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October 2019

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



State of governance

The vital signs

AML/CFT compliance

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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 the Mainland. HKICS was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI) – formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of CGI in 1990 before gaining local status in 1994 and has also been CGI'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.

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From February to April this year, our Institute conducted a survey entitled 'The State of Governance', seeking insights from our members into current corporate governance practices, policies and attitudes in Hong Kong and the mainland of China (the Mainland). The ensuing report – 'Taking the temperature: the state of corporate governance practices in Hong Kong and the Mainland' (State of Governance Report) – confirms that corporate governance is in general good health in Hong Kong and the Mainland, but it also highlights where more work needs to be done. Governance, for example, is still too often seen as a compliance issue rather than a strategic priority. Also, more work needs to be done in bringing issues of diversity, inclusion, anti-sexual harassment and whistleblowing more effectively within corporate governance systems.

This month's cover story will give you a fuller picture of the findings of the report. Here, I would like to emphasise two points. Firstly, the report shows a broad-based recognition of the importance of good corporate governance for the success of organisations. This may seem an obvious point, but good governance comes at a cost and organisations need to recognise the value of what they are paying for.

Secondly, the report demonstrates the governance thought leadership role that our Institute plays. This is very timely, coinciding with the renaming of our global Institute, The Institute of Chartered

The state of governance

Secretaries and Administrators (ICSA), as The Chartered Governance Institute (CGI), effective 16 September 2019. This move repositions CGI as the premier global qualifying organisation for governance professionals – whether they be company secretaries, directors, compliance professionals, lawyers, accountants, risk managers or any of the other professionals involved in governance work. The formal launch of CGI's new identity takes place next month. This change of name reflects a very significant milestone in the evolution of our global Institute and our profession. For our members in Hong Kong and the Mainland, this transition has already been bearing fruit. Nearly 80% of our members already have the dual Chartered Secretary and Chartered Governance Professional (CS/CGP) qualification. The next step will be the launch of the new post-nominals for CGI members – 'FCG' for Fellows and 'ACG' for Associates. Members who have attained the CS/CGP designation will be able to add CS/CGP after their post-nominals. This, along with the launch of our new qualifying programme – HKICS Qualifying Programme (HKICS QP) – in January 2020, with its updated curriculum giving greater emphasis to governance, risk management and boardroom dynamics, will make the transition complete.

I would like to thank everyone involved in producing our State of Governance Report. It was written by Peter Greenwood FCIS FCS, with input and advice from the Institute's Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE), and with overall support from the Institute's Chief Executive Samantha Suen FCIS FCS(PE). Peter will be well known to many of you as Chairman of our biennial corporate governance conferences. He has also served as a member of our Technical Consultation Panel (TCP), Company Secretaries Panel, Technical Committee,

Appeal Tribunal and Advisory Board, which he chaired from 2012 to 2014. Currently he serves as a representative of our Institute on the International Council and the Chairman of the Thought Leadership Committee of CGI.

Thanks are also due to those who assisted with the design of the survey, including Dr Gao Wei FCIS FCS(PE), Tommy Tong and the Institute's TCP under the chairmanship of April Chan FCIS FCS, as well as the Institute's Chief Operating Officer and Professional Development Director Ken Yiu ACIS ACS(PE), who conducted the survey.

I would also like to thank Edith Shih FCIS FCS(PE), International President, CGI; David Graham, Head of Listing, Hong Kong Exchanges and Clearing Ltd; Pru Bennett, Senior Advisor, Brunswick Group Hong Kong; and Andrew Weir, Regional Senior Partner, Hong Kong/Vice Chairman, KPMG China; who provided insightful quotes on the value of the report. Last but certainly not least, thanks should also go to the respondents to the survey whose insights form the basis of the report's findings.

As you can well imagine, this report was no small undertaking and everyone who contributed to it can be justly proud of both furthering our understanding of the state of governance in this part of the world and also furthering our Institute's standing as a thought leader in the governance space.

Before I go, I would also like to thank everyone involved in our inaugural Community Service Month, which kicks off this month.

A handwritten signature in black ink, appearing to read 'David Fu', written in a cursive style.

David Fu FCIS FCS(PE)

公司治理状况

今年2月至4月期间，公会展开了一项「公司治理状况」调查，向会员收集意见，从而了解中国内地和香港目前的公司治理实务、政策及态度。其后得出的《探讨·现状：香港与内地公司治理实践状况》报告，确认香港和内地的公司治理大致良好，但亦指出须多下功夫的范畴。例如人们仍然往往视公司治理为合规工作，而非策略性重点。此外，把多元化、包容性、反性骚扰及举报弊端等事宜有效地纳入公司治理制度方面，也须多加努力。

今期的封面故事详尽报道报告内的调查结果。在这里，我想特别强调两点。

首先，报告显示受访者广泛认同机构能否成功和良好公司治理十分重要。这点看似不言而喻，但其实良好治理涉及成本，机构须认同他们花钱换来的价值。

其次，报告显示公会在治理方面起着引领思想的作用。这讯息来得正是时候，刚好配合特许秘书及行政人员公会 (ICSA) 这全球组织于9月16日正式更名为特许公司治理公会 (CGI)。这次更改名称，标志着我们的全球组织CGI重新定位，成为各类治理专业人员（包括公司秘书、董事、合规人员、律师、会计师、风险管理或涉及治理工作的任何其他专业人士）的资格颁授机构。

对于香港和内地的会员而言，过渡安排已取得成果：接近八成的公会会员已获得特许秘书和Chartered Governance

Professional(CS/CGP) 的双重资格。下一步是为CGI会员引入新的职衔称谓，即资深会士'FCG'和会士'ACG'。已取得CS/CGP资格的会员，可在其资格后注明CS/CGP。随着新专业评审计划在2020年1月推出，在课程内加强治理、风险管理和董事会运作等内容，过渡安排便告完成。

我谨向参与制作公司治理状况报告的所有人士致谢。报告由林英伟FCIS FCS撰写，公会高级总监兼专业技术及研究部主管高朗FCIS FCS(PE) 提供资料及意见，并获公会总裁孙佩仪FCIS FCS(PE) 给予支持。许多会员都知道，林英伟是公会两年一度的企业管治研讨会的主持。他亦曾任公会专业知识咨询小组、公司秘书专责小组、技术委员会、上诉审裁组及咨询委员会成员，在2012至2014年间出任咨询委员会主席；目前代表公会参与CGI国际理事会的工作，CGI的思想引领委员会主席。

我亦衷心感谢协助设计此项调查的人士，包括高伟博士FCIS FCS(PE)、Tommy Tong、由陈姚慧儿FCIS FCS担任主席的公会专业知识咨询小组，以及负责进行调查的公会营运总监兼专业发展总监姚家伦 ACIS ACS(PE)。

我亦感谢CGI国际会长施熙德律师FCIS FCS(PE)、香港交易及结算所有限公司上市科主管戴林瀚、香港Brunswick Group高级顾问Pru Bennett，以及毕马威香港高级合伙人／毕马威中国副主席韦安祖；他们提出睿智的见解，点

出报告的价值。最后，受访者提供宝贵的意见，为报告的结论提供基础，我在此一并致谢。

大家可以想像得到，制作这份报告毫不简单。报告有助读者了解香港和内地的公司治理状况，也提升公会作为治理事宜的思想引领者的地位，值得参与其中的每一个人自豪。

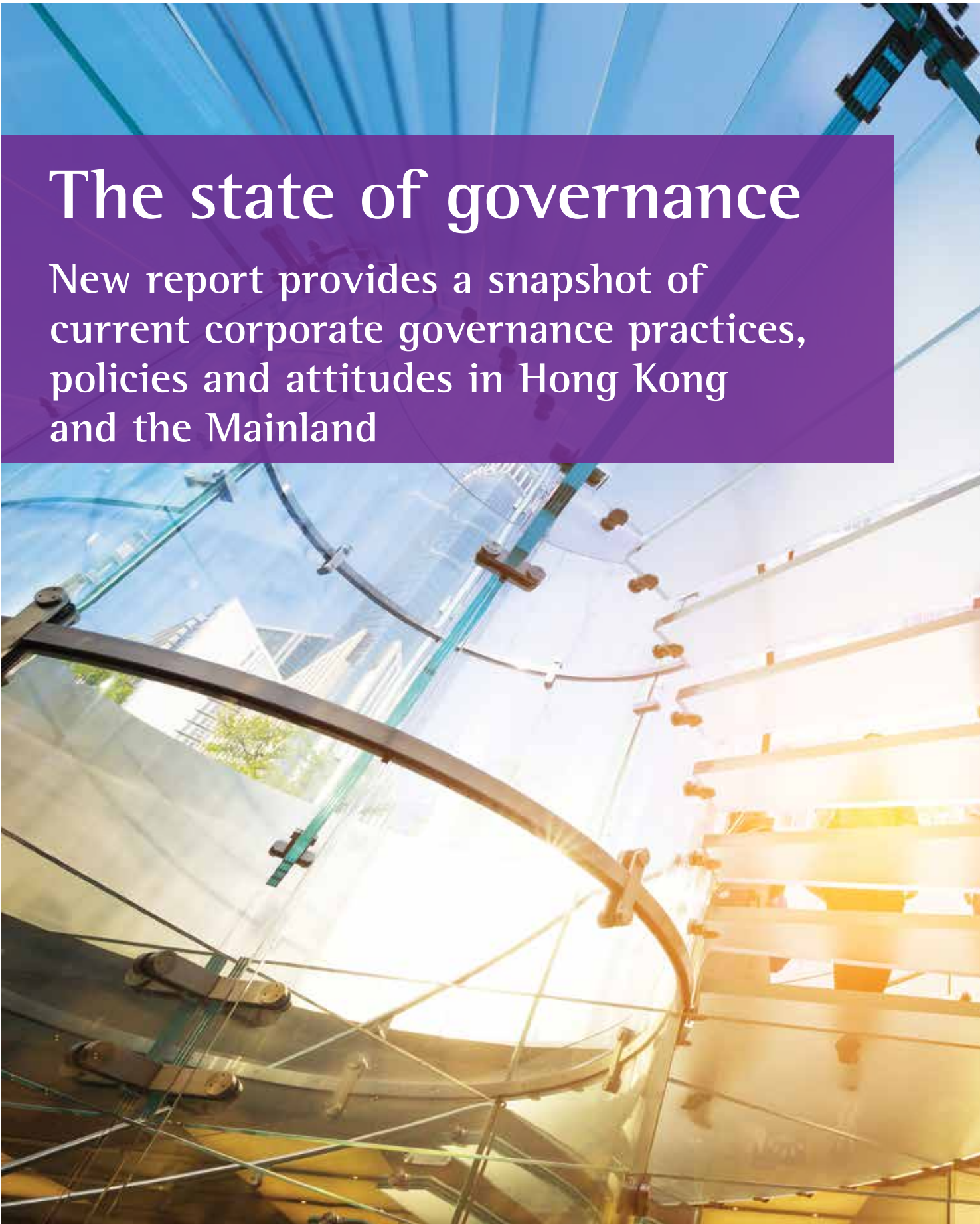
最后，公会在本月份首次举行社区服务月，我谨向所有参与者致谢。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

The state of governance

New report provides a snapshot of current corporate governance practices, policies and attitudes in Hong Kong and the Mainland





CSj highlights some of the anticipated, as well as some of the more surprising, findings of the latest research report published by The Hong Kong Institute of Chartered Secretaries.

There is no 'one-size-fits-all' in corporate governance. Different jurisdictions have different board structures, legislative and regulatory infrastructures and of course different cultural factors, all of which influence the definition of good governance. Moreover, the macro environment – business, social and political – in which organisations operate is always changing. It is in this context that the Institute's latest research report, 'Taking the temperature: The state of corporate governance practices in Hong Kong and the Mainland' (the Report), has been published.

The Report is based on a survey (the Survey) launched in February 2019. The Hong Kong Institute of Chartered Secretaries (the Institute) asked its members 10 questions regarding the policies, practices, attitude and standards of corporate governance of companies listed on the Hong Kong, Shenzhen and/or Shanghai stock exchanges. By the close of the survey in April 2019, the Institute had received 419 responses.

The subsequent Report was authored by Peter Greenwood MA FCIS FCS, a member

of the Institute's Technical Consultation Panel and an Institute representative on the International Council of The Institute of Chartered Secretaries and Administrators (ICSA), now renamed The Chartered Governance Institute (CGI), and Chairman of its Thought Leadership Committee. The Report gives first-hand data on how businesses in Hong Kong and the Mainland approach the key governance issues they face on a day-to-day basis. Moreover, it includes a number of findings that will help to correct any misperceptions we may have about the specific characteristics of governance in Hong Kong and the Mainland.

Key findings

Tone at the top

The first question in the Survey was intended to discover the degree to which the various actors in a company's corporate governance regime influenced the company's day-to-day corporate governance practices. The responses confirmed that an effective corporate governance regime is set by the 'tone at the top' (see Figure 1: Who are the key influencers?). The top three influencers

Highlights

- an effective corporate governance regime is set by the 'tone at the top', in particular by the chairman, CEO and the board
- the company secretary is central to the implementation of governance duties and regulations, and in fulfilling compliance obligations
- excellence in corporate governance is still driven more by an obligation of compliance than by a wholehearted commitment

Figure 1: Who are the key influencers?

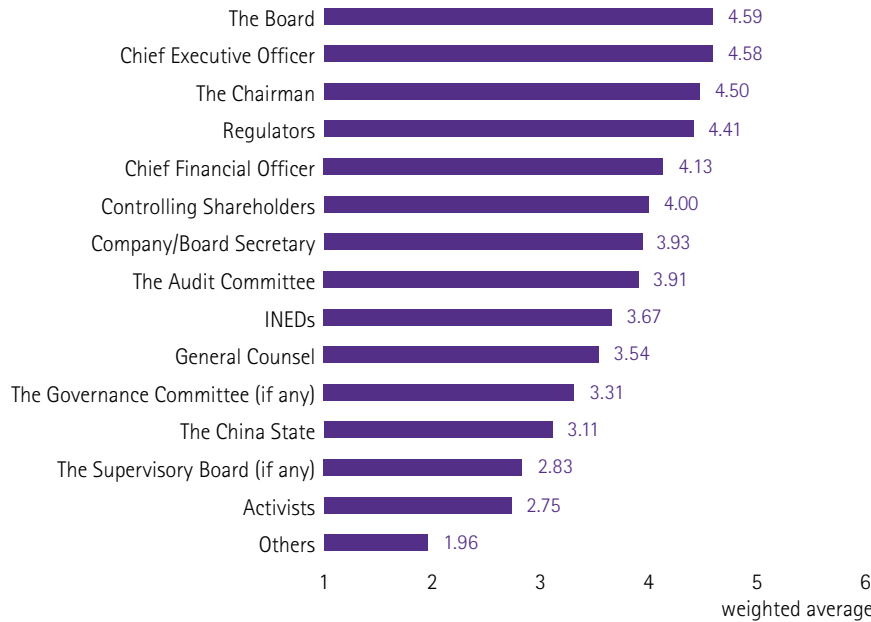
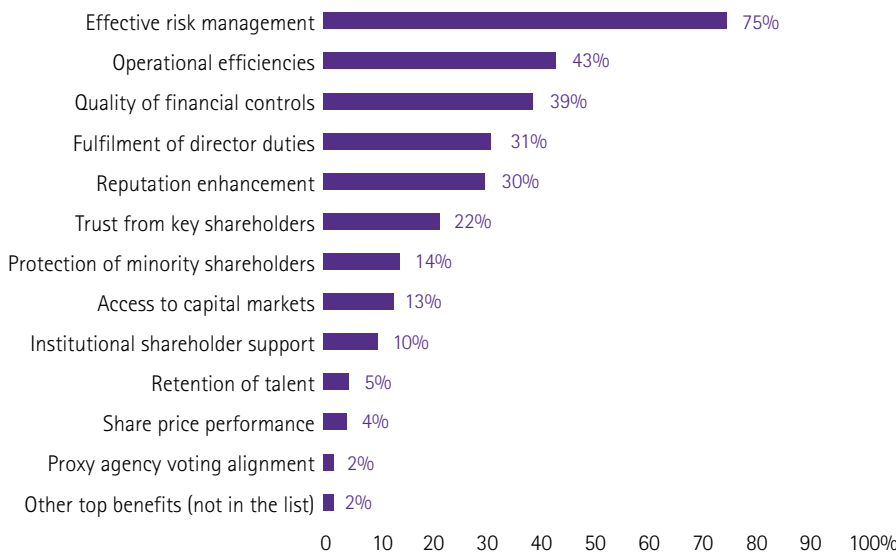


Figure 2: What are the benefits of good corporate governance?



were deemed to be the chairman, the CEO and the board.

Some interesting differences emerged, however, between the Hong Kong and the Mainland responses to this question.

Within the Mainland, a much higher proportion of responses identified the chairman and the board secretary as having the most influence on corporate governance practices. 67% of Mainland members deemed the chairman to be the most influential factor in governance (as against 22% of Hong Kong members), while 25% of Mainland members deemed the board secretary to be the most influential factor in governance (as against 7% of Hong Kong members).

The Report cautions, however, that the number of Mainland respondents to the Survey was much smaller than the number of Hong Kong respondents (48 of the total 419 respondents were Mainland-based). Readers should bear this sample size discrepancy in mind where Mainland/Hong Kong comparisons are made.

The benefits of good governance

The second question of the Survey asked respondents to rank the benefits of good corporate governance and better risk management was a clear winner (see Figure 2: What are the benefits of good corporate governance?). Overall, 75% of respondents identified effective risk management as being the foremost benefit. Generally, the respondents ranked highly the practical benefits of good governance (second and third place were taken by 'operational efficiencies' and 'quality of financial controls'), and, somewhat surprisingly, share price enhancement came well down the list.

“
enduring excellence in corporate governance requires standards that regard compliance only as a floor and not a ceiling
 ”

'It is commonly suggested that investors are prepared to pay a premium for shares in well-governed companies. This was certainly not the perception among our respondents. Overall, only 4% of these ranked share price performance as even being in the first three perceived benefits of good corporate governance practices,' the Report states.

Again, there were some interesting differences in the respective importance attached to benefits by Hong Kong and Mainland respondents. Mainland respondents (35%) attached much greater weight to promoting access to capital markets as a benefit of good governance than did their Hong Kong counterparts (7%). Hong Kong respondents attached greater importance to reputational enhancement as a benefit of good corporate governance (34%), compared to only 15% amongst Mainland respondents.

'Hong Kong companies tend to see good governance as preserving their reputation amongst existing capital providers, whereas Mainland companies tend to consider this a valuable tool in the search for new capital sources,' the Report states.

The role of the company secretary

The Survey was a good opportunity to get an update on the similarities and differences between the roles of company secretaries in Hong Kong and board secretaries in the Mainland. The overall findings demonstrate that the roles of both company and board secretaries are dominated by the responsibility for advising upon and ensuring statutory compliance.

There were some differences between the weighting attached by the Hong Kong and Mainland respondents to aspects of their role beyond broad statutory compliance, however, and these variations give us a valuable window on where the two roles differ. 'Disclosable transactions' and 'connected party transactions', for example, gained almost twice the weighting among Mainland respondents as they did among their Hong Kong peers. The Report points out that this is probably due to the fairly common situation where a Mainland company is the listed vehicle within a much larger state-owned

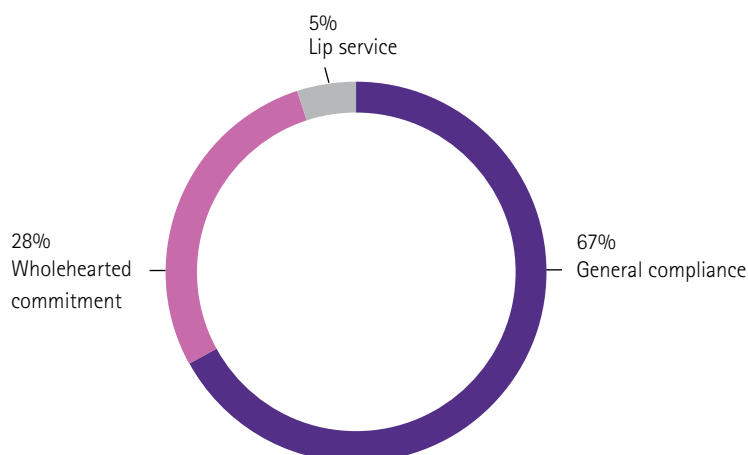
enterprise, or group of state-owned enterprises. 'Given the linkages that exist in such circumstances, including in terms of business, ownership and board representation, it is not surprising that the proper implementation of the governance implications of disclosable transactions and connected party transactions is a core element of a company secretary's daily duties,' the Report states.

Governance scorecard

Questions 4–8 of the Survey asked respondents to express their opinion on the quality of their companies' corporate governance standards. Their responses to these questions necessarily come with some caveats, the Report points out.

Firstly, while the survey was anonymous, 'not every respondent will have felt disposed to highlight reservations as to the quality of corporate governance in his or her company,' the Report points out. Secondly, any self-assessment of performance standards are subject to the so-called 'Lake Wobegon Effect'. Named

Figure 3: Commitment to corporate governance



“
corporate governance requirements are expected to increase substantially over the next five years
 ”



after a fictional school in a radio series where all children were ranked above average, this is the well-known tendency for individuals to overestimate their positive qualities and capabilities, and to underestimate their negative qualities, relative to others.

With these caveats in mind, there was a high level of confidence in the quality of corporate governance standards, codes of conduct, the implementation of financial controls, anti-bribery and corruption measures and the respect of high ethical standards among the survey respondents. The levels of confidence in the quality of policies and procedures on matters relating to social and relationship management and interaction, however, were lower. 'This indicates that more work needs to be done in bringing issues of diversity, inclusion, anti-sexual harassment and whistleblowing effectively within corporate governance systems,' the Report concludes.

Commitment to corporate governance

Question 9 of the Survey asked respondents to assess their company's commitment to corporate governance (see Figure 3: Commitment to corporate governance). While the responses to this question were subject to the same caveat described in the section above, they were quite revealing in terms of

indicating the main drivers for better corporate governance in Hong Kong and the Mainland.

Two-thirds of respondents assessed their company's commitment to corporate governance as motivated by 'general compliance'. Approximately one quarter of respondents assessed their company's commitment to corporate governance as being a 'wholehearted commitment'.

The fact that a larger proportion of respondents see the drive towards better governance as being motivated by compliance is a significant finding. Regulators, together with the Institute, have been eager to promote governance as a strategic priority rather than as a question of compliance with the regulatory minimum. 'It will be interesting to monitor the evaluation of views in this sense over the coming years, since enduring excellence in corporate governance requires standards that regard compliance only as a floor and not a ceiling,' the Report states.

The direction of corporate governance

The final question of the Survey asked respondents to look ahead and give their thoughts on whether corporate governance requirements would increase or decrease over the next five years. The answers from both Hong Kong and the Mainland painted

a clear picture – corporate governance requirements are expected to increase substantially over the next five years.

Of the almost 200 replies received overall to this question, only four respondents foresaw any decrease in corporate governance requirements. 98% of Institute members expect an increase in these requirements and 56% believe this increase will be substantial or very substantial. 'It is most definitely the view of our members that... corporate governance is a journey, not a destination,' the Report states.

Changing perceptions?

The Institute's latest research report is a valuable addition to our knowledge of the current governance landscape in Hong Kong and the Mainland. It will be useful to company secretaries and governance professionals, as well as to other stakeholders in governance, as an update on current governance standards in Hong Kong and the Mainland and as a timely reminder of which governance aspects need more attention.

The Report gives a very strong indication, for example, of the perceived strengths and weaknesses of organisations' governance regimes. While respondents to the report are confident of their organisations' approach to the core areas of governance, such as compliance, disclosure, financial controls,

the adoption of codes of conduct and the maintenance of high ethical standards, they are significantly less confident when it comes to frontier aspects of governance such as diversity and inclusion, anti-sexual harassment and whistleblowing.

The Report also gives valuable insights into the fundamental drivers for better governance in Hong Kong and the Mainland. The momentum towards higher governance standards in these two markets is still largely dependent on regulators raising the legislative and regulatory bar. The Report points out that where better governance standards are largely driven by compliance concerns, they are unlikely to progress much further than the basic minimum set by regulatory and legislative requirements. Moreover, shareholders and other stakeholders will find it hard to differentiate between different companies' standards of governance because these will be concentrated around the one single, identical reference level of compliance with regulation.

The Report therefore argues in favour of an approach to governance which sees regulatory and legislative requirements as a floor not a ceiling. It also underlines the responsibility of company secretaries in Hong Kong and board secretaries in the Mainland, as well as fellow governance professionals, to play their part in contributing to high standards of governance in Hong Kong and the Mainland. 

The report – 'Taking the temperature: The state of corporate governance practices in Hong Kong and the Mainland' – is available from the Publications section of the Institute's website: www.hkics.org.hk.

The role of the Institute

The Report reviewed in this article also highlights the role of The Hong Kong Institute of Chartered Secretaries (the Institute) in encouraging and enabling excellence in governance in Hong Kong and the Mainland. The Institute, the Report recommends, must be representative, influential, forward-looking and enabling.

Representative – the Institute's membership (it currently has over 6,000 members) has increased substantially over the past years, in line with the growing recognition of the importance of the profession.

Influential – the Institute has a close and constructive relationship with the HKSAR Government, legislators and regulators and with all the key stakeholders in the profession. Over the last five years, it has participated in 50 general consultations on legal and regulatory change, in addition to engaging in less formal processes of soft consultation and experience-sharing. The Institute is represented on many consultation bodies, steering groups and the like, as a voice of the profession and promoter of excellence in governance.

Forward-looking – since regulation, legislation and practical governance constantly evolve, the Institute should look ahead to emerging trends and ideas that will impact its members. Since 1998, its biennial Corporate Governance Conference has become a leading regional forum for debate and discussion on new developments in governance. Through reports such as this and this journal, *CSj*, the Institute provides frequent insights into current and pending issues affecting the profession.

Enabling – the Institute's members need and expect high standards of education and professional training to equip them to meet their responsibilities. The Institute presently has over 3,500 students undergoing professional education. The Institute's qualifying education and examination programmes are presently being updated and reshaped to include an added emphasis on areas such as boardroom dynamics and risk management. The Institute recognises that professional development training is now a career-long process. Last year it held over 90 seminars and workshops with a total attendance of over 17,000 attendees. Its 20th Annual Corporate and Regulatory Update conference (ACRU), held on 5 June 2019, which has grown steadily in importance, was attended by 2,000 delegates.

Finally, the Report points out that the Institute must always remain relevant to its members, to the businesses and organisations which employ them and to the wider community it serves. 'As governance has grown in scope, responsibility and importance, it has extended beyond the domain of company secretaries alone. There is no doubt that our Institute now embraces a much wider range of governance professionals, such as lawyers, accountants, directors, managers and many others. We welcome anyone who has an interest in supporting the standards of corporate governance practices, policies and attitudes described in this Report, and in taking those standards to new levels in Hong Kong and the Mainland,' the Report states.

The future of governance in the digital era

Part two – governance and blockchain



This second article in the series by Dr Jag Kundi, a Hong Kong-based scholar-practitioner active in the FinTech space, explains what blockchain is, how it works and its important relationship to governance.

Governance is a system of rules, policies and processes to direct and control an organisation. It aims to balance the interests of the various stakeholders of a company. A primary objective is to centralise information and oversight in the board of directors. How to reconcile this with blockchain? Blockchain is a distributed and decentralised ledger technology that permanently records every transaction made on its network. Combined with smart contracts, blockchain has the potential to revolutionise governance by making the transaction of money, property and shares transparent and conflict free, especially amongst private companies.

What is blockchain?

Blockchain is bringing on a fundamental shift in the way we carry out business transactions, banking, education, governance and pretty much everything else. Blockchain has been publicised to be the next generation of the internet (the internet for the exchange of value, rather than the internet for the exchange of information), as it is no less transformative in its potential to liberate the commercial and business world than the advent of the internet that proliferated global exchange of information.

Blockchain combines the power of peer-to-peer technology with strong encryption to facilitate a secure, decentralised (distributed) ledger that overcomes the problems of single point of vulnerability, distribution of data and its control, bandwidth limitations and the problem of double spend. Blockchain has the potential to move any kind of data swiftly and

securely, and at the same time, make a record of that change available instantly and permanently to anyone. The first cryptocurrency, called Bitcoin, is powered by blockchain.

In the simplest of terms, we can think of a blockchain as a shared and synchronised digital database that is maintained by a consensus protocol, an algorithm, and stored on multiple nodes – the computers that store the local version of the distributed ledger (see Figure 1: How does blockchain work?). The purpose of the consensus protocol is to ensure that all participants in a blockchain agree what constitutes a 'block' – a grouping of multiple transactions added to an existing chain of blocks. These blocks are chained to the existing ledger through a hashing process (cryptography). A hash is a function that converts an input of letters and numbers into an encrypted output of a fixed length. Think of it as a unique ID, a 'digital-fingerprint' that represents information as a string of characters and numbers. Consensus occurs when more than 50% of nodes conclude that a

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the value and usefulness of the blockchain economy will be dependent on the introduction and implementation of an effective governance infrastructure

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message is authenticated and verified so can be added as a block to the blockchain. The most popular consensus protocol on blockchain is Proof of Work (PoW), as used by Bitcoin. However, due to the extreme amounts of energy and computational power needed, it is not so practical as a business blockchain. An alternative would be Proof of Stake (PoS).

Blockchain was actually a spillover effect from the development and implementation of Bitcoin. Satoshi Nakamoto, a

Highlights

- blockchains will make it possible for people all over the world to transact securely on a peer-to-peer basis without trusted intermediaries
- the creation of a new blockchain economy based on dis-intermediated individualised markets with new business models will pose challenges for law makers, policy makers and regulators
- effective governance of the emerging blockchain economy will require coordinated and concerted efforts at the global level by regulators

pseudonym, who authored the first Bitcoin white paper in 2009, developed the technical infrastructure needed for Bitcoin. Blockchain was part of this technical infrastructure, but has since become more relevant in its own right.

Blockchains also come in many 'flavours'. Rather than think of them of as a single type of technology, it is maybe easier to consider them as a class of technologies (see Figure 2: Types of blockchain). They can be public or private, permissioned or unpermissioned and centralised or decentralised in their technological set-up and governance structure.

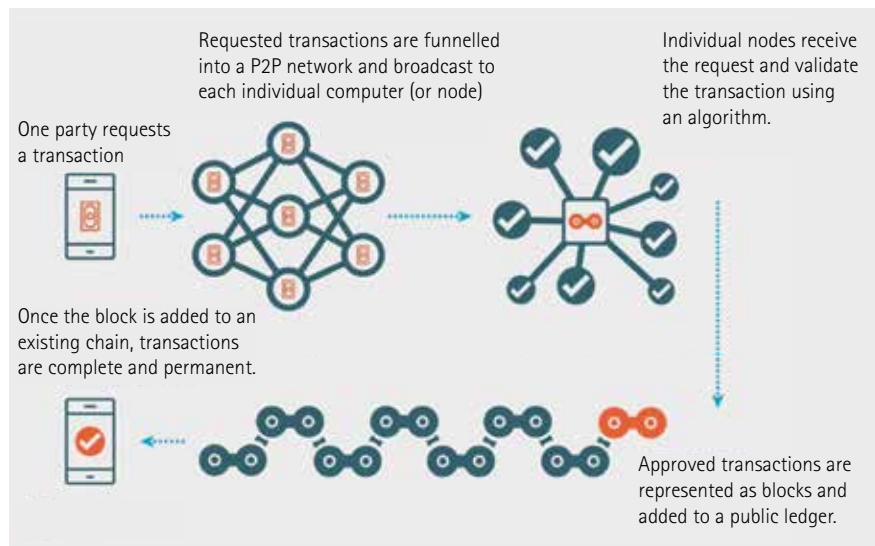
Traditional ledger systems

The underlying technology for a blockchain is not new; it is in fact hundreds of years old – think of ledgers. Ledgers are the building blocks of double-entry accounting and are based on the notion that each party in a business transaction will either receive or give something. In accounting terms, a ledger is a system to record what is received (a debit) and what is given (a credit). Accounting practitioners will recognise this representation via 'T-accounts' – where debit entries are depicted to the left of the 'T' and credits are shown to the right of the 'T'.

Interestingly, the word 'debit' comes from the Italian word *debito* which comes from the Latin word, *debita* and *debeo*, which mean 'owed to the proprietor' or an asset of the proprietor. Whereas the word 'credit' comes from the Italian word *credito* which comes from the Latin word *credo* which means 'trust or belief' in the proprietor or owed by the proprietor.

Versions of a double-entry system were practised in Florence in the late 13th century by merchants and bankers. Luca

Figure 1: How does blockchain work?



Source: <https://learn.g2.com/trends/blockchain-security>

Pacioli's reputation as the 'father of modern accounting' is on the basis that he codified this system and published it. In effect he was the first person who produced the GAAP for bookkeeping!

This concept of ledgers and double entry, as refined and published by Luca Pacioli, initially worked well for tangible assets and physical goods as indicators of economic value – who owes/owns what. This system served its users well as long as the underlying assets were tangible, that is observable and measurable – it was perfect for score-keeping in transactions involving physical assets whether land, buildings or inventory. Max Weber considered that the invention of double-entry bookkeeping was fundamental to the development of capitalism.

However, in the 21st century value is being defined, created and shared across digital platforms and much of this value is intangible in nature – such as big data. As economies shift more and more into intangibles as drivers of economic value,

then the double-entry bookkeeping system of recording, classifying and summarising needs an upgrade. Witness companies like Apple that create significant value out of intangible assets through combining design and software – both intangibles. These are then shaped to give the consumer the ultimate user experience – again an intangible. This may help to explain why Apple has a market value approaching US\$1 trillion, and why Alphabet (the parent company of Google) and Amazon are close to these breathtaking valuations.

The new ledgers of blockchain

Blockchain takes the concept of a ledger one step further by introducing the idea of a decentralised (distributed) ledger as opposed to a centralised ledger (see Figure 3: What is a distributed ledger?). More importantly, blockchain allows the creation and authentication of digital assets (digital tokens) that can be exchanged for value. These digital assets would not be recognised in the traditional accounting ledger systems as they are intangible.

Figure 2: Types of blockchain

Type	Public (Decentralised)	Private (Partially decentralised – single organisation)	Consortium (Partially decentralised – multiple organisations)
Participants	Permissionless -Anonymous	Permissioned -Identified -Trusted	Permissioned -Identified -Trusted
Consensus protocol	Anyone can read/write on the network. Every node validates the data, making it very secure.	Permission needed to read/write, controlled by a single highly trusted organisation.	Permission needed to read/write, controlled by a few predetermined nodes.
Benefits	Secure – as entire network verifies transactions. Transparent as all transactions are made public with individual anonymity.	Efficient – as verification done by single highly trusted organisation. Private – as permission needed to read/write on the blockchain.	Efficient – as lesser nodes verify transactions. Private – as permission needed to read/write on the blockchain. No consolidation of controlling power.
Challenges	Inefficient, as all nodes need to verify the transaction.	Controlling power is by a single entity. Difficult to align many organisations to use the same blockchain.	Allocation of controlling power amongst multiple organisations.

The process of tokenisation refers to issuing a blockchain token that digitally represents a real tradeable asset (see Figure 4: Tokenisation simplified). Such tokens can be stored and managed on a blockchain network. Tokenisation can have tremendous impacts on trading and investment, by offering greater transparency, liquidity, data integrity and exchange potential.

As the digital tokens are verifiable and belong to a party at a point in time (that is, ownership can be assured), the blockchain can avoid the problem of double-spending. Imagine a digital asset like a picture or video; this can be shared multiple times via email over the internet at no additional

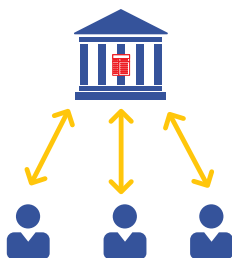
cost – it is subject to endless digital reproduction. A physical picture or video recorded on some media such as a Blu-ray disc can only be accessed by one person at a time via that media. However, posting the picture on an online site or streaming the video (Netflix) allows the simultaneous viewing (or consumption) by millions. The existing internet has effectively created 'digital abundance' for us all. We have access to a vast amount of information at almost zero cost. Whilst beneficial for users, there is a cost for the producers of this information, whether they are individuals or businesses.

What blockchain has done is introduce scarcity to the digital world. As Simon

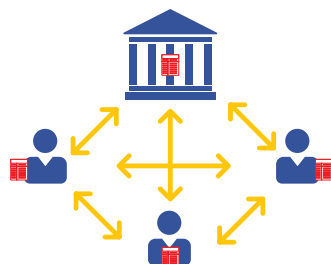
Dingle says, blockchain has created 'digital scarcity'. Because digital assets cannot be copied or double-spent, they are unlike any previous digital asset and that scarcity adds value. That value can be recorded, maintained and authenticated via the blockchain. Hence, the reference earlier to blockchain as the internet for the exchange of value.

Using blockchain, the issuance of digital assets can be limited and timed. Each digital asset can also be linked immutably to its owner/creator, who has full control over the digital asset until it is sold or transferred to another owner. This algorithmic verifiable ownership makes it easier to proliferate digital scarcity. As a

Figure 3: What is a distributed ledger?



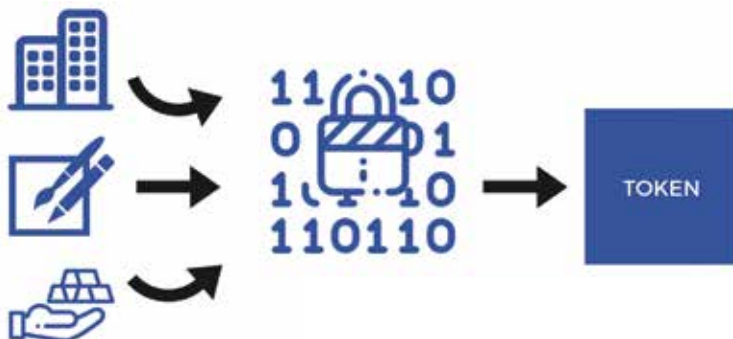
Centralised: every party is dependent on one central party who holds the ledger (for example, a technology company contracted by the Home Office). The central party has power over the data and could tamper with it without other parties knowing.



Decentralised: every party holds the ledger reducing the power of any one party over the data and providing accountability over who has altered the data and when.

Source: <https://openinnovation.blog.gov.uk/2018/02/19/is-distributed-ledger-technology-the-answer/>

Figure 4: Tokenisation simplified



Source: based on <https://blog.softwaremill.com/asset-tokenization-on-blockchain-will-disrupt-the-asset-management-landscape-befbd71639b1>

result, content creators can now charge for their digital content as their digital assets can be monetised. Consequently, it is expected that a whole new blockchain economy will emerge from this with less dependence on advertisers and commission or fee-seeking intermediaries. This will create another set of governance related issues. These blockchains will become of increasing value – Metcalfe’s Law states that a network’s value increases exponentially with each additional participant.

With the emergence of a new blockchain economy, agreed-upon transactions would be enforced autonomously following rules defined by smart contracts. A smart contract is a computer protocol intended to digitally facilitate, verify or enforce the negotiation or performance of a contract. Smart contracts allow the performance of credible transactions without third parties being involved. Taking a logical step further, this could manifest itself in a new form of organisational design – decentralised autonomous organisations (DAO), which

effectively would be organisations with governance rules that conform to the business logic specified in blockchain.

Regulatory challenges

For now, the legal aspects around blockchain are still not clearly identified or defined. This technology is evolving very rapidly (witness the extraordinary high level of investment being channeled into blockchain companies, which should hit US\$2.9 billion in 2019 and is forecast to be US\$12.4 billion by 2022 according to International Data Corp), yet the regulatory framework is far behind. Regulators have to contend with the challenges set out below.

Existing IT governance issues

Security and safety regulations around wider blockchain adoption need to be improved and updated. You may well ask how it would be possible to govern a decentralised, publicly available and permissionless ledger? The security of blockchains have several layers that may include:

- the basic requirements for the transaction information
- trusted portals for presenting transactions to the network
- the number of participants (nodes) in the network
- the difficulty of the algorithmic puzzle required to 'mine' a block of transactions that are encrypted correctly
- required consistency with the previously validated historical record as part of the transaction information and encryption process, and

Figure 5: Blockchain regulatory regimes around the world

Country	Comment	Regulator
Estonia	<p>One of the most helpful countries to blockchain entrepreneurs, Estonia's e-residency programme is attracting crypto and blockchain entrepreneurs from several countries to set up their businesses there. The process to set up business in Estonia is easy, and the government assists the entrepreneurs significantly. The legal and tax regimes for crypto and blockchain start-ups are conducive to the growth of this sector.</p> <p>Estonia doesn't restrict, control or regulate use of cryptocurrencies. The Ministry of Finance doesn't see any legal impediment to use of cryptocurrencies in payment transactions. Currently the government is working on their government-backed cryptocurrency, ESTcoin.</p>	Ministry of Finance
Japan	<p>Japan has established itself as a cryptocurrency- and blockchain-friendly nation and recognises cryptocurrencies as legal tender under the Payment Services Act. Japan's financial regulator, the Financial Services Agency (FSA), has recently introduced a new five-point plan focusing on:</p> <ol style="list-style-type: none"> 1. strict and robust security standards 2. know your customer and anti-money laundering and counter-financing of terrorism controls – stringent customer ID protocols must be implemented when dealing with large value crypto transfers 3. management of customer assets must be separate from the company's assets 4. prohibition of privacy coins such as Monero and ZCash, and 5. corporate governance – there must be a clear separation between the ownership and management of the business. <p>The FSA has also stated recently that continuous innovation in this space should not be hampered and hence it recognises the importance of collaboration with accredited self-regulating entities.</p>	Financial Services Agency
Malta	<p>Malta has one of the most progressive approaches to cryptocurrencies and has hence gained an international reputation as the 'blockchain island'. Because of its liberal attitude towards crypto and blockchain technologies, Malta has attracted many start-ups to establish operations there. Malta has passed a raft of blockchain and cryptocurrency friendly laws. On 4 June 2018, for example, it became the first nation to create official regulations for crypto operators by passing three bills: the Malta Digital Innovation Authority Act, the Innovative Technology Arrangement and the Services Act & Virtual Financial Assets Act. These bills will bring a comprehensive legal structure to the industry.</p>	The Malta Financial Services Authority
Singapore	<p>Singapore is actively promoting itself as the premier Asian jurisdiction where the future of cryptocurrency- and blockchain-related technologies is stable, secure and encouraged. The Monetary Authority of Singapore plans to tokenise the country's currency. There is also a significant focus on, and funds allocated by the government to, incorporate blockchain in governance delivery and financial services. Although cryptocurrencies are not considered legal tender, Singapore's tax authority treats Bitcoins as 'goods' and so applies goods and services tax (Singapore's version of value added tax).</p>	Monetary Authority of Singapore
South Korea	<p>In South Korea relevant regulations, such as provisions for user protection, anti-money laundering, market manipulation, use of nonpublic information and disclosure requirements are overseen by the Financial Services Commission (FSC) for cryptocurrency- and blockchain-related enterprises. The FSC has also imposed tighter reporting obligations on banks with accounts held by crypto exchanges in 2018. Anonymous cryptocurrency traders may withdraw from their cryptocurrency accounts but cannot make new deposits. Minors and foreigners are not allowed to trade, regardless of their place of residence.</p>	Financial Services Commission

Figure 5: Blockchain regulatory regimes around the world (continued)

Country	Comment	Regulator
UK	The UK considers cryptocurrencies as legal tender, and the government takes the view that no additional law is required to allow their use. For the most part, cryptoassets are treated as foreign currencies. The government is focusing significantly on using blockchain to combat fraud and corruption. The country also recognises the promise of blockchain in reducing the cost of paperwork. Innovate UK, the technology development agency of the government, is soliciting proposals for new blockchain projects, and has funded start-ups to develop cross-border financial transaction solutions. The agency is considering use of blockchain in emerging health technologies as well.	Financial Conduct Authority
US	Several prominent crypto exchanges operate from within the US. The US has a well-developed crypto infrastructure with many stores willingly accepting cryptocurrencies. It also has the highest penetration of cryptocurrency ATMs globally. The country has one of the strongest crypto and blockchain start-up ecosystems with regulations existing at both federal and state level. The following states have the friendliest regulatory framework for this space: Texas, Kansas, Tennessee, South Carolina and Montana.	Financial Crimes Enforcement Network

- the quorum/number of other ledger participants that is needed to confirm the blocks' encryption solution before its acceptance onto the permanent record across all ledgers in the network.

In addition, the wider use of smart contracts, DAOs, digital signatures, privacy concerns and asset ownership all add to the complexity mix for regulators.

Property rights and tax regulations

The development of clear, legally enforceable property rights (in particular, via the rules and laws surrounding software creation, maintenance and updating, and IP ownership), as well as appropriate tax regulations, will be key issues. The issue of tax is a particularly vexing one for governments. Blockchain businesses are quite unique in their ability to create valuable, tradeable cryptoassets (via the tokenisation process) to self-fund their initial development, despite not having established businesses. Such cryptoassets give rise to a number of

tax consequences depending on their character and age. As the most valuable part of many of these businesses, the use and/or trading of these assets may constitute the single biggest source of revenue for blockchain companies. For the accountants, cryptoassets present challenges around the areas of accounting for intangible assets and revenue recognition. As such they would be of significant interest to tax authorities and regulators.

Market depth issues

At the moment this is a very specialised niche market. Increasing market depth would require incentivising the market to attract more market participants and to increase frequency of transactions. In the state of Delaware, where a majority of Fortune 500 companies are incorporated, tests are being undertaken to develop a distributed code-based ledger that would allow companies to register shares, undertake proxy votes and do all of their public filings on blockchain. Called the Delaware Blockchain Initiative, launched by the then-Governor Jack Markell, the

state had plans to make Delaware the first state to embrace this technology as a way of upending the way businesses govern and finance themselves. The state saw this as a natural first mover advantage that would unleash this disruptive technology into the business community.

The implications for governance

Solutions to the regulatory challenges set out above are not insurmountable, but challenging. The emerging blockchain-driven economy necessitates a reassessment of established notions of governance. How exactly governance will respond to these changes is still unclear. However, the value and usefulness of the blockchain economy will be dependent on the introduction and implementation of an effective governance infrastructure, which will ultimately depend on a deep-dive understanding of the phenomena.

Different countries have taken different approaches here, which further complicates the issue, rather than aiming for a unified standard approach (See Figure 5: Blockchain regulatory regimes

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of governance
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around the world). Although there is a certain amount of hype associated with blockchains, they are rapidly transforming the way the world economy works. For the first time in history, blockchains will make it possible for people all over the world to transact securely on a peer-to-peer

basis without trusted intermediaries. The creation of a new blockchain economy based on dis-intermediated individualised markets with new business models will pose challenges for law makers, policy makers and regulators. This will require coordinated and concerted efforts at the global level by regulators. An ad hoc country by country approach to regulations will simply mean that businesses will country-shop for the friendliest regulations and avoid heavily regulated countries.

The challenge will be for individual regulators to ensure that their regulations encourage innovation in this space rather than overly regulated environments that stifle creativity and innovation.

Blockchain promises so much but will it ultimately deliver?

Dr Jag Kundi

Dr Jag Kundi is a Hong Kong-based scholar-practitioner active in the FinTech space. He can be contacted by email: dr.kundi@live.com, or via LinkedIn: www.linkedin.com/in/jagkundi.

This article is part of a series of articles in which Dr Kundi explores the interaction of emerging technologies of the digital era with governance and ethics. Future articles in this series will explore the impacts of artificial intelligence and machine learning.

Dear Members,

I am pleased to announce that the Supplemental Charter that gives effect to the new name of the global Institute was sealed on Monday 16 September 2019. This means that all of the new provisions of the Charter agreed to by members at the 19 September 2018 Annual General Meeting have come into effect. Most importantly the new name The Chartered Governance Institute (CGI) is now the official name of the global Institute and will often be described as CGI Global.



The new name also represents a new mission, a fresh brand and wider remit for the CGI. From 5 November of this year, a mass media and education campaign will commence on what CGI stands for and what it means to members worldwide.

As previously advised, CGI's network of nine local divisions will decide for themselves what is appropriate for them. You may be aware that the Institute in Canada has already become The Chartered Governance Institute of Canada and that the Institute in the United Kingdom will soon be known as The Chartered Governance Institute. In addition, the Malaysian Institute is now known as MAICSA: The Governance Institute, the Australian Institute is known as Governance Institute of Australia and the New Zealand Institute is known as Governance New Zealand.

In the coming weeks members will be kept up to date with how the new name and brand position is to be rolled out. A new website will be launched on 5 November and a broad-based eCommunity will be launched in early December of this year.

These events represent a major change in widening the remit of CGI Global and I urge you to keep abreast of these changes.

Yours sincerely,

Edith Shih FCG(CS, CGP) FCS(PE)
International President
19 September 2019

Open-ended fund companies

Keep the faith

Penelope Shen, Partner, Kwok Yih & Chan, and Stephen Wong, Director of Fund Administration, Amicorp Hong Kong Ltd, shed light on open-ended fund companies and ask us to keep the faith with this new regime.

Over a year has passed since Hong Kong introduced the Open-ended Fund Company (OFC) regime, yet at the time of writing just one such entity has been launched even though the structure promises participating companies, on paper at least, a more efficient and cheaper regulatory process.

An OFC is an open-ended collective investment entity that enables investment funds to be structured in Hong Kong in corporate form, which is a form more familiar to many investors than Hong Kong's other available fund, the unit trust structure. The OFC regime was launched on 30 July 2018 as part of Hong Kong's efforts

to boost itself as an international asset and wealth management centre, and earlier this September, Hong Kong-based fund manager Pacific Hawk (HK) Ltd launched the city's first OFC.

So why haven't more fund managers used the structure?

Tax treatment

One reason for the lukewarm take-up – that is, before April this year – lay in the tax treatment for private OFCs.

This was never an issue for publicly offered OFCs, which enjoy profit tax exemption under Section 104 of the Securities and

Futures Ordinance (Cap 571) (SFO). Under this law, when an investment fund, regardless of its domicile, is authorised by the Hong Kong Securities and Futures Commission (SFC) to be publicly offered in Hong Kong (Authorised Fund), the fund is exempted from profits tax in the city.

On the other hand, a private OFC had to satisfy certain conditions, such as the non-closely held requirement, which aimed, for one, at preventing the tax exemption from being abused by just a few investors repackaging its operations as an OFC. It was difficult for a private OFC to satisfy these criteria and consequently fund managers stuck to what they knew best: the Cayman Islands-domiciled structure.

It was not until the enactment of the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019 (Amendment Ordinance) of 1 April 2019, which gave private OFCs a different tax exemption regime, that fund managers took a second look at OFCs.

The Amendment Ordinance began as a bill in December 2018 to address ring-fencing concerns raised by the Organisation for



Highlights

- the Open-ended Fund Company (OFC) regime offers a more efficient and cheaper regulatory process
- an OFC enables investment funds to be structured in Hong Kong in corporate form
- publicly offered OFCs are exempted from profits tax in Hong Kong, while private OFCs – subject to certain conditions – are also exempted from profits tax on its assessable profits in relation to certain transactions

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Economic Co-operation and Development (OECD) and the European Union. But it also defined entities like the OFC as a ‘fund’ if it, among other things, engaged a ‘specified person’ to arrange or carry out its transactions – which means an OFC would be exempted from profits tax in Hong Kong on its assessable profits in relation to certain transactions.

So now when a fund – more or less defined in the same way as a ‘collective investment scheme’ contained in Part 1 of Schedule 1 to the SFO, with modifications made to cater for the purpose of the proposed tax exemption – appoints an SFC-licensed investment manager to conduct Type 9 (asset management) regulated activities and invest in certain transactions, it can then rely on the profits tax exemption under the Amendment Ordinance.

Investment requirements and custody arrangement

Another reason that OFCs have not flown off the shelves is that they are more or less aimed at non-private equity investments, since in essence they exclude investments in real estate or Hong Kong private companies, due to the 10% *de minimis* limit on investments. And the fact is that

in the past year or so we have observed fund managers making more private equity investments than non-private equity ones.

Further, the asset custodian for a private or retail OFC would typically be a bank or trust company if it is to satisfy criteria similar to that of an Authorised Fund. But for fund managers managing private investment funds that have traditionally relied on self-custody arrangements, or those with prime brokers and brokers, hiring a bank or trust company incurs costs that may be too high to bear for funds with smallish assets under management.

Key benefits

On the other hand, fund managers will greatly appreciate the one crucial advantage of using an OFC: the efficiency of having to deal with one single regulator, the SFC, and a single layer of service providers, which naturally translates to substantial cost savings.

For example, the SFC registration fee (pre- and post-) for a single sub-fund umbrella OFC is approximately HK\$12,000. Contrast this with the same set-up for a Cayman Islands segregated portfolio company with a single segregated portfolio, whose

government fees, plus registration fee with the Cayman Islands Monetary Authority, come to roughly US\$7,000 (about HK\$54,000).

A traditional Cayman Islands-domiciled fund managed in Hong Kong will also have to deal with legal costs from both those jurisdictions.

A common misconception that has further dissuaded OFC use is that the manager of such a fund could be subject to even more SFC scrutiny. The truth is, where a private OFC is concerned, the SFC need not even review or approve its offering memorandum – which needs to be filed with the regulator – once the investment fund is launched, regardless of domicile.

This does not reflect a laxer regime since a fund manager licensed for Type 9 (asset management) activities will already have to comply with, among other things, the Fund Manager Code of Conduct, which looks into issues such as sound liquidity management policy.

Another impediment to the OFC take-up is the political uncertainty now engulfing Hong Kong, which is of no benefit to any investment scheme.

The bottom line remains that we have little doubt that when sentiment recovers, we will see the establishment of more private OFCs.

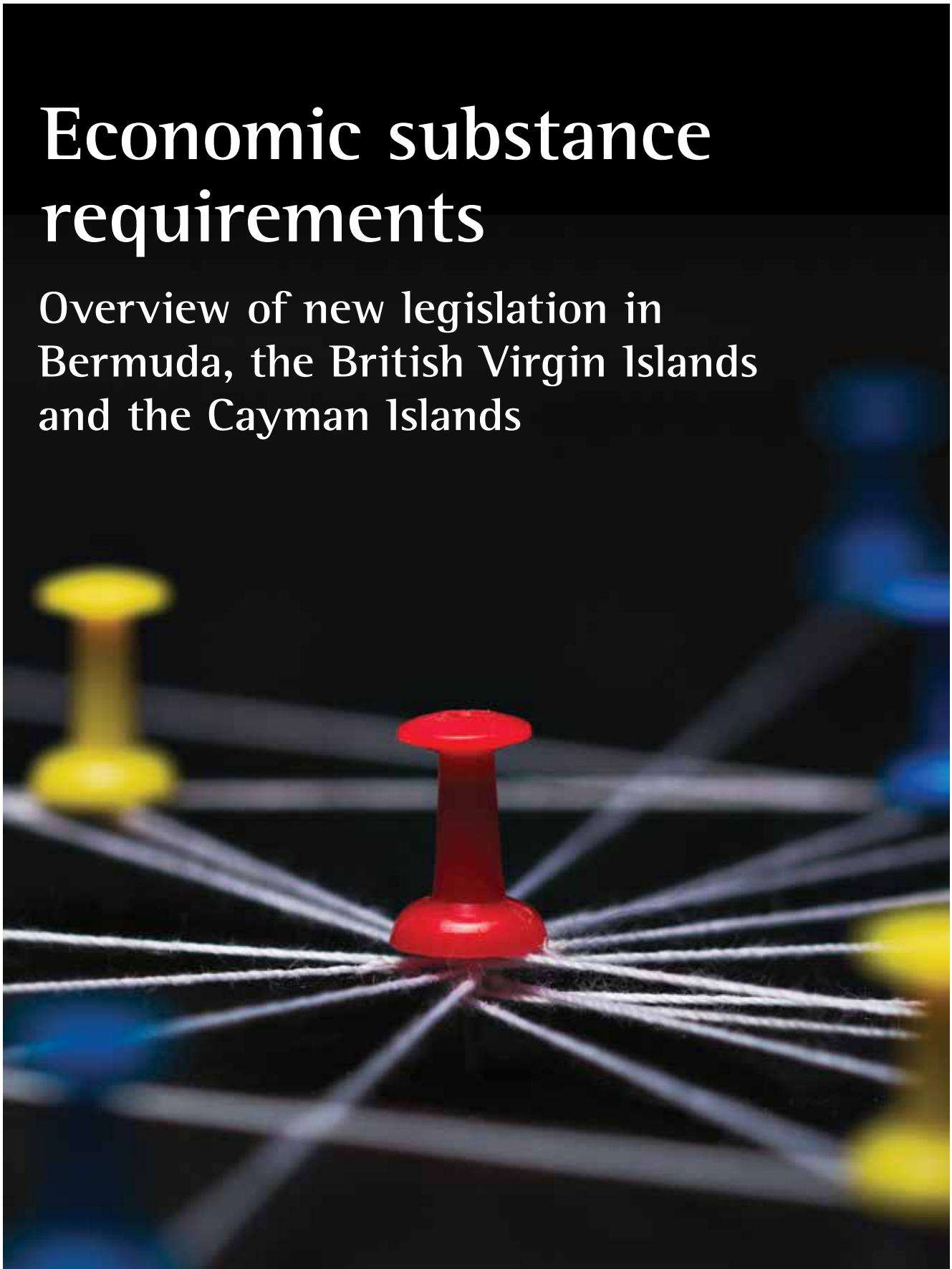
It merely makes good business sense.

Penelope Shen, Partner
Kwok Yih & Chan

Stephen Wong, Director of Fund Administration
Amicorp Hong Kong Ltd

Economic substance requirements

Overview of new legislation in
Bermuda, the British Virgin Islands
and the Cayman Islands



Vincent Chan, Counsel of Appleby (Hong Kong office), summarises recent economic substance requirements and reporting obligations in Bermuda, the British Virgin Islands and the Cayman Islands.

The governments of Bermuda, the British Virgin Islands (BVI) and the Cayman Islands (Cayman) have each passed legislation that will require certain entities carrying out any 'relevant activity' to have economic substance (ES) in its jurisdiction. The legislation was introduced in response to concerns expressed by the Council of the European Union (EU) about the absence of ES requirements for entities doing business in and through these jurisdictions.

Below is a summary of the ES requirements (Requirements) as legislated in Bermuda, BVI and Cayman, respectively, as of 10 October 2019.

Bermuda

Legislation and registered entities

Bermuda's ES Act 2018 (as amended) (Bermuda Act) and ES Regulations 2018 (Bermuda Regulations) became operative on 31 December 2018, and will be supplemented by the Guidance Note (Bermuda Guidance), which is currently in draft form. New registered entities incorporated or registered on or after 1 January 2019 have to comply with the Requirements from the date of incorporation/registration, whereas registered entities incorporated/registered on or before 31 December 2018 have to comply from 1 July 2019.

For purposes of the Bermuda Act and Bermuda Regulations, a 'registered entity' includes:

1. a company incorporated or an overseas company registered under the Companies Act (as amended)
2. a limited liability company formed under the Limited Liability Company Act, or
3. a partnership that has elected to have a separate legal personality under the Partnership Act.

Relevant activities

A registered entity will be in-scope of the Bermuda Act if it conducts any of the following 'relevant activities' (as defined in the Bermuda Regulations):

- banking
- insurance
- fund management
- financing
- leasing
- headquarters
- shipping
- distribution and service centre
- intellectual property (IP), and
- holding entity (HE).

Requirements

A registered entity conducting a relevant activity (other than a pure equity holding entity; PEHE) will satisfy the Requirements if:

1. it is managed and directed in Bermuda
2. its core income-generating activities (CIGAs) are undertaken in Bermuda with respect to the relevant activity
3. it maintains adequate physical presence in Bermuda
4. there are adequate full-time employees in Bermuda with suitable qualifications, and
5. there is adequate operating expenditure incurred in Bermuda in relation to the relevant activity.

Highlights

- in response to concerns about the absence of economic substance (ES) requirements in certain jurisdictions, ES legislation and regulations have been passed in Bermuda, the British Virgin Islands and the Cayman Islands
- pure equity holding entities, which are not carrying out other relevant activities, are subject to reduced ES requirements, whereas entities engaging in intellectual property businesses are subject to enhanced ES requirements
- failure to meet the ES requirements in any of the three jurisdictions may result in a fine and/or the entity being struck off the applicable register

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entities incorporated or registered in Bermuda, BVI and Cayman should consider whether they meet the definition of Bermuda’s registered entity, BVI’s legal entity or Cayman’s relevant entity... and undertake an internal review to determine if they carry out any one or more relevant activities
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PEHE and HE

A PEHE, being a company that carries out no relevant activity other than holding or managing equity participations, and which earns passive revenues from dividends, distributions, capital gains and other incidental income only, is subject to the following reduced Requirements:

1. compliance with (a) the applicable corporate governance requirements in the applicable company or partnership legislation, including keeping records of accounts, books and papers, and financial statements; and (b) submission on an annual basis of an ES declaration (Declaration) to the Registrar of Companies in Bermuda (Bermuda Registrar), and
2. adequate employees for holding and managing equity participations, as well as adequate premises in Bermuda. Pursuant to the draft Bermuda Guidance, this does not imply a positive obligation on that entity to hire employees or to acquire premises where no such employees or premises are reasonably required by that entity, and the maintenance of a registered office and the management of such

entity by the board of directors in Bermuda may be considered to be adequate, having regard to the nature, scale and complexity of the entity's business.

A registered entity will be classified as an HE if it engages in activities including holding or managing any assets or equity participations, in which case, unless it is a PEHE, it will be within the scope of the full Requirements for in-scope entities as outlined above.

Reporting obligations

Starting in 2020, within six months after the end of each financial year commencing in 2019, a registered entity that is subject to the Requirements will be required to file on an annual basis a Declaration with the Bermuda Registrar confirming that the entity complies with such Requirements.

BVI

Legislation and legal entities

BVI's ES (Companies and Limited Partnerships) Act, 2018 (as amended) (BVI Act) came into force on 1 January 2019, and is supplemented by the Rules on Economic Substance in the British Virgin Islands (BVI Rules), issued by the BVI International Tax Authority (ITA), which were released on 9 October 2019.

For the purposes of the BVI Act, a 'legal entity' includes:

1. a company incorporated/registered or a foreign company registered under the BVI Business Companies Act (as amended), or
2. a limited partnership or a foreign limited partnership formed/registered under the Partnership Act, 1996, or Limited Partnership Act, 2017, excluding any limited partnership which does not have legal personality.

However, a 'legal entity' does not include:

- a. an investment fund (within the meaning of applicable BVI legislation), or
- b. a non-resident company or a non-resident limited partnership.

Relevant activities

The BVI Act imposes Requirements on all legal entities carrying out any 'relevant activity'.

A legal entity will be in-scope of the BVI Act if it conducts any of the relevant activities listed above under Bermuda's relevant activities, but each relevant activity as defined in the BVI Act and clarified further in the BVI Rules should be referred to.

Requirements

Each legal entity (other than a PEHE) must, in relation to any relevant activity, carry out defined CIGAs in BVI and demonstrate ES by reference to the following criteria, having regard to the nature and scale of the relevant activity:

1. the relevant activity is directed and managed in BVI

2. there is an adequate number of suitably qualified employees in relation to that activity who are physically present in BVI
3. there is adequate expenditure incurred in BVI
4. there are appropriate physical offices or premises in BVI for the CIGAs, and
5. where the relevant activity is an IP business requiring the use of specific equipment, that equipment is located in BVI.

PEHE

A PEHE, being a company that carries out no relevant activity other than holding equity participations in other entities, and which earns dividends and capital gains only, is subject to the following reduced Requirements:

1. compliance with its statutory obligations under the BVI Business Companies Act, 2004 (as amended), or Limited Partnership Act, 2017, as applicable, and
2. adequate employees and premises in BVI for holding equity participations and, where it manages those equity participations, adequate employees and premises in BVI for carrying out that management.

A legal entity that is an HE which holds something other than pure equity participations, or which earns income other than from dividends and capital gains, does not fit into the definition of a PEHE. If its other activities amount to any other relevant activity, it will be within the scope of the full Requirements as outlined above.

Pursuant to the BVI Rules, if a legal entity only holds equity participations during a given financial period, the relevant activity will be entirely passive in nature, and the requirements for adequate and suitably qualified employees and for appropriate premises will be applied accordingly.

Also, the performance of the services of a BVI registered agent will be taken into account when assessing ES for a PEHE. However, if an entity actively manages its equity participations, it should have adequate and suitably qualified employees, and appropriate premises, in BVI to carry out such function.

Reporting obligations

Starting in 2020, a legal entity will be required to file information reasonably required by the BVI International Tax Authority (ITA) through its BVI registered agent with the BVI's existing Beneficial Ownership Secure Search (BOSS) System. Annual reporting obligations commence at the end of the first financial period (being 12 months from the establishment date, if the BVI legal entity has been established on or after 1 January 2019, or 30 June 2019 for other BVI legal entities), and continues annually thereafter.

Cayman

Legislation and relevant entities

Cayman's International Tax Co-operation (ES) Law, 2018 (as amended), and (Prescribed Dates) Regulations, 2018, (together, Cayman Law) became operative on 1 January 2019, and are supplemented by the Guidance for ES for Geographically Mobile Activities (Cayman Guidance) v2.0 (as amended). An updated version of the Cayman Guidance, together with the sector specific guidance notes, are currently being drafted and will be released in due course. New entities incorporated or registered on or after

1 January 2019 have to comply with the ES requirements from the date of incorporation/registration, whereas entities incorporated or registered on or before 31 December 2018 have to comply from 1 July 2019.

For the purposes of the Cayman Law, a 'relevant entity' means (with some exceptions):

1. a company, other than a domestic company, incorporated/registered under the Companies Law of Cayman (as amended) (Cayman Companies Law), or incorporated/registered as a limited liability company under the Limited Liability Companies Law
2. a limited liability partnership registered under the Limited Liability Partnership Law, or
3. a company incorporated outside Cayman and registered under the Cayman Companies Law.

However, a 'relevant entity' does not include:

- a. an investment fund (within the meaning of applicable Cayman legislation), or
- b. an entity that is tax resident outside Cayman.

Relevant activities

The Cayman Law imposes Requirements on all relevant entities carrying out any 'relevant activity'.

A relevant entity incorporated or registered in Cayman will be in-scope of the Cayman Law if it conducts any

of the relevant activities listed above under Bermuda's relevant activities, but each relevant activity as defined in the Cayman Law and clarified further in the Cayman Guidance should be referred to.

Requirements

A relevant entity conducting a relevant activity (other than a PEHE) will satisfy the Requirements if it:

1. conducts CIGAs in Cayman in relation to that relevant activity
2. is directed and managed in an appropriate manner in Cayman in relation to that relevant activity, and
3. having regard to the level of relevant income derived from the relevant activity carried out in Cayman:
 - a. has an adequate amount of operating expenditure incurred in Cayman
 - b. has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in Cayman, and
 - c. has an adequate number of full-time employees or other personnel with appropriate qualifications in Cayman.

PEHE

A PEHE, being a company that carries out no relevant activity other than holding equity participations in other entities, and which earns dividends and capital gains only, is subject to the following reduced Requirements:

1. compliance with all applicable filing requirements under applicable Cayman legislation, and
2. adequate human resources and adequate premises in Cayman for holding and managing equity participations in other entities.

Engagement of a Cayman registered office service provider may be able to satisfy these reduced Requirements where the PEHE is passively holding equity interests in other entities, depending on the level and complexity of activity required to operate its business.

Reporting obligations

Starting in 2020, a relevant entity will be required to file a notice with the Cayman Tax Information Authority (TIA) stating whether it is carrying out any relevant activity and, if so, whether all or any part of the relevant entity's gross income is subject to tax in a jurisdiction outside Cayman (with supporting evidence), and the date of the end of its financial year.

Twelve months after the last day of the end of each financial year commencing on or after 1 January 2019, a relevant entity carrying out any relevant activity will be required to file a report setting out certain particulars.

IP business

Bermuda, BVI and Cayman place enhanced requirements on entities carrying out IP businesses, and further requirements for those engaging in high-risk IP activities (as defined in the respective legislation).

Tax residency outside Bermuda, BVI or Cayman

Any Bermuda, BVI or Cayman entity resident for tax purposes in a jurisdiction

outside Bermuda/BVI/Cayman, respectively – and for Bermuda and BVI, such jurisdiction not in the EU list of non-cooperative jurisdictions for tax purposes – (such jurisdiction hereinafter described as Territory A) is regarded as a non-resident entity (or no longer regarded as a relevant entity) and therefore is exempted from compliance with the Requirements. Satisfactory evidence is required to be produced to substantiate the same, such as:

- **Bermuda/BVI.** A letter or certificate stating that the entity is considered to be tax resident in Territory A, or a tax assessment, tax self-assessment confirmation, tax demand, evidence of tax payment or any other document issued by the competent authority/tax authority for Territory A. For Bermuda, the Bermuda Registrar may also require a letter from a suitably qualified professional stating that, in his/her opinion, the entity is considered to be tax resident in Territory A.
- **Cayman.** A Tax Identification Number, tax residence certificate of Territory A, and assessment/payment of corporate income tax liability on its gross income in Cayman from a relevant activity.

Outsourcing

An in-scope entity may outsource some or all of its CIGAs to another person or entity (including a third-party service provider or an entity in the same group), provided that (i) such in-scope entity is able to monitor and control the carrying out of CIGAs by that person/entity, (ii) such CIGAs are performed in the respective offshore jurisdiction, (iii) there must be no double counting if services

are provided to more than one in-scope entity carrying out relevant activities, and (iv) any third-party service provider engaged should have adequate resources to fulfil the outsourced activities.

Enforcement action

All ES filings in Bermuda, BVI and Cayman will be examined by the Bermuda Registrar, BVI ITA and Cayman TIA, respectively, to ensure that the relevant entity has adequate ES. If such relevant entity lacks adequate ES, such authority/registrar may give the entity reasons for such determination, as well as direction

on how to meet the test, and may impose a fine. Continued failure to meet the test in the following year may result in higher fines and could lead to the entity being struck off the applicable register. Also, any person (which potentially includes directors or partners) who knowingly supplies false or misleading information to the authority/registrar shall be liable for a fine and/or imprisonment.

Recommendations

Entities incorporated or registered in Bermuda, BVI and Cayman should consider whether they meet the

definition of Bermuda's registered entity, BVI's legal entity or Cayman's relevant entity (and not being tax resident in Territory A), and undertake an internal review to determine if they carry out any one or more relevant activities. If so, they should consider whether any operational or structural changes are required. It is also recommended that such entities seek advice on which steps should be taken to comply with the relevant jurisdiction's Requirements.

Vincent Chan, Counsel

Appleby (Hong Kong office)


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Preparing for the Companies Registry AML/CFT Review

Martin Lim, Founder and Director, Ingenique Solutions, provides practical guidelines for implementing internal policies, procedures and controls for anti-money laundering and counter-financing of terrorism compliance, and offers a checklist for busy trust and company service providers.

It has been more than one-and-a-half years since the Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) Ordinance (AMLO) came into effect on 1 March 2018 for designated non-financial businesses and professions (DNFBP). The ordinance requires trust and company service providers (TCSPs) to take all reasonable measures to mitigate the risk of money laundering and terrorist financing (ML/TF), and to ensure that the AML/CFT requirements under the AMLO are complied with.

As of 30 April 2019, the Companies Registry has conducted 1,779 on-site inspections of TCSPs, from which 420 warning or advisory letters have been issued and 32 cases of non-compliance have been prosecuted.

To fulfil the AMLO obligations, TCSPs must assess the ML/TF risk of their businesses, and develop and implement AML/CFT policies, procedures and controls (APPC) on risk assessment; customer due diligence (CDD) measures; ongoing monitoring of customers; suspicious transactions reporting; record-keeping; and staff training.

So how can TCSPs prepare themselves for the AML/CFT compliance inspection

by the Companies Registry? TCSPs should take a closer look at and comply with the following regulations:

- Schedule 2 to the AMLO (Cap 615), and
- 'Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers'.

In this article, we summarise the key areas on which a TCSP should focus to prepare for the AML/CFT compliance inspection.

AML/CFT policy

First and foremost, TCSPs should have adequate AML/CFT risk management, as

well as proper AML/CFT internal policies, procedures and controls (APPC). Hence, TCSPs should establish an APPC policy document which records the procedures and controls that have been put in place in the business to mitigate the ML/TF risks. (Collectively, the APPC is referred to as 'AML/CFT systems' in the Companies Registry's AML/CFT Guideline for TCSPs).

This policy should cover:

- management oversight
- risk assessment
- CDD measures
- enhanced CDD (ECDD) measures

Highlights

- trust and company service providers (TCSPs) should have adequate anti-money laundering and counter-financing of terrorism (AML/CFT) risk management in place, as well as proper AML/CFT internal policies, procedures and controls
- TCSPs should perform an overall risk assessment of their clients – based on type of customer, the countries or jurisdictions where the customers are from or in, and the type of services provided to the client – as well as customer due diligence
- TCSPs should be prepared in advance for compliance inspections, should be truthful and should work out any remedial actions with the inspectors



- record-keeping
- ongoing monitoring
- suspicious transactions reporting, and
- hiring and training of employees.

Management oversight

What are the roles and responsibilities of the sole proprietor, partners, board of directors and management in preventing money laundering and terrorist financing?

It is recommended that the TCSP establish an organisational and reporting structure in relation to AML/CFT. The reporting structure should include a compliance officer and preferably also a money laundering reporting officer (MLRO). These are key persons who are responsible for AML/CFT and they should be named in the reporting structure, as well as mentioned in the AML/CFT policy.

The role of the compliance officer is to keep management informed of compliance and risk management matters as and when they deal with customers that seem suspicious. Any suspicious trade should be reported to the compliance officer (or the MLRO, if appointed) and

he or she will escalate to management if approval or further action is required.

Risk assessment

We recommend that TCSPs perform an overall risk assessment of their clients. TCSPs can assess customers' risks based on the type of customer ('customer risks'), the countries or jurisdictions where the customers are from or in ('country risks'), and the type of services provided to the client ('services risks').

Make a list of all the risk categories that are relevant to you. For example, (i) type of customer: money changer; (ii) type of service provided: acting as nominee director.

Give a risk rating to each specific risk category. You may want to rate each risk category simply as 'low risk', 'medium risk' or 'high risk'. TCSPs need to pay particular attention to those risk categories that they rate as medium or high risk, because these risk categories will need to be mitigated with ECDD procedures – and these procedures should be documented.

Produce a set of risk mitigation procedures for each risk category. Set out below are examples of some risk mitigation procedures.

- Implement another form of control on the customer – for instance, if a customer is requesting nominee director services, and he or she is deemed to be a higher-risk customer, the TCSP may require the customer to engage an auditor appointed by the TCSP.
- Ask for more details from the customer – for instance, gather and verify the source of wealth or source of funds information for individuals, or top suppliers and customer information for entities.
- Increase the frequency and quality of ongoing monitoring for higher-risk customers.

It is important to ensure that as the risk gets higher, more risk mitigation procedures are in place.

Customer due diligence

The CDD requirements are set out in Schedule 2 to the AMLO. CDD is intended to enable the TCSP to form a reasonable belief that it knows the true identity of each customer and, with an appropriate degree of confidence, knows the type of business and transactions the customer is likely to undertake. Depending on specific circumstances and risk profiles, TCSPs may also need to conduct additional measures (referred to as ECDD).

The CDD measures applicable to the TCSPs are:

- identifying the customer and verifying the customer's identity using documents, data or information provided by reliable and independent sources

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ensure that as the risk
gets higher, more risk
mitigation procedures
are in place
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- if a person purports to act on behalf of the customer, identifying the person and taking reasonable measures to verify the person's identity, and verifying the person's authority to act on behalf of the customer
- where there is a beneficial owner in relation to the customer, identifying and taking reasonable measures to verify the beneficial owner's identity so that the TCSP is satisfied it knows who the beneficial owner is, including – in cases where the customer is a legal person or trust – measures to enable the TCSP to understand the ownership and control structure of the legal person or trust, and
- obtaining information on the purpose and intended nature of the business relationship (if any) established with the TCSP.

At this stage, the TCSPs should have gone through their client lists and classified their clients based on the risk categories defined. The following steps should then be undertaken.

- Ensure that CDD and ECDD forms are completed.

- Ensure that copies of identification documents are available and verified.
- Perform screening on the customers to ensure that they are not blacklisted or politically exposed persons (PEPs), and that they are not relatives or close associates (RCAs) of PEPs. This can be done either by doing Google searches or searching commercial AML/CFT databases like SentroWeb-DJ. All search results must be retained as documentary proof.

Enhanced customer due diligence

When a customer falls under the medium- or high-risk category, based on the risk assessment, a TCSP should perform ECDD. Besides applying more risk mitigation procedures, the TCSP has to ensure that

there is management approval for each of the higher-risk customers.

Suspicious transaction reporting

If a TCSP has not reported a suspicious transaction report (STR) before, it should at least know how to report one, if such an occasion arise. TCSPs should have proper escalating procedures documented in the APPC. TCSPs are strongly encouraged to use the STR proforma or the e-reporting system named Suspicious Transaction Report and Management System (STREAMS) to report suspicious transactions.

TCSPs should also refer regularly to the website of the Joint Financial Intelligence Unit (JFIU) to check for updates on the Terrorists List, Alert List, United Nations (UN) Sanction List, and latest information,

Online resources (in order of appearance)

- Download the AMLO (Cap 615): www.elegislation.gov.hk/hk/cap615@2018-03-01T00:00:00
- Download the Companies Registry's 'Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Trust or Company Service Providers': www.tcsp.cr.gov.hk/tcspls/portal/guide/62/eng
- For details of Ingenique Solutions' SentroWeb-DJ AML/CFT CDD screening solution: www.ingenique.net/sentroweb-djx/
- For details of the Joint Financial Intelligence Unit (JFIU) reporting methods and advice: www.jfiu.gov.hk/en/str.html#how
- For the latest information about Hong Kong's AML/CFT regime and strategies from the Financial Services and the Treasury Bureau (FSTB) website: www.fstb.gov.hk/fsb/aml/en/info-pub-press/info-pub-press.htm

publications and press releases as published by the relevant authorities in Hong Kong, as well as the latest typologies work on methods, techniques and trends of money laundering and terrorist financing. This will allow TCSPs to stay abreast of alerts and updates on AML/CFT requirements and changes to the relevant lists of UN-designated individuals and entities, as well as other AML/CFT announcements, such as high-risk jurisdictions identified by the Financial Action Task Force (FATF).

In addition, TCSPs should also refer to the website of the Financial Services and the Treasury Bureau (FSTB) for the

latest information, publications and press releases on Hong Kong's AML/CFT regime and strategies. The FSTB is responsible for coordinating the HKSAR Government's efforts to deliver AML/CFT policies, strategies and legislative initiatives endorsed by the Central Coordinating Committee on AML/CFT (CCC). The FSTB monitors the overall effectiveness of Hong Kong's AML/CFT regime and compliance with the FATF Recommendations, and facilitates cooperation among stakeholders.

Be prepared

Every business dreads the news that the auditors or regulators are coming. TCSPs

can manage the AML/CFT compliance inspection process proactively and reduce surprises when they cover the major areas mentioned above. It is important to train your staff and brief them on all the policies and procedures before the inspectors arrive. The goal of the review is to understand what the inspectors want and to give them the assurance that you have done your best to fulfil what is required according to the regulations. The approach to the review is to be truthful. If there are any shortcomings, work out the remedial actions with the inspectors.

Martin Lim, Founder and Director
Ingenique Solutions



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Non-executive director duties

Elaine Chen, Partner, Clifford Chance, discusses a recent Hong Kong Court reminder to non-executive directors regarding their duty to enquire and investigate in the face of red flags.

The recent Hong Kong judgment of *Moulin Global Eyecare Holdings Ltd (in liquidation) v Olivia Lee Sin Mei [2019]* HKCFI 1715 reminds non-executive directors (NEDs), in particular those with a professional background, of their duty to exercise care and skill in performing their roles, and the potential consequences they may face if they fail to do so. This is in line with existing English and Australian case law on duties of NEDs.

Background

The collapse and insolvency of Moulin Global Eyecare Holdings Ltd (Moulin) and its group companies (the Group) due to fraud perpetrated by its senior management is well known. Olivia Lee Sin Mei (Lee) was a non-executive director and member of the audit committee of Moulin. She was an experienced commercial solicitor by profession. Eleven years after commencing litigation against her, the liquidators of Moulin have finally secured a judgment of over HK\$450 million, including recovery of cash paid out in cash dividends and via share repurchases by Moulin when insolvent and during Lee's tenure. The Court of First Instance found that Lee had breached her duty of care and skill and failed to investigate multiple red flags.

It is common for professionals to be NEDs of listed companies. It is also not uncommon for senior members of banks, law firms and other professional firms to accept appointment as NEDs of client listed companies. In doing so, they lend their names and the status and prestige associated with such professional firms to the listed companies. Parties dealing with such listed companies may, to a certain extent, place their reliance and trust in such NEDs, particularly given their background and expertise. It is in this context that the victory of the liquidators is particularly significant.

Red flags that Lee failed to investigate

By way of background, since at least 1996 and throughout her time as Moulin's NED (between 8 December 2000 and 1 November 2004), Lee was the principal legal adviser to the Group. Lee was also a

member of Moulin's audit committee upon its formation in 2000. The court found that Lee's knowledge of Moulin's internal operations and business transactions far exceeded what the title of NED would normally suggest.

The court found that Lee had acquired knowledge of matters which ought to have caused her serious concern and prompted further inquiry. If properly investigated, the fraud of the senior management would have been revealed and the Group's insolvency could have been uncovered, and no dividends would have been paid and no share repurchases would have been made.

The court identified five matters (as discussed below) on which Lee failed to take further action, and accordingly held that she was in breach of her duty of care and skill.

Highlights

- a recent Hong Kong judgment reminds non-executive directors (NEDs) of their duty to exercise care and skill in performing their roles
- potential consequences in Hong Kong for failure to properly perform NED duties are in line with existing English and Australian case law
- NEDs cannot rely on their inactive participation in a company to avoid liability

1. Lee failed to investigate a complaint by a customer in 2000 involving manipulation of accounts between the customer and the Group. In particular, the customer identified an audit confirmation that showed activity in the amount of US\$1.3 million with an entity which was already dissolved. Lee was retained to advise on the matter. The court considered that had Lee taken steps to investigate the matter, the fraud of the Group's senior management would have been exposed.
2. The court considered that the Group's failure to settle the legal fees of Lee's law firm for around seven months, in circumstances where the consolidated financial statements of the Group covering part of the relevant period recorded a profit of HK\$172 million, should have prompted Lee to question the Group's solvency. The financial statements had been presented to Lee at a board meeting at the relevant time. However, Lee made no further inquiry.
3. As at 31 March 2001, the Group had granted cash advances of around HK\$233 million to third parties, representing 17.43% of the Group's net assets, on an unsecured basis. The significance of this is highlighted by the fact that Moulin was a manufacturer and distributor of eyewear, not a moneylender. The Group's moneylending activities were recorded in the minutes of an audit committee meeting held in December 2001, which Lee attended. The court found that Lee had failed to duly perform her duties in the following circumstances: (a) the Group had no moneylender's licence at the

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if NEDs become aware of irregularities in the company, they should make necessary enquiries or instigate investigations, instead of leaving the matter aside or purely accepting the senior management's explanation
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relevant time; (b) the Group, as of 31 March 2002, increased its interest-bearing bank borrowing by HK\$420 million (if it had idle cash to support its moneylending side business, it would not have had to increase its borrowings); and (c) Lee knew that one of the purported borrowers was not an independent third party, but a member of senior management of the Group.

4. KPMG resigned as an auditor in April 2002. The court considered that, as an experienced commercial solicitor, Lee should have realised the seriousness of the resignation of an auditor of a listed company. Lee had just accepted the CEO's explanation for the change, which was KPMG's proposed 'unreasonable high fee'. In fact, KPMG raised to the CEO a number of serious concerns as to the veracity of the Group's accounts, noting that urgent attention of the management was required. Ernst & Young (EY) was thereafter appointed.
5. Lee failed to make enquiries and require investigation, notwithstanding EY repeatedly expressing serious concerns at audit committee meetings attended by Lee and in writing to Moulin's board, and threatening to

qualify the accounts. At an audit committee meeting on 29 April 2004, Lee was informed of serious issues in respect of the Group's accounts concerning the veracity of (a) the Group's purported North American customers and purported payments from them; (b) amounts purportedly owed by Mr Ma, a Chinese subcontractor, which had been assigned to independent third parties to conceal his connection; and (c) the third party advances. However, notwithstanding her accumulated knowledge of the Group's irregularities, at two further board meetings, the board approved Moulin's financial statements/interim reports and the declaration of dividends.

In respect of the unlawful payment of dividends, the defence of acting honestly and reasonably was available to Lee under Section 358 of the old Companies Ordinance (Cap 32) and Section 281 of the Bermuda Companies Act. However, since Lee did not attend the trial, it was found to be purely academic to consider such defence.

As regards the unlawful repurchases of shares, the court considered that, even if a fault element was required (there

was a lack of considered argument as to whether it was required), it was still satisfied that Lee was in breach of her duty of care and skill.

Guidance from existing English and Australian case law

Existing English and Australian case law also suggests that NEDs are expected to contribute based on any relevant expertise and must make enquiries and seek advice if red flags are raised, and cannot hide behind the fact that they do not have an active role in management. Such failure can lead to serious consequences.

England

In England, executive and non-executive directors alike are under a duty to exercise reasonable care, skill and diligence in their roles. The standard expected of a director with particular knowledge, skills or experience (such as a qualified solicitor or accountant) will be greater where they are responsible for matters that fall within such expertise (for example, reviewing and approving the company's accounts, where the director in question is a qualified accountant).

The principle that NEDs who turn a blind eye to signs of potential misfeasance will be liable for breach of their duties to the company has long been a feature of English company law. For example, in *Dorchester Finance Co v Stebbing* [1977] 7 WLUK 144, the court found that two NEDs (who were also qualified accountants) could not escape liability for allowing the company to make illegal and irrecoverable loans by arguing that they had taken very little or no interest in the affairs of the company, and as such were not aware of this wrongdoing. In so finding, Foster J added: 'For a chartered accountant and an experienced accountant to put forward the

proposition that a non-executive director has no duties to perform I find quite alarming... the duties of a director whether executive or not are the same'

The leading modern authority is *Lexi Holdings (in admin) v Luqman* [2009] EWCA Civ 117, which confirms that NEDs cannot rely on their inactive participation in the company to avoid liability; in this case, the company suffered losses due to fraud perpetrated by the managing director. The Court of Appeal ruled that had the two NEDs performed their duties by making enquiries which would have revealed the fictitious accounts, and had they informed the other directors and the lending banks of the managing director's criminal record, as well as sought advice, the subsequent borrowing and misappropriation by the managing director would not have happened. This ruling is interesting, made in the context that the court at first instance had found no breach of duty. The reasoning of the court at first instance was that the two NEDs were sisters of the managing director, who was 'a persuasive, sophisticated, charming and highly intelligent liar', such that even if they had

taken a more active role, they would have been 'fobbed off'. The NEDs were ultimately held liable for the whole of the amounts misappropriated by the managing director (each NED liable for around £40 million). This case has been cited with approval in numerous recent decisions including *Raithatha v Baig* [2017] EWHC 2059.

Australia

In Australia, regardless of qualification, all directors are subject to an objective standard of care and skill in relation to the financial affairs of their companies. In *Australian Securities and Investments Commission (ASIC) v Rich* [2009] NSWSC 1229, the court confirmed that the statutory duty imposed on every director (including NEDs) requires each to become familiar with the fundamentals of the businesses of the company, to keep informed about and monitor the company's activities and affairs, and to have a reasonably informed opinion of the company's financial status and capacity.

Similarly in *Australian Securities and Investments Commission v Healey* [2011] FCA 717, it was held that all directors

Key issues

- Non-executive directors (NEDs), in particular those with a professional background, may face serious consequences for not taking action if they become aware of suspicious circumstances that warrant further investigation.
- NEDs are equal board members, and are expected to contribute to the board or committees based on their expertise and knowledge.
- NEDs should ensure that they have sufficient time to commit to their monitoring role before accepting appointment.
- Those without professional expertise should still be ready to inform appropriate persons and seek advice where required.
- The court will consider causation and whether but for the NED's failure, the wrongful behaviour would have continued.

have a responsibility to understand the contents of the financial statements which they adopt. The directors (including six NEDs) were found to have contravened their statutory duty of care and diligence by approving financial statements that misclassified current liabilities as non-current. NEDs cannot substitute reliance on others 'for their own attention and examination of an important matter that falls specifically within the Board's responsibilities'. As confirmed in *United Petroleum Australia Pty Ltd v Herbert Smith Freehills* [2018] VSC 347, 'directors must understand and focus upon the content of financial statements, and if necessary, make further inquiries if matters revealed in these financial statements call for such inquiries'.

Conclusion

Whilst NEDs are not involved in the day-to-day management of a company, they are expected to carry out their functions, which include monitoring and scrutinising the company's performance and reporting. NEDs, as equal board members, are expected to give the board, and any committees on which they serve, the benefit of their skills, expertise, background and qualifications through regular attendance and active participation.

The Moulin case serves to reinforce the fact that the roles of NEDs are not risk-free and may be much more onerous than one would have thought. This is particularly the case given the advanced

technology nowadays, which may facilitate fraud and make discovery of the same more difficult. The Moulin case further reminds NEDs of their duty of care and skill, in particular where they are professionals and/or have gained in-depth knowledge of the company's operations. If NEDs become aware of irregularities in the company, they should make necessary enquiries or instigate investigations, instead of leaving the matter aside or purely accepting the senior management's explanation.

Elaine Chen, Partner
Clifford Chance

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The Hong Kong Institute of Chartered Secretaries 2019 Annual General Meeting

Means of receipt of annual report, general meeting notice and related documents

2019 Annual General Meeting of the Institute will be held on Wednesday 11 December 2019 at 6.30pm at Theatre A, 22/F, United Centre, 95 Queensway, Hong Kong.

The Institute's Articles of Association allows electronic communication with its members and your Council values the importance of preserving the environment. We therefore encourage members to receive the annual report, general meeting notice and related documents in electronic form. All members will receive a notification email when the documents are made available on the Institute's website. Members who opt to receive hard copy should indicate their preference by returning to the Institute a completed and signed reply slip by 6.00 pm on Friday, 1 November 2019.

More details and the reply slip are available on the Institute's website: www.hkics.org.hk.



Professional Development

Seminars: August 2019

7 August

Economic substance in the offshore jurisdictions



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

Speakers: Fiona Chan, Partner; and Vincent Chan, Counsel; Appleby

9 August

Practical company secretarial workshops: part 3 – how to communicate effectively with your management, shareholders and other stakeholders, module 6 – the company secretary: the board's communicator (re-run)



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

13 August

了解和运用中国《公司法》和《外商投资法》- 以境内公司香港上市为视角



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

Speaker: Simon Chen, Partner, Chen & Co Law Firm

16 August

Practical company secretarial workshops: part 3 – how to communicate effectively with your management, shareholders and other stakeholders, module 7 – annual general meetings (re-run)



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

20 August

New definition of permanent establishment



Chair: Julian Leung FCIS FCS, Company Secretary and Deputy CFO, New Provenance Everlasting Holdings Ltd

Speakers: Wilson Cheng, Partner, Hong Kong Business Tax Services/Tax Controversy Services; and Sangeeth Aiyappa, Director, International Tax Services - Transfer Pricing; and Sharon To, Senior Manager, International Tax Services; Ernst & Young Tax Services Ltd

22 August

Open-ended fund companies – regulations and practical guidance



Chair: Dr Davy Lee FCIS FCS(PE), Institute Past President, and Group Company Corporate Secretary, Lippo Group
Speakers: Penelope Shen, Partner, Kwok Yih & Chan; and Stephen Wong, Director of Fund Administration, Amicorp Hong Kong Ltd

22 August

粤港澳大湾区背景下的跨境人才流动：人力资源管理应对及内地个税新政下的税务考量 - ('北上'篇)



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

Speaker: Helen Liao, Counsel, Corporate Commercial, Deacons

23 August

Practical company secretarial workshops: part 4 – what you can do more, module 8 – strategy: development and analysis (re-run)



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

28 August

Practical guidelines to enhance the ESG value



*Chair: Sally Chan FCIS FCS, Assistant Company Secretary,
CLP Holdings Ltd*

*Speakers: Ir Stephen Yu, Operations, Compliance and Risk
Director, British Standards Institution; Ir Professor
Raymond Wong, Head of Collaboration, CMA Testing
and Certification Laboratories; and Angus Chan,
Manager, Environmental Division, CMA Testing and
Certification Laboratories*

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: cpd@hkics.org.hk.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
22 October 2019	6.45pm-8.15pm	Listco 101: how to tackle queries from short sellers, auditors and regulators	1.5
23 October 2019	6.45pm-8.45pm	Tax residency certificate application and PRC individual income tax update	2
31 October 2019	6.45pm-8.15pm	Enterprise risk management to environmental, social and governance-related risks	1.5
1 November 2019	6.45pm-9.30pm	Company secretarial practical training series: notifiable transactions: practice and application (re-run)	2.5

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

Membership

New graduates

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

Au Kan Yee, Queenie	Jing Tao	Sin Wing Man
Chan Ho Kei	Kung Man	Siu On Chin, Angie
Chan Kin Kwan	Lai Lai Ngar	So Tsz Lui
Chan Kin Man	Lai Mei Ha	So Wing Chun
Chan Kwok Wing	Lai Ying Tung	Tam Ma Lai
Chan Kwun Yat	Lam Kam Yin	Tang Wai Yi
Chan Yi Kiu	Lam Tsz Kwan	Tang Yiu Sang, Sam
Chao Pui Ki	Lam Yan Yan	Tiu Ching Yee
Chen Xi	Law Sau Man	Tsang Man Kuen
Cheng Lai Yee	Lee Po Yu	Tsang Tsz Ching
Cheng Sheung Yin	Lee Pui Kei, Kris	Tsui Hin Chi
Cheng Tin Yiu	Lee Tin Yan, Angel	Tsui See Wing
Cheung Chun Lok	Leung Chi Kit	Wong Ka Yu
Cheung Oi Yan	Leung Mei Kuen	Wong Pui Yee
Choi Shui Sum	Li Man Ting	Wong Pui Yin
Chong, Natalie	Liu Pui Shan	Wong Shuk Sai
Chung Chui Yi	Liu Sin Man, Mandy	Wong Wan Ting
Chung Sze Man, Mandy	Liu Yu Hang	Wong Yui Ling
Ding Weizhi	Lu Ou	Wu Manjie
Fan Mei Yan	Mak Pui Ki	Yau Ka Yee
Fok Heung Wan, Emma	Man Hiu Lam, Katrina	Yau Wai Man
Fong Tsz Ying	Ng Kwan Wai, Claudia	Yeung Hoi Ki
Fu Ching Yi	Ng Wai Kam	Yeung King Hang
Ho Ting Ting	Ng Wing Man, Cecilia	Yeung Yu Chun
Ho Tsz Ying	Ng Wing Yan	Yim Lai Kiu
Hu Ying Zhi	Ng Ying Chui	Yip Wai Man
Huang Nga Yi	Ngan Nga Yin	Yuen Hei Ching
Hui Chung Ying, Constanzia	Or Yuen Kei	Zhang Le
Hui Ka Chun	Poon Sze Yin	
Im Kai Chuen, Stephen	Poon Yu Ching	

New Associates

Congratulations to our new Associates listed below.

Chan Chui Ying
 Chan Pui Ying
 Cheng Pui Shan
 Cheung Yuen Shun
 Ho Ka Man
 Ho Mei Ling
 Kwok Kai Hung
 Lai Yan Yi
 Lam Ka Yan, Kylie
 Law Pak Ting, Beatrice
 Lee Kam Man
 Lee Ying Wai
 Mak Ho Ting, Veedy
 Ng Ka In
 Ng Wai Kuen
 Tse Gee Kwan, Joanna
 Wang Nga Wing
 Weng Jie
 Wong Kin Tim
 Wong Pui Shan
 Wong Yue Hin
 Wu Ka Yan
 Yung Sin Yee

Members' activities highlights: August 2019

31 August 2019

Fun & Interest Group – Baking Class:
 幻彩麻薯红豆酥皮月饼



Forthcoming membership activities

Date	Time	Event
12 October 2019	9.30am–1.00pm	Community Service Month – Graceful meal workshop and visit to elderly
18 October 2019	9.00am–6.00pm	Community Service Month – Dress Pink Day
19 October 2019	9.30am–11.30am	Community Service Month – Services for mentally challenged people
27 October 2019	8.15am–1.00pm	Community Service Month – Pink Walk for Breast Health 2019

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

Maintaining professional standards

Member, graduate and student discipline

The Institute requires its members, graduates and students to comply with the requisite standards of professional ethics and conduct, and the Institute's regulations. The Investigation Group, Disciplinary Tribunal and Appeal Tribunal are the Institute's disciplinary bodies, as stipulated in the ICSA Byelaws and the Institute's Articles of Association.

A summary of the Institute's disciplinary cases for year 2018/2019 is set out below.

1. Professional misconduct cases

The total number of professional misconduct cases under disciplinary proceedings was eight:

- one case was closed after investigation with no prima facie case established
- three cases are under the proceedings of the Investigation Group
- four cases have been referred to the Disciplinary Tribunal and are still under proceedings
- no appeals against Disciplinary Tribunal decisions were made to the Appeal Tribunal

- the student disciplinary case brought in year 2017/2018 was settled

2. CPD non-compliance cases

The total number of CPD non-compliance cases processed under disciplinary proceedings was four:

- two cases were closed following one member's and one graduate's compliance
- two members were removed from the membership register

Notice of Disciplinary Tribunal decision

The Institute reprimands two members for professional misconduct:

- Cheung Yiu Hung, and
- So Kwok Keung, Keith.

For details of the member, graduate and student discipline, please visit 'Discipline' in the Membership section of the Institute's website: www.hkics.org.hk.

Advocacy

HKICS Corporate Governance Week

The Institute organised its second Corporate Governance Week (CG Week) from 16 to 21 September 2019 with the aim of promoting learning, sharing, discussion and debate on corporate governance issues in Hong Kong, as well as the Mainland. This is also one of the major events to celebrate the Institute's Double Anniversary Year. All delegates, from undergraduates to experienced governance leaders, signed up to the events held in the CG Week, details of which are as follows:

16 September – Stakeholders Networking Luncheon

This luncheon provided an opportunity for the Institute Council, members and HR practitioners to exchange views in relation to the recruitment, development and retention of governance, risk and compliance talents. At the luncheon, Institute President David Fu FCIS FCS(PE) delivered his welcome remark, Institute Past President and CGI International President Edith Shih FCIS FCS(PE) presented the recent development of The Chartered Governance Institute (CGI), formerly The Institute of Chartered Secretaries and Administrators (ICSA), and Chief Executive Samantha Suen FCIS FCS(PE) provided updates on the development of the Institute in Hong Kong and the Mainland. Inputs received from members and guests will be valuable to the Institute for future development of the governance profession.



17 September – Corporate Governance Forum

The Institute organised a Corporate Governance Forum titled 'Advising the Board in Time of Crises – the Governance Landscape in the Darkest Hours' with Institute Past President Neil McNamara FCIS FCS, Dr Davy Lee FCIS FCS(PE) and Institute Council Member Dr Eva Chan FCIS FCS(PE) as speakers, and Mark Bowra Partner of KPMG China as panellist. The seasoned practitioners shared the requisite thought processes required to better deal with crisis situations – an important advisory role owed by governance professionals to the board. The forum attracted over 100 participants.

The Institute thanks KPMG China for sponsoring the venue for this forum.



18 to 20 September – The 50th Enhanced Continuing Professional Development Seminars

The Institute held the 50th Affiliated Persons Enhanced Continuing Professional Development (ECPD) Seminars under the theme of 'Risk Management and the Inside Information Control' in Lanzhou between 18 and 20 September 2019. The seminars attracted over 230 participants from H-share, A+H share, red-chip, A-share and to-be-listed companies.

Dr Gao Wei FCIS FCS(PE), Institute Vice President and PH Chik, former partner of Linklaters (HK) introduced to participants the second edition of the *Guidelines on Practices of Inside Information Disclosure of A+H Companies* (the Guidelines), which was an update of the first edition released in 2014. The two editions were prepared by a research group comprised of Institute members, Affiliated Persons and senior legal professionals. Dr Gao and Mr Chik are the chairman and legal adviser of the research group respectively.

Other speakers shared their knowledge and experiences on relevant topics ranging from risk management and practices review; connected transactions and the effective

regulations; directors, supervisors, board secretaries and other senior management's responsibilities on the inside information disclosure management and control, and so on. At the group and panel discussion session, participants discussed and shared their practical experiences on risk management and inside information control. Wu Enlai FCIS FCS, Board secretary of China National Petroleum Corporation, presented a summary of the discussion.

The Institute would like to thank all speakers, participants, associate organiser (ShineWing CPA), and sponsors (SWCS Corporate Services Group (Hong Kong) Ltd, Tricor Services Ltd, and Equity Financial Press Ltd) for their generous support.



21 September – Corporate Governance Paper Competition and Presentation Awards 2019

The final event of the CG Week was the Corporate Governance Paper Competition and Presentation Awards. This year, the Institute received papers from 21 teams, which included 51 undergraduates from nine universities. The papers were first reviewed by a group of 10 academics, each representing one university; and then further reviewed by a panel of three judges who are practitioners. This panel shortlisted six finalist teams with the highest scores who were invited to present their papers and compete for the Best Presentation Awards on 21 September 2019.

For further details, please see page 46 of this month's journal.

CSIA Annual Council Meeting in New Delhi, India

The Council of Corporate Secretaries International Association Limited (CSIA) held its Annual Council Meeting on 9 and 10 September 2019 in New Delhi, India. CSIA, of which the Institute is a founder member, was registered in Geneva, Switzerland in 2010 and relocated to Hong Kong in February 2017. Chief Executive Samantha Suen FCIS FCS(PE) attended the meeting as a representative of the Institute. At the meeting, among other things, the Council adopted the Independent Auditor's Report and the Audited Consolidated Financial Statements for the year ended 31 December 2018, approved the reappointment of auditors, elected the Honorary Officers for the year 2020 and discussed the strategic plan for 2020.

CSIA Honorary Officers for 2020 are: -

President	Karyn Southgate (Southern Africa)
Vice-President	Ranjeet Pandey (India)
Secretary	Chua Siew Chuan (Malaysia)
Treasurer	Letitia Gaga (Zimbabwe)



Advocacy (continued)

HKICS attends the Belt and Road Summit 2019 in Hong Kong

Institute Council members Bernard Wu FCIS FCS and Natalia Seng FCIS FCS(PE) were invited to the Belt and Road Summit 2019 on 12 September 2019. The Summit was launched in 2016 and is now in its fourth year in Hong Kong.

HKICS attends study tour to Chongqing and Chengdu, the Mainland

Institute Treasurer Ernest Lee FCIS FCS(PE) and Chief Operating Officer and Director, Professional Development, Ken Yiu ACIS ACS(PE) attended a study tour to Chongqing and Chengdu from 5 to 8 September 2019 organised by the Coordination Department of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. Recent economic developments in Chongqing were shared with the participants.



2019 Welcome Dinner of Master of Science in Corporate Governance and Compliance programme of Hong Kong Baptist University

On 30 August 2019, Institute President David Fu FCIS FCS(PE) and Council member and Chairman of Membership Committee Stella Lo FCIS FCS(PE) were invited to join the 2019 Welcome Dinner of Master of Science in Corporate Governance and Compliance (MScCGC) programme of Hong Kong Baptist University. The dinner was to welcome new students of the MScCGC and for the Institute to share its latest developments with the students.



President attends 70th National Day Celebration Dinner

Invited by Hong Kong Institute of Certified Public Accountants, Institute President David Fu FCIS FCS(PE) attended their 70th National Day Celebration Dinner held on 12 September 2019 at the Convention and Exhibition Centre.

Launch of new electronic seminar/event signing in and out service

The Institute is pleased to announce that its IT and database systems upgrade has been completed. As part of the upgrade programme, seminar/event participants are required to scan a designated QR code provided in the confirmation email for signing in and out at the registration counter. Paper-based signing in and out arrangements ceased at the end of September 2019. The designated QR code must be provided for signing in and out from 1 October 2019 onwards.

Enhanced online services for seminar and event registration including online registration and payment by credit cards are now available. Enrolments will be confirmed once online payment is successful. To access the online services, please login to your user account with your email address registered with HKICS and your designated password in the login area of the Institute's website.



Electronic signing in and out at registration counter

International Qualifying Scheme (IQS) examinations

	Tuesday 3 December 2019	Wednesday 4 December 2019	Thursday 5 December 2019	Friday 6 December 2019
9.30am–12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2.00pm–5.00pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

This is the last examination diet of the International Qualifying Scheme (IQS). With effect from 1 January 2020, the new qualifying programme – HKICS Qualifying Programme (HKICS QP) with new syllabuses will replace the current IQS. The first examination diet of the HKICS QP will be held in June 2020. For details, please refer to the Studentship section of the Institute's website: www.hkics.org.hk.

HKICS Examination Technique Workshops

The Institute organised a series of three-hour IQS examination technique workshops in mid-October 2019. These workshops aim to help students improve their examination techniques.

For more information, please visit the Event section of the Institute's website: www.hkics.org.hk.

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.

IQS study packs (online version)

The updated version of the IQS study packs for Corporate Secretaryship, Corporate Governance, Corporate Administration and Hong Kong Corporate Law subjects are available online. For details of the updates, please refer to the News section of the Institute's website and the PrimeLaw platform for the study packs online version. Students are encouraged to register and read the study packs online.

For enquiries regarding the online study packs, please contact Leaf Tai: 2830 6010, or email: student@hkics.org.hk. For technical questions regarding PrimeLaw, please contact Wolters Kluwer Hong Kong's customer service by email: HK-Prime@wolterskluwer.com.

International Qualifying Scheme (IQS) examinations (continued)

Tips from subject prize awardees

Subject prize awardees from the May 2019 IQS examination diet shared their study experience and tips on preparing for the IQS examinations.

Mak Hau Yin, Melody (subject prize awardee, Hong Kong Corporate Law)

Miss Mak graduated with a bachelor's degree in Economics and Finance from The University of Melbourne. She is currently working as a senior secretarial assistant in a listed company.

This was Miss Mak's first attempt at the IQS examination on Hong Kong Corporate Law. She found that the knowledge gained by preparing for the examination was practical and could be applied in her daily work. Miss Mak thought that one of the most interesting parts of the syllabus is that there are a lot of cases for different topics and she found it exciting to learn the background stories. The cases also helped her understand the legal principles. She found that this subject was very practical and she was able to utilise the knowledge gained at work.

For examination preparation, Miss Mak enrolled in the Examination Preparatory programme organised by HKU SPACE. The lecturer's sharing of his experience and providing a clear explanation of the difficult topics helped her gain a better understanding of the subject. Miss Mak found that the Institute's study pack was well-organised and was a useful reference when preparing for the examination, and that some textbooks recommended by the Institute were also useful.

Miss Mak advised that, apart from revising the study pack and notes from the HKU SPACE Examination Preparatory programme, studying past examination papers and reading the examiner's report were useful in understanding what would be examined and enabled her to learn from past candidates' experience. Miss Mak also advised to start studying early and prepare a timetable so that the revision progress could be tracked.

Sze Tong (subject prize awardee, Hong Kong Financial Accounting)

Ms Sze graduated with a bachelor's degree in Chinese Language and Literature from The University of Hong Kong. She is currently working as a company secretarial officer in a listed company.

The main reason why Ms Sze decided to pursue the Chartered Secretary qualification is that the industry has a promising future. The regulations on companies are getting more rigorous nowadays, and it is the company secretary that takes the lead in maintaining good corporate governance and complying with legal requirements. Therefore, there is an increasing demand for company secretarial and governance professionals. Ms Sze found that the theories and knowledge she learnt from the IQS syllabus could be applied to her work and have improved her work performance. She also believes that being qualified by taking the IQS examinations will help make her a competitive professional in the market.

This was Ms Sze's first attempt at the IQS examination on Hong Kong Financial Accounting. She did not take any preparatory courses or examination technique workshops and she was not entitled to any subject exemption. Her motivation for preparing for the examination was the determination to complete the whole qualification programme within 2.5 years. By setting up specific and time-bound goals, Ms Sze was able to manage her time effectively.

Ms Sze's examination preparation advice is that she found past papers and study packs to be essential study materials and the Institute's monthly journal *CSj* kept her updated on the latest regulations. The examiner's reports were also must-read items as they analysed common mistakes.

Wong Yee Ting (subject prize awardee, Corporate Administration)

Ms Wong graduated with a BBA degree in Accounting and Finance from The University of Hong Kong. She is currently working as a relationship manager in the corporate banking section in a listed bank.

This was Ms Wong's first attempt at the IQS examination on Corporate Administration. Given that her daily job duties include conducting customer due diligence and analysing anti-money laundering risks of corporate clients, the Corporate Governance subject helped her identify whether her customers implemented sufficient internal controls and risk management. The major driving forces for her pursuit of the Chartered Secretary qualification were the international recognition of the professional qualification; a renowned reputation; the significance of company secretary roles in various corporations; and direct relevance to her current job duties.

Ms Wong emphasised that it was vital to prepare for the examination as early as possible. She began preparation around two to three months ahead of the examination date and so had sufficient time to go through all study materials and pinpoint

the main focuses of the various topics. Ms Wong found that the study packs published by the Institute were useful for her examination preparation because they were presented in a precise and concise manner.

Collaborative courses (CCA) – student orientations

The Secretariat conducted orientations for new CCA students at City University of Hong Kong, Hong Kong Baptist University, The Hong Kong Polytechnic University and The Open University of Hong Kong on 3, 23, 30 August; and 2, 8, 21 September 2019, respectively. Updates about the recent Institute developments, as well as relevant policies and requirements, were provided to the students.



Information session for PolyU Master of Professional Accounting

On 24 August 2019, the Institute's representative held an information session regarding the Institute and the dual qualification, Chartered Secretary and Chartered Governance Professional, to new students of the Master of Professional Accounting programme of The Hong Kong Polytechnic University (PolyU). Students found the information useful and inspiring.



Studentship

Corporate Governance Paper Competition and Presentation Awards 2019

To promote the awareness of good governance among local undergraduates, the Institute has been organising the Corporate Governance Paper Competition and Presentation Awards since 2006. This year's topic was 'How is good governance of non-governmental organisations (NGOs) similar to, and different from, good corporate governance of public companies'. The six finalist teams of the Paper Competition attended the Presentation Competition on 21 September 2019. The Institute extends its congratulations to the winners listed below.

Paper Writing	Paper Presentation
Champion Chan Pak Hay and Lee Ching Long City University of Hong Kong and Hong Kong Baptist University	Best Presentation Award Simran Sanjaybhai Kalathiya The Open University of Hong Kong
1st Runner up Choi Hiu Tung and Ho Heily Hei Yin The Hong Kong University of Science and Technology	1st Runner up Choi Hiu Tung and Ho Heily Hei Yin The Hong Kong University of Science and Technology
2nd Runner up Lai Hoi Shan, Lo Kin Kwan and Wong Hoi Keung The Hong Kong Polytechnic University	2nd Runner up Kwong Jasmine Nicole and Leung Yu Yan Ruby City University of Hong Kong



Best Presentation Award



Champion of CG Paper Competition



Top six Finalists with Judges



Top six Finalists with Panel Judges, Awardees and Reviewers

The Institute would like to thank the following individuals and organisations (listed in alphabetical order) for their contribution and support.

Reviewers

1. Dr Derek Chan, Associate Dean (Undergraduate), Faculty of Business and Economics, The University of Hong Kong
2. Professor David Donald, Professor, Faculty of Law, The Chinese University of Hong Kong
3. David Lai, Former Lecturer, Department of Accounting, The Hong Kong University of Science and Technology
4. Carmen Lam FCIS FCS, Senior Lecturer, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong
5. Professor Kevin Lam, Head, Department of Accountancy, The Hang Seng University of Hong Kong
6. Dr Claire Wilson, Assistant Academic Vice President, Head, Department of Law and Business, Hong Kong Shue Yan University
7. Aileen Wong ACIS ACS, Lecturer, Caritas Institute of Higher Education
8. Dr Raymond Wong, Associate Dean (Undergraduate Programmes), College of Business, City University of Hong Kong
9. Dr Davy Wu, Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University
10. Dr KP Yuen ACIS ACS, Senior Teaching Fellow, School of Accounting and Finance, The Hong Kong Polytechnic University

Paper Panel Judges

1. Loretta Chan FCIS FCS, Council member and Chairman of Professional Services Panel, HKICS, and Partner, Tax - Corporate Services, PricewaterhouseCoopers Ltd
2. Joseph Mau FCIS FCS, Member of Company Secretaries Panel, HKICS, and Managing Director - Listing & Regulatory Affairs & Group Company Secretary, Hong Kong Exchanges and Clearing Ltd
3. Paul Yeung, Senior Director and Commission Secretary, Securities and Futures Commission

Paper Presentation Judges

1. Dr Eva Chan FCIS FCS(PE), Council member and Chairman of Education Committee, HKICS, and Head of Investor Relations, C C Land Holdings Ltd
2. Michael Ling, Member of Mainland China Focus Group, HKICS, and Deputy Company Secretary, CLP Holdings Ltd
3. Margaret Yan, Member of Technical Consultation Panel, HKICS, and Director - General Counsel & Company Secretary, Hang Lung Properties Ltd

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1. School of Accountancy, CUHK Business School
2. The Hong Kong Institute of Chartered Secretaries Foundation Ltd

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Department of Accountancy, City University of Hong Kong

Studentship

Recruitment – examiners/ reviewers/markers of examination papers

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

Requirements:

1. Sound knowledge and experience in the related module(s)
2. Strong editing and writing skills
3. Experience in setting postgraduate level examination papers and marking schemes
4. Relevant academic and/or professional qualification in the related module(s)
5. Experience as a published writer is an advantage
6. Membership of HKICS/ICSA is an advantage

Interested parties please email 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.

(Data collected will be used for recruitment purposes only).

HKICS Qualifying Programme (HKICS QP) – reminder

With effect from 1 January 2020, the HKICS Qualifying Programme (HKICS QP) will replace the current International Qualifying Scheme (IQS). The first examination diet of the HKICS QP will be held in June 2020. The HKICS QP will comprise seven modules, of which six are compulsory and the seventh is chosen from two electives:

1. Hong Kong Company Law
2. Corporate Governance
3. Corporate Secretaryship and Compliance
4. Interpreting Financial and Accounting Information
5. Strategic Management

6. Risk Management
7. Boardroom Dynamics or Hong Kong Taxation (electives)

The Institute will announce details of the syllabuses, reading lists, study materials and pilot papers for all the modules in the HKICS QP to 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 & Examinations Section: 2881 6177, or email: student@hkics.org.hk.

Policy – payment reminder

Exemption fee

Students who received exemption confirmation letters issued in July 2019 are reminded to settle the exemption fee by Friday 25 October 2019.

Studentship renewal

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

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:

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls



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