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上課時間：周六，14:00 - 17:00及18:00 - 21:00;周日，10:00 - 13:00及14:00 - 17:00

授課日期：2019年3月23日、3月24日、3月30日及3月31日
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CHARTERED SECRETARIES 特許秘書

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

Membership statistics update

As of 31 December 2018 membership statistics were as follows:

Students: 3,504
Graduates: 391
Associates: 5,464
Fellows: 688

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February 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.

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

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ISSN 1023-4128

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Setting the tone for 2019

I would like to give my special thanks to everyone involved in our excellent Annual Dinner last month. The evening certainly set a new standard for this event and was a very fitting way to start 2019 – our double anniversary year celebrating 70 years since the first informal grouping of Chartered Secretaries in Hong Kong and 25 years since the incorporation of our Institute as a local professional body. Putting on an event of that scale and calibre is no small undertaking so I would like to thank, not only our friends and colleagues who participated as our guests for the evening, but also our Secretariat members and Chief Executive Samantha Suen who clearly spared no effort to ensure that the dinner exceeded expectations.

Another event last month that set a high standard for the year to come was the seminar 'ESG – a good idea; what could possibly go wrong?' You can read more about this event in our Institute News section, but I would like to mention here that it was another example of the very successful collaboration between our Institute, The Law Society of Hong Kong and the Hong Kong Trade Development Council. The seminar was in fact part of the International Financial Week of the Asian Financial Forum 2019 (AFF), an event we have been supporting for several years now. The AFF is not only a good forum to promote better understanding of relevant professional issues, but also a good way for us to promote our brand and qualification more widely in Hong Kong and the region.

Chairing the ESG seminar was Peter Greenwood FCIS FCS, who has been well known to *CSj* readers for his work on numerous Institute committees and panels, and as the Chairman of our biennial corporate governance conferences for many years. This year, Peter has received the recognition he well deserves in the form of our HKICS Prize 2019. On behalf of the Institute, I would like to extend our warmest thanks to Peter for his work for the Institute over the years. He can always be counted on to bring a degree of irreverent humour to proceedings, an approach which brings out the best in those working with him.

Turning to the theme of our journal this month, I am pleased to report that we are delving into an issue which our Institute is keen to promote as a crucial, but not always widely recognised, part of good corporate governance – board evaluation. There still remains significant differences in the degree to which different jurisdictions have mandated, as well as the degree to which boards have embraced, formal board evaluation. Our cover story this month looks at some best practice recommendations from the UK, where board evaluation has been a requirement of the UK Corporate Governance Code for 15 years and where a further requirement for companies to conduct a review facilitated by an independent external party every three years has been in place since 2010.

Here in Hong Kong board evaluation remains a recommended best practice, and, while informal reviews of board performance are common, relatively few companies have set up a regular and formal evaluation process, still less one which involves the use of external parties. This is an issue in which members of our profession can play a key role. Ensuring the effectiveness of the board is at the heart of the company secretary's work. The company secretary handles the practical arrangements pertaining to board meetings, ensures directors have the information they need before meetings are held and supplies critical governance advice during the meetings themselves.

As our cover story makes clear, company secretaries are also key facilitators of the board evaluation process. In the Hong Kong context, this typically involves defining the scope of the evaluation, designing internal evaluation questionnaires and analysing the feedback collected. It may also involve arranging director interviews and liaising with external facilitators. But beyond this practical involvement, company secretaries and governance professionals can also be agents of change in companies yet to embark on the formal board evalution process.

I look forward to working on this and other topics of professional interest in 2019. The year ahead will be a key one for our profession, not only as a double anniversary year but also as a critical 12 months in the ongoing repositioning of our profession as the world's only Chartered Governance profession. In the meantime, I wish you *Kung Hei Fat Choy* and all the very best for the Year of the Pig!

David Fu FCIS FCS(PE)

为2019年定调

公会上月的周年晚宴十分成功，我谨在此特别向所有参与者及负责筹备的同事致谢。当晚的出色安排，为这盛事订立新标准，也是2019年的好序幕。2019年是公会双周年志庆，既是香港首个非正式特许秘书组织成立70年，也是香港特许秘书公会成立为本地专业团体25周年。今年的周年晚宴规模庞大，节目精彩，筹备工作绝不简单；因此，我谨多谢当晚出席的朋友和同事，更感谢秘书处人员和总裁孙佩仪，他们为准备晚宴不遗余力，务求令参加者喜出望外。

上月另一件为来年订立高标准的盛事，是「环境、社会及管治 － 错・在那」研讨会，有关详情可参阅公会消息一栏。我想在这里指出，这是公会与香港律师会和香港贸易发展局成功合作的另一例子。研讨会是国际金融周的项目，国际金融周与2019亚洲金融论坛同步举行，是公会多年支持的盛事。亚洲金融论坛不仅是加深各界认识相关专业课题的好机会，也是公会在香港和亚太区推广品牌和特许秘书资格的好途径。

研讨会的主席是林英伟FCIS FCS。*CSj*读者对林英伟应相当熟悉，他为公会多个委员会和专责小组效力，而且曾担任公会多届两年一度的企业管治研讨会的主席。今年他荣获2019香港特许秘书公会杰出贡献奖，乃实至名归。我谨代表公会衷心感谢他多年来参与公会的工作。他总能为所参与的活动带来幽默感，让跟他合作的人发挥最好的一面。

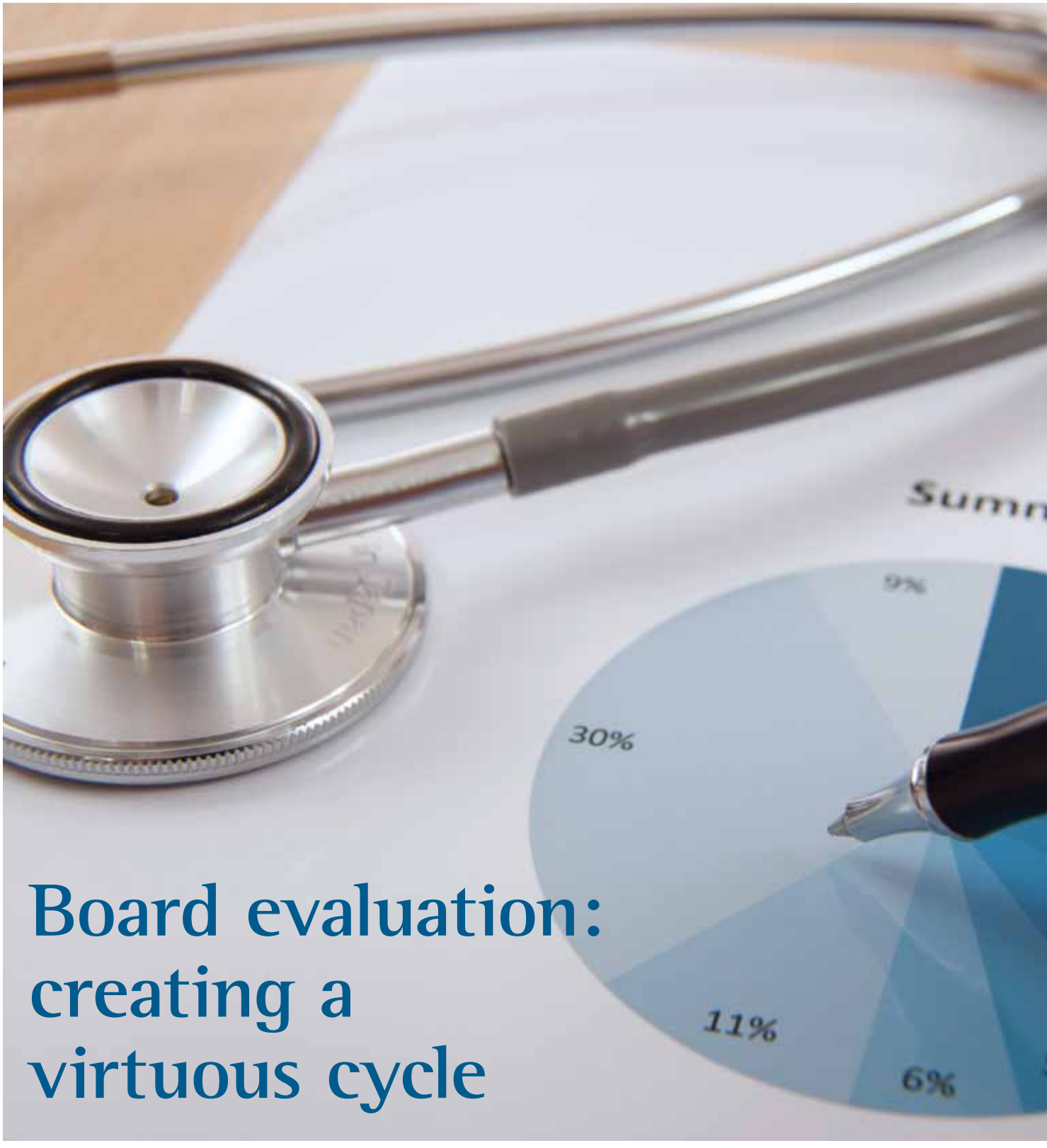
本刊今期的主题方面，我们探讨良好企业管治中极重要的元素 － 董事会评核。这是公会致力提倡，但往往为人所忽略的元素。各地对正式董事会评核的规定，严格程度不一，而董事会对此取态亦有所不同。今期的封面故事介绍英国的一些最佳做法建议。15年前起，英国企业管治守则已有董事会评核的规定，而自2010年起，更要求公司每三年由独立第三者协助进行检讨一次。

在香港，董事会评核仍只是建议最佳常规；对董事会表现作非正式检讨的做法相当普遍，但较少公司设有恒常的正式评核程序，安排第三者协助评核的更少之又少。在这课题上，公会会员可发挥重要的作用。公司秘书工作的核心，是确保董事会有效运作。公司秘书处理董事会会议的实务安排、确保董事在会议前取得所需资讯，并在会议期间就管治事宜提供重要的意见。

正如封面故事指出，公司秘书也是董事会评核过程的主要促进者。就香港的情况而言，有关工作通常包括界定评核范围、设计内部评核问卷、分析收集的回应等，也包括安排面见董事，以及与协助进行评核工作的外间服务提供者联系等。但除了这些实务工作外，公司秘书及管治专业人员也可在尚未开展正式董事会评核工作的机构中推动转变。

我期望于2019年在这课题和其他专业课题上努力。来年是特许秘书专业重要的一年，不仅因为这是公会双周年，也因为要定位为世上唯一的特许管治专业，这12个月至为关键。最后，恭祝各位新年进步，猪年顺景，万事胜意。

傅溢鸿 FCIS FCS(PE)



Board evaluation: creating a virtuous cycle

Board reviews have become an accepted and valued part of board governance in the UK. Philip Sidney, Associate, Lintstock, highlights some insights into board evaluation best practice from a recent Lintstock study of current practices in the UK.

2018 was an interesting, if turbulent, year for the UK corporate world. Dealing with the ongoing perception of societal division following Britain's vote in 2016 to leave the European Union, a newly elected Conservative government enacted proposals to increase employee representation, to provide for greater shareholder oversight of remuneration and to extend corporate governance regulation to companies which are privately held. High-profile cases of corporate largesse and mismanagement over the year have led to further challenging questions being asked of boards' oversight, and the degree of regulatory oversight needed to supervise boards themselves.

2018 also marked the 15th anniversary of the adoption of the provision in the UK Corporate Governance Code (the Code) that each Financial Times Stock Exchange (FTSE) 350 board 'should undertake a formal and rigorous evaluation of its own performance'; a further provision for companies to conduct a review facilitated by an independent external party every three years was introduced in 2010. Having facilitated board evaluations since the introduction of the Code, Lintstock have been asked by the All Party Parliamentary Corporate Governance Group to review performance against the Code every five years since its enactment; the latest study, *15 Years of Reviewing the Performance of Boards*, was launched at the Houses of Parliament in London in June 2018.

The study offers a snapshot of a space in an atmosphere of change. Against the backdrop of Brexit, the corporate sector is still digesting extensive revisions to the Code, which applied from 1 January 2019. With such a rate of change – and considering the febrile political and social atmosphere – it would seem that the UK corporate sector (and with it, the board evaluation space) may look significantly different on the 20th anniversary of the Code's introduction in 2023.

Highlights

- many respondents to the study reported that director engagement in the board review process has increased in the past five years
- greater appreciation of the value of board reviews on the part of boards, and greater professionalism on the part of facilitators, can create a 'virtuous cycle' whereby engagement in the exercise and the benefit derived from it increase in tandem
- company secretaries play a pivotal role in ensuring the success of both external and internal reviews

Nevertheless, in setting out the thoughts of corporate leaders on the state of the board evaluation space in 2018, we hope that the study can be of use both for companies with an established cycle of board reviews and those seeking to expand or enhance their processes for analysing the effectiveness of their boards. In researching our report we canvassed the views of the directors and company secretaries of FTSE All Share companies, as well as a selection of leading international companies – including several from Hong Kong – and institutional investors; the study is based on the responses we received from the 370 participants, and we are grateful to them for the level of engagement and candour that was shown.

The respondents gave robust descriptions of the board reviews they had experienced, both positive and negative, and there were some accounts of unsatisfactory exercises that make for uncomfortable reading for those active in the space. Such commentary serves as a useful reminder that each evaluation has a bearing on the credibility of the next, and as such it is important that all those engaged in board reviews, as well as seeking to improve the performance of boards, focus on enhancing the practice of the board review itself.

Part of the cycle

Happily, the responses to our study suggest that, for the most part, board reviews have become an accepted and valued part of the board's cycle in the UK; over 80% of respondents to the study survey felt that board reviews have had a positive impact on the performance of their boards, with only 1% reporting a negative impact.

Following the Code's introduction of the board evaluation requirement, most large listed company boards will now have undertaken around 15 annual reviews, of which at least two will have been externally facilitated; 86% of respondents felt that their board would still undertake an annual review of its effectiveness in the absence of a requirement to do so, and 66% indicated that their board would still conduct an externally facilitated review every three years without being directed to by the Code. The cycle of two internally facilitated reviews with one externally facilitated exercise had become an established custom prior to the 2010 changes to the Code, which essentially formalised what was already market practice, and our sense is that this '2:1' cycle is increasingly the international standard amongst top corporates. We have clients in Asia, including Hong Kong, who have operated according to this cycle for a number of years.

Implementing a cycle of internal and external reviews has clear value in allowing the advantages of each type of exercise to complement the other: a lighter-touch internal exercise can provide consistency and momentum between more comprehensive external evaluations, with the internal facilitator's greater knowledge of the day-to-day running of the organisation enabling a clearer focus on current issues, before the external review undertakes a more in-depth examination of the board's performance that can provide an independent perspective, informed by experience of best practice from other organisations. In this way, internal reviews can ensure there is continuity and follow-up between external exercises, acting as an inexpensive and informal 'temperature check'.

Moving to external

In considering whether, and how, to incorporate an external review into the cycle of their board, it is important for companies to acknowledge that different boards have different needs. A given approach or methodology that benefits one board may add less value for another, and a review that takes place at one stage in the board's cycle – for example during restructuring or following a change in leadership – could deliver different results at another time, even with the same participants.

As mentioned above, the timing of an external review – both the point at which it occurs in the year and the demands it makes on the time of internal personnel and the directors themselves – has a significant bearing on the value of the exercise. There is potential for external reviews to represent an unwanted distraction during periods where a company is experiencing substantial change (due to a major transaction, for example), and we tend to encourage companies to undertake a lighter-touch exercise – or postpone their review for a short period – if circumstances make it clear that the time is not right.

Similarly, it is key to ensure that an appropriate balance is struck between the time required of board members and the insight gained through the evaluation. For busy directors, an extensive process that involves both surveys and one-on-one interviews represents a substantial commitment, and clearly it is important for practitioners to recognise this, especially when considering whether to include an interview phase in the exercise. Given that there is no definition of what constitutes 'external' facilitation, an independent review based around a core

> “we hope that the study can be of use both for companies with an established cycle of board reviews and those seeking to expand or enhance their processes for analysing the effectiveness of their boards”

survey component is used by a number of leading companies.

With this in mind, care needs to be taken to scope the content of the review correctly, making sure that the correct areas of board performance are covered in sufficient depth to be value-additive. Insufficient understanding of the company on the behalf of external facilitators, and a perceived tendency among providers to offer a ‘one-size-fits-all’ service, were seen by our study’s respondents to represent major disadvantages of using external facilitation; it is imperative for providers to tailor external reviews to the needs and circumstances of each individual board that they serve. While there will inevitably be some aspects of board effectiveness that need to be covered in every review – the composition, for example – there is clearly value in ensuring that reviews are business-focused, and relevant to the board and the company it oversees. One useful way of doing this is for exercises to examine the board’s performance in the context of particular events, such as key appointments or transactions, or a recent strategy day. Such case studies are helpful in providing a picture of the board ‘in action’, augmenting more general consideration of the board’s effectiveness with specific examples of how it has performed in certain contexts.

The role of the company secretary

The company secretary plays a pivotal role in ensuring the success of an external review; company secretaries are usually our first point of contact with a client, and their input as a key project sponsor is crucial, with their knowledge of the company, the board’s processes and the preferences of individual directors all helping to ensure that exercises have a value-additive focus on relevant issues. As well as contributing to the facilitation of the review, we are strong proponents of company secretaries taking part as respondents, where their familiarity with the board allows them to provide useful insight and a different perspective to the board members themselves.

In our experience the company secretary is also a highly effective facilitator of a company’s internal review; we often assist companies with internal exercises, and increasingly we have been asked to undertake the survey and reporting phase and then provide briefing notes that allow the company secretary to follow up with individual director interviews, perhaps in conjunction with the chair or senior independent director.

Conclusion

There was a sense in our study that board reviews are part ‘art’ – dependent on the qualities of the facilitator – but also part ‘science’, insofar as there are certain best practices and common methodologies utilised. The importance of collaboration in this space – between company secretaries, chairs, external facilitators and other interested parties – was emphasised by many respondents, and there was widespread recognition that a broader knowledge of best practice would be beneficial. Whether shared informally between individual companies

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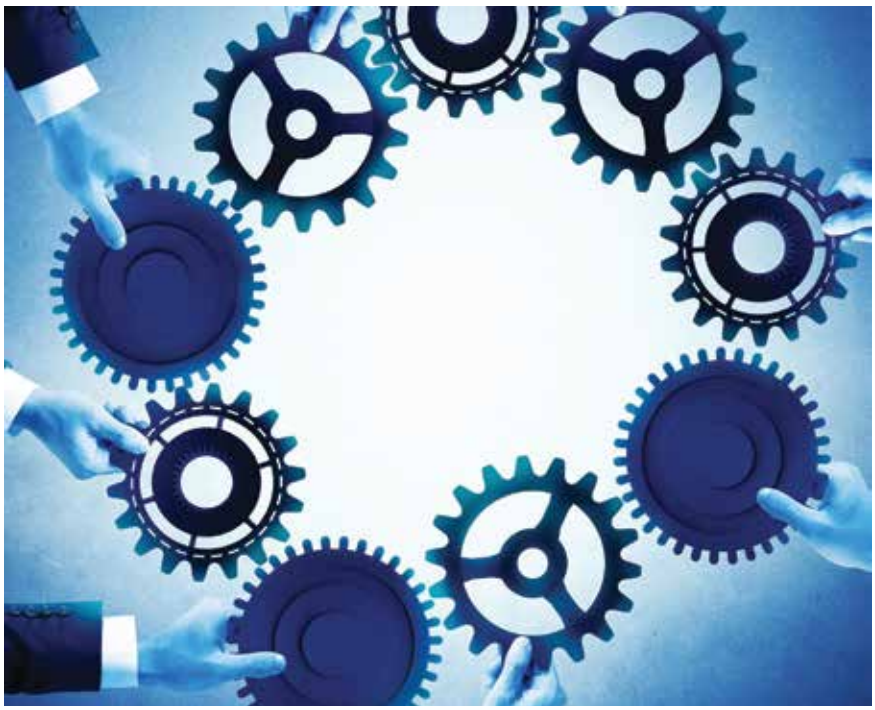

or directors, or distributed more widely in independent publications or public forums, greater insight into what works (and what doesn't) can only help to enhance the practice and ensure that each review a company undertakes can enhance its board's effectiveness and help to move the company forward.

Many respondents to our study reported that director engagement in the board review process has increased in the past five years, and it seems that greater appreciation on the part of boards of the value that evaluations can deliver, combined with greater professionalism and ability to deliver value on the part of facilitators, can create a 'virtuous cycle' of board reviews whereby engagement in the exercise and the benefit derived from it increase in tandem, year-on-year.

As the board evaluation space develops internationally, it is to be hoped that all those working in this field can play a part in promoting understanding of the practice, enabling more boards to be provided with engaging and value-additive reviews that improve their effectiveness in overseeing the companies they govern, thereby enhancing the performance of the companies themselves.

Philip Sidney
Associate, Lintstock

Lintstock is a London-based corporate advisory firm specialising in board reviews. Lintstock also promotes best practice in the area of board reviews by hosting workshops for company secretaries around the world. For more information, or to obtain a copy of '15 Years of Reviewing the Performance of Boards', contact the firm's Partner, Oliver Ziehn: oz@lintstock.com.

About the study

The report *15 Years of Reviewing the Performance of Boards*, was launched by the All Party Parliamentary Corporate Governance Group (APCGG) at the Houses of Parliament in London in June 2018. The report, produced by Lintstock for the APCGG, was based on a survey in which over 350 respondents took part, including 66 company secretaries – 25 from Financial Times Stock Exchange (FTSE) 100 companies, 21 from FTSE 250 companies, nine from FTSE Small Cap companies, and 11 from international companies.

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Governance for our times

The Institute of Chartered Secretaries and Administrators International President and The Hong Kong Institute of Chartered Secretaries (HKICS) Past President, Edith Shih FCIS FCS(PE), in her recent HKICS Doube Anniversary Gala Dinner Guest of Honour speech, argued that the gatekeeping role of governance professionals is more important than ever in these times of global political and financial uncertainty.

This year, 2019, is a double anniversary year celebrating 70 years since the first informal grouping of Chartered Secretaries of The Institute of Chartered Secretaries and Administrators (ICSA) in Hong Kong, and 25 years since the incorporation of The Hong Kong Institute of Chartered Secretaries (HKICS) as an independent, local professional body. We have indeed come a long way from the informal meetings of Chartered Secretaries back in 1949, but I believe the most interesting and most important chapter in the history of our Institute is unfolding before our eyes right now. I would like to share with you my thoughts, firstly on the latest developments at our Institute as a world-leading governance body, and secondly, on the role we as governance professionals can play in the uncertain political and financial environment in which we find ourselves.

ICSA developments

Governance has always been at the core of our profession. In recent years, however, we have become much better at aligning the identity of our Institute – our brand – to the central concept of excellence in governance. This enables us to gain better and wider recognition locally and internationally.

So where are we currently in this process? The new name of the international Institute – The Chartered Governance Institute – was approved by our global membership in September last year. The Notice of Petition for a Supplemental Charter was published in the London Gazette on 18 December last year and we are awaiting its conclusion. If everything goes according to plan, the Supplemental Charter is expected to have completed all Privy Council processes and be ready for implementation towards the end of this year. This name change is a significant step forward, repositioning our Institute and profession under the governance banner.

Three divisions – Australia, New Zealand and UKRIAT – have already adopted the Chartered Governance Institute name and a similar move is currently being considered in Malaysia and here in Hong Kong. ICSA international does not mandate individual divisions as to the name they adopt and encourages divisions to follow the approach that is best suited for them. We will be happy to facilitate name change delivery where requested.

The second major development at ICSA in 2018 was the launch of our new Chartered Governance Professional (CGP) qualification and designation. Alongside the existing Chartered Secretary (CS) designation, the CGP was introduced in the Hong Kong/China division in September last year. Already some 4,726 of our local members possess both qualifications.

So what lies ahead for us in this anniversary year? A major work in progress for ICSA divisions is the roll-out of new qualifying programmes to replace the existing International Qualifying Scheme. ICSA divisions have the option to implement a new qualifying programme in a manner best suited to their individual circumstances. Some divisions offer the CS and CGP streams separately; others, including Hong Kong/China, UKRIAT, Malaysia, Singapore and Canada, have opted to amalgamate the two streams, leading to a combined CS and CGP dual qualification.

> “governance has always been at the core of our profession”

Looking further ahead, adapting to technological changes will be a major task for our profession. Emerging technologies, such as artificial intelligence, machine learning and blockchain, are already creating an impact on the work we do, as well as the training we provide to our members and students. I urge all members who haven't already done so to read the excellent papers published by the ICSA Thought Leadership Committee on this topic. The first paper – *Futureproofing:*

Highlights

- against a backdrop of global political and financial uncertainty, boards and their governance advisers need to keep an even more watchful eye on current political, social and financial developments
- governance professionals are better placed than they ever have been to realise their full potential
- the aim is to forge a closer working relationship between The Institute of Chartered Secretaries and Administrators and its divisions worldwide

> “at times such as these, it is important for us to bear in mind that the value of the fundamental governance principles which we adhere to in our profession increases”

technological innovation, the company secretary and implications for corporate governance – examines the impact of emerging technologies on our profession in the near and distant future. The second paper – *21st Century Annual General Meeting* – depicts a modernised way of conducting general meetings deploying a hybrid model.

The Thought Leadership Committee was created in late 2016 to address frontier issues affecting our profession. It has also published papers on shareholder engagement and minute taking practices, and is helping us turn the ICSA international website into a globally respected resource in governance thought leadership.

The role of governance professionals

This year's HKICS Double Anniversary Gala Dinner comes at a time of global political conflict. Since this is a celebratory occasion, I don't want to make too much of the many threats the world is facing at the moment. At this time of political and hence financial challenges, however, boards and their governance advisers need to keep an even more watchful eye on current political, social and financial developments in our markets and the world at large to assess the risks their organisations could be facing in the year, and even years, ahead.

Furthermore, at times such as these, it is important for us to bear in mind that the value of the fundamental governance principles which we adhere to in our profession increases. International norms of good governance and the rule of law can advance our shared interests and convictions. In this double anniversary year, against a backdrop of global political and financial uncertainty, I believe we are better placed than we ever have been to realise our full potential as the guardians of governance. We need to be even more vigilant in discharging our gatekeeping responsibilities. We are the solution – and it is our job to hold tight and guard our turf with diligence.

Pulling together

The ICSA has more than 30,000 members worldwide and is represented in more than 80 countries, covering all five continents. One of my goals as International President is to forge a closer working relationship between ICSA international and division colleagues worldwide, based on mutual respect and cooperation. Since I became the International President in July last year, I have visited and attended conferences and events in six of the nine ICSA divisions, including Malaysia, South Africa, Zimbabwe, Canada, the UK, and now Hong Kong. The International Council will hold its meeting in New Zealand in October this year and possibly in Singapore next year. I shall also try to visit Australia during my presidency.

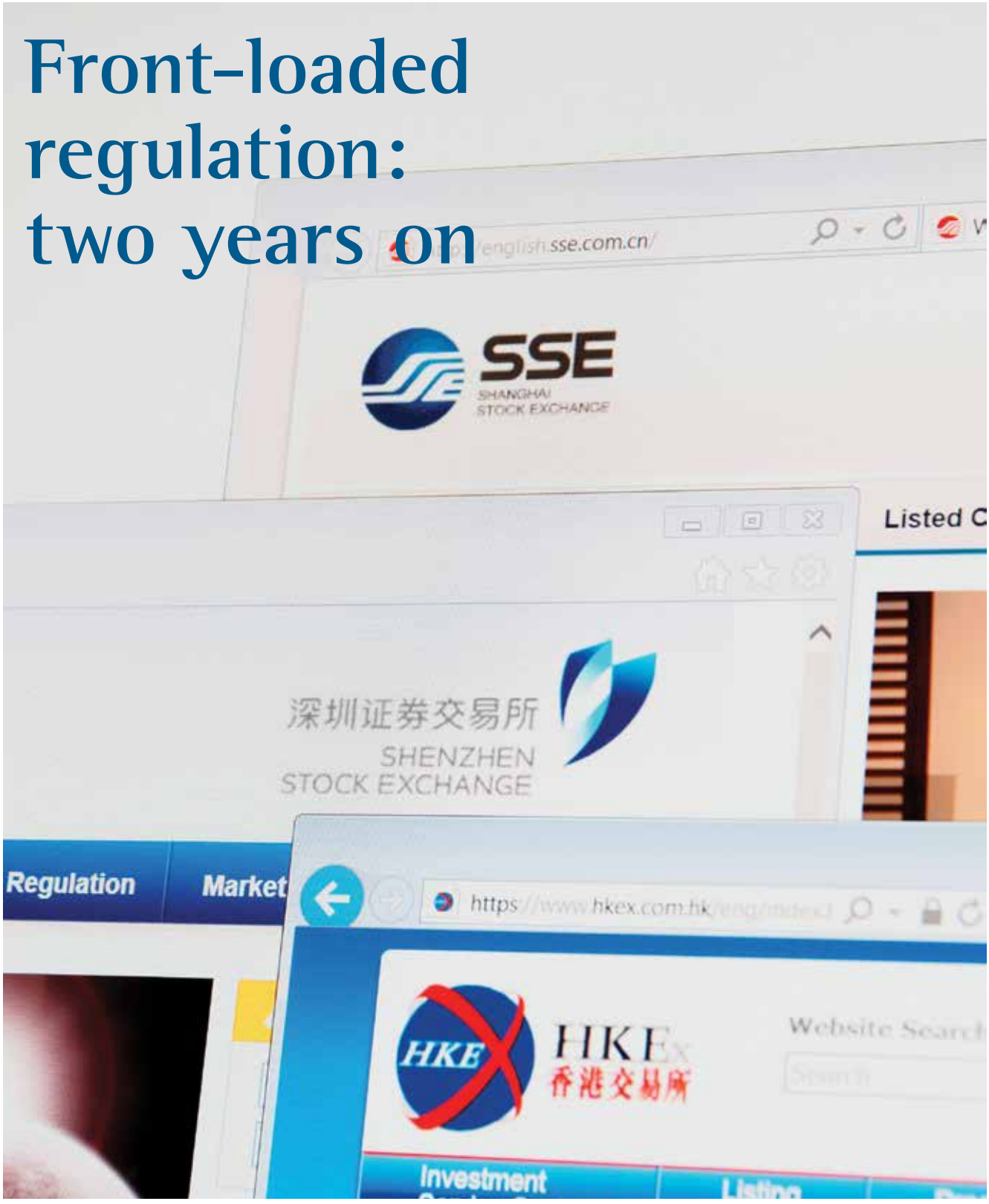
ICSA has over 127 years of history and has established a presence in Hong Kong for 70 years. Based on such a solid foundation, we can work together to build an even stronger and more rewarding profession for our current and future members.

I became an HKICS Company Secretaries Panel member in 1998, a Council member in 2007 and took on the Presidency from 2011 to 2014. I joined the ICSA Council as Vice-President in 2014 and became President last year. I find my involvement at HKICS and ICSA a satisfying and enriching experience. Let us all get involved and do our part for the profession. I would like to leave you with the thought – what else can we do for the Institute and the profession? What can I do for the Institute and the profession? Let us know and let us work together.

This article has been adapted from Edith Shih's Guest of Honour speech at The Hong Kong Institute of Chartered Secretaries Double Anniversary Gala Dinner, held at the Hong Kong Convention and Exhibition Centre on 17 January 2019. More information can be found in this month's Institute News section on p.42.

Double Anniversary Gala Dinner photo gallery

Front-loaded regulation: two years on



Two years on from the adoption by the Securities and Futures Commission (SFC) of its 'front-loaded' approach to regulation, Ashley Alder, the SFC's Chief Executive Officer, gives an update on how it is working in practice.

Hong Kong can enhance its current position to move up the value chain as it plays an even more important role to enable Mainland savers to access the world and international investors to access Mainland China. But it is more important than ever that investors have confidence that our markets are fair and regulation is resolute and impartial. Our goal at the SFC is to pursue a world-class regulatory environment to secure Hong Kong's prosperity for many years to come.

Regulation for changing markets

About three years ago, we began to take a hard look at all the new challenges the SFC faces. Obviously, our markets were very different from when the SFC was set up in 1989. Hong Kong had grown from a relatively small, local market to a major financial centre regularly topping the global rankings for initial public offerings (IPOs). As a market development story, this clearly counted as a great success.

It was also clear that there were plenty of opportunities to do even better. But this would not be straightforward. Capital markets were becoming ever more global and interconnected. Technology was fundamentally changing how business was done. And these changes were happening incredibly fast. More and more, Hong Kong was competing with London and New York, as well as with other markets both within Asia and the rest of the world.

Then, with the introduction of programmes to link Hong Kong and Mainland markets such as Stock Connect and Mainland-Hong Kong Mutual Recognition of Funds (MRF), we had a whole new set of opportunities. But with them came another complex set of challenges for regulation. Most importantly, greater connectivity with the Mainland and increasing two-way fund flows meant that even more of the people trading in our markets were not in Hong Kong. Without some adjustments, this would make it difficult for us to carry out our usual supervisory and enforcement work. And the same was true the other way round for our regulatory counterparts on the Mainland.

At the same time, we also faced some persistent conduct problems specific to Hong Kong's listed market. Of course, it is impossible to entirely eliminate misconduct, but in this case we were seeing patterns which had persisted for quite some time. There were clear red flags pointing to activities which, if left unchecked, threatened the reputation and integrity of our markets. The problems we were seeing were mainly to do with complex listed company accounting and other fraud, often seen together with different forms of market misconduct in the same case.

Now I want to be very clear that these problems involve only a minority of companies. The shares of smaller listed companies with minimal public floats can be easier to manipulate so we have seen a clutch of problems in that sector. We have also seen issues in a few very large companies. For example, not so long ago, the non-executive directors of Hanergy Thin Film Power Group Ltd – then the largest listed solar business by far – were sanctioned after we suspended trading in its shares. There have since been others, but they are still the exception.

Often problems were not confined to one company, but rather involved a whole network of smaller interconnected companies and brokers. These typically involved highly organised groups of people who controlled or influenced not only the companies but also related brokers, financial advisors or placing agents. We found that these networks

Highlights

The front-loaded approach to regulation adopted by the Securities and Futures Commission means getting ahead of issues by:

- intervening earlier and more quickly to protect the integrity of financial markets and the interests of investors
- targeting the greatest threats and the most significant and systemic risks, and
- working more collaboratively both internally and with other regulators, law enforcement agencies and Mainland authorities.

were gaming the system in a number of ways, from share warehousing and the use of nominees to disguise actual control, to selling assets at absurd discounts or extreme overvaluations to divert public shareholders' wealth into private hands, leaving investors high and dry.

Even if the most serious of these problems only involved a small number of companies, the reputational damage to the overall market could be severe, so doing nothing to tackle the hard problems was not an option.

A very different approach

This led to the question of whether the current system for regulation was delivering the best results for investors and the market, and how it might be improved. So in 2016, we issued a joint consultation with The Stock Exchange of Hong Kong Ltd (the Exchange) on a proposal to make the existing system more efficient and accountable. In the end this proposal was not fully implemented, but it led to an intense public debate which brought a lot of issues into the open.

This debate encouraged us to have a fundamental rethink about how to use our existing powers to tackle some of the problems I have mentioned and in my view this led to an outcome that is now far superior to the original consultation proposals, with far greater impact. In short, we reassessed the way we were actually using all of the regulatory tools available to us. We wanted to see how they might be used together in different combinations to help crack harder problems. Tackling misconduct related to listed companies would be a top priority for this new approach.

Our starting point for this was to look at gatekeeping. That is, decisions about whether companies are fit to list and also oversight of transactions by companies which are already listed. Now the SFC's functions as the statutory market regulator are very different from the important role of the Exchange when administering its own non-statutory listing rules. It was this statutory function which we repositioned and brought right to the front line.

In the past, the SFC's role in listing regulation had been to take a backseat in IPOs and other types of gatekeeping, operating largely behind the scenes. This was in fact a very long-standing convention in Hong Kong, under what is known as the dual filing system, but times had changed. We needed to consider how we could best use our existing legal powers to prevent the more serious types of harm arising in the first place and better protect the reputation of Hong Kong as it continued to grow as a unique international financial centre in China.

Crucially, the Securities and Futures (Stock Market Listing) Rules (SMLR) did already allow the SFC to object to an IPO on specific legal grounds and also to object on the same grounds to capital raising proposals by companies which were already listed. But for many years the dual filing convention had got in the way of using the SMLR in this way. As we quickly found, we could be more effective if we broke with convention and used these powers far more directly and independently, whilst embedding transparency, fair process and accountability in everything we did.

One important aspect of this was to ensure that all those on the wrong end of our decisions were given fully articulated reasons for our view and a chance to object before any decision was formalised, as well as the right of appeal to an independent tribunal. Two years on, I think that this new approach has worked even better than expected, synchronising well with the Exchange's own role.

More targeted supervision

Changing tack, a separate part of our new, front-loaded approach has been to reform how we supervise the brokers, asset managers and other firms we license. We started off by doing far more theme-based inspections, rather than over-relying on a standard checklist-driven approach. This helped us focus on the key, urgent risks identified from our market monitoring and intelligence gathering.

We also began to concentrate our energies on other more imminent, high-impact problems, such as serious internal control failures which result in actual harm to investors, as well as the risks arising from significant margin lending activities secured by a few highly illiquid stocks. We give firms advance, public notice of some of the specific risks we plan to focus on during our inspections. We hope that this will prompt them to sort out any potential issues before we show up at the door.

Collaboration with other regulators has also been vital. We recently did a joint inspection where the Hong Kong Monetary Authority examined the wealth management unit of a bank which sourced in-house products, and we inspected the bank's securities unit, which sold these products. This collaborative approach was new, and helped us better identify conflicts of interest which may well prejudice investors.

We will be doing more joint exercises like this in other areas.

More deterrence

We also made some changes to the way we carry out our enforcement role. We prioritised our investigations so that we could focus our finite resources on the most important cases. This helps us move more quickly in what are usually very complex cases.

Complex cases inevitably take time, so we also looked at how we could take more rapid protective measures. One was to use restriction notices on brokers to freeze the assets of suspects. These assets would then be available to fund eventual compensation for victims of misconduct.

I should also say, in case there is any doubt, that we are determined to pursue individual responsible directors very firmly. We know that not all problems can be solely attributed to IPO sponsors or advisers.

As with our supervisory efforts, we now work more closely with our local partners on enforcement cases. We have investigations in progress in collaboration with the Hong Kong Police, as well as the Independent Commission Against Corruption, and of course we work every day in partnership with the China Securities Regulatory Commission.

More collaborative and multidisciplinary

All of these changes have depended on a more collaborative, multidisciplinary approach, pooling the industry knowledge and regulatory expertise spread across all of the SFC's functions so that they could be used in a more creative way.

> "it is more important than ever that investors have confidence that our markets are fair and regulation is resolute and impartial"

We had an early success using this approach when dealing with price manipulation in Growth Enterprise Market (GEM) companies. This was after we formed a special operational team to tackle harder problems drawing senior staff from all our divisions. The team began by focusing on one pattern of misconduct which we were seeing far too often. High concentrations of shares were placed with only a few shareholders. On the first day of listing, prices soared multiple times only to fall flat later. These looked a lot like pump-and-dump schemes.

Our team coordinated a multidimensional approach to tackle this and the results were tangible and immediate. Following our interventions and some policy changes, the average first day price change of newly listed GEM stocks dropped from extreme levels to a more normal average of about 20%, where it has remained through 2017 and 2018. We are now seeing fewer small-cap IPOs across the board.

We also took on dubious market activities associated with shell companies. This mostly involves backdoor listings and the manufacture of shell companies for sale. One pattern here was that many listing applicants did not have a convincing rationale for seeking a listing. The cost of the listing was often wholly disproportionate to the funds raised, and companies did not seem to have a real need for new capital.

Our response to this and other issues was more targeted gatekeeping at the listing stage and after. Where we suspected that listing applicants were in fact being set up to be shells, or were reporting seriously inflated sales figures, we brought our SMLR powers to bear to ask very searching questions. This usually led to the withdrawal of the application.

Where we suspected that public shareholding floats or voting power was being rigged, usually through the warehousing of shares, or that information given to the market by a company was deficient, in more serious cases we have moved to suspend trading to protect the wider interests of investors.

Over the past two years, more than 70 cases have involved activities under our SMLR powers, compared to only seven in the two years before that. The majority involved companies which are already listed, not IPOs.

The results have been fairly stark. Whereas in previous years, we saw more than 20 companies with market capitalisations surging more than 10 times within a six-month period, we have only seen a handful in each of the past two years.

The number of stocks with extremely high valuations, more than 10 times sales, has also fallen, and the average of their valuations has also declined significantly.

I should say that this is not a function of the decline in the index this year – it seems to reflect real changes in market behaviour.

We also worked with the Exchange on some key listing rule changes. These include new rules to tackle highly dilutive capital raisings and proposals to catch backdoor listings as well as a fast-track procedure for delisting.

As part of our supervisory programmes we have identified sponsors with a history of having their proposed listings rejected because of substandard work. These sponsors are now more likely to be inspected by us, and if we identify problems, we will open an investigation even if the listing did not go ahead. We have a number of these cases on our books right now.

As I have said, all of this is now a new normal for us and for the market.

The future of Hong Kong as a leading global financial centre

I mentioned earlier that in our view Hong Kong has plenty of opportunities to develop as an even more successful international financial centre. So before I finish, I want to talk about our vision for Hong Kong's future. Basically, we see Hong Kong's long-term success in three major areas.

The first is to grow our role as the place where vast pools of Mainland and global investment liquidity can merge in one market. The fact is that only Hong Kong can claim to be a credible bridge between these two investment pools. This means not only serving as an important fundraising platform for Mainland companies, but also connecting markets on the Mainland with markets across Asia and further afield.

Here we have a unique selling proposition in the one-of-a-kind regulatory relationship we have with Mainland authorities. We have unbeatable cooperation arrangements in place with our Mainland counterparts to safeguard investors and market integrity. Without these cross-boundary arrangements, unique mutual market access programmes such as Stock Connect, Bond Connect or MRF would not have been possible.

A second goal is to become a global, full-service asset management centre, complete with the full range of ancillary services. This includes developing Hong Kong as an onshore fund management hub and a domicile for investment funds. As well as offering new products and services, this also involves building market infrastructure. We have already introduced an open-ended fund company structure and entered into MRF arrangements with the Mainland, Switzerland, France and the UK. More are coming.

This hub and spoke model is an important channel through which we want to encourage growth. Success will not happen overnight – linking two or more different systems is bound to result in some technical frictions. But we will work hard with firms and the authorities to work them out.

The third area is for Hong Kong to take on a larger role in the management of financial risk for international investors with exposures to the Mainland markets, and for Mainland investors with exposures in Hong Kong and globally. This is about a more sophisticated set of exchange-traded and over-the-counter derivatives for hedging and other risk management tools.

> **“two years on, I think that this new approach has worked even better than expected, synchronising well with the Exchange's own role”**

It means enabling international access to Mainland-related futures and options, as well as the development of Mainland-related equity, currency and fixed-income derivatives which Mainland and global investors can access in Hong Kong.

In my view, the market potential for the trading of risk management products in or through Hong Kong is enormous. This is because larger, more diverse cross-boundary capital flows will demand better all-round risk management tools under a world-class regulatory regime. Hong Kong has a real opportunity to anchor itself as the premier offshore centre for investors to manage their Mainland risks.

Source: The Securities and Futures Commission

This is an abridged version of the speech 'Progress of the SFC's new approach to regulation' delivered by Mr Alder at the Hong Kong Securities and Investment Institute Roundtable Luncheon on 27 November 2018.

A bird's eye view

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

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70 CHARTERED SECRETARIES 特許秘書 Years in Hong Kong

Board evaluations: getting directors on board

If board evaluations are tedious or cumbersome, director engagement can be impacted negatively. Franklin Chen, Director, Diligent, suggests ways to boost the engagement of directors in, and therefore the effectiveness of, your board evaluation process.

A recent global report by the Corporate Secretaries International Association (CSIA) found that 57% of organisations surveyed perform yearly board evaluations. The report, *Global Board Evaluation Practices and Trends*, which was sponsored by Diligent, also found that, while some organisations are required to conduct self-evaluations annually by exchanges like the New York Stock Exchange, many boards volunteer to conduct evaluations to reflect on and discuss the overall effectiveness and performance of the board.

There is also growing sentiment from investors to ensure boards are behaving ethically and holding themselves accountable. Concerns over a board's governance deficiencies and lack of diversity – both in terms of demographics and in terms of viewpoint/perspective – are among the drivers for conducting evaluations. In short, organisations want their boards to be in the best position for success.

However, corporate secretaries and board administrators face challenges with board evaluations. Not being able to comment anonymously, manual processes, security, lack of engagement from board directors, outdated methods, and competing demands on directors' time to complete ever longer and more numerous forms and information requests are all factors that compound the obstacles in achieving insights. Effective board evaluations require strategy, board evaluations technology and an actionable plan to bring it all together.

Current challenges

No option for anonymous feedback

One current method of submitting evaluations is sending them to board directors via email. However, if directors know that their comments can be traced back to them, they may not feel comfortable giving candid feedback, which may include criticism of other board directors' performance. According to the 2017 *Annual Corporate Directors Survey*, published by PwC, 70% of director respondents said they found it hard to be frank and objective in evaluating their board.

The crux of board evaluations is obtaining honest insights from board directors in order to improve the performance of the board. Directors need anonymity to shield them from potential retaliation when providing critique – good or bad – on the board overall and on individual directors. If the responses to the board evaluation questions are not honest, you will not obtain actionable insights to help the board and the organisation.

Manual, time-consuming process

Online survey solutions are a step in the right direction, but are not tailored specifically for directors and officers (D&O) questionnaires. Many of these solutions have limited features or support, and may lack stringent security. Furthermore, using an online survey tool doesn't always equate with easy adoptability; this could be yet another tool for your already busy directors and board administrators to learn, register and manage.

With most board evaluations, corporate secretaries oversee sending, tracking and compiling all of the feedback from board directors. The current approach is for corporate secretaries to email the questionnaire and compile feedback. However, because it's a manual process, there is a higher risk of things being left up to interpretation, for example, when corporate secretaries can't read the handwritten responses, or if someone answered too quickly.

Emailing questionnaires can also impact security and confidentiality. If you're emailing the questionnaire, it could get forwarded – intentionally or accidentally – out to the public. As mentioned, directors want to provide anonymous comments and not feel threatened by the fear of retaliation.

Highlights

- concerns over a board's governance deficiencies and lack of diversity, together with investor pressure, are among the drivers for conducting evaluations
- anonymity can augment honest feedback and assuage the fear of retaliation
- make evaluations easy for board directors and corporate secretaries by moving away from emailing or sending hard copies of the evaluation questionnaire

> "if the whole board evaluation process is difficult and tedious for board directors, engagement will drop and may impact the uncovering of any actionable insights"

To address the challenges of manually sending out board evaluations, some boards are turning to technology. However, on average, across all countries surveyed for the Corporate Secretaries International Association *Global Board Evaluation Practices and Trends* report, technology was only used in 29% of cases.

Lack of engagement by directors

Traditionally, the board evaluation process is often very long and laborious for both corporate secretaries and board directors. The average board evaluation, if printed out, is approximately 60 pages long. Unfortunately, some board directors must print out these massive paper packs, carry them around and feel weighed down – literally – by the process.

Due to the cumbersomeness of board evaluations, many directors don't like the evaluations process; in fact the PwC 2017 *Annual Corporate Directors Survey* cited earlier found that 47% of directors surveyed wanted to eradicate the entire process. According to the same study, 63% of board directors just check the boxes on self-evaluations without much thought or care. Overall, if board evaluations are tedious or difficult, director engagement can be impacted negatively.

Suggested solutions

Board evaluations don't need to be such a challenge for corporate secretaries and board directors. If done right, evaluations let:

- directors know how their performance is viewed by their peers
- directors reflect on and discuss their performance
- directors voice their concerns without fear of retaliation, and
- stakeholders know that the board is performing well.

Below we suggest our top six best practices for board evaluations.

1. Agree on a well-planned, systematic process for evaluations

Make sure that the board evaluations process is well-defined, occurs at the same time of the year, and includes clear instructions and deadlines for participants. While developing the questionnaire, determine the scope of the evaluations; for example, whether it is for the entire board, individual directors, self-assessment or peer to peer. Some boards find it helpful to establish a board evaluation committee and delegate the legwork for completing evaluations.

2. Allow for anonymous feedback

Provide an anonymous way for directors to share their feedback. The mindset here is for stakeholders to identify individual strengths and weaknesses in order to benefit the whole organisation – even if it's feedback critical of a particular director who may be underperforming. Anonymity can augment honest feedback and assuage the fear of retaliation. However, current approaches that require directors to email their responses are

not truly anonymous since they can be traced back to the respondent via the email address.

3. Secure board evaluations
Security is paramount because board directors are giving sensitive feedback. Don't use email because it's insecure and vulnerable to hacks. Communicate to the directors that their individual responses will be secure and not leaked to other board members or the public. Consider adopting board evaluation technology that can secure the entire process.

4. Value board directors' feedback, time and effort
Stress the importance of board evaluations as a way for directors to provide honest feedback that helps them do their job better, as well as improving the overall performance of the board. Communicate to board directors that evaluations create insights to resolve issues and to achieve goals; therefore, their participation is extremely valuable. Remind them that if board evaluations are done right, it can effect change.

5. Make evaluations easy
If the whole board evaluation process is difficult and tedious for board directors, engagement will drop and may impact the uncovering of any actionable insights. Make evaluations easy for board directors and corporate secretaries by moving away from emailing or sending hard copies of the evaluation questionnaire. Consider selecting board evaluations, such as a board governance software platform, that allows users easy access to the questionnaire. Providing too many different pieces of software can create confusion; therefore, it's best to find a tool that can be integrated with existing board meeting management and governance software. Find a technology vendor that is user-friendly, secure, and that can be accessed on laptops as well as other mobile devices.

6. Automate where possible
Select technology and tools that can automate the process for directors and corporate secretaries for better efficiency. As discussed, the traditional approach of recreating the questionnaires, emailing or printing stacks of evaluations, sending them out and then compiling the insights is a challenge for the corporate secretary. Timeliness is the key to providing the insights necessary for boards to act. Look for a solution that allows the director to store their responses securely from the previous year's survey. This is helpful because many questionnaires include similar questions from previous years. Consider a technology vendor that allows users the ability to port over their responses from last year and then review/decide whether they believe things have changed from the previous year. This helps provide continuity as well as allowing the board member to individually 'benchmark' progress from one year to the next.

Franklin Chen
Director, Diligent

'Global Board Evaluation Practices and Trends' (published by the Corporate Secretaries International Association in January 2018) is available at: www.csiaorg.com. 'Annual Corporate Directors Survey' (published by PwC in 2017) is available at: www.pwc.com. For more information on Diligent Board Evaluations, visit: https://diligent.com/au/board-assessment-tool/, or call: +852 3008 5657.

Companies Ordinance amendments: your guide

This article highlights new amendments to the Companies Ordinance which became effective on 1 February 2019.

It has been five years since the new Companies Ordinance (CO) commenced operation in March 2014. The Companies (Amendment) (No 2) Ordinance 2018 (the Amendment Ordinance) updates the CO in the light of new developments, and amends some provisions to improve the clarity and operation of the CO and further facilitate business in Hong Kong. In particular, the Amendment Ordinance updates relevant accounting-related provisions and expands the types of companies eligible for simplified reporting. The amendments are designed to reduce companies' compliance costs and better address the needs of small and medium-sized enterprises.

Key changes

The Amendment Ordinance allows the holding companies of two types of corporate groups, as set out below, to benefit from the reporting exemption (that is, to adopt simplified accounting and financial reporting) provided that both the holding company and all its subsidiaries meet the size criteria (see 'Mixed groups size criteria'):

i. holding companies of corporate groups comprising small private companies or eligible private companies and small guarantee companies (mixed groups), and

ii. holding companies of groups of small private companies, eligible private companies, small guarantee companies, or mixed groups described in paragraph (i) above, with non-Hong Kong subsidiaries.

The Amendment Ordinance also updates the definitions of 'holding company' and 'parent undertaking' to reflect the current accounting standards and adopting control as the basis for determining whether an entity is a 'subsidiary' of the 'parent undertaking'.

The Amendment Ordinance also includes amendments to clarify policy intent or remove ambiguities and inconsistencies, including the changes highlighted below.

- Empowering the Financial Secretary to make regulations for non-Hong Kong companies to provide for the detailed requirements relating to the display of company names and the disclosure of liability status in order to align the obligations of non-Hong Kong companies with those of local companies.

- Aligning the penalty level for an offence for making a misleading, false or deceptive statement to an auditor relating to revised financial statements with a corresponding offence relating to original financial statements.

- Allowing a company's articles to be in electronic form.

- Clarifying that, if a company has both an English registered name and a Chinese registered name:

  i. both names must be stated in its articles

  ii. the common seal of the company may be engraved with only its English name or Chinese name, and

  iii. the company may display either its English name or Chinese name.

- Providing for an exemption from the general registration requirement for an alteration of articles if such alteration is in respect of a change of company name only, as a separate registration requirement already applies to a change of company name.

- Clarifying that the statement of capital should report the share capital position immediately after the relevant change instead of the capital position as at the date of change.

- Clarifying that the obligation to give particulars of class rights in the statement of capital only arises if the share capital of a company is divided into different classes of shares.

- Providing that if all members in a class agree to a variation of the class

Highlights

The Amendment Ordinance:

- expands the types of companies eligible for simplified reporting
- provides that, for a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only, and
- allows a company's articles to be in electronic form.

> “the amendments are designed to reduce companies’ compliance costs and better address the needs of small and medium-sized enterprises”

rights, the variation will take effect on the date of, or as specified in, the consent or resolution. No holder or member may apply to the court to have the variation disallowed in such circumstances.

- Providing for an exemption from the requirement to notify the Registrar of Companies of a change in the place where copies of instruments creating charges are kept if the relevant change only relates to a change of the address of a company's registered office or the address of a registered non-Hong Kong company's principal place of business in Hong Kong, as a separate notification requirement already applies to the change of such address.

- Providing alternative means for a holding company to disclose the names of the directors of its subsidiary undertakings by adding an option to allow a holding company to provide such information on its website, or by keeping a list at its registered office and making it available for inspection.

- Providing for an option for a holding company, which is also a wholly owned subsidiary, to prepare consolidated financial statements instead of its own financial statements.

- Providing that, for a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only.

- Clarifying that 'non-statutory accounts' do not include a summary financial report.

- Providing that the financial year of a company may be shortened or lengthened by a period not exceeding seven days.

- Clarifying the primary accounting reference date for a dormant company that has ceased to be dormant.

- Clarifying provisions in respect of company record-keeping and company administration and procedure, including matters relating to:

  i. the keeping of records of directors to include resolutions passed by directors without a meeting

  ii. the records which may be used as evidence of proceedings at a directors' meeting and general meeting, and

  iii. the notice to the Companies Registry on where minutes of directors' meetings, resolutions of directors and written records of decisions of sole director are kept.

- Clarifying that the court-free procedure for horizontal amalgamation is also available for subsidiaries of a holding company which is incorporated outside Hong Kong, so long as the merging companies are Hong Kong companies.

- Amending the 'small payment' exception to the prohibition on payments for loss of office of a director to make it clear what payments are not aggregated for the purpose of calculating the total amount of the small payment.

- Clarifying that, in the case of a takeover offer relating to shares in a class, the requirement for 90% of the number of shares means 90% of the number of shares of the class.

- Clarifying the power of the government to dispose of any property or right vested as *bona vacantia* under the predecessor Companies Ordinance.

- Clarifying the conditions for granting applications for administrative restoration of companies.

- Clarifying that an authorised representative of a non-Hong Kong company must have an address in Hong Kong.
- Providing a definition for 'officer' of a subsidiary undertaking.
- Clarifying in the model articles that an ordinary resolution of a company is required only for certain types of alteration of the share capital of the company.

Implementation

The Companies (Amendment) Bill 2018 (the Bill) was introduced into the Legislative Council on 25 April 2018. The Bill was passed on 28 November 2018 and the Amendment Ordinance became effective on 1 February 2019 except for two provisions which will commence later. The two provisions will repeal Section 792 and Item 7 of Schedule 7 of the new CO that relate to the disclosure requirements of non-Hong Kong companies and related offences.

Source: Companies Registry

A new thematic section on the Amendment Ordinance has been set up on the Companies Registry website: www.cr.gov.hk/en/companies_ordinance2018. The section contains the full text of the Amendment Ordinance and frequently asked questions, as well as a relevant External Circular and other publications issued by the Registry in relation to the implementation of the Amendment Ordinance.

For enquiries relating to the Amendment Ordinance, a dedicated hotline: 3142 2822 has been set up. The hotline operates from Monday to Friday 9am–8pm, and on Saturday from 9am–1pm (excluding public holidays). Email enquiries can be sent to: coa2@cr.gov.hk.

Mainland China's new e-commerce law

Catherine Zheng, Partner; Dora Si, Partner; and Winne Yue, Professional Support lawyer; Deacons, look at the implications of Mainland China's new e-commerce law, which comes into effect this month, relating to the liability of e-commerce platform operators in respect of consumer protection and intellectual property infringement.

In less than a decade, Mainland China has become the largest e-commerce market in the world, accounting for over 40% of global e-commerce, according to a recent report by McKinsey. The breathtaking speed of development has left lawmakers scrambling to regulate the booming e-commerce industry. After nearly two years of discussion, the Standing Committee of the National People's Congress passed Mainland China's new e-commerce law on 31 August 2018, only two weeks after the fourth draft of the law was released for consultation. The law is Mainland China's first comprehensive legislation governing the field of e-commerce and took effect on 1 January 2019.

E-commerce operators in Mainland China have been under intense scrutiny following media reports of counterfeits sold on the online discount platform operated by Pinduoduo Inc, the Shanghai-based e-commerce platform recently listed on Nasdaq. The accountability of e-commerce operators in Mainland China has been a particularly hot topic recently following the reported deaths of users of the Didi mobile ride-sharing app and it is not surprising that there has been pressure to increase the liability of e-commerce platforms.

The law is wide-ranging and covers the requirement for registration and licensing of e-commerce operators, taxation, electronic payment and e-commerce dispute resolution. It also addresses other important aspects of e-commerce including false advertising, consumer protection, data protection and cybersecurity, as well as the protection of intellectual property (IP). Many of the provisions are a codification of the existing laws. This article will briefly examine the impact of some of the measures relating to the liability of e-commerce platform operators in respect of consumer protection and IP infringement.

Key features

Increased scope

It is significant that the law applies to all e-commerce operators, meaning all natural and legal persons that engage in the business of selling merchandise and/or providing services on the internet or other information networks. This covers e-commerce platform operators, the vendors of goods and services on the e-commerce platforms of others, and those who operate their self-built websites or through other network services. The expanded wording is important as it covers non-traditional shopping channels including social media and messaging services such as WeChat and streaming sites such as Douyin.

Consumer safety

This has been a particularly contentious area. The new law provides that where e-commerce platform operators know, or should know, that goods or services provided on the platform do not comply with requirements for personal or property security, or otherwise violate the lawful rights and interests of consumers, and they do not take necessary measures, they will be jointly and severally liable with the online vendor. This makes clear that a consumer who suffers damage will be able to sue both the vendor and the e-commerce platform. Under the new law, it seems that a platform, such as Didi, is likely to be jointly liable, if it knew, or should have known, of the possible risk to its customers and did not take the necessary measures to protect them.

> "a consumer who suffers damage will be able to sue both the vendor and the e-commerce platform"

Notice and take-down

The new law provides a framework for 'notice and take-down' procedures that are already enshrined in existing regulations and are already provided for by most e-commerce platforms in Mainland China. There has been much discussion as to the nature of the 'preliminary evidence' needed to be included in any notice and whether

Highlights

- Mainland China's first comprehensive e-commerce legislation is wide-ranging, covering, among other things, false advertising, consumer protection, data protection, cybersecurity and the protection of intellectual property (IP)
- there has been pressure to increase the liability of e-commerce platforms and the new law specifically provides that a platform operator may be liable for assisting in a web user's infringement where it fails to take action
- it is clear that the online platforms are expected to do more to protect the interests of IP owners and, especially, consumers

> “the recent high-profile campaigns by the Chinese authorities to crack down on internet-related infringement are a sign of the government’s resolve to increase the pressure on e-commerce platforms to help fight illegal activities on their platforms”

this increases the burden on IP owners. However, since this is not a new concept, we do not expect this to be very different from the notice requirements currently used in practice in Mainland China or under other international notice and take-down systems.

The law refers to acting ‘promptly’ to take the necessary measures after receipt of a take-down notice. We believe that is likely to be interpreted in line with existing guidelines governing the infringement of copyright works on information networks, which already set out factors for determining whether measures have been taken in a ‘timely’ manner. These include the degree of difficulty in implementing the measures, the nature of the services provided by the online service provider, and the type and quantity of works involved.

Erroneous and malicious notifications

The new law provides for penalties in the case of incorrect or malicious notifications but does not actually specify who will bear the liability. Since it is not uncommon for rivals to make false accusations against their competitors, the suggestion that the platform operator may be liable for damages caused by an erroneous notice, or even ‘multiple’ damages in the case of a malicious notice, has caused legitimate concern. Our reading is that general civil liability in respect of erroneous notices is imposed on anyone; the provision may be deliberately ambiguous to give the courts discretion to apportion liability in appropriate circumstances, including platform operators, if they should have known that a notice may be incorrect.

However, we believe that the heavier penalty for filing a malicious notice is directed towards the persons filing the malicious notice, rather than the platform operator. This would be in line with the Beijing Higher People’s Court Guidelines for the Adjudication of Network-Related IP Cases (Beijing Guidelines), which allow vendors to seek damages against the complainant for filing a false complaint. It is hoped that this will be clarified in due course.

Counter-notices and reinstatement

There is also provision for counter-notices and reinstatement, which is normal with a notice and take-down regime. Legitimate concern has been expressed by IP owners regarding the burden on them to take court or administrative action once a counter-notice has been filed within 15 days. Whilst domestic companies should be able to take action quickly, formality requirements mean that it can take foreign IP owners more than a month to get the requisite documentation in place. Short deadlines are not uncommon in Mainland China but, given the particularly short timeframe and the difficulty of anticipating counter-notices, this provision may prove to be troublesome. This is especially as infringers may file false counter-notices and there is no discussion of verification of the counter-notice.

Joint and several liability

IP owners should be happy to see that the law specifically provides that an e-commerce platform operator will have joint and several liability with the vendors, where a platform operator knows, or should know, that a vendor has violated another’s intellectual property rights and fails to take the necessary action such as deleting, blocking links or stopping transactions. This is in line with existing law where a platform operator may be liable for assisting in a web user’s infringement where it fails to take action.

Constructive knowledge

The new law imposes liability where the e-commerce provider knew, or should have known, that relevant goods and services infringe the rights and interests of consumers or the IP of others. This notion is reminiscent of the ‘red flag’ test under the US Digital Millennium Copyright Act, where an online service provider cannot claim safe harbour protection if it is aware of facts and circumstances from which infringing activity is apparent. On the face of it, the wording places a greater burden on e-commerce operators than the law in many jurisdictions, including Hong Kong, which has a high threshold for establishing joint liability, requiring there to be a common design, deliberate collaboration with a third party to commit

an infringing act, or otherwise procuring another person to commit the tort.

However, the concept has existed for some time under Mainland Chinese law, appearing in the Information Network Dissemination Provisions, the Beijing Guidelines and existing case law such as *E-land v Tao Bao (2011) 沪一中民五(知)终字第40* and *Wenqing Culture v Baidu (2016)京民终248号*, which already provide guidelines for determining whether a platform service provider knew or ought to have known of infringement by an online vendor, and are likely to be relevant to interpreting the new law. This may also be covered in the implementing rules.

Heavy fines

Where e-commerce platform operators fail to take necessary measures in respect of IP infringements, the relevant administrative authorities may order them to rectify the situation within a set time. For the first time, the law provides that failure to rectify by the deadline could expose the platform to a fine of between RMB 50,000 to RMB 500,000. In serious cases, a fine of between RMB 500,000 to RMB 2,000,000 may be levied. However, the law does not grant IP owners any specific right to file complaints or request compensation from platform operators.

Business licence registration

In practice, the most important change for IP owners may be the administrative requirements for all e-commerce operators to obtain business licences and to register with the tax authorities. The law also requires all e-commerce operators to ensure that their business licence and administrative licence information related to their business activities are prominently displayed online at all times.

Whilst unscrupulous vendors may still try to file fake registrations, this will not be easy, as they will be examined by the local market supervision bureau. Although these requirements may not catch all the parties in a supply chain, the new law should make it easier for IP owners to identify infringers, or at least key parties involved in counterfeiting activities. This should be welcomed by IP owners who may now be able to avoid the expense and trouble of filing civil actions to secure disclosure orders for vendor information.

Retention of transactional information

All e-commerce platforms are now required to keep records of product and service information, as well as transaction records, for not less than three years. Failure to keep such records can result in significant fines and suspension of operations pending rectification. Such records can be crucial to IP owners in building an infringement case. However, the law does not address the issue of whether the courts or administrative enforcement authorities have the power to order disclosure of such transactional information for the purpose of infringement proceedings. Given that the law does provide for e-commerce operators to hand over information to relevant authorities in the context of data protection, cybersecurity and tax, it remains to be seen whether there may be provision for information to be requested by the authorities in the context of administrative enforcement or court proceedings.

Conclusion

The law raises many questions that will be the subject of further debate and lobbying as the implementing rules are yet to be drafted. The broad wording in some areas is not unusual as it allows the authorities flexibility in applying the law. Some of the provisions are not actually a significant departure from the current law, but it is clear that the online platforms are expected to do more to protect the interests of IP owners and, especially, consumers.

IP owners and e-commerce operators should seek advice on the effect of the changes and prepare for compliance. Many of the major e-commerce companies already have mechanisms in place to identify and handle counterfeits and have been making use of big data technology in an attempt to cleanse their platforms in advance of the new law coming into force. They are also likely to revise their business terms with vendors to impose obligations on them to comply with the law, but operators may need to conduct more careful due diligence into the vendors and their products.

The swift enactment of the law and the recent high-profile campaigns by the Mainland Chinese authorities to crack down on internet-related infringement are a sign of the government's resolve to increase the pressure on e-commerce platforms to help fight illegal activities on their platforms. However, whilst the larger companies may have the resources to do this, smaller platform operators – and especially vendors operating their own websites – may find it more difficult to comply with the law, which may hamper the sustainable growth of small and medium-sized businesses that the government is hoping to promote.

Catherine Zheng, Partner; Dora Si, Partner; and Winne Yue, Professional Support lawyer

Deacons

Anti–money laundering compliance

Milda Valevice, Legal Counsel, Citco Global Subsidiary Governance Services (GSGS) gives compliance advice following the step change we are currently seeing in the scope of anti-money laundering regulation around the world.

In April 2018, the European Parliament adopted the European Commission's 5th Anti–Money Laundering (AML) Directive, which brings crypto assets, online payments and company ownership under scrutiny. The European Union's 4th AML Directive emphasised transparency in the ultimate beneficial ownership of legal entities and enhanced customer due diligence. The 5th AML Directive has given EU institutions more authority to audit and control how businesses adhere to beneficial owners' disclosure requirements. The Directive also introduces standards for those dealing with electronic payments and cryptocurrencies, a notable development in light of the enormous growth of the global blockchain market. Clearly, regulators are not content to tolerate the perceived opacity of this burgeoning industry.

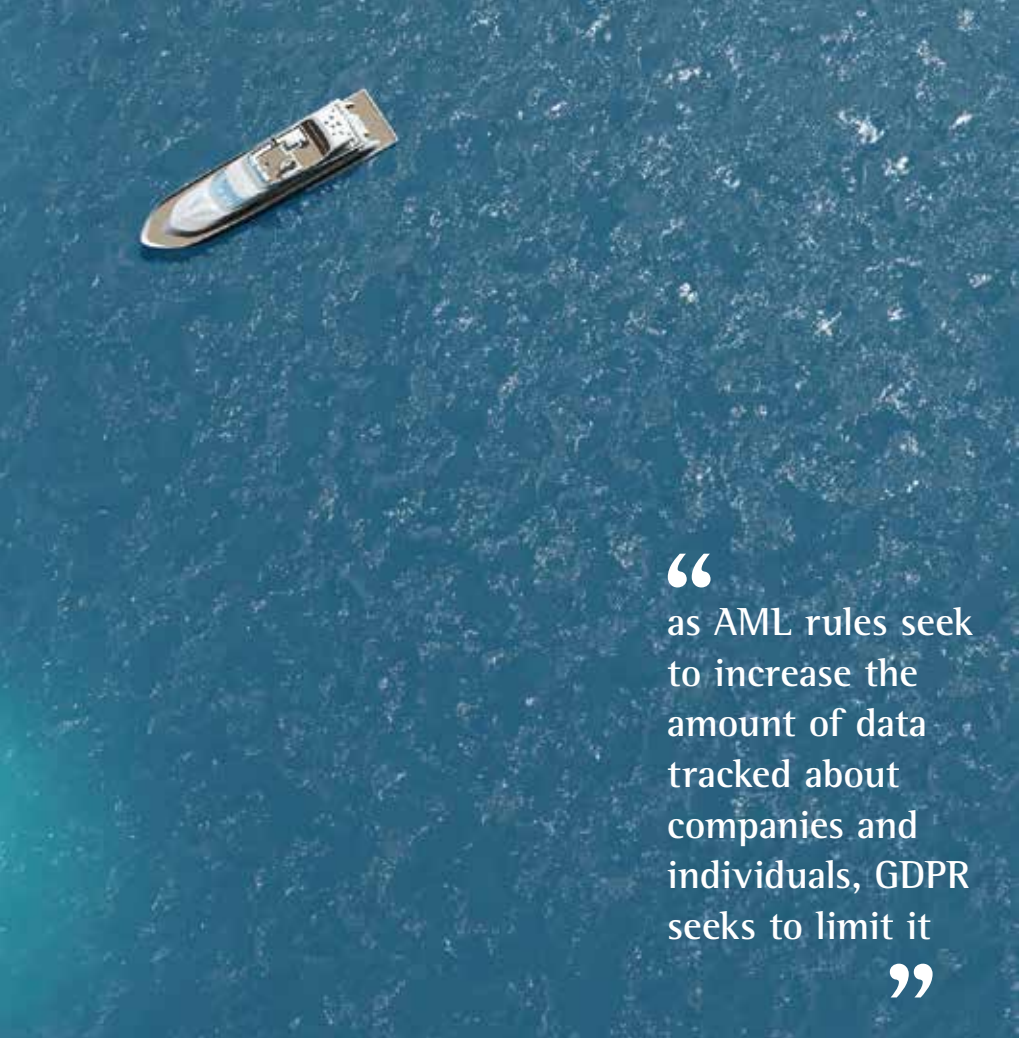
The initial European AML Directive was limited to regulation and supervision of the traditional financial sector, but the scope has been expanded ever since: real estate professionals, accountants, company service providers, virtual currency exchange platforms and custodian wallet providers are all now required to identify their clients and report suspicious transactions to authorities. The implication for the rest of the business world is that every time you engage one of the in-scope entities, you will be asked for various documents to properly establish your identity. Such documentation could include the identity of directors, shareholders and owners, the company's structure and purpose, or the source and destination of the funds in question.

Highlights

- investigations against individuals have increased, targeting individuals like CEOs, compliance officers and other responsible personnel
- no longer are anti–money laundering (AML) discrepancies merely an abstract corporate failure for which blame and consequence manifest themselves only through monetary fines and sanctions – now, the individual can and will face consequences for irregularities in their AML adherence
- the EU's General Data Protection Regulation has created additional complexity when it comes to ensuring AML compliance

Regulators get tough

Not only has the scope of the regulation increased, but regulators have been encouraged to crack down much more aggressively. The potential fines faced by companies are now considerable. In 2017, Rolls Royce forfeited just over half a billion pounds for offences relating to



> "as AML rules seek to increase the amount of data tracked about companies and individuals, GDPR seeks to limit it"

corruption in Indonesia and Mainland China and five other countries.

Regulators have initiated random check protocols and have increased the rate at which companies are investigated to levels not seen before. Last year, the UK's Financial Conduct Authority reported that it had performed 75% more checks than in the previous year. Illustrating a step change in the scope of AML regulation, investigations against individuals have also increased, targeting individuals like CEOs, compliance officers and other responsible personnel. No longer are AML discrepancies merely an abstract corporate failure for which blame and consequence manifest themselves only through monetary fines and sanctions. Now, the individual can and will face consequences for irregularities in their AML adherence.

How to ensure compliance

The legal framework is complex. To collect and issue all required information to banks, legal professionals, company service providers, or real estate agents requires expert resources as well as a significant amount of time. The format of AML forms, and the content of requests, varies from very standardised to extremely customised and detailed. You are also required to provide this information prior to entering into a business relationship.

The key steps to ensure compliance are the preparation and maintenance of beneficial owners' registers and ensuring that you make the correct initial filings with relevant local authorities on time and whenever there are any changes to the status of beneficial owners.

There is another consideration too. The EU's General Data Protection Regulation (GDPR) has created additional complexity when it comes to ensuring AML compliance, due to the competing, and in some senses contradictory, aims of the two pieces of legislation. As AML rules seek to increase the amount of data tracked about companies and individuals, GDPR seeks to limit it. As companies respond to the new AML rules, they will need to work hand in hand with legal advisers and other expert parties to ensure they are walking the right balance between AML and GDPR, particularly when it comes to documenting the legal basis for the collecting and storing of personal information.

A global trend

In this context, AML compliance should be high on the corporate agenda in 2019. All entities domiciled in the EU must comply with the 5th Directive by the end of 2019. Companies with subsidiaries in the EU need to ensure that their documentation is in order. Moreover, other jurisdictions outside the EU have been adopting similar AML requirements.

Here in Hong Kong, the Companies (Amendment) Ordinance 2018 (the Amendment Ordinance), which came into operation on 1 March 2018, introduced new requirements for companies incorporated in Hong Kong to enhance the transparency of corporate beneficial ownership. Companies incorporated in Hong Kong are now required to obtain and maintain up-to-date beneficial ownership information, by way of keeping a significant controllers register for inspection by law enforcement officers upon demand.

Milda Valevice

Legal Counsel, Citco Global Subsidiary Governance Services (GSGS)

For more information, please contact: gsgs@citco.com.

Professional Development

Seminars: December 2018

3 December

#MeToo in the workplace – bullying, harassment & workplace misconduct

Chair: *Richard Leung FCIS FCS, Institute Past President, and Barrister-at-law, Des Voeux Chambers*
Speakers: *Anita Lam, Head of Employment; and Rachel Cheng, Senior Associate; Clifford Chance Hong Kong*

4 December

Regulatory updates and journey to ML/TF risk mitigation

Chair: *Ernest Lee FCIS FCS(PE), Institute Council member and Audit Committee Chairman, and Partner, Audit & Assurance, Deloitte China*
Speakers: *Chad Olsen, Partner; Lilian Sin, Director; Deloitte; Anthony Quinn, Founder & Board Chair/CEO; and Darren Cade, Chief Operating Officer/Company Secretary; Arctic Intelligence*

6 December

Finding the right listing venue

Chair: *Edmond Chiu FCIS FCS(PE), Institute Membership Committee member and Professional Services Panel member, and Executive Director, Corporate Services, Corporate & Private Clients, Vistra Hong Kong Ltd*
Speaker: *Virginia Tam, Partner, K&L Gates*

7 December

Practical company secretarial workshops: part 2 – getting to know your board, module 5 – board evaluation (re-run)

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

10 December

The evolving role of INED and a forward-looking board

Chair: *Nancy Tau FCIS FCS, Deputy Company Secretary, Yuexiu Enterprises (Holdings) Ltd and Yuexiu REIT Asset Management Ltd; Manager, Yuexiu Real Estate Investment Trust*
Speaker: *Anthony Cheung FRSA CESGA HKIoD.GD, Managing Director, Head of Absolute Return Equity Strategies, Asia Pacific, Hamon Asset Management Ltd*

12 December

2018 AGM season review

Chair: *Carmen Lam FCIS FCS, Company Secretary, Tongda Hong Tai Holdings Ltd*
Speaker: *Stephanie Cheung, Vice President, Relationship Management, Computershare Hong Kong Investor Services Ltd*

ESG seminar

On 18 January 2019, the Institute organised a seminar looking at the key issues in environmental, social and governance (ESG) management in Hong Kong. The seminar, held in partnership with the Hong Kong Trade Development Council (HKTDC) and sponsored by KPMG, was part of the International Financial Week of the Asian Financial Forum 2019. The forum, under the title: 'ESG – a good idea; what could possibly go wrong?', was attended by about 100 directors, independent non-executive directors (INEDs), company secretaries and senior managers.

Despite the general consensus that ESG is a good thing, there remain many problems when it comes to implementing an effective ESG strategy. The seminar looked, for example, at the need for a common reporting standard for ESG data. Reporters can choose from among many different reporting frameworks, such as those of the Global Reporting Initiative, Carbon Disclosure Project and the Sustainability Accounting Standards Board, making it hard for investors to compare sustainability information, even between companies in the same industry.

The seminar chair, Peter Greenwood FCIS FCS, posed the seminar's title question – what could possibly go wrong? – to each of the speakers:

- Andrew Weir, Regional Senior Partner, Hong Kong/Vice-Chairman of KPMG
- Hendrik Rosenthal, Director, Group Sustainability of CLP
- Jamie Allen, Founding Secretary General, Asian Corporate Governance Association, and
- Pat Dwyer, Founder and Director of The Purpose Business.

Many potential pitfalls emerged from their answers. Mr Weir pointed to the tendency for companies to underestimate the significance of ESG. He added that boards need to recognise that the world of business has changed – the size of the sustainable investment market globally has been increasing dramatically in

recent years. He displayed a graphic showing that, according to the *Global Sustainable Investment Review 2016* (published by the Global Sustainable Investment Alliance), assets managed under sustainable investment strategies totaled US$22.9 trillion – a 25% or US$4.6 trillion increase since 2014 – representing more than $1 in every $4 under professional management.

Mrs Dwyer emphasised that things tend to go wrong where companies see ESG solely as a compliance issue. ESG, she pointed out, needs to be regarded as part of risk management and therefore a board-level concern.

Mr Allen pointed out that things can also go wrong when companies approach ESG issues purely as a marketing opportunity. This means that few investors will read their glossy ESG reports and the important questions – for example, how environmental and social risks affect business strategy – do not get addressed. He added that some ESG reports do not even get elevated to the C-suite.

Mr Rosenthal identified short-termism as a pitfall to avoid. 'If you don't manage your risk with a long-term view, that's when things will go wrong,' he said. He urged companies to consider a longer-term horizon in their ESG risk management.

The Institute would like to thank the speakers, co-organiser (HKTDC) and sponsor (KPMG) for their support.

Personal Development (continued)

Online CPD (e-CPD) seminars

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
1 March 2019	6.45pm–8.30pm	Business valuations for listed companies	1.5
6 March 2019	6.45pm–8.15pm	Hybrid meeting in action	1.5
12 March 2019	6.45pm–8.15pm	Disclosure risk management and capital market: how can listed companies improve its ESG competence	1.5
18 March 2019	6.45pm–8.15pm	Company secretarial practical training series: how easy is it to close down a company in Hong Kong	1.5

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

Membership

Membership/graduateship removal due to non-payment of 2018/2019 subscription

Subscription payments for the year 2018/2019 were due on 30 September 2018. Under Byelaw 14 of the Institute of Chartered Secretaries and Administrators (ICSA) Byelaws and Article 17 of the Institute's Articles of Association, all fees shall be payable at such times as the Council may from time to time determine. Members who fail to pay the subscription within the grace period given by the Council will be removed from membership and his/her name will be removed from both membership registers of ICSA and the Institute.

For the year 2018/2019, 155 members and graduates were removed from the respective registers of ICSA and the Institute. Should they wish to reinstate their membership or graduateship with ICSA and the Institute, former members and graduates are required to apply for re-election and settle the outstanding subscription plus a re-election fee. All applications for re-election are subject to the review and approval of the Institute's Membership Committee.

Membership (continued)

New graduates

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

Chan Nga Ching
Ching Pak Sin
Choi Pik Ying
Ko Sheung Tak
Xu Chaoran

Chartered Governance Professional designation

The Council has agreed to the 'grandfathering' policy for conferring the Chartered Governance Professional designation to members on a quarterly basis.

As at 31 December 2018, a total of 5,978 members had been awarded with the Chartered Governance Professional designation.

Members' activities highlights: January 2019

5 January
Community Service – 保良局兒童探訪

19 January
Governance Professional Mentorship Programme – Mentors' Training

Forthcoming membership activities

Date	Time	Event
2 March 2019	10.15am–12pm	Governance Professional Mentorship Programme – Training for mentors and mentees
9, 16, 23, 30 March 2019	3.30pm–5.30pm	HKICS Dragon Boat Team Training Sessions
23 March 2019	9.15am–2pm	Fellows only – Half Day Hiking Tour
27 March 2019	6.45pm–8.30pm	Members' Networking – Personal Cybersecurity

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

Advocacy

HKICS Prize 2018 winner

The Hong Kong Institute of Chartered Secretaries Prize (HKICS Prize) celebrates the achievements of leaders of the Chartered Secretarial profession. The 2018 HKICS Prize was awarded to Institute member Peter Greenwood FCIS FCS, who has extensive experience and expertise in corporate governance.

Peter was admitted as a Fellow of The Institute of Chartered Secretaries and Administrators (ICSA) and the Institute in 2001 and holds the qualifications of Chartered Secretary and Chartered Governance Professional. He is currently a representative of the Institute on the International Council of ICSA. He has served on many committees and panels of the Institute. From 1997 to 2005, he was a member of the Company Secretaries Panel. He served on the Technical Committee as a consultant in 2001, and as a member in 2002 and 2003. He served on the Appeal Tribunal as a member from 2005 to 2007 and as the Chairman from 2008 to 2013. Peter was the Chairman of the Advisory Board from 2012 to 2014. He has also been serving on the Technical Consultation Panel as a member since 2006. He has been the Chairman of the Institute's biennial corporate governance conferences for many years.

Peter served on the Standing Committee on Company Law Reform of HKSAR Government and the Listing Committee of Hong Kong Exchanges and Clearing Ltd. He is the Co-Chairman and lead international resource on the corporate governance training programmes of the Standing Committee of Public Enterprises in India.

Look out for the interview with Peter Greenwood in next month's CSj.

HKICS Chief Executive speaks at Corporate Governance Conference in Taipei

Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited by the Governance Professionals of Taiwan Institute to speak on 'The global changes, trends and positioning of governance professionals' at its Corporate Governance Conference held on 15 December 2018. Other topics discussed at the conference included issues relating to financial reporting, connected transactions and connected persons and corporate governance practices in Taiwan. About 80 professionals attended the conference.

Group photo with the speakers

HKICS Chief Executive and Registrar interviewed by Hong Kong Economic Journal

Institute Chief Executive Samantha Suen FCIS FCS(PE) and Registrar Louisa Lau FCIS FCS(PE) were interviewed by *Hong Kong Economic Journal* (HKEJ). In the interview, Ms Suen talked about her career development as a Chartered Secretary, her aspirations for the Institute as the Chief Executive and the challenges she and Ms Lau have encountered in the past few years. The interview was published by HKEJ on 21 January 2019.

The Official Receiver's Office consults the Institute

On 7 January 2019, Frances Chan FCIS FCS, a member of the Institute's Professional Services Panel and the Institute's representative on the Official Receiver's Office (ORO) Services Advisory Committee, and Mohan Datwani FCIS FCS(PE), the Institute's Senior Director and Head of Technical & Research, attended a meeting with a representative of ORO and its consultant, Arcotect/Varmeego Ltd, to discuss ORO's Departmental Information Technology Plan (DITP).

The aim of the meeting was for the Institute to contribute to ORO's strategic review of its use of information technology in delivering its services to facilitate short- to medium-term IT planning to support the priority areas and initiatives of ORO's work over the next five years under ORO's DITP. A major aim of the exercise is to ensure that the insolvency service ORO provides in Hong Kong is of a high quality, on a par with international standards.

During the meeting, representatives from the Institute made a broad range of comments. These included the suggestions below.

- It would be useful for ORO to have some basic free search functions. The charge currently for basic information is high and not user friendly.
- A partial name search should be facilitated as long as there are other identifiers like ID card numbers. The latter is to deal with privacy concerns.
- IT should be used to facilitate access to case officers and updates as to the status of insolvency cases.
- The ORO website should have a more international feel and should put in context that insolvency cases could be cross-border, especially with China concerns.
- There should be discussions of the ORO's regulatory powers and judicial comity in assisting international insolvency processes.
- From the local perspective, user-friendly information as to the liquidation process as an overview of insolvency legislation should be available on the ORO website.
- There should also be usual and expected functions including alert subscriptions, what's new, and a practitioners' area under any revamped ORO website. Also, performance pledges should be reviewed and enhanced, where appropriate.
- There may be an area on the ORO's website developed for public education, including as to the consequences of being adjudged bankrupt. It may be useful to use short videos in this regard.
- Also, the technical IT standards should interphase with those of Inland Revenue Department, Companies Registry and other relevant organisations to facilitate exchange of information.

Advocacy (continued)

Group photo with Past Chairmen and Presidents of the Institute

HKICS Double Anniversary Gala Dinner

The Institute kicked off the celebrations for its 25th anniversary and the 70th anniversary of the presence of The Institute of Chartered Secretaries and Administrators (ICSA) in Hong Kong at the Double Anniversary Gala Dinner, held on Thursday 17 January 2019 at the Convention Hall of the Hong Kong Convention and Exhibition Centre.

The Gala Dinner was a full house with more than 700 participants, including distinguished guests from the HKSAR Government, regulatory bodies, professional institutes, academia and corporate sponsors, as well as Institute members, graduates, students and friends. The Institute was honoured to have the ICSA International President and Institute Past President Edith Shih FCIS FCS(PE) as the Guest of Honour for this special occasion. The Institute invited Astrid Chan (陳芷菁女士) to be the Master of Ceremonies.

Under the theme of 'Celebrating the HKICS at 70 & 25', Institute President David Fu FCIS FCS(PE) made his opening remarks by providing a brief review of the major achievements of the Institute in 2018, and how the Institute has commenced awarding the new Chartered Governance Professional designation alongside the long-standing Chartered Secretary designation and has gained better and wider recognition in Hong Kong, Mainland China, Macau, Taiwan as well as internationally.

Guest of Honour, Edith Shih FCIS FCS(PE), Executive Director & Company Secretary of CK Hutchison Holdings Ltd, delivered her keynote speech at the dinner (Edith's speech is available on page 12 of this month's *CSj*). A live stream was broadcast of the first session of the Gala Dinner – the opening ceremony and the speeches of Institute President David Fu and Guest of Honour, Edith Shih (the broadcast is available in the News section of the Institute's website: www.hkics.org).

To recognise the tremendous contribution made by all Past Chairmen and Presidents of the Institute, the Council prepared a 925-sterling silver pendant with yellow gold plating Past President medal for each of them. Institute President David Fu FCIS FCS(PE) presented the medals to the Past Chairmen and Presidents at the Gala Dinner as a token of appreciation. The Institute will present the Past Presidents medals to those who could not join the dinner at a later date.

As part of the programme of the Gala Dinner, the Institute held a 'Best Dressed Competition' for the participants running for the Best Dressed Individual and Best Dressed Team awards. The top two contestants for each award were invited to take part in a catwalk on the stage. The first-round selection of the final two contestants of each award were selected by a judging panel comprising Institute senior members Anthony Rogers FCIS FCS, Gordon Jones FCIS FCS and Paul Chow FCIS FCS. The winners of both awards were then voted on by each table. Trophies were presented to the winners.

The Institute would like to thank all members, graduates, students and friends who attended the Gala Dinner, as well as corporate table and lucky draw sponsors, and everyone who helped organise the event.

The Institute would also like to thank all contestants of the 'Best Dressed Competition', the judging panel members for their participation and help; and to congratulate all the winners of the competition and lucky draw, as well as to thank Link Market Services (HK) Pty Ltd for providing live streaming services for the Gala Dinner.

Please see page 15 of this month's edition for photos of the HKICS Double Anniversary Gala Dinner.

Best Dressed Competition results

Best Dressed Individual winner:
Institute Past President April Chan FCIS FCS

Best Dressed Team winner:
Team Name: HKICS Dragon Boat Team

Team members:

1. Chan Chi Fai
2. Lai Tin Yin Fion FCIS FCS
3. Leung Kwok Keung ACIS ACS (Team Leader)
4. Michelle Low
5. Rainbow Li
6. Wong Mui Kwai, Portia ACIS ACS

Advocacy (continued)

Guests (in alphabetical order)

Professor Dr Syed Abdul Hamid Aljunid FCIS
President, The Malaysian Institute of Chartered Secretaries and Administrators

Ir Dr Alex Chan BBS
Chairman, Hong Kong Council for Academic Accreditation & Vocational Qualifications

April Chan FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

CM Chan
Vice-President, The Law Society of Hong Kong

Dr Eva Chan FCIS FCS(PE)
Chairman, Hong Kong Investor Relations Association

Natalie Chan
Chairman, Association of Chartered Certified Accountants HK

Professor Agnes Cheng
Chair Professor and Head, School of Accounting and Finance, The Hong Kong Polytechnic University

Jeremy Choi
President, the Taxation Institute of Hong Kong

Paul Chow GBS SBS JP FCIS FCS
Senior Member, The Hong Kong Institute of Chartered Secretaries

Rebecca Chow FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Ivy Chua
Deputy Honorary Secretary, Hong Kong Professionals and Senior Executives Association

Ada Chung JP
Registrar of Companies, Companies Registry

Lily Chung
Executive Director, Hong Kong Business Ethics Development Centre, ICAC

Michael Duignan
Senior Director, Enforcement Division, Market Surveillance Team, Securities and Futures Commission

Philip John Dykes SC
Chairman, Hong Kong Bar Association

Anthony Fan
President, The Hong Kong Independent Non-executive Director Association

David Graham
Head of Listing, Hong Kong Exchanges and Clearing Ltd

Peter Greenwood FCIS FCS
Senior Member, The Hong Kong Institute of Chartered Secretaries

Dr Guan Yuyan
Associate Professor, City University of Hong Kong

Iris Hoi
President, the Hong Kong Institute of Landscape Architects

Grace Hui
Managing Director and Chief Operating Officer, Listing Department, Hong Kong Exchanges and Clearing Ltd

Edwin Ing FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Gordon Jones BBS FCIS FCS
Senior Member, The Hong Kong Institute of Chartered Secretaries

Philip Kam
General Manager – Institute Development, The Hong Kong Institute of Bankers

Christine Kan
Managing Director, Listing and Regulatory Affairs Division, Hong Kong Exchanges and Clearing Ltd

Philip Kung
Head of Business and Professional Services, Invest Hong Kong

Lau Ka-Shi BBS
Vice-Chairman, Hong Kong Trustees' Association

Sr Lau Ping-Cheung
Chairman, the Hong Kong Coalition of Professional Services

Patrick Law
President, Hong Kong Institute of Certified Public Accountants

Dr Davy Lee FCIS FCS(PE)
Past President, The Hong Kong Institute of Chartered Secretaries

Joey Lee
Associate Head, Department of Accountancy & Associate Director, BBA(Hons) in Corporate Governance, The Hang Seng University of Hong Kong

Professor Matthew Lee
Chairman, Hong Kong Committee for Pacific Economic Cooperation

The Honourable Kenneth Leung
Legislative Councillor (Accountancy), Legislative Council of the HKSAR

Richard Leung FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Dr Haston Liu
Chairman, Hong Kong Dental Association Ltd

Euguene Liu
President, The Association of Hong Kong Accountants

Professor Liming Liu
Dean, Faculty of Business, Lingnan University

Tim Lui SBS JP
Chairman, Securities and Futures Commission

Neil McNamara FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Frank R Mullens FCIS FCS
Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong (former body of HKICS)

Katherine Ng
Chairman, Hong Kong Securities and Investment Institute

Dr Maurice Ngai FCIS FCS(PE)
Past President, The Hong Kong Institute of Chartered Secretaries

Ellie Pang
Vice President, Policy and Secretariat Services Unit, Listing Department, Hong Kong Exchanges and Clearing Ltd

Anthony Rogers GBS QC JP FCIS FCS
Senior Member, The Hong Kong Institute of Chartered Secretaries

Michael Scales FCIS FCS
Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong (former body of HKICS)

Natalia Seng FCIS FCS(PE)
Past President, The Hong Kong Institute of Chartered Secretaries

Sylvia Siu
President, Hong Kong Institute of Arbitrators

Stephen Sun

Ivan Tam FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Peter Turnbull FCIS
Vice-President, The Institute of Chartered Secretaries and Administrators (ICSA)

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

Duffy Wong BBS JP FCIS FCS
Past Chairman, The Association of The Institute of Chartered Secretaries and Administrators in Hong Kong (former body of HKICS)

Horace Wong FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries

Dr Karen Wong
Assistant Professor, the Open University of Hong Kong

Dr Kelvin Wong JP
Chairman, Financial Reporting Council

Wong Kuen-Fai JP
Commissioner, Inland Revenue Department

Dr Davy Wu
Programme Director, MSc in Corporate Governance and Compliance Programme & Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University

Salina Yan JP
Director - General of Trade and Industry, Trade and Industry Department

Franklin Yu
Vice-President-elect, The Hong Kong Institute of Architects

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

International Qualifying Scheme (IQS) examinations

December 2018 examination

Candidates will receive an email and SMS notification before mid-February 2019 that the December 2018 examination results are ready to be released. Examination result slips will be posted to candidates and will not be disclosed by phone or email.

Syllabus update – Corporate Administration

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

IQS Study Packs (online version)

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

May 2019 diet examination schedule

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

Examination enrolment period 1 – 3 March 2019

HKICS Examinations Preparatory Programme

The Examinations Preparatory Programme of the Institute, conducted by HKU SPACE, will commence on Monday 18 February 2019. Please refer to the timetable and enrolment form on the Examinations tab under the Studentship section of the Institute's website: www.hkics.org.hk. For enquiries, please contact HKU SPACE: 2867 8317 or email: hkics@hkuspace.hku.hk.

Student Ambassadors Programme

Summer Internship

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

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

Studentship

Professional Seminar at Hong Kong Institute of Vocational Education

Institute member Eric Fung ACIS ACS shared his work experience and route to qualification to over 60 Year 2 students of Higher Diploma in Corporate Administration at Hong Kong Institute of Vocational Education on 11 December 2018. Students found the sharing by Mr Fung very inspiring.

Governance Professionals Information Session

The Institute organised a Governance Professionals information session on 5 December 2018 for people interested in becoming a Chartered Secretary and Chartered Governance Professional, or pursuing a career as a governance professional. Institute Chief Executive Samantha Suen FCIS FCS(PE) kicked off the session by introducing the history of the Institute and The Institute of Chartered Secretaries and Administrators, as well as sharing the career prospects for governance professionals. Institute members Susan Lo FCIS FCS(PE) and Eric Fung ACIS ACS shared their work experience and route to qualification with the attendees. Information about the Institute's International Qualifying Scheme and the forthcoming New Qualifying Programme examinations were also provided during the information session.

Policy – payment reminder

Exemption fees

Students whose exemption was approved via confirmation letter on Thurday 29 November 2018 are reminded to settle the exemption fee by Monday 25 February 2019.

Studentship renewal

Students whose studentship expired in December 2018 are reminded to settle the renewal payment by Saturday 23 February 2019.

New Qualifying Programme (NQP)

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

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

Studentship (continued)

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

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

All students under the current IQS will be transited to NQP with effect from 1 January 2020 and will also be awarded the dual designation of Chartered Secretary and Chartered Governance Professional when elected as Associates after completing either the IQS or NQP, or combination of both, and becoming Graduates of the ICSA and HKICS.

Note 1: Disclaimer: Membership of ICSA, as referred to in this document, is conditional upon agreement and contractual relations between HKICS and ICSA. Such agreement and contracts are subject to change and/or termination by either party and therefore, notwithstanding anything to the contrary in this document, HKICS cannot provide any assurance that membership of HKICS will lead to automatic membership to the ICSA nor can HKICS be held responsible if membership of ICSA is not granted even following completion of the International Qualifying Examination and/or qualifying procedures being met.

Admission Requirements

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

Examinations

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

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

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

Transitional arrangements

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

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

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

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

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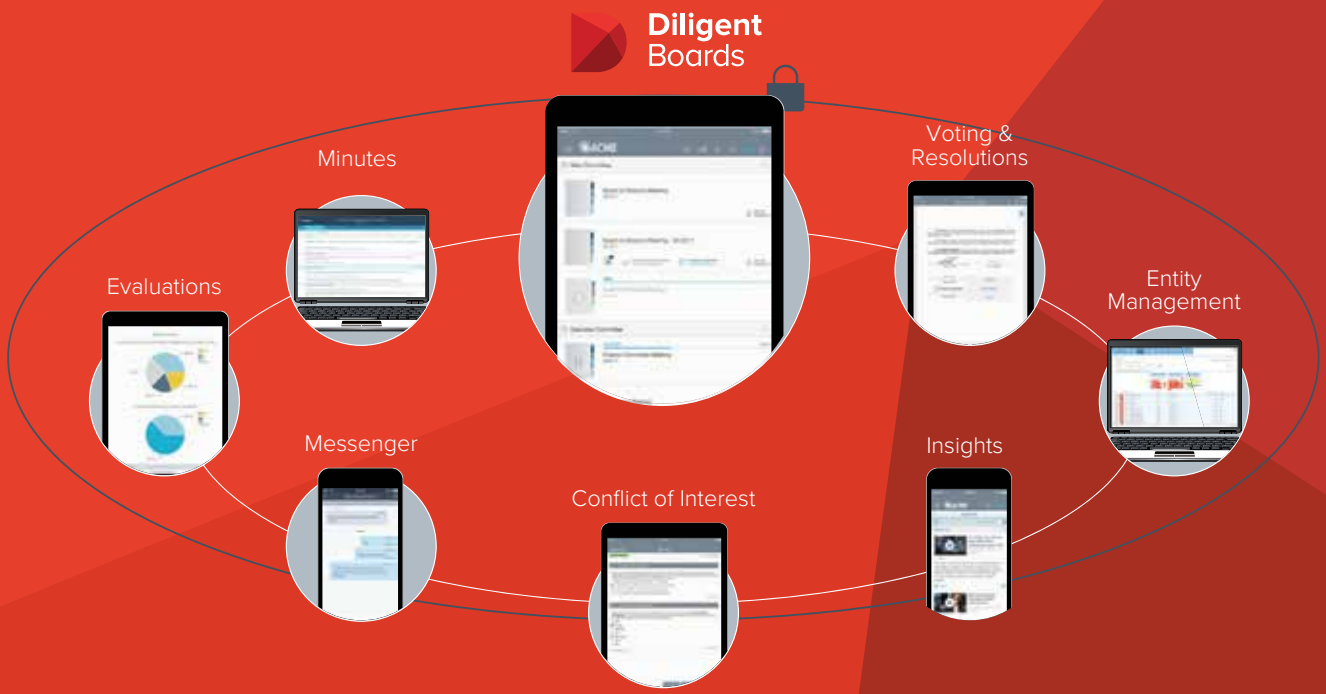

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