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May 2019

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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 March 2019 membership statistics were as follows:

Students: 3,479
Graduates: 395
Associates: 5,398
Fellows: 686

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Social media – the good, the bad and the ugly

Before turning to the theme of this month's journal, I would like to thank everyone involved in our Practical Corporate Governance Conference 2019, held in Taipei on 29 March 2019. This conference was a significant step forward in building a closer working relationship with our peer professionals and institutions in the region. The conference was jointly held by our Institute, KPMG Taiwan and the Governance Professionals Institute of Taiwan, and it was supported by Chengchi University in Taiwan and The Institute of Chartered Secretaries and Administrators.

The forum demonstrated the huge benefits for our community of governance practitioners, in the region and internationally, to share our expertise and insights. If you were unable to attend the conference, you can catch up on the conference's insights into related-party transactions, risk management, stakeholder engagement and the challenges arising from new technology in this month's International Report.

Turning to our theme this month, our journal offers some valuable advice from governance professionals in Hong Kong and Mainland China on how to assist your company to effectively harness the power of social media without falling prey to the uglier aspects of this information and networking ecosystem.

Over the last two decades, social media networks have transformed the way we interact and communicate with each other. There are currently about 2.5 billion Facebook users globally and it, along with the other major global networks such as YouTube, Instagram, Twitter, and LinkedIn, have overtaken mainstream media as the main medium for information exchange and communication around the world. Some of the major social media networks in Mainland China have been able to combine e-commerce and e-payment with information exchange and social networking functions to assimilate themselves even more radically into the social fabric.

Our journal this month focuses on the good, the bad and the downright ugly aspects of this trend. The good news, of course, is that social media provides an excellent and low-cost means for companies to engage with stakeholders. If you want to stay up-to-speed on what your stakeholders think and what they are looking for, you need to be monitoring social media. Moreover, if you want to have a voice in the debates about, or relevant to, your company, you need to have a presence on social media.

The less salubrious aspects of social media, however, will be readily apparent to governance professionals. The risk that officers or employees of your company might tweet price-sensitive information in a social media posting, or the risk that a market rumour regarding your business will go viral on social media networks, have long been on the radar for risk and governance professionals. Our cover story this month highlights the fact that social media governance is actually an extension of the work we are already doing. Disclosures on social media need to meet the same exacting standards of accuracy, timeliness and accessibility that apply to all of our other communications.

Good governance when it comes to social media, then, looks a lot like good governance in any other area of our work. Essentially it is about understanding the related risks and opportunities, realigning your corporate strategies to benefit from the opportunities and putting in place appropriate internal controls to deal with those risks. Company secretaries are well placed to facilitate these processes since they need to be implemented on a company-wide basis, and members of our profession frequently play a go-between role bringing together the investor relations, marketing and communications, human resources, legal, compliance and finance teams.

Finally, I would like to remind you that our latest Annual Corporate and Regulatory Update (ACRU) seminar will be held at the Hong Kong Convention and Exhibition Centre on Wednesday, 5 June 2019. This year we have an excellent lineup of speakers from the Companies Registry, Hong Kong Exchanges and Clearing Ltd, the Mandatory Provident Fund Schemes Authority and the Securities and Futures Commission. They will be updating us on the top issues on the compliance agenda – including disclosure and enforcement issues for listed issuers, anti–money laundering developments and mandatory provident fund reform. This year we will also have a new 'Practitioner Practical Sharing' session which will look at best practices in, and how to respond to regulatory investigations relating to, inside information disclosure. As always, ACRU will also be your opportunity to address questions directly to the attending regulators. ACRU 2019 is now full and registration has been closed, but anyone unable to join us this year will be able to catch up on the day's discussions in the review of the event in the July edition of this journal.

David Fu FCIS FCS(PE)

社交媒体的利弊

在谈论今期的主题前，我谨向参与3月29日在台北举行的2019年公司治理实务研讨会的人士致谢。这项活动是重要的一步，有助我们与亚太区内的同业及相关组织建立紧密的工作关系。研讨会由公会、KPMG安侯建业和台湾公司治理专业人员协会联合举办，并获台湾政治大学和特许秘书及行政人员公会支持。

这项活动显示，管治专才在地区和国际层面彼此交流学习、分享心得，可带来莫大裨益。若未能出席研讨会，可在今期的国际（含地区）报告一栏参阅研讨会的讨论内容，包括关联方交易、风险管理、持份者管理，以及新科技带来的挑战等。

今期的主题方面，香港和中国内地的管治专才分别撰文提出珍贵的专业意见，说明可如何协助所任职的公司善用社交媒体的力量，同时避免受到这个资讯与网络生态系统的弊病所影响。

过去二十年来，社交媒体网络改变了人们彼此交往沟通的模式。目前全球约有25亿脸书用户，加上其他主要全球网络如YouTube、Instagram、Twitter、LinkedIn等，这些网络已取代了主流媒体，成为全球交换资讯和沟通的主要媒介。中国内地的一些主要社交媒体网络，已能把电子商贸和电子付款与资讯交换和社交联系功能结合，更根本地与社会融为一体。

本刊今期集中探讨这个趋势的好处、缺点和丑恶面。社交媒体的好处，当然是提供了极佳的低成本方法，让公司与持份者保持联系。假如要紧贴持份者的想法，知道他们的期望，便要监察社交媒体的言论。再者，如希望在关乎贵公司的事务、或与贵公司相关的课题的讨论中发表意见，贵公司便须在社交媒体开设帐户。

至于社交媒体不太理想的一面，对管治专才来说显而易见。公司的高级人员或雇员可能在社交媒体帖文中泄露股价敏感资料，关于公司业务的市场传闻可能在社交媒体网络疯传：这些风险，长期以来一直受风险管理及管治专业人员监察。今期的封面故事特别提出，社交媒体管治实在是我们现有工作的延伸部分。社交媒体上的披露，与其他所有形式的沟通一样，在准确度、及时性和容易取阅的程度等方面，须符合同样严谨的标准。

由此可见，社交媒体的良好管治，与我们其他范畴的工作的良好管治十分相似。基本上，我们要明白相关的风险与机遇，调整机构策略以把握机遇，并推行适当的内部管控措施以处理风险。公司秘书正是推动这些工作的最佳人选，因为这些工作须在整个机构的层面推行，而我们经常担当协调角色，让投资者关系、市务推广与传讯、人力资源、法律、合规及财务等团队互相配合。

最后，我谨提醒大家，本届公司规管最新发展研讨会(ACRU)，将于2019年6月5日星期三，假香港会议展览中心举行。今年讲者阵容鼎盛，分别来自公司注册处、香港交易及结算所有限公司、强制性公积金计划管理局和证券及期货事务监察委员会。他们将介绍合规工作方面的最新发展，包括上市公司的披露和执法事宜、反洗黑钱事务的发展，以及关于强制性公积金的改革。今年将加插「从业员实务交流」新环节，探讨有关内幕消息披露的最佳做法，以及如何应对监管机构有关内幕消息披露的调查。一如既往，ACRU是向出席的监管机构代表直接提问的好机会。2019年ACRU已经额满，未能参加的人士，可参阅本刊7月号的研讨会报道，了解当天的讨论内容。

傅溢鸿 FCIS FCS(PE)

Social media governance – your guide

CSj gets some best-practice advice from governance professionals in Hong Kong and Mainland China on how to build and maintain an effective social media governance regime.

In August 2018, Tesla's chairman Elon Musk posted a message on Twitter that he had secured funding to take Tesla private at US$420 per share. This tweet sent Tesla's stock seesawing for weeks. This later turned out to be a marijuana-inspired joke he had made in order to amuse his girlfriend. The United States' Securities and Exchange Commission (SEC) was not amused. It promptly filed charges in September against Musk for securities fraud and distributing misleading information.

Musk ended up paying a US$20 million fine, agreeing to step down as Tesla's chairman for three years and to get pre-approval of his tweets from Tesla's legal counsel. Separately, Tesla also agreed to pay US$20 million to settle claims that it had failed to set in place measures to safeguard Elon Musk's communications, and to replace Elon Musk with two independent directors. By the time the dust settled, Tesla's share price had fallen by more than 30% from early August to late September.

This episode is a dire lesson in the importance of social media governance for businesses, especially for listed companies. The rapid growth of the social media sector – Statista (www.statista.com) estimates that there are now over a billion social media users in Asia – and the opportunities it provides is making it impossible to ignore.

Places in Asia are also driving the growth of internet speeds and connectivity. Hong Kong launched a Smart City blueprint back in 2017, envisioning a highly connected city driven by technology and innovation. Mainland China is also aiming for the high-speed 5G rollout from 2020, with speeds up to 20 times the current 4G speeds.

A recent e-commerce report commissioned by PayPal last year pointed to the growth of a new economy, called 'social commerce', driven – especially in Asia – by the combination of smartphones and e-commerce. The region also leads the world in online advertising spending and will contribute to almost half of the world's increase in ad spending this year, according to estimates by Japanese social media company Dentsu Aegis Network last year.

The benefits of social media can be seen clearly in the hospitality, entertainment and consumer sectors, where the use of social media can directly affect the company's bottom line, or even an entire industry. For example, the film and entertainment industry is still recovering from the backlash of a Sina Weibo post made by a Chinese TV anchor in May 2018. The post comprised a photo of tax-dodging pay agreements, which, while redacted, implicated popular Chinese actress Fan Bingbing and prompted an industry-wide cleanup.

'I think in this day and age a company would have to work very hard to ignore the value and impact of social media,' says Dylan Williams, Company Secretary of Sands China Ltd. The Hong Kong–listed company is the leading developer of integrated resorts in Macau, owning some of the biggest resorts and convention centres such as The Venetian Macao and Cotai Expo.

'We recognise that it helps to build relationships with customers, connect with guests and partners, and also connect with the public generally, in terms of our public image and how we portray ourselves online. It allows us to have real interactions with people, either with those individuals directly or a large subset or even the entire planet.'

Some commonly used social media platforms by businesses are Facebook, Twitter, Instagram, YouTube and LinkedIn. In China, Tencent's WeChat, Tencent QQ, Sina Weibo and Baidu Tieba lead the pack

Highlights

- companies today cannot afford to ignore social media as a channel for corporate disclosures and stakeholder engagement
- the risks involved in using social media channels, however, include reputational damage arising from internal or external posts and leakage of confidential information
- companies need to have policies and internal controls in place to balance the risks and opportunities of social media use

when it comes to social media use. It is increasingly common for companies to publish press releases or to release official statements on these platforms.

Risks

For shipping conglomerate COSCO, social media is a way of enhancing the company's brand and engaging with investors, Guo Huawei, Company Secretary of China COSCO Holdings Company Ltd, says. Internally, it is also used for recruitment purposes. COSCO is one of the largest shipping companies in the world by container volume, and has H shares listed on the Hong Kong and A shares listed on the Shanghai stock exchanges.

'Most companies have official WeChat and Weibo accounts nowadays. The benefit of social media is that good news can travel fast, but fake news, if not controlled well, also travels fast,' says Guo, acknowledging the speed with which information travels via social media.

The probability of an incident like that of Tesla and Elon Musk is, however, relatively low for COSCO. 'All of our employees, from regular employees to higher management, especially board members, have a high awareness of compliance risks,' says Guo.

Still, there are risks to consider when it comes to social media. Legal liabilities do not only apply to directors, they apply to all employees' social media activities. The more severe consequences include reputational risks arising from employees' posts that may harm a business and its reputational interests, and leakage of intellectual property and trade secrets, whether intentional or unintentional.

There are also issues of employee privacy and ethical considerations such as to what extent the employer's inquiries into the online lives of employees is justified on the basis of business concerns. Another very current challenge is the proliferation and rapid dissemination of fake news.

For a listed company, the fundamental principle of social media governance is to ensure two main goals:

1. to enhance and protect the company's business and reputation, and

2. to ensure that the marketplace is fair for their investors.

Regulators in both Hong Kong and Mainland China have made the obligation for listed companies to ensure the accuracy and timeliness of disclosures a focus of their enforcement work. Perhaps less understood by the market, however, is the equally important obligation for listed companies to ensure that some investors are not privileged above others in terms of their access to corporate information. Selective disclosure via social media groups could certainly lead to disciplinary action by regulators, not to mention the loss of trust among wider shareholder and stakeholder groups who feel they have been kept in the dark.

Kenny Luo, Company Secretary of Bank of China (Hong Kong), shared that selective disclosure and information incompleteness are some of the challenges that can result from social media disclosure.

'While social media plays a constructive role in corporate information disclosure and dissemination, it also causes problems such as selective disclosure as well as circulation of misinformation and disinformation. The negative effects brought by disinformation would be massively amplified on social media so the impacts on medium and small individual investors would be particularly significant. This in turn would be likely to result in turbulence in the stock market. It is challenging to ensure the accuracy and completeness of information disclosure on platforms such as Weibo and WeChat with their word limit for text messages.'

'In order to stay in line with the relevant regulatory requirements, compliance checks are necessary before information is disclosed on social media, especially on interactive platforms, given their high frequency of information exchange. The human resources required for this can be a thorny problem for corporates,' Luo adds.

Stock exchanges have strict guidelines on how to communicate with investors. With the increasing popularity of social media as a communications channel for businesses, in 2013 the SEC stated that they accept that most social media is a perfectly suitable method for communicating with investors, provided the information is accurate, although Hong Kong is not on the same page yet.

'At present, there is still no explicit regulatory guidance on whether social media can be used as official channels for information disclosure for issuers in Hong Kong. It will be encouraging to see local regulations catch up with the latest market development and expedite the development of its standards and governance of investor relations practices using social media. It is instrumental to building a multi-layered management system of online investor relations while leveraging the diverse functionalities

> “the benefit of social media is that good news can travel fast, but fake news, if not controlled well, also travels fast”

of stock exchange websites, interactive platforms, corporate websites, designated financial websites and social media outlets,' Luo says.

Nevertheless, what a company says through social media still needs to meet the same standards as other communications, and the information must be released to investors at the same time. In this context, companies need to have policies and measures in place to balance social media governance risks with the opportunities it can bring.

Implementing a social media governance policy

A senior executive in a listed company, who wants to be identified only as Li, says in his personal capacity, 'One way to reduce the risks brought about by social media is to pull together cross-departmental groups from different functions.' Developing and implementing a company-wide social media governance policy is an inter-departmental effort, bringing together the investor relations, marketing and communications, human resources, legal, compliance and finance functions, among others.

Regulations relevant to social media governance policy include those on employee privacy, labour, cybersecurity and the general provisions of civil law. A good social media governance policy would cover both internal and external communications. Stock exchanges usually have strict rules and offer guidelines on internal and external communication. When developing a social media governance policy, Guo advises starting with those first. 'We formulate our communications policy on these guidelines and use them as a basis to exceed the standards set by the stock exchanges. We monitor these guidelines very closely.'

How it is done

One should have a complete management guidance and internal control system for information disclosure. Regarding material information disclosure, there should be a well-defined procedure and sensible control with respect to its identification, internal approval and external distribution,' says Luo.

Secondly, one should embrace new technologies and proactively strengthen the knowledge of relevant applications, and continue to enhance internal management so as to safeguard against the potential risk of information disclosure arising from the use of social media. For example, a robust procedure is needed for managing external communication channels such as corporate websites and corporate Weibo and WeChat accounts, and for authorising senior executives such as directors, supervisors or management members engaged. Management of social media outlets should be centralised. The probability of non-compliance can be minimised by managing the source of risk.

Li also suggests using internal communication software to reduce risks. 'Communication software such as internal messenger can help to reduce risks when it comes to internal surveillance and controls,' he says.

Sands China has strict company-wide social media policies that apply to everyone across all levels, including Williams himself. There are general policies that apply to all team members even when they are posting outside of work hours on personal devices, and there are policies that apply specifically to team members authorised and empowered to communicate and participate in social media on behalf of the company. These policies include guidelines regarding rumours, where the company's approach is not to engage in any speculation.

'It is vitally important that our team members do not spread or participate in the spreading or discussion of rumours online, particularly rumours about any confidential information relating to the company or its finances, or about business strategies that could potentially be confidential. Participating in those discussions will subject team members to disciplinary action internally but could also subject them to legal liaibility as well', Williams says. For those staff authorised to communicate on behalf of the company online, the company actively works to ensure that they are familiar with any relevant subject matter before communicating with or responding to the public. 'Those team members are also told that if subject matters they are not familiar with come up in any discussions, they should avoid engaging further until they have the latest information.'

'Everyone can be the media,' remarks Guo. 'To maintain our high standards of compliance, we also train our board members during our annual meetings,

> “what a company says through social media still needs to meet the same standards as other communications”

as well as when there are any updates in regulation or any changes.'

'Each individual in the company has a responsibility to uphold the company's social media governance policy,' says Li. 'This includes not disseminating confidential information or releasing sensitive information to the public, and not using or propagating incorrect and/or unverified information.'

In fact, all interviewees for this article stressed that training is a key area for the successful implementation of social media governance policy.

For Sands China, the regulatory environment in which it operates is strict and complex. 'There are different and complicated laws and regulations around the world governing the various different aspects of our business, including laws relating to advertising, that we must comply with at all times,' Williams explains. 'Team members who work in the communications, marketing or e-commerce departments must be well-trained', he adds, in order to prevent falling foul of these laws.

'A policy without training is of limited value to any organisation. There must be a culture of providing regular, relevant and up-to-date training. At Sands China, individuals who are responsible for external communication will receive regular scheduled training and then department heads are responsible for the ongoing and day-to-day monitoring of what is being said,' Williams says.

Outreach

Once an overarching social media governance policy has been set, communication with external parties usually falls to the team in charge of social media and external relations. For COSCO, Guo says that in order to allow investors to quickly receive the most complete information, they ensure that investors are aware that the most correct information would always be disseminated on the following channels, in order of importance:

1. official channels designated by the stock exchanges
2. the official company website, and
3. an internal official mailing list, which includes email and the company's official social media channels such as WeChat and Sina Weibo.

The more official channels would be the first two and the third supplements the efforts via social media.

At Sands China, personnel in charge of social media communications to the public fall under another umbrella of policies pertaining to their job scope, on top of company-wide policies on social media for everyone else. The personnel tasked with social media communications generally have to follow the guidelines requiring them to be transparent, respectful, and knowledgeable in respect of the content posted, and need to take responsibility for what is posted.

'They must be transparent and identify their affiliation with the company and their role, they must speak knowledgeably, so they've got to understand the product and the messaging and speak only of what they know', Williams says. Transparency in communication is an area that is heavily emphasised by Sands China.

Staff handling social media communication with the public are also required to take responsibility and manage what is being posted. 'If something gets posted accidentally or is inaccurate, they must respond quickly and clearly and in an upfront manner', Williams explains. 'In addition, all posts must be respectful. Team members should always be mindful to protect the company, our guests, partners, investors, suppliers, business associates, vendors and other team members by not disclosing any personal information or referring to them in any way in posts.'

As a general rule, the relevant staff who are communicating publicly on behalf of the company have to state in what capacity they are communicating. These individuals who are communicating as authorised users are required to make it very obvious to the public with every post they make that they are representing the company in the communication.

With the right social media governance policy in place to manage risks, businesses can reap the benefits of social media to enhance their business and keep them relevant in this age of technology and instant information. Governance experts can help their companies mitigate the risks of using social media by maintaining high compliance standards and using social media to generate a positive reputation among the public.

Poo Yee Kai and Annabelle Low
Journalists

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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CHARTERED SECRETARIES 特許秘書

Future challenges in governance

Practical Corporate Governance Conference 2019

CSj highlights the key themes of the corporate governance conference held by The Hong Kong Institute of Chartered Secretaries and governance institutions in Taiwan last month.

Since 2016, The Hong Kong Institute of Chartered Secretaries (the Institute) has been working closely with peers in Taiwan to share expertise and build their respective professional communities. This work culminated in the holding of a major corporate governance conference last month in Taipei – Practical Corporate Governance Conference 2019 – jointly organised by the Institute, the Governance Professionals Institute of Taiwan and KPMG Taiwan, with the support of The Institute of Chartered Secretaries and Administrators (ICSA) and Taiwan's Chengchi University.

The forum brought together a diverse group of governance professionals from Australia, Canada, Hong Kong, Malaysia, New Zealand, Singapore, Southern Africa, Taiwan, Zimbabwe and the UK, and focused on the key challenges ahead for all stakeholders in governance, both in the region and internationally.

Taiwan's governance roadmap

Given the venue of the conference, Taiwan's governance regime featured prominently in the discussions. In his guest of honour speech, Dr Tien-Mu Huang, Vice-Chairman of Taiwan's independent financial regulator – the Financial Supervisory Commission (FSC) – highlighted the tough choices ahead for regulators in the region eager to increase the competitiveness of their capital markets. Better governance raises competitiveness, of course, but Dr Huang cited the latest research report by CLSA and the Asian Corporate Governance Association (ACGA), published in December 2018 – *Hard decisions: Asia faces tough choices in CG reform* – which draws attention to the pressure on regulators in the region to restructure some standards in a bid to compete. Hong Kong and Singapore, for example, have allowed the introduction of dual-class shares to compete with overseas markets where dual-class shares are allowed.

Dr Huang said that in the past Taiwan had a mediocre governance record, but he reiterated the determination in Taiwan to raise standards. The FSC published its *New Corporate Governance Roadmap (2018–2020)* in April 2018, launching

Highlights

- better governance raises a market's competitiveness, but regulators in Asia are under pressure to restructure some standards in a bid to compete
- many Taiwanese companies still tend to vest excessive power in the company chairman
- Taiwan's new governance regime specifically calls for organisations to have an adequate number of properly qualified governance professionals

> “the chairman is the grandfather who cannot be challenged”
>
> Professor Faung Kai-Lin, Chengchi University

key corporate governance reforms aimed at enhancing board effectiveness, strengthening information transparency and improving regulatory enforcement. Dr Huang stressed that the FSC wants to encourage a bottom-up approach to reinforcing good governance – for example the new roadmap specifically seeks to promote shareholder activism. 'We aim to support corporate governance from the ground up,' he said.

Nevertheless, challenges still remain. Panellist Professor Faung Kai-Lin, Chengchi University, pointed out that, while the law and regulations have improved, weak enforcement remains a problem. Moreover, many Taiwanese companies still tend to vest excessive power in the chairman, she suggested. 'The chairman is the grandfather who cannot be challenged,' she said. She added that Taiwan's company law reflects this by giving directors the option to absent themselves from meetings where they would be in opposition to the chairman.

She welcomed the trend for companies to employ more professional managers, but added that this practice is still relatively rare and professional managers do not always have the independence they need to perform effectively. 'We are doing better on corporate governance, but we can certainly do more,' she said.

In his guest of honour speech, Ulyos KJ Maa FCIS FCS, President, Governance Professionals Institute of Taiwan, thanked the Institute and ICSA for their collaboration with peers in Taiwan. He said that this collaboration had certainly helped governance professionals in Taiwan become more familiar with international best practice. Mr Maa is the first person in Taiwan to attain the ICSA and Institute qualification and was presented with his badges of membership at the conference.

The role of governance practitioners

The role of company secretaries and governance professionals was another key focus of the conference. In her guest of honour speech, Edith Shih FCIS FCS(PE), ICSA International President and Institute Past President, praised regulators and governance practitioners in Taiwan for making explicit in Taiwan's new governance roadmap the importance of the work of governance professionals. Taiwan's new governance regime specifically calls for organisations to have an adequate number of properly qualified governance professionals. Furthermore, the Taiwan Stock Exchange is bringing in a requirement for companies listed on the Exchange with paid-in capital of NT$10 billion or more, as well as those in the financial industry, to appoint a company secretary.

The role of company secretaries and governance professionals is not always acknowledged in law and governance requirements around the world, Ms Shih pointed out. 'At a practical level, however, good governance is all about getting the details right. That means building and maintaining effective internal controls, risk management and board structures and procedures. Having appropriately qualified governance professionals on board ensures that these "details" get the attention they deserve,' she said.

Flora Wang, Director, Head of Investment Stewardship Greater China, BlackRock Asset Management North Asia Ltd, also welcomed the new requirement for larger companies and financial companies to appoint a company

secretary in Taiwan. She pointed out that company secretaries are often the main entry point of contact for investors on governance issues.

'Investors have very limited access to directors, especially independent directors, in Asia,' Ms Wang said, urging company secretaries to 'help us help you' by improving the quality of the dialogue between companies and investors on governance issues. She pointed out that a dialogue with investors has significant benefits for companies since investors can provide a useful perspective on governance issues.

She cited the allegations surrounding Nissan in Japan as a classic example of failure of a board to provide an effective check and balance on management. 'The board of directors is at the core of corporate governance,' she said. 'A well-functioning board of directors provides effective oversight of management and strategic guidance to management.' Board effectiveness is a key focus of BlackRock's engagement with companies. It looks in particular at who is on the board and how they are selected, what skills and experience they bring to the board, how often the board meets, how long the meetings are and how the meetings are organised.

Given the diversity of speakers and panellists at the conference, the forum was able to share knowledge about the responsibilities and status of company secretaries and governance professionals in jurisdictions around the world. For example, Peter Turnbull FCIS, ICSA Vice-President, and Past President of the Governance Institute of Australia, discussed the role of company secretaries in Australia.

All larger and listed companies require a company secretary in Australia, and the role is growing in stature and remuneration – the highest paid receiving above A$1million per annum. 'The role is generally seen as the "go to person" for governance and board support functions,' Mr Turnbull said. He added that, while the role is well established, it is still somewhat misunderstood. Moreover, in common with other jurisdictions, the company secretary's responsibilities are often combined with other roles, for example finance and legal.

Related-party transactions

The Taipei conference was designed with a practical rather than a theoretical focus. Speakers and panellists focused on providing practical advice in areas most relevant to the work of company secretaries and governance professionals – including related-party transactions, risk management, stakeholder engagement and challenges arising from new technology.

Some 70% of businesses in Asia are family businesses. There is also a high proportion of state-controlled entities in Asian markets, making related-party concerns one of the most relevant governance issues in the region. The first session of the conference was devoted to this topic. The forum heard from Winston Yu, Chairman, KPMG Taiwan; Mr Maa of the Governance Professionals Institute of Taiwan; Professor Chu, Associate Professor, Chengchi University; and Megan Ng, Partner, KPMG Taiwan, on the effectiveness of Taiwan's governance regime for related-party transactions (RPTs).

Professor Chu noted that Taiwan's definition of 'related parties' is still narrower than equivalent regimes in Hong Kong and the US. Ms Ng highlighted the difficulty of formulating clear rules relevant to the complex matrix of personal and professional relationships. For example, does the concept of 'spouse' stretch to same sex partners? Moreover, how should the law respond to situations in small companies where all of the directors may be nominally unable to vote on a transaction due to conflicts of interest?

Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research, explained the law and practice of RPTs in Hong Kong. He pointed out that this topic is high on the agenda of professional practitioners in Hong Kong and the Institute has therefore produced a guideline which is available on its website (www.hkics.org.hk).

A key element of the Hong Kong regime, he pointed out, is that it focuses on the people rather than the entities involved. Moreover, the scope to be caught under the regime is relatively wide. For example, the definition of 'related party' includes:

- a substantial shareholder (in Hong Kong you are deemed to be a substantial shareholder if you own 10% or more of the shares)
- a director of the company, a subsidiary, a parent or a fellow subsidiary
- a person exercising significant influence, or
- an associate of any of the above.

Moreover, the stock exchange in Hong Kong has discretion to determine when transactions are deemed to be connected.

> “at this time of global political and financial uncertainty, we need more than ever to promote and adhere to the values of the good governance principles which are the foundation of our profession”

Edith Shih FCIS FCS(PE) International President, The Institute of Chartered Secretaries and Administrators and Institute Past President

Peter Greenwood FCIS FCS, ICSA Council member and Institute Technical Consultation Panel member, brought the related-party session to a close with some practical tips for practitioners. He stressed the need to be strong-willed and authoritative when approaching this issue. The board and management will often be very keen for a deal not to be classified as an RPT, but regulators can generally be relied upon – in cases of doubt – to take the opposite view.

'Some directors and senior managers wouldn't recognise an RPT if it ran across the road and bit them on the leg,' he quipped. 'If need be, take outside advice, but bear in mind lawyers and accountants may have an interest in the deal going ahead, and may give the advice that the board and management want to hear.'

Mr Greenwood emphasised that practitioners must:

- know the law and regulations better than anyone else (since these are technical provisions, you cannot rely on common sense)
- keep up to date on the law and regulation in this area, including its interpretation and application in practice
- ensure that the board and senior management are aware of the meaning of, and obligations resulting from, RPTs, and
- have documented processes in place to monitor, identify and act upon potential RPTs.

In addition he recommended that practitioners should keep a list of the relevant related parties for their organisation and a set of the regulator's size tests. They should also keep a standard memo ready to send to colleagues explaining what an RPT is, identifying related parties, setting out the size tests and asking for confirmation of whether the proposed deal is an RPT.

The road ahead

The Taipei conference was designed to address issues on the horizon, as well as those current to the work of governance practitioners.

Several speakers – among them John Heaton FCIS, Council member, ICSA, and President, ICSA: The Governance Institute; and Jill Parratt FCIS, Vice-President, ICSA, and Past President, Chartered Secretaries Southern Africa – discussed the gradual shift to a stakeholder rather than solely a shareholder focus in corporate governance regimes around the world.

Adapting to new technology features prominently in any discussion of future challenges, of course, and was a central

focus of the forum. David Venus FCIS, ICSA Immediate Past International President, and Past President of ICSA: The Governance Institute, highlighted some of the technologies already in use in boardrooms around the world – hologram technology, virtual reality headsets, simultaneous translation and automated minute taking among them. Interestingly, some companies have already taken the step of adding an AI 'director' to the board, he pointed out. Should such 'robodirectors' have a vote on the issues discussed? While in company law, a machine cannot be regarded as a director, Mr Venus predicted that AI will have an increasing presence in boardrooms.

Loh How Yee FCIS, ICSA Council member, and Vice-Chairman, Chartered Secretaries Institute of Singapore, addressed the concern that AI will replace company secretaries. He pointed out that AI is already doing a lot of the 'heavy lifting' administrative tasks of company secretaries. The higher-level work, however, requires skills which AI lacks – in particular independent professional judgement and emotional intelligence.

Mr Loh recommended that practitioners should understand and embrace AI, pointing out that the value of company secretaries enhanced by AI is likely to increase in the years ahead. 'To stay relevant, don't wait to start embracing AI technology', he said.

The Practical Corporate Governance Conference 2019, held in Taipei on 29 March 2019, was jointly organised by The Hong Kong Institute of Chartered Secretaries, the Governance Professionals Institute of Taiwan and KPMG Taiwan, with the support of The Institute of Chartered Secretaries and Administrators (ICSA) and Taiwan's Chengchi University.

The guideline 'Connected Transactions – A Practical Guide to Good Governance' is available on the Institute's website: www.hkics.org.hk.

The Taipei consensus

The Practical Corporate Governance Conference 2019, held in Taipei, Taiwan on 29 March 2019, marked a major step forward in building closer working relationships between peer professionals and institutions in promoting good governance principles and practices and the governance professional qualification in the region and internationally.

'This conference takes our collaboration to a new level – we are certainly stronger together than apart', commented Samantha Suen FCIS FCS(PE), Institute Chief Executive, in her welcoming speech. This point was backed up by Edith Shih FCIS FCS(PE) International President, The Institute of Chartered Secretaries and Administrators and Institute Past President. In her guest of honour speech, she said the conference demonstrates the huge potential for collaboration and expertise sharing in the governance profession. 'At this time of global political and financial uncertainty, we need more than ever to promote and adhere to the values of the good governance principles which are the foundation of our profession,' she said.

Peter Greenwood FCIS FCS, ICSA Council member and Institute Technical Consultation Panel member, and one of the architects of the forum, emphasised that there is much to be learned from exercises such as these. 'We are a learning organisation,' he said. 'We will take away what we have learned so that we can come back and do better to strengthen the profession in Taiwan and internationally. Corporate governance is a journey and this conference was a step forward in that journey.'

Governance capital

James Lau JP, Secretary for Financial Services and the Treasury, argues that high corporate governance standards will be crucial for maintaining Hong Kong's role as a premier international financial centre.

Chapter 54 in Mainland China's 13th Five-Year Plan has a dedicated chapter on Hong Kong and Macau. Can you share with us the latest developments relating to the increasing integration of the Hong Kong and Mainland financial markets?

'The dedicated chapter on Hong Kong and Macau has actually been augmented by the promulgation of the Outline Development Plan for the Guangdong-Hong Kong-Macau Greater Bay Area (the Outline Development Plan) in February, which goes beyond the promotion of Hong Kong as an offshore renminbi (RMB) centre and quality growth.

First, I would like to clarify that Hong Kong has not been passively pulled into this plan by the Central Government. We actively presented our competitive advantage, and the Outline Development Plan, together with other wider policy initiatives, have put Hong Kong in a unique position to preserve and deploy its core strengths and values. Improving market access to Mainland China also leaves us in an advantageous position to develop our financial services and better connect with the Greater Bay Area and the rest of the Mainland.'

What will be Hong Kong's future role under the Outline Development Plan?

'There are four roles for Hong Kong that are clearly identified within the Outline Development Plan. These relate to Hong Kong's role as an established international financial centre, an offshore RMB centre, an asset management centre and a risk management centre.

These four roles are crucial. Let's take the second role first, that of Hong Kong's role as an offshore RMB centre. In 2004, we started the modest opening of bank accounts for RMB deposits for individuals, then gradually there were corporate accounts and remittance too. We started from the banking business and then moved onto debt issuance – such as the RMB-denominated dim sum bonds issued by multinationals, corporations and multilateral development banks.

The bond market in Mainland China is the third largest in the world – today it is worth about US$13 trillion but international participation in this market is probably less than 2%, which is very low. Usually global bond markets move up and down in sync, but Mainland China's economy and markets are quite different. They have a low correlation with the developed markets so they provide a very good alternative investment for bond investors.

Now that the RMB is fairly steady, we are seeing more interest in the bond market. The Bloomberg Barclays Global Aggregate Index included Mainland China bonds from 1 April this year, and, over the next 20 months, they are going to include Chinese government bonds and those of policy banks like the China Development Bank. Their bonds would account for 6% of the Index, making the RMB the fourth largest currency component and much of this development of the RMB as an international currency has been facilitated by us.

Expanding Hong Kong's offshore RMB role is not only about getting more business for Hong Kong, it is also about the internationalisation of the RMB. This is important because Mainland China has been opening up, starting with reforms on trade and liberalising the services sector over the last 20 years, and that has been the source of growth and prosperity for Hong Kong. If you take the securities market, more than 80% of our stock exchange daily turnover is in Mainland companies, and close to 70% of the market capitalisation is Mainland sourced. In this context, you can see why it is so important that Mainland China is making the transition from a primary and secondary into a tertiary economy.'

How serious an impediment is the absence of capital account convertibility to the internationalisation of the RMB?

'Beijing brought in reforms to the fixing of the RMB exchange rate in 2015. Unfortunately, that triggered a fall in international investor interest in the RMB, reflecting the problem of the lack of capital account convertibility and the restrictions

Highlights

- Hong Kong has built up its market infrastructure over hundreds of years – it would be difficult for Mainland cities to replicate that overnight
- under the 'One Country, Two Systems' arrangement, Hong Kong has access to the Mainland China market while keeping its own currency, markets, the rule of law and regulatory framework
- recent policy initiatives in Mainland China to further integrate the Hong Kong and Mainland financial markets have put Hong Kong in a unique position to preserve and deploy its core strengths and values

on cross-border flows. Hong Kong's role in the "four connects" is crucial in providing a type of "sandbox" for capital account convertibility. In 2014, we launched the Shanghai-Hong Kong Stock Connect and in 2016 we added the Shenzhen-Hong Kong Stock Connect. In between, in 2015, we had the Mutual Recognition of Funds arrangement and then the Bond Connect in 2017. The internationalisation of the RMB through the availability of these connects is vital. With the creation of these channels for RMB denominated financial products, there will be more interest from international investors and central banks.

For investors in Mainland China, Stock Connect has a qualification threshold which requires them to have half a million RMB in their securities and cash accounts. There is a huge demand for investment products for wealth management, however, and the Outline Development Plan mentions that there is room for such wealth management products to be marketed in both directions. We have also been discussing for some time the possibility of creating an Exchange Traded Fund (ETF) Connect. We are trying to broaden the scope of these closed circuit connects. There are some technical issues being addressed and we will also need to consider the scope of the ETFs to be included.'

More broadly, what other measures are being considered to further integrate the Hong Kong and Mainland markets?

'There have been recent changes to tax arrangements designed to encourage the cross-boundary flow of workers. Globally, the general practice is that if you live in a place for 183 days you become a tax resident. The change is that when you do the tally on your stay in the Mainland, the first day and the last day of your stay won't count, because normally these won't be complete days. That means if you stay there five days, it will be counted as three days for the purpose of computing tax residency.

If you live in Mainland China continuously for six years you become liable for taxation on your global income, but another new rule states that, if you have been outside Mainland China for a continuous period of 30 days during a year, then that year won't be counted for the purposes of tax residency. There is considerable interest in being liable for Hong Kong, rather than Mainland, taxation since the tax rate in Hong Kong is normally 15%, but in Mainland China it is 40% plus.

These incentives will encourage cross-boundary flow of professionals and they will also help with cross-fertilisation and cooperation in technology, innovation, artificial intelligence and biotechnology within the Greater Bay Area, since teachers and researchers working cross-boundary will not be caught in the Mainland China tax net so long as they are paying Hong Kong salaries tax.

Other incentives relate to the insurance sector. The increased flow of persons across the boundary has highlighted the need for cross-boundary insurance for motor vehicles, for example. In Switzerland, you can drive across the border to France, Germany or Hungary without needing separate insurance coverage. In Hong Kong if you drive to Macau you need separate insurance cover from a Macau-based insurance company, and the same would apply to Zhuhai. That is very inconvenient. If you could have one insurance policy covering your visit, it would be more user-friendly and sensible.

The Outline Development Plan also mentions medical insurance. The coverage, scope, exclusions and pricing mechanisms of medical insurance policies in Mainland China, as well as the claims processing, can sometimes be quite problematic. Hong Kong provides much more user-friendly medical coverage polices and we are keen to expand cross-boundary business in insurance products to serve the Greater Bay Area.'

What roles can company secretaries and governance professionals play in this?

'For members of the Hong Kong Institute of Chartered Secretaries, both the international and also the Mainland China dimensions are quite crucial. In Hong Kong we have earned our reputation by the importance we attach to corporate governance and compliance. It is vital that company secretaries continue to perform their critical role in ensuring compliance, upholding corporate governance standards and ensuring the general awareness of the importance of accountability.

The reason many Mainland companies want to list in Hong Kong is precisely because of governance. Companies in Mainland China are very used to their own way of doing things and there is nothing wrong with that when they remain domestic. If they want to go global, however, such companies would not be benchmarked against the domestic standard but by international standards in terms of governance and compliance.

So the role of company secretaries is crucial for listed corporations, and the initiatives of the Financial Services and the Treasury Bureau (FSTB) and the creation of the Financial Reporting Council (FRC) are also an important part of maintaining our standards. Currently, we are improving

the process for the auditing of listed companies, for example.

I would also mention environmental, social and governance (ESG) issues. For me the areas of sustainable development, the environment and climate change are as important as the well-established areas of compliance and traditional corporate governance. People are saying that, while Fintech (financial technology) will be taking jobs away from accountants, there are some jobs you cannot take away and one example is ESG. Looking after ESG governance issues is less mechanical, less procedural and less likely to be replaced by AI.'

Significant differences remain between the capital markets and the regulatory philosophies of Mainland China and Hong Kong – are there limits to how far market convergence and regulatory cooperation can proceed?

'There are regulatory differences and that is precisely why the Mainland wants to connect with Hong Kong. Mainland China knows that our standards are benchmarked against world standards and the whole point of improving the connections between the markets is to dovetail with those standards. Mainland China is trying to migrate to higher governance standards.'

Would that affect Hong Kong's competitive advantage?

'Hong Kong is a very strong international financial centre. This is a significant achievement for a city with a population of around 7.4 million people. Of the top 100 global banks, 77 are in Hong Kong. Of the top 20 insurers, 13 are in Hong Kong. The total balance sheet of the banks in Hong Kong is US$3 trillion. Our stock exchange has a market capitalisation of US$4.3 trillion, that is about 11 times our GDP. If you look at fund management, in 2017 the total assets under management was US$3.1 trillion, although, compared to Mainland China, that is still small.

Hong Kong is so unique and so important to Mainland China. It would be difficult to try to find another Hong Kong. Even with the liberalisation of the capital account, Shanghai and Shenzhen would not become Hong Kong overnight because we have built up our market infrastructure and governance over hundreds of years.

That is why I am quite confident of Hong Kong's future role. Hong Kong is small but it is in a very fortunate position because it is placed under the "One Country, Two Systems" arrangement. We have access to the markets in Mainland China and we can keep our own currency, markets, the rule of law and regulatory framework – everything necessary. Some people have been talking about the loss of our identity, or our being forced into the Outline Development Plan, but nothing could be further from the truth.'

Could we discuss your own personal and professional background? Were there any particular events that have shaped your career?

'I worked initially with an airline for five years before going to university. Working at Japan Airlines as a reservations clerk, I learned the nitty gritty of doing work at a very basic level. My job was to pick up the telephone and do seat reservations, book hotels, send telegrams, telex and so forth. That taught me that the details can be very minor but you still have to make sure they are handled properly and conscientiously.

After that I went to the University of Waterloo where I studied computer science and statistics. These technical

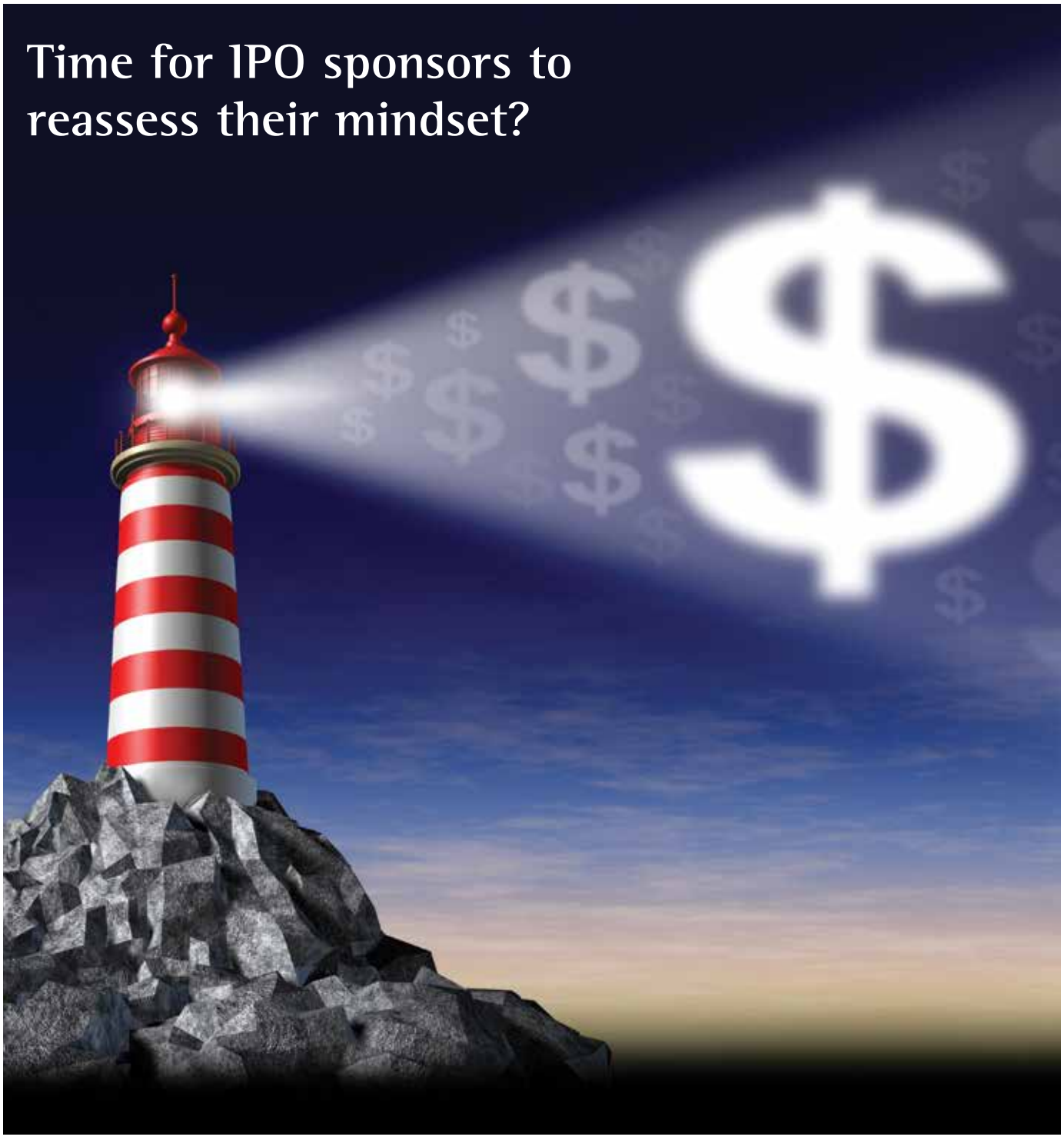
> "in Hong Kong we have earned our reputation by the importance we attach to corporate governance and compliance"

subjects trained me to think analytically. In computer science, you cannot feed some garbage into a programme and hope that something good will come out. We call it "garbage-in, garbage-out". We all have to put in the best of our efforts to do things properly and an analytical mind helps in doing my job today.

After university I joined IBM for two years and then the Hong Kong government. A major and unique experience was my four years of work in Geneva as Hong Kong's deputy trade negotiator. I was handling Uruguay Round negotiations in trade in services and also market access under the General Agreement on Tariffs and Trade. Then I came back and joined the Monetary Affairs Branch for three years, and subsequently moved to the Hong Kong Monetary Authority. All of these jobs were instrumental in shaping me, giving me the experiences and the know-how, making me the person I am today.' CSj

James Lau JP was interviewed by Sharan Gill, journalist, and Mohan Datwani, Senior Director and Head of Technical & Research, The Hong Kong Institute of Chartered Secretaries.

Reasonable due diligence



Tim Mak, Partner, Freshfields Bruckhaus Deringer, gives some tips on how initial public offering (IPO) sponsors can narrow the gap between their own and regulators' expectations of the appropriate level of due diligence required in sponsor work.

In May 2003, Hong Kong Exchanges and Clearing Ltd (HKEX) and the Securities and Futures Commission (SFC) published their *Consultation Paper on the Regulation of Sponsors and Independent Financial Advisers.* Among various observations, the regulators said: 'It has become increasingly clear... that an "expectation gap" remains between many sponsors (on the one hand) and regulators and investors (on the other) about the role and responsibilities of a sponsor'. Practice Note 21 to the listing rules (PN21) was later implemented to narrow the gap.

In May 2012, almost a decade later, the SFC returned to the same theme. 'The SFC has been concerned that standards of sponsor work have fallen short of reasonable expectations,' it said. Paragraph 17 of the SFC's Code of Conduct (Paragraph 17) was later implemented to narrow the gap.

In October 2018, the SFC again returned to that theme. Thomas Atkinson, the SFC's current Executive Director, Enforcement, told the attendees of a regulatory summit: 'We continue to see sponsor work performed below expectations... from what we are seeing, the quality of sponsor work appears to have much room for improvement, and we will continue to focus on this area until standards have improved'. The SFC has done as it has promised, as its latest enforcement actions demonstrate.

Sponsors genuinely believe that they have done, and continue to do, enough. However, regulators can often disagree and believe that more could, and should, have been done. Why is it that the market has been out-of-sync for so long with regulators' expectations, notwithstanding the implementation of increasingly granular and prescriptive regulatory rules and guidance about what regulators expect and an increasing number of enforcement actions designed to underline that?

The answer might be found in time and mindset. With respect to time, whether they want to or not, regulators are capable of being influenced or informed by hindsight. Often, by the time that they assess a sponsor's conduct, many things about the listed issuer might become known, or might be much clearer than they were at the time when the sponsor(s) conducted due diligence. It is easy in those circumstances to find things that were not done, particularly if a subsequent regulatory investigation focuses on finding gaps. Because sponsor due diligence is supposed to be 'reasonable' and is not expected to be 'forensic', there will often be gaps. It may also be easy to feel that if the things that had not been done had actually been done at the relevant time, that might have made a difference to the outcome. Sponsors, however, do not have the luxury of hindsight. Their work is prospective and they are not clairvoyants. So how can they mitigate that disadvantage and, accordingly, their risks?

Mindset might provide an answer; mindset can be of critical importance because it drives behaviour. In this article, we examine the key areas where, from past regulatory pronouncements and enforcement action, and from our own experience of defending regulatory matters involving sponsors, we consider there might be an expectation gap between regulators and market participants in the sponsor space generally. In doing so, our intent is to help sponsors reflect on and, if necessary, recalibrate their mindset and approach to due diligence so that they can narrow that gap.

Overall mindset and approach

The regulators' expectations

Since the implementation of PN21, regulators have emphasised the need

Highlights

- the SFC's pledge to 'continue to focus on this area until standards have improved' should be taken seriously
- even though sponsors' clients are the listing applicants, they also have a responsibility to act as a proxy for the Stock Exchange, the SFC and the investing public
- sponsors should take additional and sufficient steps to test the information supplied by the listing applicant and its management

for sponsors to adopt an attitude of 'professional scepticism' when conducting due diligence on a listing applicant.

That attitude requires a questioning mind and a critical assessment of information provided by the listing applicant and being alert to other information (obtained from other due diligence steps), including information from appointed experts, that contradicts or brings into question the reliability of that information. Put another way, that attitude might be described as 'trust, but don't trust too much, and certainly not unless the information that's been provided has been properly tested against information that has been separately obtained from various other sources or angles'.

Behind that requirement is the regulators' hope and expectation that after a sponsor has:

- looked closely at multiple aspects of the applicant's business, seen individually and collectively (for example its products, markets, competitors, customers, suppliers, creditors, key assets, management, finances, performance, internal controls and qualifications for listing), and

- been closely involved in preparing the applicant's listing document.

The sponsor will then be able to form a sufficiently complete and holistic view of the listing applicant and its business such that it can satisfy itself, as a proxy for the Stock Exchange, the SFC and the investing public (even though the sponsor's client is the listing applicant), that:

- the applicant is legitimate; its business is legitimate, viable and will continue to be viable; and those who run it are competent and can demonstrate a track record of performance, and

- the applicant's listing document is sufficiently full and meaningful such that it complies with the relevant content requirements and enables a prospective investor to make an informed assessment about whether to invest in the IPO.

If a sponsor is unable to satisfy itself of that, after taking all of those steps, regulators will expect the sponsor to take appropriate steps (including, for example, notifying the relevant regulators).

Where an expectation gap can arise

An expectation gap can arise where a sponsor is too trusting of the listing applicant and its management, and is not sufficiently critical and questioning of the information that it receives from them, and therefore does not take additional and sufficient steps to test that information against other available information. An example of this would be where the listing applicant provides to a sponsor a document purportedly issued by a governmental body, whether officially or unofficially, and the sponsor accepts that document and relies on it, or allows other professional advisers involved in the IPO to rely on it, without taking any independent steps to check or confirm whether that governmental body had in fact issued that document.

The disconnect with regulators' expectations also applies to situations where the sponsor does not itself look closely enough at sufficient aspects of the applicant's business, individually and collectively, to obtain comfort that:

i. the applicant is legitimate, its business is legitimate, viable and will continue to be viable, and those who run it are competent and can demonstrate a track record of performance, and

ii. the applicant's listing document is sufficiently full and meaningful such that it complies with the relevant content requirements and enables a prospective investor to make an informed assessment about whether to invest in the IPO.

Similarly, an expectation gap may arise where the sponsor relies too heavily on others, like lawyers and accountants, to do what it should itself do. For example, whilst a lawyer can assist with the review of material contracts from a legal perspective, regulators expect a sponsor to conduct a thorough parallel review from a business perspective and as a 'sanity check'. In that review, if the sponsor identifies, for example, inconsistent material terms, this could be a 'red flag' which necessitates further investigative steps. Such further steps might include, for example, enquiries to seek to confirm the genuineness of the contract with the contract counterparty/counterparties.

The planning of due diligence

The regulators' expectations

Regulators expect that due diligence on a listing applicant is carefully planned, in accordance with the guidance in PN21 and Paragraph 17, and tailored to the specific nature and circumstances of the applicant's business. Each applicant's business and circumstances will be different, and so must be the

> “regulators have emphasised the need for sponsors to adopt an attitude of ‘professional scepticism’ when conducting due diligence on a listing applicant”

due diligence steps and enquiries that a sponsor should conduct. There is no one-size-fits-all.

Where an expectation gap can arise

An expectation gap can arise if, for example, a sponsor uses a ‘standard’ PN21 checklist, and adopts a ‘tick-box’ (form-over-substance) approach to due diligence. Where a PN21 checklist is used, it should be supplemented with an additional, contemporaneous document, or documents, that explain(s) clearly the sponsor’s thinking, analysis, rationale and planning with respect to how due diligence on the applicant should be conducted.

The listing applicant’s key assets

The regulators’ expectations

A significant number of past cases where regulators have found problems or concerns with listed companies, where investors have suffered significant loss, have involved false assets, inflated revenue, false accounting and fabricated documents. In light of that, regulators expect sponsors to scrutinise carefully a listing applicant’s key assets (including the physical existence of those assets, the applicant’s legal title to them and an assessment of whether those assets are commensurate with the applicant’s business), and track-record period revenue.

Where an expectation gap can arise

A disconnect or gap can arise if, for example, a sponsor does not:

- itself physically inspect and scrutinise the listing applicant’s key assets or, where it is not well equipped to do that, specifically instruct a suitable expert to do so and to provide an appropriate written report from which the sponsor can conduct its own assessment of those assets, and/or
- take sufficient steps to confirm that the listing applicant has proper legal title in the relevant jurisdiction(s) to its key assets, including to confirm the genuineness and effectiveness of key title documents.

Customers and other third parties

The regulators’ expectations

In view of the risk of inflated revenue, as referred to above, regulators expect a listing applicant’s track-record period revenue to be carefully scrutinised, not just by the listing applicant’s reporting accountants and auditors but also by the sponsor(s). A key aspect of that scrutiny is not just the revenue itself but those behind it – the applicant’s customers.

The thinking is as follows: if a deceit involving false accounting and fabricated internal accounting documents is to be executed successfully, that deceit must, of necessity, also involve fabricated customer-related documents and fabricated customers. Put another way, if a listing applicant’s customers are not genuine, it is likely that its revenue is also not genuine, and vice versa.

For those reasons, regulators expect careful, methodical planning of customer due diligence and independent, thorough scrutiny of key customers with minimal involvement (and therefore control), if any,

> "the risks for sponsors who find themselves in disagreement with the SFC about the quality of their due diligence are significant"

by the listing applicant, to reduce the risks of a deceit involving fabricated customers.

Where an expectation gap can arise

A disconnect or gap can arise if, for example, a sponsor:

- does not plan customer due diligence and select key customers for interview in a sufficiently methodical, logical and objectively justifiable way such that mitigates the risk of deceit involving inflated revenue
- does not take appropriate steps to ensure that a customer interviewee is a genuine representative of the customer and is properly authorised by that customer to be interviewed by the sponsor(s) about that customer's relationship with the listing applicant over its track-record period, and is properly able to give the sponsor(s) the information about that relationship that the sponsor(s) seek(s)
- does not contact a customer's representative directly and independently of the listing applicant to arrange an interview with that individual
- does not independently query a customer if that customer's representative refuses, or is reluctant, to be interviewed by the sponsor(s) in person at that customer's own premises, and the sponsor is not sufficiently satisfied that the customer's response to its query is acceptable, such that it mitigates the risk that that customer might be fabricated
- agrees to interview a customer's representative face-to-face at a location *other than* that customer's own premises, without a sufficiently good reason (with which the sponsor is satisfied for good reasons) and without taking any additional steps to mitigate the risk that the customer representative in question might be fabricated (for example through conducting internet searches, and making direct enquiries of the customer's main office about the customer representative in question)
- agrees to a telephone interview with a customer's representative without taking any additional steps to mitigate the risk that the customer representative in question might be fabricated (for example through taking steps to confirm the interviewee's identity, and making direct enquiries of the customer's main office about the customer representative in question)
- allows the listing applicants' representatives to participate in or control the interview and/or interview process (for example by sitting in on interviews)
- a customer representative's conduct gives rise to questions about whether he/she is a genuine customer representative, and that conduct is not followed up with additional enquiries, the results of which reasonably mitigate the risk that the representative in question might be fabricated, and/or
- subsequently becomes aware of information that might raise a question about whether a customer's representative previously interviewed might be fabricated, and no additional enquiries are conducted to reasonably mitigate that risk.

Reliance on experts

The regulators' expectations

Regulators expect that a sponsor will work closely with other professional advisers and experts in the course of

conducting due diligence on the listing applicant. Regulators understand that each adviser/expert has a role to play, and generally do not expect a sponsor to replicate or duplicate the work of each adviser/expert. However, regulators do expect a sponsor to scrutinise critically an expert's credentials, scope of work, assumptions, methodology, work product and conclusions and to ensure that the sponsor is reasonably satisfied about all of that in the circumstances of the case.

Where an expectation gap can arise

A disconnect or gap can arise if, for example, a sponsor:

- has not carefully considered the assumptions underlying an expert's or professional adviser's work, to satisfy itself that those assumptions are reasonable and appropriate in the circumstances
- does not fully understand how an expert has conducted its work and reached its conclusions, and/or
- does not specifically instruct an expert to conduct work that would objectively be regarded as important or essential in the circumstances of the case.

Record-keeping

The regulators' expectations

Regulators expect that a sponsor will keep a proper, contemporaneous, written audit trail of the work that it conducted as a sponsor, such that, if necessary, they can piece together after the event (including years after the event) what had happened, who did what and why, at the time of the sponsor's work on the IPO in question.

Where an expectation gap can arise

A disconnect or gap can arise if, for example, a sponsor:

- does not contemporaneously document, and document sufficiently fully and accurately, the planning and execution of key due diligence steps and enquiries. Documenting thinking, analysis and rationale is as important as documenting the conclusions reached
- relies solely or predominantly on a 'standard' PN21 checklist for documenting its due diligence work. Such templates often do not include sufficient space for detailed text about the thinking, analysis, rationale and conclusions reached with respect to each key step
- has not been closely involved in preparing notes of interviews with the listing applicant's key third-party stakeholders, like customers, suppliers and creditor banks, and does not ensure that those notes are full, accurate and meaningful, and/or
- relies solely or predominantly on others (for example sponsor's/sponsors' legal counsel) to assist with record-keeping.

Concluding remarks

The SFC's pledge to 'continue to focus on this area until standards have improved' should be taken seriously. Given the SFC's indication in October 2018 that it had investigated 30 cases of suspected sponsor misconduct involving 28 sponsor firms and 39 listing applications, the enforcement actions recently publicised by the SFC are unlikely to be the last of their kind. Accordingly, sponsors would be well advised to carefully reassess how they might be able to narrow, or further narrow, the expectation gap.

The risks for sponsors who find themselves in disagreement with the SFC about the quality of their due diligence are significant. In addition to an increasing magnitude of financial penalties, the risk of a suspension of sponsor authorisation is real, as is the risk of being the subject of a test case before the Market Misconduct Tribunal for suspected breach of Section 277 of the Securities and Futures Ordinance (SFO) and/or before the High Court for investor compensation under Section 213 of the SFO.

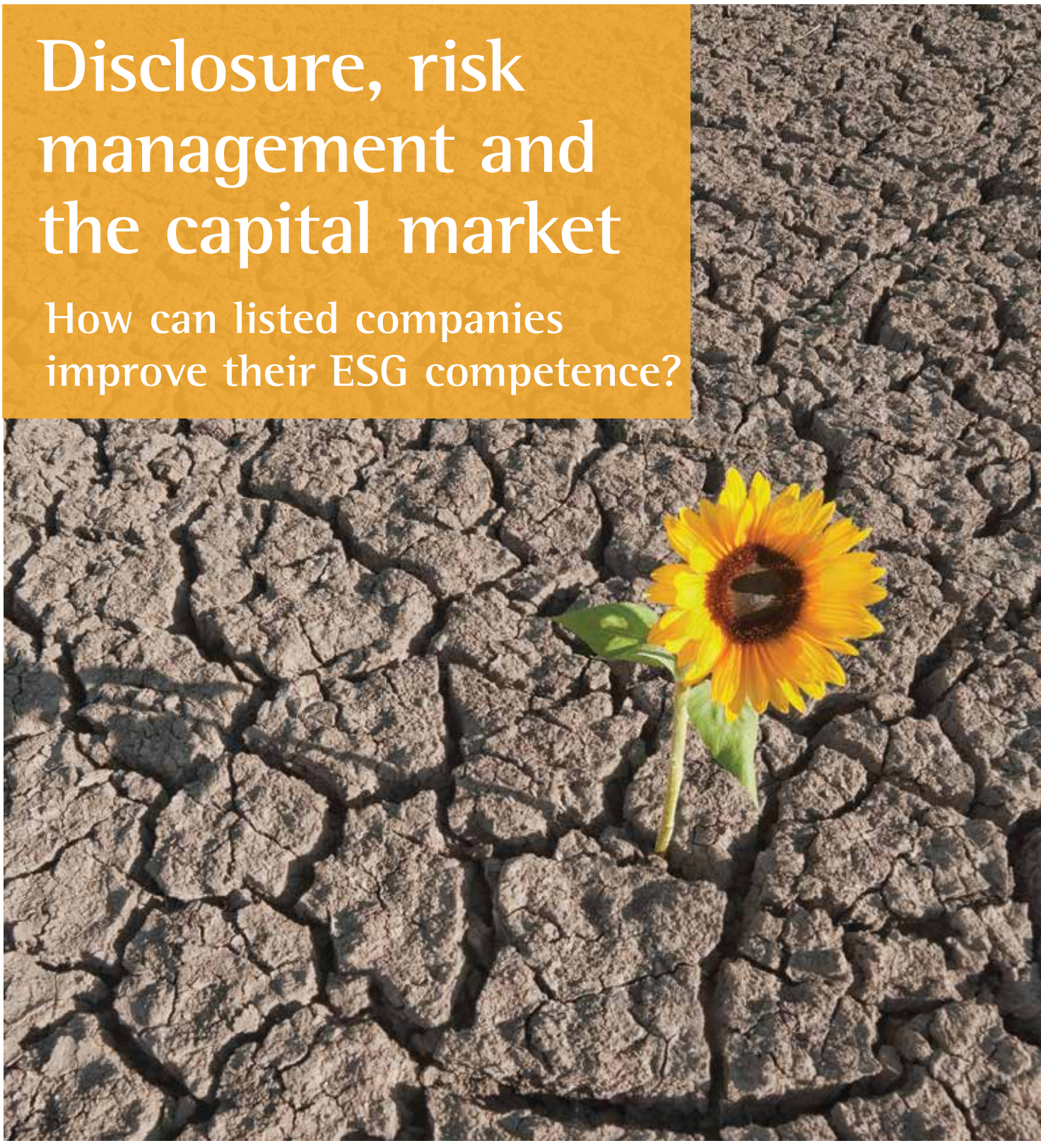
Tim Mak, Partner

Freshfields Bruckhaus Deringer

> *More information is available on the websites of Hong Kong Exchanges and Clearing Ltd (www.hkex.com.hk) and the Securities and Futures Commission (www.sfc.hk).*

Disclosure, risk management and the capital market

How can listed companies improve their ESG competence?



Brian Ho, Partner, Climate Change and Sustainability Services, EY, discusses how environmental, social and governance disclosure requirements may evolve in Hong Kong and what businesses can do to prepare for the change.

Environmental, social and governance (ESG) issues are not simply a matter of compliance or philanthropy, but of emerging risks. EY's 2018 global investor survey – *Does your nonfinancial reporting tell your value creation story?* – found that 97% of institutional investors have already incorporated ESG factors into their investment decisions, either in a structured or informal way. Moreover, at least 87% agree that companies should be reporting on ESG from a risk perspective. As climate-related financial losses become more prominent, for example, there has been an increasing focus on climate change as a corporate risk. The survey found that 48% of investors would not invest in organisations failing to address climate risks, compared to only 8% responding in this way in 2017.

Hong Kong is one of the leading global financial centres, but are our listed issuers disclosing useful information under the new ESG-disclosure regime? EY's research analysing the ESG reports of over 1,200 Hong Kong listed issuers over two years found that issuers have been in general doing a box-ticking exercise aimed at meeting the conspicuous 'comply or explain' provisions of the Hong Kong Exchanges and Clearing Ltd (HKEX) *ESG Reporting Guide* (Appendix 27 of Main Board Listing Rules). Where HKEX's original intention was to enhance issuers' transparency on nonfinancial risks, so as to allow informed investment decisions, EY's research suggests that many of the ESG reports surveyed were not up to HKEX's expectations.

ESG analysts representing institutional investors are asking tough questions about organisations' ESG risk management standards. How are your directors held accountable to ESG risk management? How does your organisation identify emerging ESG risks? Do you have a strategy to manage ESG risks and does that strategy align with your corporate strategy? How are you measuring your ESG performance against your targets?

The *ESG Reporting Guide* does address these issues but in a less direct way. Moreover, companies tend to observe the

Highlights

- the next revision to Hong Kong's environmental, social and governance (ESG) regime is likely to require more detailed disclosures of companies' materiality analyses
- organisations need to start with an accurate assessment of the actual and potential impacts of ESG risks and opportunities on their business
- the board needs to be involved to drive effective ESG risk management

> “EY’s research analysing the ESG reports of over 1,200 Hong Kong listed issuers over two years found that issuers have been in general doing a box-ticking exercise”

‘comply or explain’ provisions of the guide, for example the ‘General Disclosures’ requirements, but not the Recommended Best Practices. These recommendations, however, often relate to equally important ESG issues and addressing these issues would make companies’ ESG reports more valuable documents to investors. The next round of consultation on revising the *ESG Reporting Guide* is around the corner and we are expecting HKEX to ask for more detailed disclosures on directors’ responsibilities, the process of materiality assessment and the inclusion of targets for environmental management. In addition the Securities and Futures Commission (SFC), in its *Strategic Framework for Green Finance*, highlighted the importance of nonfinancial risks – especially climate risks – as key factors in investment and financing. A reform in ESG corporate disclosure standards seems unstoppable.

But for issuers to provide answers to the investor questions above, they will have to create new management systems, policies, metrics and targets. Directors’ involvement is fundamental. EY’s experience tells us, however, that issuers find it difficult to introduce new topics to their organisations’ governance agendas.

How to get directors involved

Bear in mind that boards of directors are responsible for ESG strategy and risk management anyway, so the question is therefore what is the best way for directors to assume such responsibilities. How hands-on should your directors be when governing ESG issues? Are they familiar with the subject? Who in the organisation is responsible for the management of nonfinancial risks and do they report to the board to ensure that directors are aware of current developments? What sort of authority in the organisation is needed to drive ESG risk management? Should the board authorise and endorse effective ESG risk management?

An ESG working group led by a member of the senior management team is a good idea, although the roles of those involved will vary depending on the role directors are playing. The working group could implement ESG policy at an executive and operational level, collect information regarding ESG management performance and report back to the board.

ESG risk identification – rethinking materiality analysis

HKEX is expected to ask for more detailed disclosures of companies’ materiality analysis – which is essentially the ESG risk identification process. Stakeholder engagement is still the core element of materiality analysis. The classic approach is to circulate a survey to stakeholders, asking which ESG topics are more important or impactful to them. However, such surveys may be not as effective as we expect, depending on how they are designed. There is a high chance for a misalignment in how stakeholders conceive your questions and what you intend to ask, so that the survey results may not be very reliable.

As an alternative, it can be more effective to interview representatives of key, vocal stakeholders for deeper insights. Key stakeholders are those who can potentially impact the organisations’ prospects: key customers for a B2B business, suppliers of key raw materials, governments, lawmakers and key personnel. Some stakeholders are more important than the others, but prioritisation is what is often missed.

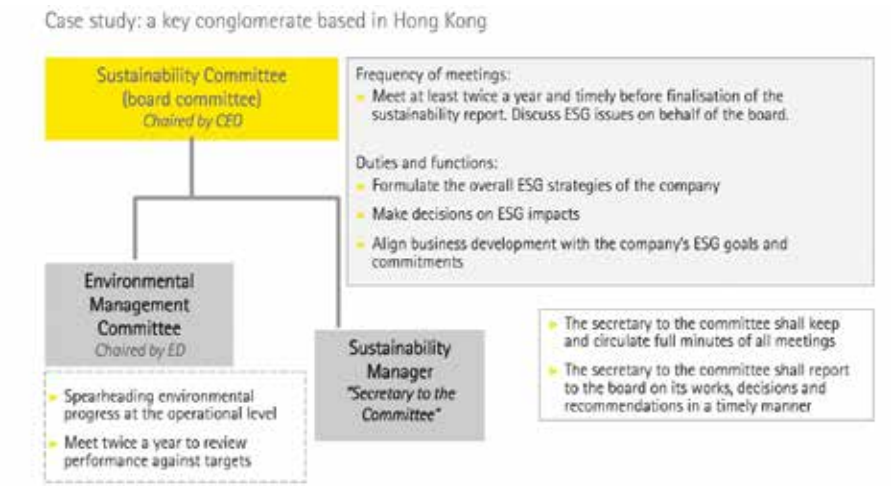
ESG indices and ratings are widely regarded by investors as important tools reflecting ESG performance and helping them to assess the ESG risk level of listed companies. Therefore, in addition to stakeholder engagement, companies should also refer to these ESG indices and ratings and industry specific research.

Setting targets for your environmental performance

The first challenge when setting a target is to understand where you currently are. Knowing your current performance level is fundamental, but companies sometimes get it wrong because the data they have may not even be correct. Misstatement risk is high for organisations with complex operations that rely on the manual input of ESG data, but digital solutions are available in the market to enhance the accuracy of the metrics used, such as Robotics Process Automation and dedicated sustainability data management software.

Another challenge of target setting is to make sense of the target number you have chosen. A random number without support can be either non-achievable or not sufficiently ambitious. The emerging science-based target initiative may give us a clue to how a justifiable target can be set. A science-based target for carbon

Options to get directors involved



Source: Disclosure, risk management and capital market: how can listed companies improve their ESG competence? ***EY***

reduction, for example, can be based on your organisation's carbon emission quota, depending on its economic contribution and sector, under the relevant national target to keep the global temperature rise to no more than 1.5°C above pre-industrial levels, as determined by the latest report of the Intergovernmental Panel on Climate Change. Following the same logic, a company in Hong Kong can derive a target for non-hazardous waste reduction, based on the HKSAR Government's published waste reduction target by 2022 (*Hong Kong Blueprint for Sustainable Use of Resources*, published by the Environment Bureau, HKSAR Government in 2013).

The proposed target should then be sent to the board for approval, followed by implementation, monitoring and public reporting.

Discussing and managing climate risk

As previously discussed, the capital market is focusing on the climate risks of listed companies. The Task Force on Climate-related Financial Disclosure of the Financial Stability Board has arrived at a number of recommendations relating to climate-related disclosure. These include recommendations to discuss:

- the organisation's governance around climate-related risks and opportunities
- the actual and potential impacts of climate-related risks and opportunities on the organisation's businesses, strategy and financial planning
- the processes used by the organisation to identify, assess and manage climate-related risks, and
- the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

However, climate risk is a rather unfamiliar topic in the Hong Kong market today. Businesses may find it difficult to start even from square one, which is to understand how climate change may affect the organisation. If climate risk disclosure is going to happen, businesses should consider seeking expert opinions on this matter.

Act before you feel the pressure

This article has discussed how ESG disclosure requirements may evolve in Hong Kong and what businesses can do to prepare for the change. This is especially important for larger companies more vulnerable to global institutional investor pressure. To publish ESG reports that are valuable to investors, businesses should:

- ensure your directors understand the relevance of ESG to the business
- assess your ESG risks and climate risks – seeking expert help if necessary
- assess how reliable your current ESG data is, and
- consider smart solutions to enhance data accuracy while reducing reporting costs.

Brian Ho, Partner, Climate Change and Sustainability Services
EY

> *EY's 2018 global investor survey – 'Does your nonfinancial reporting tell your value creation story?' – is available via the EY website: www.ey.com. The views reflected in this article are the views of the author and do not necessarily reflect the views of the global EY organisation or its member firms.*

Investor-state dispute settlement reform

Mapping the way forward

The Honourable Teresa Cheng GBS, SC, JP, Secretary for Justice, Hong Kong Special Administrative Region of the People's Republic of China, outlines the major issues pertinent to investor-state dispute settlement (ISDS) reform in Hong Kong and internationally.

Recourse to ISDS has been an important feature of modern investment treaties since the 1980s. It allows a foreign investor to bring a claim directly against the sovereign state in which the investment takes place. In recent years however, ISDS has been criticised for lacking legitimacy. Reforms are called for.

As an investment hub and international dispute resolution centre, Hong Kong stays astute to the ongoing debate on possible ISDS reform. Our mind is set on how to properly resolve investor-state disputes in light of the growing number of foreign investments along the Belt and Road routes. The United Nations Commission on International Trade Law (UNCITRAL) Working Group III (WG III) has been entrusted to work on possible ISDS reform at the international level.

On 13 February 2019, the Department of Justice (DoJ) co-organised with the Asian Academy of International Law (AAIL) the ISDS Reform Conference: Mapping the Way Forward, with a view to contributing to the ISDS reform discussion and facilitating relevant policy-making in the Asia-Pacific region. The event attracted over 200 participants, consisting of leading international practitioners, academics, business leaders and senior officials from international organisations such as the International Centre for Settlement of Investment Disputes (ICSID) and UNCITRAL, as well as senior government officials including those from the Ministry of Foreign Affairs and Ministry of Commerce of the People's Republic of China. This short article seeks to outline the major issues pertinent to ISDS reform, with reference to the insights shared by the speakers at the conference.

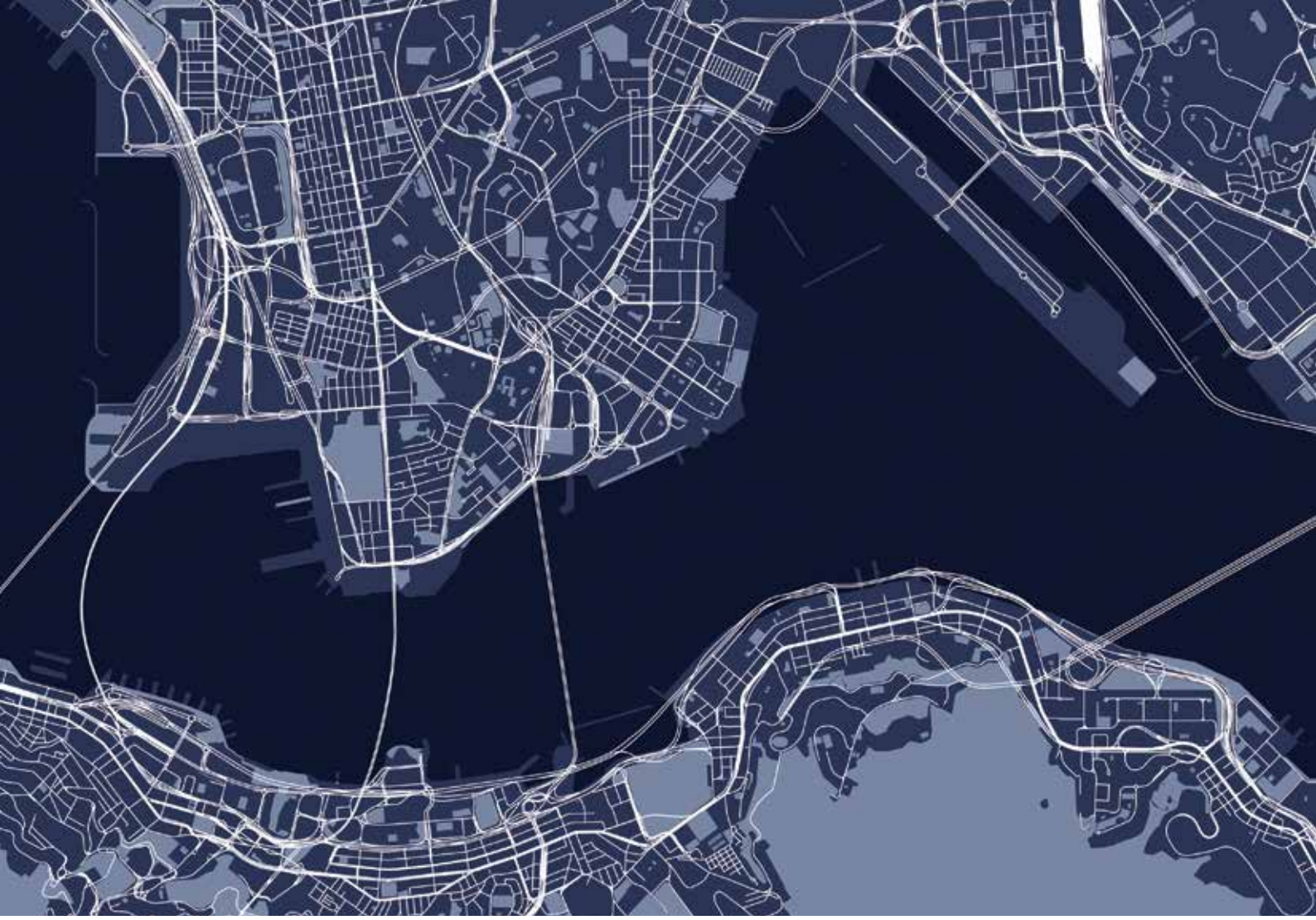
A word of caution

Before going into the details of ISDS reform, a word of caution is in order. First, while perceptions may be relevant to states in making policy decisions on ISDS and maintaining the legitimacy of ISDS, deliberations on the case for its reform should be fact-based. Second, any ISDS reform measure should not compromise the flexibility of arbitration. The beauty of arbitration is its flexibility. Parties are free to choose a tribunal which will act promptly and be able to devise procedures that will best suit the relevant case at hand. Reforms which come at the expense of flexibility may be worth a second thought.

Consistently wrong or wrongly consistent?

Inconsistency and lack of predictability are some of the concerns identified by the UNCITRAL WG III. Generally, consistency would support the rule of law and enhance confidence in the stability of the investment environment, thereby bringing legitimacy to the regime.

While the importance of the rule of law is beyond doubt, there is, though, the question of whether 'inconsistency' is necessarily undesirable. As in the common law system where judges'



dissenting opinions may over time become the prevailing law, inconsistent arbitral decisions do not necessarily reflect a lack of rule of law. As suggested by Professor Brigitte Stern in the conference, contradictions may be seen as dialectical in the sense that they foster 'cross-fertilisation' of different positions. Inconsistencies will eventually be resolved in favour of the best approach. The arbitral process of converging by emerging consensus fits well with the evolutionary character of international investment law.

Even if inconsistency is seen as a problem, would a standalone appellate mechanism, tasked with a substantive review of arbitral decisions, be practical and desirable?

'Appeal is a balancing act between finality and correctness,' as put eloquently by Professor Albert Jan van den Berg in the conference. However, considerable political will may be needed to negotiate a new treaty for a novel institutional appeal structure. There are also technical issues yet to be resolved, such as how the appeal mechanism for ISDS awards would interact with the existing multilateral instruments such as the New York Convention and the ICSID Convention. Professor Jan van den Berg finds it doable to amend the ICSID Convention by certain *inter se* agreements to provide for an appellate body thereunder.

Safeguards may also be put in place to uphold the delicate balance. For the appeal procedure and grounds of appeal, reference may be drawn to Section 69 of the English Arbitration Act 1996 and opt-in appeal provisions under Schedule 2 to the Hong Kong Arbitration Ordinance (Cap 609), whereby leave has to be obtained from the court, and appeal is

Highlights

- inconsistency and lack of predictability of investor-state dispute settlement (ISDS) awards are among the concerns prompting reform proposals
- the HKSAR Government is considering a number of possible reforms, including the promotion of mediation as an alternative dispute settlement mechanism
- the Investment Mediation Rules under the Closer Economic Partnership Arrangement may serve as a model for possible ISDS reform

> “the challenges of ISDS reform for policy makers are enormous but surmountable with proper fact-based studies and professional advice”

limited to points of law. Further thoughts may, however, be warranted on whether domestic courts are the right avenue for challenging ISDS awards, given the international nature of these disputes and the wide implications that usually entail.

Arbitrators and decision-makers

It has also been suggested that ISDS is marked by a 'revolving door', in that single individual actors may play multiple roles as arbitrators, counsel, expert witnesses and tribunal secretaries within the ad hoc arbitration system. Such 'double hatting' poses a threat of conflicts of interest. An effective challenge mechanism is seen to be a critical safeguard to ensure arbitrators' independence and impartiality. This challenge system is, however, subject to abuse, for there is a general increase in the number of tactical, vexatious or frivolous challenges.

Some reformers therefore suggest replacing the ad hoc tribunal system with a court system. The court will consist of judges appointed or elected by states on a permanent basis or for a fixed term. It is hoped that, by sitting permanently and deciding cases over time, judges would deliver consistent decisions. Certain recent investment treaties (such as the Comprehensive Economic and Trade Agreement between Canada and the European Union) have indeed envisaged the creation of such a permanent, international court institution. Strong political will is again indispensable for the creation of such an institution. Its development is being closely observed by businesses and professionals, as well as states.

Costs and duration

WG III acknowledged that lengthy and costly ISDS proceedings may raise practical challenges to claimant investors and respondent states. Third-party funding thus becomes a heated topic, with concerns raised on conflicts of interest and extent of disclosure, as well as on transparency of third-party funding arrangements.

Following the Hong Kong decision in *Unruh v Seeberger & Anor [2007] 2 HKC 609*, where it was left open whether maintenance and champerty would apply to arbitrations in Hong Kong, and subsequent to the Law Reform Commission's report in 2016, legislative amendments to the Hong Kong Arbitration Ordinance passed in 2017 (which came into effect in February 2019) now makes it beyond doubt that third-party funding of arbitration is allowed. The Code of Practice for Third-Party Funding of Arbitration, issued in December 2018, further plays a useful role in setting minimum standards of good practice for third-party funders of arbitration and laying down safeguards for funded parties.

As for costs, they can be reduced if ISDS proceedings are streamlined. To that end, one should not lose sight of other alternative dispute resolution (ADR) mechanisms for resolving disputes, a prime example being investment mediation.

Investment mediation

Investment mediation is within the mandate of WG III, which is to consider the possible reform of ISDS and is not limited to investment arbitration. At its core, it is a kind of dispute resolution mechanism that emphasises harmony and achieving a win-win situation for the disputing parties. It provides host states and foreign investors with options to resolve investment disputes consensually with a high degree of autonomy and flexibility. Apart from allowing the disputing parties to control the mediation process, investment mediation can facilitate them to reach mutually beneficial, creative and forward-looking settlement arrangements that are based on their common interests and needs, with the assistance of professional mediators.

As an example, remedies available under investment arbitration are generally limited to monetary damages (with interest) and restitution of property. However it has been observed that, for many ISDS cases, an award of monetary damages or even an injunction is not the optimal solution. As commented by Professor JW Salacuse in a paper in 2009, whilst an arbitration award is a 'one-dimension solution' to a problem, a mediated solution is often 'multi-dimensional'. The range of settlement terms that can be included in mediated settlement arrangements is limitless.

Professor Lucy Reed shared the view at the conference that investment mediation is a promising ADR mechanism in ISDS. She has provided some thoughts on promoting investment mediation.

These include emphasising the range of remedies available under investment mediation, publishing successful examples of investor-state mediations with sensitive information redacted, and building mediation procedures into dispute resolution stages, even when the dispute is in arbitration.

On the architecture of procedures, Professor Jack Coe proposed at the conference a 'concurrent' or 'shadow' mediation so as to promote unencumbered exploitation of the strengths of arbitration and mediation while also containing costs and preventing one process from disrupting or subjugating the other. Under his proposal, one or more third-party neutrals will pursue collaborative problem-solving efforts that coincide, on a coordinated basis, with mediation. Such an idea of 'shadow' mediation is appealing. It is comparable to maritime arbitration, where there is an umpire who will not have to write the award unless the two arbitrators do not agree with each other. It is worth looking into how this idea can be developed and institutionalised by, for example, crystalising the same into a protocol.

Capacity building and training for government officials are also beneficial for enhancing their understanding on the investment mediation process. The DoJ, ICSID and AAIL co-organised the 'Investment Law & Investor-State Mediator Training' in October 2018. This is the first investment law-cum-investment mediation training course in Asia, and is pivotal in developing Hong Kong as an international investment law and dispute resolution skills training centre. Equally important is that, through public education, confidence in the use of investment mediation can be built up, especially amongst government officials representing states.

Investment mediation under the CEPA Investment Agreement

Hong Kong has been a staunch supporter of investment mediation. In the Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), we have established mediation as the dispute settlement mechanism. CEPA Investment Mediation Rules (Rules) are now in place, and it is hoped that the Rules may serve as a model for possible ISDS reform.

The mediation mechanism together with the Rules set out, among other things, the factors outlined below.

- ***Number of mediators:*** the default position is a mediation commission consisting of three mediators (with each party appointing one and the chairperson to be appointed jointly by the parties). The advantage of such an arrangement is that the parties can have a say in appointing its own mediator, which gives them a greater sense of control over the process.

- ***Qualification of mediators:*** the mediators shall have attained relevant qualifications in mediation, and shall have professional knowledge and experience in the fields of cross-border or international trade and investment and law, and shall remain impartial in resolving the investment disputes.

- ***Code of conduct of mediators:*** each mediator shall be independent and impartial and shall mediate the dispute in a manner that is transparent, objective, equitable, fair and reasonable. Mediators are required to avoid their performance being affected by their own financial, business, professional, family or social relationships or responsibilities. Unless otherwise agreed by the disputing parties, by accepting an appointment as a mediator, the mediator is deemed to agree not to act in any other role in respect of any differences or disputes which are the subject of the mediation, or in which a party is involved as a disputant pending resolution. Moreover, if during the course of mediation, mediators become aware of any facts or circumstances that may call into question their independence or impartiality in the eyes of the parties, they are required under the Rules to disclose those facts or circumstances to the parties in writing without delay.

Conclusion

The outline above shows that the challenges of ISDS reform for policy makers are enormous but surmountable with proper fact-based studies and professional advice. At this crossroad in our journey to ISDS reform, it is our sincere hope that the conference, together with the efforts made and experience shared by the HKSAR Government and eminent speakers, will assist in mapping the way forward.

Teresa Cheng, SC, Secretary for Justice
Hong Kong Special Administrative Region of the People's Republic of China

Ms Cheng would like to thank Eric Yuen, Government Counsel (Treaties & Law), for his assistance in preparing this article.

Professional Development

Seminars: March and April 2019

18 March

Company secretarial practical training series: how easy to close down a company in Hong Kong

Chair: *Wendy Ho FCIS FCS(PE), Institute Education Committee member, and Executive Director of Corporate Services, Tricor Services Ltd*

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

20 March

Formation and administration of companies limited by guarantee for charitable purpose

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

Speaker: *Susan Lo FCIS FCS(PE), Executive Director of Corporate Services, Tricor Group/Tricor Services Ltd*

26 March

Corporate rescue in Hong Kong: present and future

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

Speaker: *Dr Davy Wu, Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University*

29 March

Ethics Legacy – roles of senior management in corporate governance

Speaker: *Katherine Ma, Senior Community Relations Officer, Hong Kong Business Ethics Development Centre, ICAC*

1 April

Hong Kong and US IPOs: Cayman and BVI compared and contrasted, legal issues and practical hints

Chair: *Edmond Chiu FCIS FCS(PE), Institute Membership Committee Vice-Chairman and Professional Services Panel member, and Executive Director, Corporate Services, Corporate & Private Clients, Vistra Hong Kong Ltd*

Speakers: *Derrick Kan, Partner; Juno Huang, Of Counsel; and Karen Zhang Pallaras, Associate; Maples Group*

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
21 May 2019	2pm-3pm	Introduction to Exchange Traded Funds (ETF)	1
21 May 2019	4pm-5.30pm	Shareholders' disputes – practical tips on the rights & remedies	1.5
22 May 2019	6.45pm-8.45pm	Managing corporate risks - introduction to COSO enterprise risk management framework	2
23 May 2019	4.30pm-6pm	Golden handshakes & directors duties in Hong Kong	1.5
23 May 2019	6.45pm-8.15pm	Would a statutory business judgment rule help directors sleep better at night in Hong Kong?	1.5
13 June 2019	6.45pm-8.15pm	Effective dispute resolution and how to achieve it – the Hong Kong position	1.5

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

Membership

Members' activities highlights: March and April 2019

23 March 2019
Fellows Only – Hiking Tour (Half-day)

27 March 2019
Members' Networking – Personal Cyber Security

6 April and 13 April 2019
Fun & Interest Group – Strength and Stretching Training

Forthcoming membership activities

Date	Time	Event
22 June 2019	9.30am – 1.30pm	Fun & Interest Group – Dog Training
4 July 2019	6.30pm – 8.30pm	Members' Networking – Governance Challenges in Social Enterprises and NGOs
20 July 2019	10.00am – 12.30pm	Governance Professional Mentorship Programme – Training for Mentors and Mentees

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

Membership (continued)

New graduates

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

Chan Lai Yee	Lee Ying Wai
Cheung Yee Wa	So Po Fung
Ho Mei Ling	Tse Yik Chun
Lee Wai Fung	Wong Kiu Fung

New Fellows

The Institute would like to congratulate the following Fellows elected in March 2019.

Cheung Kwok Ting, Joanne FCIS FCS

Ms Cheung is currently the Senior Company Secretarial Manager of CIFI Holdings (Group) Co Ltd (stock code: 00884). She has extensive experience in company secretarial practice and handling compliance matters. Ms Cheung obtained a bachelor's degree in law from the University of London and a bachelor's degree in laws from Peking University Law School.

Lui Mei Yan, Winnie FCIS FCS

Ms Lui is a Director of Corporate Services of Tricor Services Limited and provides professional corporate services to Hong Kong listed companies as well as multinational, private and offshore companies. Prior to joining Tricor, Ms Lui acted as the company secretary of a number of Hong Kong listed companies providing professional corporate secretarial services to the boards of directors and was responsible for compliance and corporate governance issues. Ms Lui holds a bachelor's degree in business administration and a master's degree in business administration.

Mak Yuk Kiu FCIS FCS

Ms Mak is currently the Company Secretarial Manager of Alibaba Group, responsible for regulatory compliance, corporate governance and corporate secretarial matters of Alibaba Pictures Group Limited (stock code: 1060).

Shu Hing Yip FCIS FCS

Mr Shu had more than 20 years of experience in corporate administration, corporate governance and company secretarial matters. Since January 2010 he has been a Company Secretary and Secretary to the Board of the Airport Authority Hong Kong. Mr Shu is also a Director of AsiaWorld-Expo Management Limited and HKIA Limited. He obtained a master's degree in science in professional accounting and corporate governance (with distinction) from the City University of Hong Kong and a bachelor's degree in industrial engineering from Technical University of Nova Scotia, Canada.

Wong Chun Sek, Edmund FCIS FCS

Mr Wong is currently a Practising Director of Patrick Wong C.P.A. Limited, responsible for audit and assurance engagement, company secretarial and compliance services and risk management. He has a bachelor's degree in accountancy, a master of science degree in applied accounting and finance, a master's degree in business administration and a master's degree in corporate governance. Mr Wong is also a Fellow member of The Institute of Certified Public Accountants, and a member of The Hong Kong Institute of Chartered Accountants in England and Wales and Association of Chartered Certified Accountants in the United Kingdom. He is the current Vice-President of The Society of Chinese Accountants and Auditors.

Wong Lok Man FCIS FCS(PE)

Ms Wong is the Company Secretary Manager of DLA Piper Hong Kong, a global law firm, overseeing the company secretarial team in the firm. Ms Wong has over 17 years of experience in the company secretarial field. She started her professional career with KCS Limited and joined DLA Piper Hong Kong in 2008. She has been a holder of the Institute's Practitioner's Endorsement since 2008.

Chan Hei Wah FCIS FCS

Company Secretary, Prime Credit Holdings Limited

Hui Yui Kei FCIS FCS

Legal Counsel, Alibaba Group (NYSE stock code: BABA)

HKICS fee structure 2019/2020

The Institute has been striving to achieve its strategic goals in promoting good governance in Hong Kong and Mainland China with the fees which are the same as the majority of the fees charged by the Institute in 2013/2014. Taking into consideration of the Institute's work in launching the new designation, New Qualifying Programme and increased benefits to members, graduates and students, as well as the increase in inflation and other costs over the years; the Council has resolved to increase the annual subscription and certain other related fees for members, graduates and students for the financial year 2019/2020. Kindly note that certain major fees including the seminar, examination and exemption fees will remain the same as 2018/2019.

The membership renewal notice, together with the debit note, for the financial year 2019/2020 will be sent to all members and graduates in July 2019. Members and graduates should settle payment as soon as possible, but no later than Monday, 30 September 2019. Failure to pay by the deadline will constitute grounds for membership or graduateship removal.

Subscription and related fees for members, graduates and students for the financial year 2019/2020, which will apply from 1 July 2019 to 30 June 2020, are set out as follows:

Members/Graduates

Items	Amount (HK$)
Annual subscription	
Fellow	2,620
Associate	2,240
Graduate (holding the status for less than 10 years, i.e. on or after 1 August 2009)	1,930
Graduate (holding the status for more than 10 years, i.e. before 1 August 2009)	2,260
Concessionary subscription	
Retired rate (note 1)	500
Reduced rate (note 1)	500
Hardship rate (note 1)	1
Senior rate (note 2)	100
Election fees	
Fellow (note 3)	1,000
Associate	2,000
Graduate Advancement Fee	1,950
Re-election fees	
Fellow	3,300
Associate	3,000
Graduate	2,500
Other fees	
Membership card replacement	200
Certificate replacement	200
Membership confirmation	250
Transcript application	200 per copy
Replacement for pin	
• Member	100
• Graduate	100
• AP	100

Notes

1. Members are eligible to apply for the retired, reduced or hardship rate if they have fulfilled the respective requirements, subject to the Membership Committee's approval. Application forms can be downloaded from the Membership section of the Institute's website: www.hkics.org.hk. The application deadline for any concessionary subscription for the year 2019/2020 is Friday, 31 May 2019.
2. Senior rate is automatically granted to eligible members by the Institute. No application is required.
3. The special rate for the Fellow election fee at HK$1,000 will continue to be applicable during the financial year 2019/2020.

Membership (continued)

Mainland Affiliated Persons Programme

Items	Amount (HK$)
Annual subscription	2,290
Registration fee (for new Affiliated Person who registered between 1 July and 31 December)	2,290
Registration fee (for new Affiliated Person who registered between 1 January and 30 June)	1,145

Students

Items	Amount (HK$)
Registration fee	1,280
Re-registration fee	1,500
Renewal fee	800
Late studentship registration administration charge (note 4)	650
Examination fee	1,100 per subject
Examination postponement fee	850 per subject
Examination appeal fee	2,200 per subject
Exemption fee	1,100 per subject
Exemption re-application administration charge (note 5)	700 per application
Transcript application	200 per copy
Examination technique workshop	500 per subject
ICSA study text (IQS strategic and operations management)	800 per copy
CCA late registration charge	450 per month
Studentship Card Replacement	200
Replacement for pin	
• Student	100

Notes

4. An administration charge will be applied to studentship registrations submitted within the following specific periods for taking the corresponding examinations in June and December.

Late studentship registration period	Examination diet
1-15 August 2019	December 2019
1-15 February 2020	June 2020

5. An administration charge for each exemption re-application will be applied to students who do not settle their exemption fees within the designated period of time following the approved exemption.

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

Advocacy

Meeting with Secretary for Constitutional and Mainland Affairs

Institute President David Fu FCIS FCS(PE) and Council member Natalia Seng FCIS FCS(PE) joined a meeting with the Secretary for Constitutional and Mainland Affairs Mr Patrick Nip Tak-kuen, JP on 21 March 2019. The meeting was organised by the Hong Kong Coalition of Professional Services Limited (HKCPS) of which the Institute is an ordinary member. During the meeting, representatives from the Institute and other member bodies of HKCPS shared their views on the Greater Bay Area development plan.

ICSA Council Meeting in Taipei

The International Council of The Institute of Chartered Secretaries and Administrators (ICSA) held its Council Meeting on 27 and 28 March 2019 in Taipei, Taiwan. Institute Past President and ICSA International President Edith Shih FCIS FCS(PE), Institute Representative and ICSA Council member Peter Greenwood FCIS FCS and Institute Chief Executive Samantha Suen FCIS FCS(PE) attended the meeting. As the current Institute Secretary, Simon Osborne FCIS, will be stepping down as the Chief Executive of the ICSA UKRIAT Division effective 30 June 2019. He will also be stepping down as ICSA's Secretary. The International Council extended their appreciation to Mr Osborne for the significant contribution he has made in his many years as ICSA's Secretary. The International Council had appointed Cynthia Mora Spencer ACIS as ICSA's Secretary from 1 July 2019.

ICSA Director General and the Divisional Chief Executives also met on 26 March 2019 in Taipei to discuss operational issues.

HKICS interviewed by SCMP Classified Post

ICSA International President and Institute Past President Edith Shih FCIS FCS(PE) was interviewed by SCMP Classified Post. During the interview, Ms Shih emphasised the important role played by qualified Chartered Secretaries in the business world and introduced the pathways to becoming a professional with dual designation of Chartered Secretary (CS) and Chartered Governance Professional (CGP). The dual designation is designed to meet the growing demand of governance professionals in Hong Kong, Ms Shih indicated. BDO Hong Kong's Managing Director and International Liaison Partner Johnson Kong, and Head of Corporate Secretarial Services Teresa Lau ACIS ACS, also joined the interview. They further explained the market needs for CS and CGP as well as how their company supported their staff members to pursue the CS and CGP qualifications. The interview was published by SCMP Classified Post on 6 April 2019.

To read the article, please visit the News section of the Institute's website at: www.hkics.org.hk

Advocacy (continued)

Practical Corporate Governance Conference 2019

On 29 March 2019, the Institute held its first corporate governance conference in Taipei, Taiwan. The Practical Corporate Governance Conference 2019 was held jointly with KPMG Taiwan and the Governance Professionals Institute of Taiwan, and with the support of Taiwan's Chengchi University and The Institute of Chartered Secretaries and Administrators.

The conference brought together expertise from Hong Kong, Taiwan and internationally, including Australia, Singapore, Southern Africa and the UK, to address the challenges ahead for company secretaries and governance professionals – focusing on related-party transactions, risk management, stakeholder engagement and the challenges arising from new technology. The conference, attended by over 170 local and international governance professionals, marked a major step forward for the Institute's work building closer working relationships among peer professionals and institutions in promoting good governance principles and practices, as well as the qualification for governance professionals in the region and internationally.

The Practical Corporate Governance Conference 2019 is reviewed in this month's International Report article.

Institute welcomes Taiwan delegation for a study tour to Hong Kong

On 11 and 12 April 2019, the Institute welcomed a delegation from Taiwan for a study tour to Hong Kong. The delegation, led by Professor Chu of Chengchi University of Taipei, comprised 25 senior governance professionals. They visited CLP Group, Hong Kong Exchanges and Clearing Limited (HKEX) and Securities and Futures Commission to understand their ESG efforts and Hong Kong's regulatory regime respectively. ICSA International President and Institute Past President Edith Shih FCIS FCS(PE), Council member and Past President Natalia Seng FCIS FCS(PE), Robin Healy FCIS and Mohan Datwani FCIS FCS(PE) briefed the delegates on the role of the company secretary in a listed company and financial institution, and the development of trust and company services providers and the anti-money laundering regime in Hong Kong. Independent Commission Against Corruption Chief Corruption Prevention Officer Stanley Chio provided a briefing to the delegation on anti-bribery and anti-money laundering matters.

At Black Point Power Station, CLP Group

At HKEX Connect Hall, HKEX

At CK Hutchison Holdings

Networking luncheon with Dr George Lam, Chairman, Hong Kong Cyberport Management Company Ltd

On 16 April 2019, the Institute hosted a networking luncheon with members and practitioners. At the luncheon, Dr George Lam provided an update about the vision and work of Cyberport, its global position as tech hub and the opportunities for members as governance professionals in the tech sector. Attending the meeting from the Institute were Institute President David Fu FCIS FCS(PE); Treasurer Ernest Lee FCIS FCS(PE); Council member and Education Committee Chairman Dr Eva Chan FCIS FCS(PE); Council member Bernard Wu FCIS FCS; ICSA International President and Institute Past President Edith Shih FCIS FCS(PE); Institute Past Presidents Dr Davy Lee FCIS FCS(PE), Duffy Wong FCIS FCS and Ivan Tam FCIS FCS; Institute Chief Executive Samantha Suen FCIS FCS(PE); and Institute Secretariat executives.

International Qualifying Scheme (IQS) examinations

May 2019 diet examination schedule - Reminder

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

IQS Study Packs (online version)

The updated version of the IQS study pack for Corporate Secretaryship was made available to students from 24 August 2018 onwards. 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 found in 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 the PrimeLaw account, please contact WKHK's customer service by email: HK-Prime@wolterskluwer.com.

Syllabus update – Corporate Administration

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

Studentship

AAP Luncheon

The Institute's Academic Advisory Panel luncheon was held on 22 March 2019, and was attended by representatives of the Institute, local universities and tertiary education institutions. The luncheon was hosted by Institute Council member and Education Committee Chairman Dr Eva Chan FCIS FCS(PE) and Treasurer and Education Committee Vice-Chairman Ernest Lee FCIS FCS(PE), as well as Council member and Education Committee Vice-Chairman Bernard Wu FCIS FCS, accompanied by Chief Executive Samantha Suen FCIS FCS(PE) and Registrar Louisa Lau FCIS FCS(PE). Recent Institute developments and other educational matters were shared with the academics during the luncheon.

Guests (in alphabetical order):

- Dr Derek Chan, Associate Dean (Undergraduate), Faculty of Business and Economics, University of Hong Kong
- Dr June Cheng, Associate Professor, Team Leader of Accounting & Law, School of Accounting and Finance, The Hong Kong Polytechnic University
- Professor Say Goo FCIS FCS, Professor, Faculty of Law, University of Hong Kong

- Prof Kevin Lam, Professor & Head, Department of Accountancy, School of Business, The Hang Seng University of Hong Kong
- Dr Claire Wilson, Assistant Academic Vice-President, Head, Department of Law and Business, Hong Kong Shue Yan University
- Dr Raymond Wong, Associate Head, Associate Professor, Department of Accountancy, City University of Hong Kong
- Professor Susana Yuen ACIS ACS, Dean, School of Business and Hospitality Management, Caritas Institute of Higher Education

Information sessions at universities

With the launch of the New Qualifying Programme (NQP) in January 2020, information sessions have been conducted with the graduating class of Partnership BBA programmes and Collaborative Courses. Information about NQP and preparations for the transition were shared with students.

The Open University of Hong Kong on 19 March 2019
BBA (Hons) in Corporate Administration and BBA (Hons) in Corporate Governance

Hong Kong Shue Yan University on 1 April 2019
BBA (Hons) – Corporate Governance Concentration

City University of Hong Kong on 22 March 2019
Master of Science in Professional Accounting & Corporate Governance (Corporate Governance stream)

Hong Kong Shue Yan University on 3 April 2019
BCom (Hons) in Law and Business – Corporate Governance and Management

Studentship (continued)

New Students Orientation

The New Students Orientation was held on 26 March 2019 and aimed to give new students up-to-date information about the Institute and the New Qualifying Programme. Institute Council member and Education Committee Chairman Dr Eva Chan FCIS FCS(PE) and Education Committee member Wendy Ho FCIS FCS(PE) shared their experience in career development. Examination preparation advice was provided by Kathy Sun, subject prize winner of the International Qualifying Scheme (IQS) December 2018 examinations. Induction to the PrimeLaw account was given to the attendees by Wolters Kluwer Hong Kong Limited. Participants found the sharing relevant and useful.

Student Ambassadors Programme

The Institute arranged visits to Hong Kong Exchanges and Clearing Limited (HKEX) and Companies Registry (CR) for our student ambassadors on 20 March 2019 and 27 March 2019 respectively. Students found the visits very inspiring and informative.

The Institute would like to thank HKEX and CR for their support

New Qualifying Programme (NQP) – reminder

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

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

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

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

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

Recruitment – examiners/reviewers/markers of examination papers

The Institute is now looking for subject experts who would like to contribute to the Institute's qualifying programme as examiners, reviewers and markers of examination papers.

Requirements:

1. Sound knowledge and experience in the related module(s)
2. Experience in setting post-graduate level examination papers and marking schemes
3. Relevant academic and/or professional qualifications in the related module(s)
4. Membership of HKICS /ICSA is an advantage

Interested parties should send a full resume to recruit@hkics.org.hk and quote 'EE_2019'.

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

Policy – payment reminder

Exemption fees

Students whose exemption was approved via confirmation letter on 4 February 2019 and 27 February 2019 are reminded to settle the exemption fee by Friday 3 May 2019 and 24 May 2019 respectively.

Studentship renewal

Students whose studentship expired in March 2019 are reminded to settle the renewal payment by Thursday 23 May 2019.

HKICS responds to scripless market consultation

The Institute has made a submission to the *Joint Consultation Paper (JCP) on a Revised Operational Model for Implementing an Uncertificated Securities Market (USM) in Hong Kong*. The Institute expresses its support for the underlying rationale for the implementation of an USM regime in Hong Kong, but highlights a number of governance-related and other issues that need to be addressed. These are outlined below.

Costs

For listed issuers, the implementation of the USM regime may involve set-up costs. The Institute believes that it is not appropriate to expect listed issuers to bear these costs when this is an overall securities market initiative and cost recovery could only be achieved over time. The cost issue needs to be explained further and the Institute reserves its right to comment on this issue if a disproportionate burden is to be borne by listed issuers.

Cyber risk

The cyber risk management relating to the USM regime is of critical importance. This is because with dematerialisation the integrity of the electronic ROM is the centrepiece of the USM regime. It would be helpful for the appropriate parties under the Joint Consultation Paper (JCP) to explain how this issue will be addressed, including the licensing requirements for participants under the USM regime and how are they to practically manage the cyber risk on a continuous basis.

Shareholder communication

A major practical issue for listed issuers and their company secretaries that needs to be considered is the increased demands for shareholder communication. The assumption is that, with the increase in the number of shareholders on record under the USM regime, there would be increased participation by shareholders at shareholder meetings.

There is already a real and present problem in securing venues to hold shareholder meetings, which are becoming increasingly costly for listed issuers. As such, the Institute submits that with the implementation of the USM regime, regulators should promote the concept of hybrid meetings – an issue which the Institute and the Institute of Chartered Secretaries and Administrators (ICSA) has been promoting.

The submission also urges the Securities and Futures Commission (SFC) and Hong Kong Exchanges and Clearing Ltd (HKEX) to address the related issue of implied consent for electronic communication. The Institute calls upon regulators to consult the market further on electronic communications to both support the USM initiative and to reduce paper use in corporate communications.

More information is available on the websites of the SFC and HKEX: www.sfc.hk, and www.hkex.com.hk. The Institute's submission is available on its website: www.hkics.org.hk.

SFC publishes guidance for green or ESG funds

On 11 April 2019, the Securities and Futures Commission (SFC) issued a circular to provide guidance to management companies of SFC-authorised unit trusts and mutual funds on enhanced disclosures for SFC-authorised green or environmental, social and governance (ESG) funds. The guidance is one of the regulatory initiatives of the SFC's *Strategic Framework for Green Finance*, which includes, among other things, providing disclosure guidance to facilitate disclosure and reporting of green-related investment products. The SFC has evaluated the quality of disclosure of SFC-authorised funds with investment focus on climate, green, environmental or sustainable development and found that a majority of them do not specifically disclose how investment managers integrate ESG factors into the criteria used in their investment selection process.

To enhance disclosure comparability between similar types of SFC-authorised green or ESG funds and their transparency and visibility, the circular sets out the SFC's expectation on how the existing Code on Unit Trusts and Mutual Funds and disclosure requirements apply to SFC-authorised green or ESG funds and provides guidance to narrow the disclosure gap among these funds.

More information, including the SFC's 'Strategic Framework for Green Finance', published in September 2018, is available on the SFC's website: www.sfc.hk.

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