covering seven modules, of which six are compulsory and the seventh is chosen from two electives. The structure allows students to learn and take the examinations in a progressive manner.

Part One of the CGQP comprises four modules, which aim to build students' technical knowledge in governance, law, finance and compliance. Part Two covers four modules, of which two are electives, that seek to enhance students' comprehensive understanding of risk, strategy, and boardroom dynamics or taxation.

The CGQP programme structure, syllabuses, admission requirements and exemption policies are posted on the Chartered Governance Qualifying Programme section under the Studentship section of the Institute's website: www.hkics.org.hk.

Starting from 1 January 2020, all students can review via their own login account the remaining modules under CGQP after the transition from IQS to CGQP. Transition arrangements at this stage will not be applicable to students who enrolled for the December 2019 examination diet and current CCA students under the IQS syllabus.

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

For enquiries, please contact the Education and Examinations Section: 2881 6177 or email: student@hkics.org.hk.

Collaborative Course Agreement Signing Ceremony

On 30 October 2019, the Institute signed a Collaborative Course Agreement with The Open University of Hong Kong (OUHK) regarding the Master of Corporate Governance (face-to-face) (MCG) programme of OUHK. The curriculum of this MCG programme is aligned to the Institute's new Chartered Governance Qualifying Programme (CGQP). Students admitted to this MCG programme in 2019 autumn and thereafter will be studying the CGQP syllabus.



Studentship

Important notice to students – Further Exemption Applications and Exemption Policies under CGQP

The Institute has announced revised policies on exemptions and further exemption applications under the Chartered Governance Qualifying Programme (CGQP). Students are reminded to read the important notice via email or under the News section of the Institute's website: www.hkics.org.hk.

Policy – payment reminder

Studentship renewal

Students whose studentship expired in October 2019 are reminded to settle the renewal payment by Monday 23 December 2019.

Exemption fee

Students who received an exemption confirmation notice issued in September 2019 are reminded to settle the exemption fees in three months, that is by December 2019. Please refer to the exemption confirmation email for the payment deadline.

Featured job openings

Company name	Position
Sit, Fung, Kwong & Shum, Solicitors	Company Secretarial Assistant/ Officer
Link Asset Management Limited	Deputy Company Secretary
Shenzhen International Holdings Ltd	Manager - Company Secretarial Department
CK Asset Holdings Ltd	Manager, Company Secretarial Department
Link Asset Management Ltd	Senior Manager - Company Secretarial

For details of job openings, please visit the Job Openings section of the Institute's website: www.hkics.org.hk.



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For enquiries, please contact HKICS secretariat at marketing@hkics.org.hk, or (852) 2881 6177

HKICS

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CS Practical Training Series:

The Essential Elements of a
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Formation of Common Vehicles in
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Restoration Thereof

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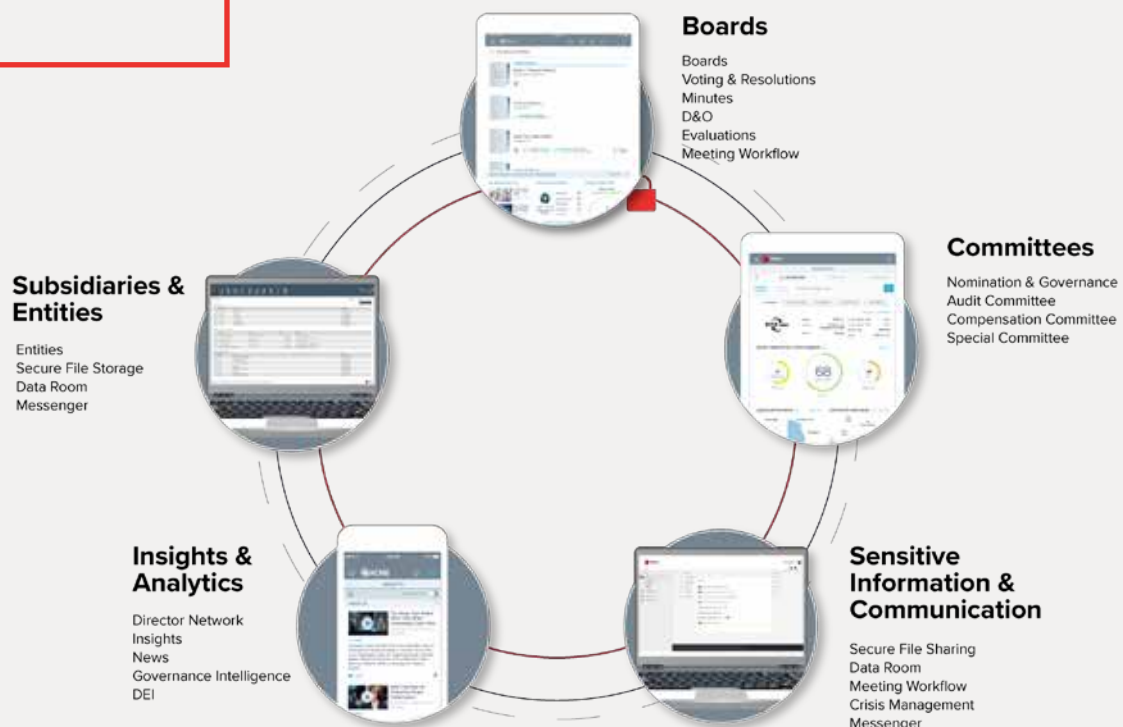
Registration: <https://ecentre.ouhk.edu.hk/cpdcourse/en/HKICS/index.jsp>

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

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