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

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September 2019

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Qualifications and experience of the company secretary

Before turning to the theme of this month's journal, I'd like to address an important matter of relevance to our profession. As you may know, Hong Kong Exchanges and Clearing Ltd (HKEX) published a consultation paper last month proposing, among other things, to codify the discretionary waiver that has been granted on a number of occasions to listed issuers from compliance with the requirements of Main Board Rule 3.28 in relation to the experience and qualification of company secretaries.

Rule 3.28 requires a company secretary of a listed issuer to possess certain academic or professional qualifications (including being a member of The Hong Kong Institute of Chartered Secretaries; a solicitor or barrister under the Legal Practitioners Ordinance; and/or a certified public accountant under the Professional Accountants Ordinance). Rule 3.28 also requires a company secretary of a listed issuer to have relevant experience to be considered capable of discharging the functions of company secretary.

Council has considered and determined that the Institute strongly disagrees with the HKEX proposal. It would allow persons with no relevant experience, with assistance by a qualified company secretary, to be a company secretary for up to three years at a listed issuer. At the end of the three-year waiver period, the unqualified company secretary will presumably be deemed to have the relevant experience required under Rule 3.28.

For the Institute, in representing members' interests, this is not acceptable. Only properly qualified professionals should be allowed to be the company secretary of a

listed company. They should be members of recognised professional bodies, subject to relevant codes of professional ethics and conduct, discipline and continuous professional development. The Institute does not see the need for waivers to be granted from strict compliance with Rule 3.28 as the function of the company secretary should be fulfilled by a Hong Kong qualified company secretary. Following a membership survey, the Institute is preparing a submission to the HKEX consultation on the proposal, voicing its strong disagreement with the proposed codification. The Institute also urges members, graduates and students to provide their views directly to HKEX as well.

Turning to our theme this month, our cover stories look at an issue which has been climbing the agenda for members of our profession for some time – risk management. Our Institute has been advocating the integration of risk management as an integral part of organisations' corporate governance culture for a number of years. Both our 2015 and 2017 research reports looking at risk management practices in Hong Kong, published jointly with KPMG, emphasise that risk management is integral to good governance. The reports – 'Risk Management: Looking at the New Normal in Hong Kong' (2015) and 'Risk Management: Navigating Change in Hong Kong' (2017) – highlight the fact that the ultimate responsibility for the management of risks lies with the board and recommend that reviewing risk issues should be a standing board item.

The surveys on which these two reports were based indicated that risk management is still often seen as a compliance rather than a strategic priority. The fact is that effective risk management not only guards against the many potential threats to organisations' continued operations, it also adds value and supports growth.

In the current business environment, this message has a good prospect of being listened to. Organisations in Hong Kong are beset on all sides by major threats to their continued existence. Our Institute will continue to promote the development of structured frameworks within organisations to address risks. In keeping with the broader governance remit of our Institute, our CPD training and the curriculum of our New Qualifying Programme have a much stronger emphasis on risk management. The path to risk resilience is not an easy one, particularly in the current environment, but our members will be a part of the team – along with risk professionals – to ensure that risks get the attention they deserve.

Before I go, I would like to urge you to sign up for the events lined up for our second Corporate Governance Week later this month. You can get further details on our website. Places are limited so please book now to avoid disappointment!

Finally, I would also urge members to participate in the 2019 Annual General Meeting (AGM) of The Institute of Chartered Secretaries and Administrators (ICSA), which will be held on Tuesday 1 October 2019. This year, you are offered a choice of joining the AGM in person (at the Pullman Hotel, Auckland, New Zealand) or online from any location using your computer, smartphone or tablet. If you choose to participate online, you will be able to view a live webcast of the meeting and ask questions online. More details are available on the ICSA website: www.icsaglobal.org.

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

David Fu FCIS FCS(PE)

公司秘书的资格与经验

在讨论今期月刊的主题前，我想先提出与特许秘书有关的一项重要事项。大家也许都知道，香港交易及结算有限公司（港交所）上月发出谘询文件，当中的一项建议，是把一项有关公司秘书经验及资格的豁免编纳成规。港交所以往曾数度行使酌情权，豁免上市公司无须遵守《主板上市规则》第3.28条有关公司秘书的经验与资格的规定。

第3.28条规定上市公司的公司秘书须具备的学术或专业资格（即香港特许秘书公会会员、《法律执业者条例》所界定的律师或大律师，及／或《专业会计师条例》所界定的会计师）。第3.28条亦要求上市公司的公司秘书具备有关经验，足以履行公司秘书职责。

理事会经考虑后达成的意见是，公会强烈不同意港交所的建议。这项建议将容许缺乏相关经验的人士，在合资格公司秘书的协助下，担任上市公司的公司秘书，为期不超过三年。三年豁免期满后，该名不合资格的公司秘书大概可视为具备第3.28条所要求的相关经验。

作为会员的代表，从会员的利益出发，公会认为上述建议不可接受。只有正式取得资格的专业人士，才可容许出任上市公司的公司秘书。他们应是认可专业团体的会员，受相关专业道德及行为守则、纪律及持续专业发展规定所规范。公司秘书的职责应由在香港取得资格的公司秘书履行，公会看不到有需要豁

免严格遵守第3.28条。在进行会员调查后，公会将就该项建议向港交所提交意见书，对该项编纳成规的建议表示强烈不同意。公会亦促请会员、毕业学员和学员直接向港交所表达意见。

今期月刊的主题方面，封面故事讨论特许秘书日益关注的一项课题——风险管理。多年来，公会一直提倡把风险管理纳入机构的企业管治文化内，成为当中的组成部分。公会与毕马威会计师事务所所在2015及2017年共同出版有关香港风险管理实务的两份研究报告，均强调风险管理是良好管治中不可或缺的部分。两份报告分别是《风险管理：香港新常态观察》(2015)及《风险管理：驾驭香港的转变》(2017)，均重点指出董事会负有管理风险的最终责任，建议风险事宜检讨应成为董事会恒常讨论的事项。

该两份报告所本的调查显示，风险管理仍然往往被视为合规工作，而非策略重点。事实上，有效的风险管理不仅保障机构的持续运作免受威胁，更可为机构增值，促进机构发展。

在目前的营商环境下，这个讯息相信可更为人注意。香港机构的持续经营面对多方面的重大威胁。公会将继续促进在机构内建立有系统的框架，处理风险。随着公会所关注的管治范畴扩大，公会的持续专业发展计划和新专业评审计划的课程也加强了风险管理的内容。要能灵活妥善地处理风险，并非易事，在目

前的环境下尤其困难，但特许秘书乐意与风险管理专业人员共同合作，确保风险得到所需关注。

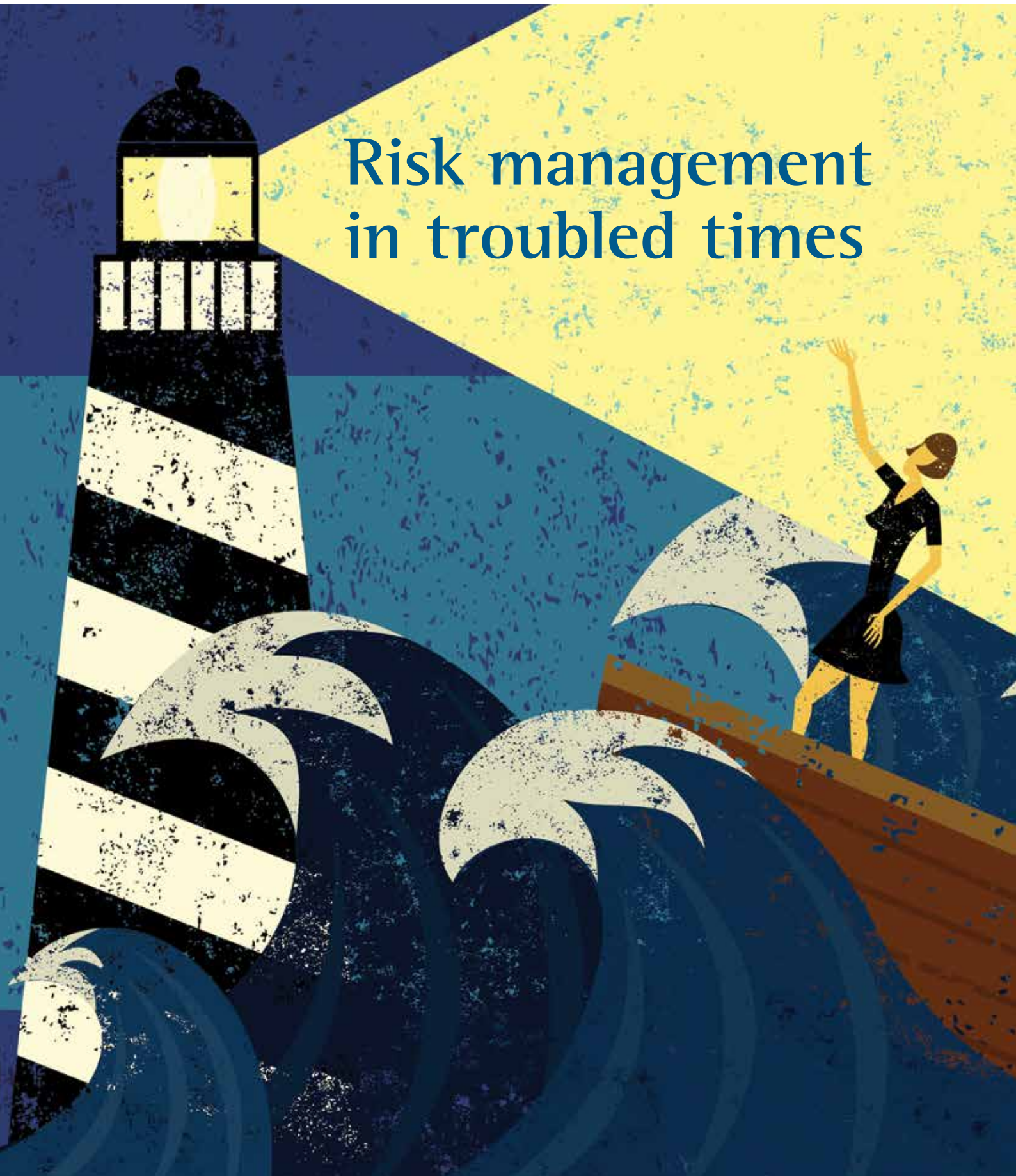
在搁笔前，我促请大家报名参加本月下旬第二届企业管治周的活动，详情可在公会网页浏览。名额有限，请从速报名，以免向隅。

最后，我亦促请会员参加特许秘书及行政人员公会(ICSA)2019年周年大会。大会将于2019年10月1日星期二举行。今年会员可选择亲身前往现场参与会议（地点为新西兰奥克兰Pullman Hotel），或在任何地点利用电脑、智能电话或平板电脑在网上参与。会员可观看会议的网上直播，并透过网络提问。详情可参看ICSA网页<http://www.icsaglobal.org>。

傅溢鴻

傅溢鴻 FCIS FCS(PE)

Risk management in troubled times



Against a backdrop of political unrest, the ongoing Sino-US trade war and growing environmental threats, there has been a renewed interest among governance professionals in the complex and challenging art of risk management.

In October and November last year, local newspapers reported on the vulnerability of many companies in Hong Kong to data governance risks. *Mingpao* cited the fact that you could easily obtain the credit reports of the city's Chief Executive and Financial Secretary through a few simple steps on the TransUnion Hong Kong website in November. Only a month earlier, airline Cathay Pacific had announced a data breach in which 9.4 million passengers' details were stolen by hackers.

These headlines are a reminder of the importance of effective risk management. Many companies, even the larger companies and financial institutions that have generally better risk management than smaller companies, are vulnerable to the manifold risks inherent in the current business environment in Hong Kong.

'We are still far, far away from talking about risk management and governance for many companies in Hong Kong. Even for big companies there is still room for improvement in areas such as

information security,' says Dominic Wu ACIS ACS, Chairman of Asia Financial Risk Think Tank.

KPMG and The Hong Kong Institute of Chartered Secretaries (the Institute) conducted surveys in 2015 and 2017 among senior managers of companies in Hong Kong. The 2017 survey found that, while the Corporate Governance Code changes of 2016 designed to foster a better risk culture among Hong Kong companies had helped improve the oversight of risk, only 69% of the companies interviewed included risk management in strategic decision-making. Both reports give recommendations on how organisations should include risk as a standing boardroom agenda item.

Mr Wu emphasises that the most fundamental step is getting support from the board. 'First of all, you need commitment from the board. If the board does not agree on the strategic priorities, there's nothing you can talk about. Once the strategy has been agreed, then you can move on to the governance of risk,

Highlights

- company secretaries, with their backgrounds in compliance and corporate governance, often take on risk management responsibilities
- effective risk management requires an understanding of the wider implications of current events
- the most fundamental step is getting support for risk management from the board

the tools to manage risk, the risk appetite statement, the necessary resources and also internal controls.'

Wu also points out that commitment from the board on risk management varies across industries and businesses. This point is echoed by other respondents to this article. 'Some industries have a strong tradition of risk management – some utilities for example are even better than banks. Banks have a very low risk tolerance, but the utilities have zero risk tolerance. The nature of the industry is such that if you make mistakes, people will die.'

The 2017 HKICS/KPMG survey also highlighted the differences between the financial sector and the non-financial sectors when it comes to assessing risk. It found 47% of respondents from the financial industry see their risk function within the company as 'mature and well-integrated in business activities with extensive oversight'. This, compared to just 10% of the respondents from the non-financial services sector. When it comes to roles and responsibilities, 63% of the respondents from the finance industry saw their roles as clearly defined for managing risks, compared to just 36% from the non-finance sector.

Social unrest and other uncertainties

Given that Hong Kong has been rocked by social instability in recent months, businesses here are taking risk management a lot more seriously. 'No company can escape from the risks and it has to face and to prepare for the challenges, no matter what size it is or will be,' says Mike Chan ACIS ACS, Fraud Control Officer and Head of Operational Risk Management at a top Mainland Chinese bank.

Facing the challenge requires adopting a structured approach to risk management, which is the fundamental element of governance. 'We have our operational risk managers in different departments and branches, and they are our so-called first line of defence. Their role is to be the major contact point and the ones that know the whole story and full picture. They use our models and tools and then report to the risk departments that are the second line of defence. If we consider the situation very severe and crucial exposures are identified, we will immediately escalate up to senior management and committees.'

When it comes to incidents like the protests, Mr Chan's bank has a set of plans in place to ensure business continuity and disaster recovery. 'We identified critical services through a detailed risk assessment mechanism, called Business Impact Analysis (BIA), for our bank so that we can prioritise our responses in case of incidents or disasters,' Mr Chan says. After considering and utilising BIA results, the bank develops an operational resilience plan to be ready in case an incident happens near any office, branch network or data centre, ensuring business continuity as well as the safety of staff and customers. The plan stipulates required resources in terms of people, processes and systems, as well as communication plans. 'We have different levels of alertness and when it reaches a certain level, we scale it up and convene a designated committee meeting urgently with our general managers, Chief Risk Officer, Chief Information and Operation Officer, Chief Financial Officer and different stakeholders to implement our resilience plan within the recovery time. Continuous monitoring is necessary to keep our plans alive,' Mr Chan says.

Both Mr Chan and Apple Lee ACIS ACS, Deputy Head of Risk Management at Bank of Communications Co Ltd Hong Kong Branch (Bank of Communications Hong Kong Branch), mention that their organisations are in regular contact with the Hong Kong Monetary Authority on the threat level to their branches and the general impacts on their business. Ms Lee says that Bank of Communications Hong Kong Branch has been calling their staff in early when there is a risk of road closures and public transportation disruption. 'During this period we have been coming to the office earlier than usual. On the day of the general strike, our staff were in the office before the stated time of the strikes,' she says.

This focus on the operational risks, however, needs to go hand in hand with an awareness of the indirect impacts. 'First of all you have to assess the direct and indirect impacts on the location of your business, but you also have to ask yourself how this may be affecting your clients. Will your clients' behaviour and attitudes change? There may be less spending as a result of the protests for instance,' Mr Wu points out.

He adds that addressing risk involves a wide knowledge of the many uncertainties that may affect the business. Assessing the impact of the ongoing Sino-US trade war, for example, is not just a matter of following the news. 'Each company is different, with a different exposure and a different client base. You need to take a strategic view and each enterprise needs to do an internal assessment. Think about the new rules of the game – the impact on globalisation, for example. How are you going to find your new position in the shifting global supply chains? Find the threats and also the opportunities,' he says.

“
cases of cyber-attacks
or emails being
compromised... should
be escalated to the
board immediately
”

Apple Lee ACIS ACS, Deputy Head of Risk Management at Bank of Communications Co Ltd Hong Kong Branch



The role of governance professionals

Risk management is an integral part of corporate governance. What then should be the role of governance professionals, in particular company secretaries, in assisting with the management of risk? The Institute has highlighted the importance of asking the right questions and company secretaries can be a crucial part of this in their board advisory and support roles. How often and how effectively is risk addressed by the board? How effective are the risk management internal controls? Does the organisation have a structured framework to identify risks and assess their impact on the business?

Ms Lee emphasises that good communication skills are vital to company secretaries. The company secretary plays a key role in setting up the board agenda for meetings, but given that board meetings are held once every few months, other communication channels outside the meetings are also important. 'It is really important that the board knows about any internal control failings, because these failings represent potential risk to the company. Cases of cyber-attacks or emails being compromised,

for example, should be escalated to the board immediately, perhaps via emergency meetings at the board level', she says.

Internal communication channels, such as chat groups and phone lines, are also crucial in keeping management and the board informed, she explains. 'One of the important things is to convey to the board our recommendations on certain decisions, such as buying expensive insurance for protection and indemnity. The insurance can run up to millions of Hong Kong dollars so we need to ensure the board understands why it is required,' she says.

Mr Wu points out that the mindset of a risk professional and a company secretary may not always be the same. 'The role of company secretaries is very important and they do a lot of compliance work, but one very distinctive aspect of risk management is that you have to be very forward looking – you have to be able to tell what will happen tomorrow and how you can deal with it. This does not mean that company secretaries cannot be responsible for risk management, but they would need to have more training because the mindset of a risk

professional and a company secretary can be different.'

Mr Chan points out that the issue of who should be responsible for risk management in a company will often come down to the question of resources. 'The smaller listed companies might not have the resources to have specialised risk officers. A company secretary has a background in compliance and has a strong mindset in corporate governance, so a company secretary with technical competency in risk management becomes a treasure of a company secretary who can help future governance enhancements. More importantly, companies should have a small office or team to be responsible for risk management at the very least. We need to change the mindset that risk management is a cost to companies – it actually helps to reduce financial loss through identifying risk exposures and implementing mitigating measures.'

Risk training

The ongoing situation in both domestic and global environments calls for more training in risk management, respondents to this article agree. 'Risk management is

“
**if the board does not agree on
 the strategic priorities, there’s
 nothing you can talk about**
 ”

Dominic Wu ACIS ACS, Chairman of Asia Financial Risk Think Tank



a profession just like accountancy. I don't think company owners and managers would hire an accountant who doesn't do accounting,' Mr Wu says.

Suggestions for ways risk management professionals can upgrade their skills and knowledge include more scenario-based sharing, talking to peers and other people, and keeping an open mind about future developments.

'We find that case studies generate the highest level of interest in the internal training at our organisation,' Ms Lee says. Such case studies focus on actual situations and assess the correct steps needed in each case. The TransUnion Hong Kong branch scenario mentioned at the beginning of this article, for example, is a good case to study in relation to the risks involved in improper storage of sensitive data. The first step here would be to identify the risk and this would be followed by an assessment of the most effective risk mitigation measures.

Ms Lee also mentions that organisations need to think about what kind of risks they need to prioritise. 'There are a lot of risks to consider and it's up to you how you prioritise these risks – taking into account for example the frequency or the severity of relevant incidents,' she says.

Respondents also highlight the potential for future collaboration between different professional bodies and the Institute in risk management training. The Institute has been upgrading its own risk management training in recent years. The transition to the new combined Chartered Secretary and Chartered Governance Professional (CS/CGP) designation has led to a broadening of the curriculum of the Institute's Enhanced Continuing Professional Development programme and a revised syllabus for its New Qualifying Programme to ensure that CS/CGP professionals have the knowledge and reinforced skill set they need. The new curriculum has a much stronger emphasis on board effectiveness and risk management.

Crisis and opportunity

There is no shortage of high-level risks for businesses to consider at the moment. Respondents to this article highlight liquidity and geopolitical risks among the most significant risks Hong Kong companies will face going forward. Mr Wu urges companies to consider the impact of 'de-globalisation' and global reconfiguration of supply chains. News reports have also reported on capital outflow to destinations such as Singapore and such a situation is likely to continue given the political situation in Hong Kong.

'Companies in Hong Kong need to rethink the new global model. Can you just rely on exports to the US or should you diversify your customer base? Managers need to be aware of this macro climate and future trends. If you don't put all your eggs in one basket, no matter what happens, you will still have choices,' he says.

He adds that it is always worth remembering that, even in times of crisis, there are opportunities. 'Even though your assessment can be very negative, there are always opportunities and it's also about being positive. Try to reduce the negative impacts and maximise the potential upside,' he says.

Poo Yee Kai

Journalist

The 2017 KPMG/HKICS research report mentioned in this article ('Risk Management: Navigating Change in Hong Kong') was a follow-up to an earlier report in 2015 ('Risk Management: Looking at the New Normal in Hong Kong'). Both reports are available in the Publications section of the Institute's website: www.hkics.org.hk.



Together in Community Services

HKICS Community Service Month



The Institute is committed to its corporate social responsibility and is organising the first 'Community Service Month' in October 2019 in celebration of its Double Anniversary year.

October 2019

	Event	Beneficiary Organisation
SAT 5	Fun-day with children	Tung Wah Group of Hospitals
SAT 12	Graceful meal workshop and visit to elderly	St. James' Settlement
FRI 18	Dress Pink Day	Hong Kong Cancer Fund
SAT 19	Community services for mentally challenged people	The Mental Health Association of Hong Kong
SAT 25	Pink Walk for Breast Health 2019	Hong Kong Breast Cancer Foundation

Let's join hands
together and serve
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For more information, please visit the Institute's website or contact: 2881 6177 or email: member@hkics.org.hk.

ESG and risk

An essential partnership for long-term value



Putting a dollar value on environmental, social and governance (ESG) impacts, argues Pat Dwyer, Founder and Director, The Purpose Business, demonstrates the business sense of prioritising ESG management.

In the summer of 2019, Hong Kong Exchanges and Clearing Ltd (HKEX) held their latest ESG consultation (see 'Online resources' for all resources referenced in this article). The key focus was to support and improve issuers' governance and disclosure of ESG activities and metrics.

'Our proposals emphasise the board's leadership role and accountability in ESG and the governance structure for ESG matters. The consultation also seeks to highlight that materiality in respect of ESG is key to meaningful and concise reporting. Our proposal to require disclosure on climate-related issues echoes the increasing international focus on climate change and its impact on businesses,' said David Graham, HKEX's Head of Listing.

At corporates, the top-down approach is key to pushing fundamental change and, while C-suite regard for the importance of ESG is on the rise, it can still be difficult to rally the whole organisation around its business case. This is due to a mix of factors ranging from language and jargon (sustainability means different things to different people), to lack of technical knowledge of ESG issues and putting a dollar value to ESG impacts so that it makes business sense (and is able to compete with other priorities). It is this last factor that many struggle with, yet really is the key to unlocking responsible businesses.

To understand ESG is to view it with a risk lens, to measure it with costs and to reflect on its true value to the business. Corporate governance is traditionally focused on issues such as role and composition of boards, overall business ethics and

executive compensation, but in the last decade the ESG issue has pushed itself onto and up the agenda as well. There has been a clear rise in environmental and social issues that require senior leadership's focus, thus tying into the latest HKEX proposals. ESG-related risks pose unique challenges, prompting the Committee of Sponsoring Organizations and the World Business Council for Sustainable Development to partner to develop guidance to help entities better understand the full spectrum of ESG risks and to manage and disclose them effectively. Their joint report – 'Enterprise Risk Management: Applying enterprise risk management to environmental, social and governance-related risks' is essential reading for anyone seeking to understand ESG through the risk lens.

The World Economic Forum's annual 'Global Risks Report', which is informed by nearly 1,000 decision-makers from the public sector, private sector, academia and civil society, has been dominated by environmental risks in recent years, both in terms of likelihood and the impact that they will have. Looking forward, the report

identifies extreme weather and climate-change policy failures as the gravest threats of the next 10 years.

Frameworks such as the Task Force on Climate-related Financial Disclosures, the science-based targets that underpin the Paris Agreement and the UN Sustainability Goals with its targets and indicators are providing increasingly accepted and adopted mechanisms for measuring, managing and reporting ESG issues. The process of quantifying issues helps broaden the conversation and helps companies to more easily recognise ESG as fundamental to the conversation on risk.

In simple terms, environmental and social issues can have far-reaching financial implications for a company and while they may not single-handedly dictate the rise and fall of share price, failure to properly manage them will incur costs that could be significant and need to be understood and mitigated.

The cost of operations

The development and delivery of goods and services extends beyond simple

Highlights

- to understand environmental, social and governance (ESG) is to view it with a risk lens, to measure it with costs and to reflect on its true value to the business
- failure to properly manage ESG risks will incur costs that could be significant and need to be understood and mitigated
- fresh graduates today come at a higher cost because they do not only measure value through take-home pay

“ with mounting scrutiny of ethical business practices, the 'I didn't know' defence simply won't cut it ”

procurement these days into complex supply chain management systems. These systems may be spread regionally or globally across different jurisdictions and include different regulatory and compliance laws that need to be accounted for. In extreme cases, some inputs to the supply chain may even be associated with highly illegal activities such as human trafficking or inhuman working conditions. The challenge for business is it could be exposed to hidden, uncontrollable and non-transparent practices. With mounting scrutiny of ethical business practices, the 'I didn't know' defence simply won't cut it.

Companies are under scrutiny from customers, the media, environmental NGOs and even credit rating agencies, who themselves are ramping up ESG data analysis, according to the United Nations' Principles for Responsible Investment (PRI). The PRI launched the 'ESG in Credit Ratings Initiative' in 2016 and Asia is substantially represented at this body with representatives from the Mainland and Malaysia, and two from Japan (this is consistent with the ESG wave that drove the emergence of a Japanese stewardship code and a growing focus on ESG among Japanese institutional investors, especially pension funds such as the Japanese Pension Investment Fund).

Operationally, increased scrutiny affects the bottom line as companies incur expenses related to supplier audits, minimum resource efficiency performance, implementing required certifications for B2B industries, such as those in the apparel, textile and food and beverage industries, and other means necessary. Failure to properly manage the supply chain and consider the ESG aspects thereof could also result in losses, prime examples being the vehicle recalls following emissions fraud, the safety scandal that hit Chinese pharmaceutical companies following reports of fake vaccines, and Mattel Fisher-Price's recall of the Rock 'n Play due to infant deaths, which cost the company an estimated US\$40-60 million.

The cost of talent

While many of us talk about the future of work – imagining the coexistence of robots and their creators, the truth is that most Hong Kong listed companies are still very resistant to evolving basic talent pipelines and leadership succession. Companies hire the same way, chasing the top graduates for management trainee positions and retiring those managers anywhere from 60 onwards. However, while these corporates may not have changed much, the outlook of their potential employees has. Fresh graduates today come at a higher cost because they do not only measure value through take-home pay. Millennials, who by next year will make up 35% of the global workforce and will jump to 75% of the global workforce by 2025, also value security, holidays and time off, working with great people and a flexible working environment, according to ManpowerGroup's 'Millennial Careers: 2020 Vision' report.

Before we rearrange office spaces to look like Google's or WeWork's, we also need to look at our thinking around talent development. This includes supporting more women from the ground up in STEM (science, technology, engineering and maths), finance and tech careers, giving them workplace support so as not to compromise between family and career. There is also the matter of diversity at board level, which is integral to a company's long-term financial performance and overall resilience. According to a 2018 EY survey of 60 institutional investors collectively representing US\$32 trillion in assets under management, 82% consider this issue a management priority warranting disclosure, while 52% also want companies to disclose their workforce diversity and inclusion actions.

In order to future-proof businesses, the 'S' in ESG will need to be budgeted for. In order to be the employer of choice, we need to ensure that our people are engaged and stimulated, benefit from workplace wellness and can see a path for career growth. Gallup's latest 'State of the Global Workplace' report shows that '85% of employees are not engaged (18%) or actively disengaged (67%) at work. The economic consequences of this global "norm" are approximately US\$7 trillion in lost productivity! This means that we are paying people full time and, while they may give us 8-10 hours at the desk, they are not fully committing themselves in the role, whereas they might be over shorter hours or under different conditions. These employees are indifferent, likely to jump ship for any new role that seems better (even if not better paid). If we are to manage the cost of talent, this certainly does not look like it has a decent return on investment.

The cost of brand and reputation

Public relations experts have told us time and again that it takes years to build a brand and minutes to crash it. Earlier this year, Ethiopian Air Flight 302 was the second Boeing 737 crisis in four months, tainting the safety records of the renowned aircraft manufacturer. If Boeing suspends production completely we know that safety (an 'S' issue) is going to incur costs of operations. It also brings into question the trustworthiness of the brand going forward. For airlines like British Airways and Cathay Pacific, this means costs incurred to mitigate risks for commercial aerospace management, as well as their own brand and reputation on issues such as safety,

quality and welfare of both staff and passengers.

Blue Planet I and II have also stirred our attention beyond straws and coffee lids and now consumers are primed to support brands that make them feel like they are part of the solution. Kantar says that as early as mid-2018, '44% of polled UK respondents say they have recently become more concerned about single-use plastics, and 70% plan to change their behaviour in some way as a result'. In Hong Kong, up to 5.3 million single-use plastic bottles are thrown out every day and this has given rise to campaigns to reduce this and raise awareness about the problem, such as #plasticfreeJuly and

the Hong Kong Rugby Sevens' Green7s campaign.

Visionary companies tackle ESG as part of leadership and innovation. Many others do so out of compliance. Whichever side of the spectrum you are on, ESG simply makes good business sense. Similar to corporate governance, it is a business necessity that goes beyond corporate citizenship. It is about operating as a responsible and sustainable business – and the cost of not managing it well today will catch up on our balance sheets in the near future.

Pat Dwyer, Founder and Director
The Purpose Business

Online resources (in order of appearance)

- www.hkex.com.hk – 'Review of the Environmental, Social and Governance Reporting Guide and Related Listing Rules' (Hong Kong Exchanges and Clearing Ltd).
- www.coso.org and www.wbcds.org – 'Enterprise Risk Management: Applying enterprise risk management to environmental social and governance-related risks' (the Committee of Sponsoring Organizations (COSO) and the World Business Council for Sustainable Development).
- www.weforum.org – 'Global Risks Report' (World Economic Forum).
- www.fsb-tcfd.org – 'Recommendations of the Task Force on Climate-related Financial Disclosures'.
- <https://sciencebasedtargets.org> – resources and guidance on science-based target setting CDP (formerly the Carbon Disclosure Project), the United Nations Global Compact, World Resources Institute, and the World Wide Fund for Nature).
- www.unpri.org – 'ESG in Credit Ratings Initiative' (the United Nations' Principles for Responsible Investment).
- <https://unfccc.int> – progress tracker of global commitments under the COP21 agreement signed by parties to the United Nations Framework Convention on Climate Change in Paris on 12 December 2015 (United Nations).
- www.un.org – Sustainable Development Goals (United Nations).
- www.manpowergroup.com – 'Millennial Careers: 2020 Vision' (ManpowerGroup).
- www.ey.com – '2019 EY CEO Imperative Study'.
- www.gallup.com – 'State of the Global Workplace' (Gallup).
- www.kantarworldpanel.com – insights about consumers and shoppers in global markets (Kantar).

New guidance notes

CSj highlights the latest additions to the Institute's guidance note series, updating members on how to conduct internal investigations into malpractice and on inside information disclosure requirements for A+H share companies.

The Hong Kong Institute of Chartered Secretaries (the Institute) set up seven Interest Groups under its Technical Consultation Panel in June 2016 to issue guidance notes in their areas of expertise. This project has subsequently added a substantial body of guidance to the Institute's website for the benefit of the Institute's members and the wider profession and community. This article highlights the latest additions to this series.

Internal investigations

The Institute's Ethics, Bribery and Corruption Interest Group (EB&C) issued its fourth guidance note in August this year. The three previous guidance notes addressed legal and regulatory compliance issues, as well as investigation readiness. The latest EB&C guidance note covers

best practice when conducting internal investigations.

The guidance note stresses that ensuring internal investigations are robust and objective is not only a part of good corporate governance, but will also potentially mitigate litigation, reputational, criminal and regulatory risk further down the line. In this context, the guidance note outlines how companies should structure and conduct an internal investigation into alleged bribery, fraud or other wrongdoing, looking at relevant factors in Hong Kong and the Mainland.

The need for an early warning system

Many internal investigations are launched following a request from a regulator or other external authority for information regarding an alleged breach of law or

regulation. Ideally, however, companies will have a functioning early warning system that will trigger an investigation long before regulatory bodies become involved. Issues may be uncovered, for example, during internal discussions, training or audit processes by internal auditors or external auditors of the company. These may reveal 'red flags' that indicate a particularly high risk that corrupt behaviour may have occurred.

Another form of early warning system, is a whistleblower channel enabling employees and/or stakeholders such as suppliers or vendors to reveal suspected misconduct. Every company, and especially listed companies, should set up whistleblowing policy and adopt a detailed complaint reporting procedure as described in C.3.7 and C.3.8 of Appendix 14 of the listing rules (see 'Whistleblowing – comply or explain').

The guidance note has useful suggestions on the best way to set up a specific channel within the company to receive whistleblowing information. The channel should have independent status and would preferably be attached to internal auditors or the company secretary who are accountable to the company's audit committee. Other departments in the company, such as human resources, can be used to receive whistleblowing complaints or concerns as long as they

Highlights

- the latest Ethics, Bribery and Corruption Interest Group guidance note outlines how companies should structure and conduct an internal investigation into alleged malpractice
- digital forensic tools exist to help the investigation team identify potentially relevant documents
- the second edition of the Institute's *Guidelines on Practices of Inside Information Disclosure of A+H Companies* is a valuable resource for anyone involved in the governance of companies listed in Hong Kong and the Mainland



have independent status to handle whistleblowing cases.

The company should also strictly follow a whistleblower protection policy under which any retaliation or ill-treatment against genuine whistleblowers is subject to disciplinary action. In addition, the identity of the whistleblower and the information provided should be kept confidential – only being shared on a strict 'need to know' basis during the investigation process.

Determining scope and assembling the investigation team

The guidance note stresses that a good internal investigation should not only focus on the underlying allegations and possible compliance failings, but also address potential systemic issues – for example, whether the problem is more widespread or symptomatic of another issue. Nevertheless the investigation team should avoid starting the investigation with a very broad scope in order to avoid loss of focus.

The guidance note points out that, for obvious reasons, the investigation

team should exclude anyone allegedly implicated, either as a witness or wrongdoer, in the malpractice. The investigation team should ultimately account and report to the board of directors of the company. If a board member or member of senior management is implicated in the alleged misconduct, the chairman of the audit committee may escalate the case to the chairman of the board of directors who may set up a separate ad hoc committee of the board with enough internal and external resources and support to oversee the investigation.

For more serious events, the guidance note also recommends engaging outside counsel to direct the investigation.

Document collection and review

A key priority at the outset of any internal investigation is to preserve all potentially relevant information. This will typically include information from a very wide variety of sources – including hard copy documents and data stored electronically. The guidance note acknowledges that, given the wide variety of devices such

data might be stored on, identifying what the company can collect and review has become complex. It also points out that, regardless of the form in which the information exists, data privacy laws must be observed.

Once relevant data is preserved, the next step is to review the data. Issues can arise where the company wants to transfer the data across borders to be reviewed by people located elsewhere. Local data privacy and state secrecy laws may impose restrictions. As a matter of good practice, the company should keep a record of all steps taken to collect and review data. Further, data should be kept in an orderly and secure manner in case they are required for litigation or an external investigation.

Digital forensic tools exist to help the investigation team identify potentially relevant documents. Software programmes using artificial intelligence and algorithms can conduct first round reviews of documents for relevance and legal privilege. In particular, the use of search terms (for example, key words,

individuals' names or date ranges) helps to hone the pool of documents to be reviewed. 'String searching', whereby data in a specific text string or pattern is grouped together for review, is also popular. Analytical tools can also help pinpoint suspicious patterns of activity, for example high levels of email traffic between individuals, emails sent at unusual times and so on.

In conjunction with document collection and review, the investigation team should identify who they wish to interview (typically employees) and how these interviews should be conducted.

Preparing a report

It is important for the investigation team to consider how best to report findings of the investigation internally. The guidance note offers a number of considerations here. For example, law enforcement agencies/regulators may want to see a copy of any written report so the manner and timing of reporting requires careful consideration.

In the case of serious matters, the guidance note recommends that the outcome of the investigation should be reported to the chairman of the board who will determine whether a full board meeting is necessary to discuss the matter. In particularly urgent cases, the board chairman may directly refer the case to the relevant regulator or law enforcement without discussion in a full board of directors' meeting.

The guidance note also points out that external reporting obligations to regulators and/or criminal authorities may apply to any internal investigation reports. If the company is listed, for example, there may be obligations to report to the Stock

“ self-reporting and cooperation with investigations by both law enforcement and regulators will be influential to obtaining leniency, particularly when representing a corporate entity ”

Exchange and the market. If there are proceeds of crime, there may be obligations to report under relevant money laundering provisions. For example, in Hong Kong, there is an obligation to report to an 'authorised officer' (usually the Joint Financial Intelligence Unit) upon becoming aware of, or suspecting, proceeds of crime.

Moreover, reporting obligations are not limited to the jurisdiction(s) where the relevant conduct took place. For instance, any obligations to regulators in the company's home jurisdiction should be considered, as well as any jurisdictions where the business may be impacted by the relevant conduct. It may be prudent to voluntarily self-report in relevant jurisdictions concurrently while satisfying mandatory reporting obligations in others.

In many jurisdictions the involvement of any regulator will be accompanied by secrecy obligations. Hong Kong is one such jurisdiction, where secrecy obligations often attach to criminal and regulatory investigations. This can place companies in a difficult situation, although it may be possible to get relevant regulators' approval for disclosure of an investigation to other regulators.

In the absence of a positive obligation, in certain jurisdictions there may be some

advantages to voluntarily self-reporting. Self-reporting and cooperation with investigations by both law enforcement and regulators will be influential to obtaining leniency, particularly when representing a corporate entity.

If the company decides not to report, it is important to ensure that the decision-making process that resulted in that conclusion is documented. That way, if the question is later raised as to why the company did not make a report, then the relevant information will be available (even if the employees involved have moved on).

Remedial actions

A key value of internal investigations is the opportunity they provide for companies to enhance their policies, procedures, systems and controls to minimise the likelihood of similar incidents recurring.

Consideration should be given, for example, to whether those suspected of wrongdoing should be suspended or put on leave pending the completion of the investigation. Consideration should also be given as to whether any weaknesses need to be strengthened in other parts of the business. The response will depend on the misconduct and how it arose, but work may be needed to strengthen relevant policies – both setting up the

policies and making sure that there are appropriate checks and balances in place. It will also be important that staff get appropriate training; it will not be enough to simply update policies and procedures, and there will likely be some 'lessons learned' updates that should be shared.

Inside information disclosure for A+H share companies

The Institute's Mainland Technical Consultation Panel has published the second edition of *Guidelines on Practices of Inside Information Disclosure of A+H Companies* (the Guidelines). The first edition of the Guidelines, which was published in 2014, was the first of its kind in the Hong Kong and Mainland markets, offering practitioners, directors, senior managers and regulators a valuable guide to the different requirements on inside

information disclosure for companies listed both in Hong Kong and the Mainland from a practical governance perspective.

The Institute commenced work on revising and updating the Guidelines more than a year ago in response to the changing needs of governance professionals working in Hong Kong and the Mainland. The second edition has undergone a rigorous stakeholder-led upgrade based on five rounds of written consultations, eight revisions and three series of meetings that spans more than 12 months.

The Guidelines cover three broad topics:

1. a summary of the inside information disclosure law in Hong Kong and comparisons of the key differences and similarities of the inside information disclosure law and

regulations in Hong Kong and the Mainland.

2. suggestions and recommendations on internal control systems in inside information disclosure, and
3. specific guidelines on inside information disclosures.

The second edition updates the applicable rules and regulations to 31 December 2018, and expands the scope of the comparisons of the rules relevant to A+H share companies to include:

1. suspension of trading
2. disclosure of shareholder's information, and
3. unusual share trading movement.

The second edition also introduces two appendices. Appendix 1 contains a collection of the five case summaries (three Hong Kong court/Market Misconduct Tribunal decided cases and two pending proceedings against two listed issuers) regarding breaches of the Hong Kong inside information disclosure law. Appendix 2 is a collection of Mainland insider dealing case summaries demonstrating the interpretations of the Mainland courts and the China Securities Regulatory Commission when the duty to disclose 'inside information' arises under the relevant Mainland law and regulations.

The guidance notes mentioned in this article are available from the Publications section of The Hong Kong Institute of Chartered Secretaries website: www.hkics.org.hk.

Whistleblowing – comply or explain

The need for effective whistleblowing arrangements among listed companies in Hong Kong is addressed by the Corporate Governance Code (Appendix 14 of the listing rules).

Code Provision

C.3.7 The terms of reference of the audit committee should also require it:

- (a) to review arrangements employees of the issuer can use, in confidence, to raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for fair and independent investigation of these matters and for appropriate follow-up action; and
- (b) to act as the key representative body for overseeing the issuer's relations with the external auditor.

Recommended Best Practice

C.3.8 The audit committee should establish a whistleblowing policy and system for employees and those who deal with the issuer (for example customers and suppliers) to raise concerns, in confidence, with the audit committee about possible improprieties in any matter related to the issuer.

Practical guidelines for enhancing ESG value

Ir Professor Raymond Wong, Head of Collaboration and Quality Assurance & Compliance, and Angus Chan, Manager (Environmental), both of CMA Testing and Certification Laboratories, and Ir Stephen Yu, Operations, Compliance & Risk Director, of BSI Hong Kong, discuss new Hong Kong proposals for environmental, social and governance (ESG) compliance, and suggest practical ways for companies to improve ESG analysis and reporting.



A tidal wave of global sustainable investing is driving a burgeoning interest in environmental, social and governance (ESG) disclosure, comprising how a company impacts the environment; how it manages its relationships, including with customers and the communities in which it operates; and how it deals with the whole range of governance and compliance issues. Stakeholders are urging a far greater disclosure of sustainability and ethical issues, and are demanding far more relevant detail. The way a company manages its ESG risk now has a profound effect on its financial and operational performance, while the regulatory and social requirements for measuring and disclosing ESG performance are evolving rapidly in tandem with its growing importance.

The Hong Kong position

In May 2019, The Stock Exchange of Hong Kong Ltd (the Exchange) issued a new consultation paper, entitled 'Review of the Environmental, Social and Governance Reporting Guide and Related Listing Rules' (ESG Review), in which it invited comments on a number of proposed changes to its first 'Environmental, Social and Governance Reporting Guide', introduced in 2013 as a recommended practice, and later updated with new listing rules in 2016.

In its review of the current ESG framework, the Exchange took into account other recent developments in Hong Kong, including the 'Strategic Framework for Green Finance', published by the Securities and Futures Commission in September 2018, and a paper entitled 'Environmental, Social and Governance Strategy for Hong Kong' published by the Financial Services Development Council

in November 2018. On the international front, the Exchange also aligned its recommendations with those of the Task Force on Climate-related Financial Disclosures (TCFD), which more specifically emphasises climate-change issues.

The Exchange's ESG Review proposes several amendments to support and improve governance and disclosure of ESG matters. These include requirements relating to an explanation of the application of the prescribed reporting principles, target setting for environmental key performance indicators (KPIs), upgrading all social KPIs to 'comply or explain' and guidelines on independent assurance. Proposals also cover the introduction of one new Aspect A4 on climate change, as well as four new KPIs, including a new anti-corruption KPI. Particular feasible actions are elaborated on to provide guidance when preparing for some of the potential new disclosure requirements.

The most significant proposed amendment in the Exchange's ESG Review is the introduction of a number of mandatory disclosure requirements, which will impact ESG reporting and which incorporate disclosure of the board's oversight of

ESG issues; the process used to identify, evaluate and manage materiality; and the means by which progress towards ESG-related targets are measured and assessed.

Climate-change scenario analysis

Due to the escalating demands from investors and other stakeholders for decision-useful climate-related financial information, TCFD structured its recommendations around four thematic areas: governance, strategy, risk management, and metrics and targets. Scenario analysis is introduced for assessing climate-related issues, identifying risks and opportunities, and evaluating the potential financial implications.

In order to apply scenario analysis to the management of climate-related risks and opportunities, the authors advise that the following six major steps should be undertaken:

1. defining the assessment boundaries
2. assessing the materiality of climate-related risks, including market, reputational, policy and physical risks
3. defining the scenarios

Highlights

- a recent consultation paper, issued by The Stock Exchange of Hong Kong Ltd, proposes several amendments to improve disclosure of environmental, social and governance (ESG) matters, including a number of mandatory disclosure requirements and a greater emphasis on climate-related risk management
- six major steps are recommended in order to apply scenario analysis to the management of climate-related risks and opportunities
- readily available tools, such as the ISO families of standards, can be utilised to assist and enhance ESG reporting

“ stakeholders are urging a far greater disclosure of sustainability and ethical issues, and are demanding far more relevant detail ”

4. conducting background and desktop research
5. evaluating impacts and opportunities, and
6. devising response plans.

Challenges related to climate scenario analysis

The challenge of climate scenario analysis is that the cumulative, second-order and projected impacts elicited by climate change are not obvious or direct, and thus a massive amount of desktop and background research covering a wide range of scientific literature is required to identify the direct and indirect linkages between a business and climate change. In order to better manage the risks involved, different climate scenario information is required to be interpreted in specific business contexts.

For example, take a company that is a pharmaceutical producer with a manufacturing site in Asia. When assessing the risks, failure to adopt new production technology like zero water withdrawal technology could constitute a technology risk. In terms of physical risk, there might be transportation disturbances due to flooding. There might be concerns over the type of packaging used, due to surging

consumer awareness of sustainability issues, which in turn could constitute market and reputational risks.

In addition, changing perceptions about nutritional deficiency could gradually create a shift in market demand. The 'Global Assessment Report on Biodiversity and Ecosystem Services', published by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in 2019, found that nature, biodiversity and the agroecosystems are being eroded at rates unprecedented in human history. Climate change has exerted an adverse impact on nutrition through decreased food quantity and access, decreased dietary diversity, and decreased food nutritional content. Climate change affects the food supply chain – and subsequently, the nutritional supply. This demonstrates a second-order impact of climate change that constitutes a market risk. More importantly, significant second-order impacts are not rare.

Constructive mechanisms for fulfilling the quantitative reporting principle requirements

The Exchange's ESG Review proposes that ESG reporting should include the disclosure of information on the standards, methodologies, assumptions and sources of the conversion factors used, to illustrate how the quantitative principle is being applied. For the sake of consistency, comparison and traceability, it is recommended that a data management system is established and that it is continuously enhanced.

Many companies have obtained ISO 14001 certification for their environmental management systems, covering aspects such as leadership, planning, operation, training, performance evaluation,

management review, improvement and compliance. As the majority of companies tend not to take ESG requirements into consideration when implementing ISO 14001, management of the environmental data in relation to particular Environmental KPIs, such as KPI A1.1 Emissions and KPI A1.2 Greenhouse Gas (GHG) Emissions, has been relegated or even omitted.

Quality control activities involving consistent checks, as well as identification of errors and omissions, are not sufficient. It is recommended that the quality control activities also cover the activity data and emissions factors. In particular, because emissions factors change from time to time, a review of the quality of the emissions factors constitutes a vital necessity. A number of quality indicators, including the time horizon, as well as geographic and data sources, could be applied. Concerning the time horizon, the emissions factors should be published within five years. Regarding geographic considerations, data should be representative of the specific market in which the products are placed. For data sources, whether the emissions factors are published by a government organisation, an academic institute or an industry association does matter, in terms of credibility and reliability. Ideally, a scoring system should be developed for the betterment of the review.

Relationship between ESG and ISO management systems

Over 2,000 standards or guidelines published by the International Organization for Standardisation (ISO) are related to the Sustainable Development Goals, as set by the United Nations General Assembly in 2015. Particular ISO information management systems can enhance and enrich the disclosures under

the ESG Reporting Guide, and further build credibility via certification. For example, the ISO 14001 standard for environmental management systems and the ISO 50001 standard for energy management systems could be used to systematically collate environmental policies and could function as tools for the general disclosures proposed under the Exchange's ESG Review, under 'comply or explain' provisions, for Aspect A1 Emissions and A2 Use of Resources. Furthermore, these two systems could facilitate a review of any regulatory requirements newly promulgated and raise environmental awareness among employees.

1. ISO 45001. The ISO 45001 standard, which relates to a management system for occupational health and safety, and which focuses on risk prevention, innovation and continual improvement, can be utilised to demonstrate a company's commitment to a sustainable working environment by providing a safe and healthy workplace, pertinent to Aspect B2 Health and Safety.

2. ISO/IEC 27001. The ISO/IEC 27001 standard provides requirements for an information security management system and is a systematic approach to addressing the issues of prevalent and sophisticated cyber-attacks, as well as the processes for managing important information. This ISO/IEC standard relates closely to KPI B6.5, under Aspect B6 Product Responsibility, and requires a description of consumer data protection and privacy policies, as well as its implementation and monitoring process.

3. ISO 37001. ISO 37001, which addresses the establishment or enhancement of an anti-bribery management system (ABMS), is an effective tool to satisfy compliance requirements of relevant legislation, manage risks throughout the supply

chain, and ascertain which suppliers and subcontractors are committed to anti-bribery best practices. The ABMS is pertinent to Aspect B7 Anti-Corruption and, as such, could be adopted to prepare for the proposed new addition of KPI B7.3, which calls for a description of anti-corruption training provided to directors and staff.

Strategic application of the ISO management systems can foster business continuity and resilience. Externally, attaining certification in the ISO standards will build business credibility, since audits are conducted by a qualified certification body.

ISO 37001 anti-bribery management system

Because the framework for ISO 37001 ABMS was published only relatively recently, in October 2016, the amount of reference information is limited. Several procedures are required before a company can introduce an ABMS, including building a risk calculator to categorise the severity and likelihood of bribery, identifying interested parties, conducting an anti-bribery activity assessment and nurturing a workplace culture that incorporates anti-bribery. Regarding the anti-bribery activity assessment, assessment needs to be conducted for different lines of service and for different departments involving several aspects, consisting of the effectiveness of existing controls, risk treatment, review period, and identified opportunities and actions. If the company has operations across different regions, the audit activities would need to be influenced by the Corruption Perception Index (CPI) of the corresponding region. The CPI, which currently ranks 180 countries and territories by their perceived levels of public sector corruption, is

published annually by Transparency International.

Even though the ABMS is a relatively new ISO framework, obstacles to its implementation can be surmounted with sufficient engagement across various internal departments.

The outlook for ESG

With the escalating demand – both locally and internationally – for better ESG performance and greater disclosure of ESG practices, along with inevitably tougher compliance regulations, companies are coming under increased pressure.

There is no doubt that a company can create value by enriching its ESG information and presenting that information in the expected format. Readily available tools, such as the ISO families of standards, can be utilised to assist and enhance ESG reporting, while information on materiality and methodologies can be accessed from several sources.

Challenges notwithstanding, compliance with ESG rules and regulations is only going to become more crucial as we move forward into the future.

Ir Professor Raymond Wong, Head of Collaboration and Quality Assurance & Compliance

CMA Testing and Certification Laboratories

Ir Stephen Yu, Operations, Compliance & Risk Director

BSI Hong Kong

Mr Angus Chan, Manager (Environmental)

CMA Testing and Certification Laboratories



New offshore Economic Substance Laws

Implications for Hong Kong companies of new Economic Substance Laws in the Cayman Islands and the British Virgin Islands

Eugene Yeung, Director, and Johnson Tee, Senior Manager, Corporate Tax Advisory practice of KPMG China, overview the new Economic Substance Laws and explain how regulatory changes in the Cayman Islands and the British Virgin Islands impact Hong Kong businesses with holding companies in those offshore jurisdictions.

Effective from 1 January 2019, certain offshore jurisdictions, including the Cayman Islands and the British Virgin Islands (BVI), have issued new Economic Substance Laws (ES Laws) that introduce certain reporting and economic substance requirements for entities conducting 'relevant activities' in local jurisdictions.

This is game-changing for corporate groups for the way in which they manage and control their Cayman and BVI incorporated companies. Corporate groups and even individuals with these offshore companies may need to restructure their

Highlights

- effective from 1 January 2019, new Economic Substance Laws (ES Laws) in the Cayman Islands and the British Virgin Islands will potentially impact Hong Kong companies
- the economic substance requirements are broadly met if the relevant entity is directed and managed from; conducts core-income generating activities in; and has adequate operating expenditure, physical presence and full-time employees in the relevant jurisdiction
- for pure equity holding companies, the current administrative burden of complying with the new ES Laws is not stringent, but this could change with the ongoing development of the global tax environment

holding and operational structures to ensure that they are carved out or that they satisfy the economic substance test.

This article focuses primarily on the impact of the ES Laws on Hong Kong businesses with holding companies in these offshore jurisdictions and outlines the new compliance requirements, reporting deadlines, penalties for non-compliance and mitigation strategies.

Introduction

In response to efforts made by the Organisation for Economic Co-operation and Development (OECD) to enhance global tax transparency under Action 5 of the Base erosion and profit shifting (BEPS) initiatives, as well as an investigation by the European Union's (EU) Code of Conduct Group (COCG) into certain low- or no-corporate income tax regimes, various offshore jurisdictions have enacted new ES Laws. These include the governments of the Bahamas, Bermuda, BVI, the Cayman Islands, Guernsey, the Isle of Man, Jersey, Mauritius, the Seychelles and the Marshall Islands, whose updated economic substance rules came into effect on 1 January 2019.

Of particular interest to Hong Kong are the implications for BVI and Cayman Island companies, both of which are locations where many corporate groups have established holding companies, investment funds and/or special purpose vehicles (SPVs).

What are the Economic Substance Laws about?

The ES Laws are designed to ensure that if profits are being earned by an offshore company, then those profits need to be aligned to where the business or profit-

generating activities are being carried out, thus potentially affecting the tax outcome. The level of economic substance required in these jurisdictions needs to be commensurate with and support the business. This will have an impact on Cayman and BVI companies that are being used to conduct businesses or hold investments to generate income.

In December 2018, the Cayman Islands and BVI passed the International Tax Co-operation (Economic Substance) Law, 2018, and the Economic Substance (Companies and Limited Partnerships) Act, 2018, respectively, both effective from 1 January 2019.

The Cayman Islands subsequently issued the Cayman Islands' Economic Substance for Geographically Mobile Activities Guidance version 1.0, on 22 February 2019, and an updated Guidance version 2.0, on 30 April 2019 (the Guidance). Similarly, BVI released its draft Economic Substance Code, dated 22 April 2019 (the Code).

What entities are in-scope?

Generally, all 'relevant entities' carrying out 'relevant activities' are obliged to fulfil the economic substance requirements, with certain exclusions.

Definition of a relevant entity

Most of the local entities and 'exempt' or 'offshore' entities incorporated or registered in the offshore jurisdictions are in-scope. These include:

- locally incorporated companies
- foreign companies registered in the relevant jurisdictions, and
- limited partnerships.

Definition of a relevant activity

Relevant activities consist of the following nine types of business, namely banking, distribution and service centres, finance and leasing, fund management, headquarters businesses, holding companies, insurance, intellectual property (IP) holding and shipping.

What level of substance is required?

Where a relevant entity carries out one or more relevant activities in a relevant jurisdiction, the relevant entity must fulfil the local economic substance requirements in relation to each activity being carried out.

Broadly, the economic substance requirements are met if the relevant entity is directed and managed in an appropriate manner from the relevant jurisdiction; conducts core-income generating activities (CIGA) in the relevant jurisdiction; and has adequate operating expenditure, physical presence and full-time employees in the relevant jurisdiction.

The economic substance requirements vary with different types of relevant activities. Specifically, entities carrying out an IP holding business are presumed to be non-compliant with the economic substance requirements. To meet the rigorous substance requirements for an IP holding business, these entities are required to take strategic decisions, and to manage the risks associated with the development and exploitation of the IP, using locally based employees to conduct the CIGA and trading activities through exploitation of the IP.

Holding companies

Conversely, a pure equity holding company is subject to reduced substance requirements. Using a very specific

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”



definition, a pure equity holding company is a company that holds equity shares and which only earns dividends and capital gains.

Based on the Cayman Islands' Guidance, the economic substance requirements are met if a pure equity holding company:

- has complied with all applicable filing requirements under the Company Law, and
- has adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participation in other entities.

The substance requirements can be outsourced to local service providers.

In addition, for a pure equity holding entity incorporated in BVI:

- there is no requirement for the entity to be directed or managed in BVI
- there is no requirement for the entity to carry out CIGA, nor to outlay a certain level of expenditure, in BVI (as there is no CIGA relating to a holding business), and

- there are no restrictions on the extent to which a pure equity holding entity may outsource its activity.

In effect, the administrative burden of complying with the reduced substance requirements in the Cayman Islands and BVI does not appear to be too onerous for pure equity holding companies. In practice, and depending on the circumstances, existing company secretarial and entity maintenance outsourcing may be sufficient.

Exclusions

It is worth noting that there are certain instances where Cayman Island or BVI entities are not required to comply with the ES Laws. These exclusions include, but are not limited to, the following items.

1. Local entities that do not carry out relevant activities

While on the surface this may appear to be straightforward, there are some uncertainties involved. For example, if a pure equity holding company makes an investment in a debt security, by definition it is no longer a 'pure equity holding' company, and yet it may not fall into the other types of relevant activities. It is unclear if these entities would need to comply with any of the

economic substance requirements and whether this interpretation aligns with the legislative intent. Alternatively, the debt investments could be transferred out, leaving only an equity investment and thus qualifying as a pure equity holding company.

2. Local entities that are tax resident in another jurisdiction

A local entity is outside the scope of the ES Laws if it is tax resident in another jurisdiction. Based on the Guidance and the Code, to substantiate that the relevant entity is in fact resident in another location, satisfactory evidence is required. For example, such evidence may include:

- a Tax Identification Number
- tax residence certificate and assessment
- payment of a tax liability, or
- other documentary evidence that could support the tax residency.

From a Hong Kong perspective, this could be achieved by registering under Part 16 of the Hong Kong Companies Ordinance. That said, the potential historical and

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future tax implications would need to be considered prior to making this move.

3. BVI entities that do not generate income from a relevant activity in a financial period

Based on the draft Code, it is stated that a BVI company 'can discontinue the activity, or modify it so it no longer falls within the scope of a relevant activity'.

With regard to the above, and based on a strict interpretation of the ES Laws and the draft Code, a position could be taken that if there is no relevant income, the BVI entity no longer falls within the scope of a relevant activity or activities, and is thus not required to comply with the ES Laws. As the economic substance is assessed by reference to financial periods (normally one year in length), if the BVI entity did not derive any relevant income for that financial period, it should not be required to meet the relevant economic substance requirements for that particular period.

Similarly, based on the Cayman Islands' Guidance, a relevant entity that carries out a relevant activity but which has no relevant income is not obliged to meet the requirements of the ES Laws.

4. Investment funds and their SPVs

In the Cayman Islands, an investment fund is not considered a relevant entity for the purpose of the ES Laws and is not required to satisfy the economic substance test. The term 'investment fund' also includes any entity through which the investment fund directly or indirectly invests or operates, for example the fund's Cayman Island SPVs.

In BVI, although not specifically excluded from the definition of relevant activity, the business of being an investment fund is not considered a relevant activity, and is thus outside the scope of the economic substance requirements.

Transition period and reporting obligation

For companies established on or after 1 January 2019 in both the Cayman Islands and BVI, compliance with the substance requirements is mandatory from the time they start providing the relevant activities.

In the Cayman Islands, existing companies as at 31 December 2018 had a six-month transition period (that is, until 1 July 2019) to comply with the new rules. In BVI, the government had introduced a beneficial ownership data collection regime, known as the Beneficial Ownership Secure

Systems Act, 2017 (BOSS Act), which was later amended to accommodate the Economic Substance Act. The BOSS Act amendment was originally intended to come into force on 30 June 2019, but its effective date has now been deferred to 1 October 2019. This new date is not a filing deadline, and does not replace 30 June 2019 as the deadline for entities to be compliant with applicable economic substance requirements. However, by 1 October 2019, BVI entities are required to have completed 1) their internal review exercises on whether or not they wish to be BVI tax resident entities, 2) their financial reporting periods, and – should they decide to register as a BVI tax resident – 3) the establishment of their procedures to support the relevant substance requirements for their relevant activities.

Commencing in 2020, entities will have annual reporting obligations to Cayman Island and BVI authorities in respect of their compliance with the new rules. There are heavy penalties for failing to satisfy the economic substance test, with a fine for non-compliance of approximately US\$10,000 applicable to the initial year and up to US\$100,000 in subsequent years. The entities may also be struck off the Registrar of Companies for continuing non-compliance.

Mitigation measures and conclusion

The introduction of the ES Laws is potentially a game-changer for corporate group structures and multinational companies that commonly use Cayman Islands or BVI companies. Under the ES Laws, this will mean that unless the offshore entities or SPVs are carved out, these entities/SPVs will require a certain level of economic substance to be established in that jurisdiction.

This is a good opportunity to revisit the wider group's holding structure and the purpose behind it, as well as the costs and benefits of maintaining such offshore entities, taking into consideration the changing global economic and tax landscape and the various BEPS initiatives in order to formulate a longer-term solution.

Group companies will need to think about how the new rules impact their operational and holding structures. If they are caught out by the rules, management may need to restructure their holding and operational structures to ensure that they are carved out or that they satisfy the economic substance test. The substance requirements may be satisfied through deployment of

services provided by certain platforms, or by service providers.

As part of the review of the group holding structure, management should critically assess the existence of, and need to use, these offshore companies – specifically, whether or not these offshore entities still serve the purpose they were originally established for and whether it would be viable to reduce the number of intermediate holding companies to save costs and administration. This typically involves the combined efforts of multiple internal departments. The resultant alignment of interests and expectations, as well as appropriate project management and coordination, are keys to success.

As a takeaway, given the development of the global tax environment towards greater transparency and the clamping down on harmful tax practices, economic substance requirements are likely to expand to even more jurisdictions, particularly those which have very low or no taxation. While existing operating structures may still be viable under current laws, management should keep a close eye on new developments and make appropriate changes in a timely manner in response to such changes.

Eugene Yeung, Director, and Johnson Tee, Senior Manager, Corporate Tax Advisory

KPMG China



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Backdoor listings: the SFC approach

The Securities and Futures Commission (SFC) clarifies its approach to backdoor listings and shell activities, using its statutory powers under the Securities and Futures (Stock Market Listing) Rules and the Securities and Futures Ordinance.

A



In recent years, problems associated with backdoor listings and shell activities have attracted wide attention. These activities can undermine the integrity and quality of our market, and may affect investor confidence and our market's reputation.

Backdoor listings involve transactions or arrangements that are structured to achieve a listing of assets while circumventing the requirements that apply to a new listing applicant, including:

- initial listing criteria under the listing rules, such as suitability for listing, financial eligibility criteria and sufficiency of public interest in the business of the company, and
- obligations such as disclosure and due diligence requirements.

Backdoor listings are often associated with assets of lower quality or with suitability issues.



B

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Issues relating to backdoor listings and shell activities

How backdoor listings are achieved

The means by which backdoor listings are achieved have evolved in ways that make them harder to detect or regulate. Some examples of backdoor listings are highlighted below.

- Instead of one single substantial acquisition, a backdoor listing may involve a series of smaller acquisitions of a new business (sometimes this could also involve organic development of the new business), which has no connection with the listed company's original business, financed by the proceeds from an issue of new shares to a new major shareholder.
- An incoming major shareholder may acquire a significant interest in the listed company, which is less than

Highlights

- the means by which backdoor listings are achieved have evolved in ways that make them harder to detect or regulate
- backdoor listings circumvent the suitability, disclosure and due diligence requirements that apply to a new listing applicant
- the Securities and Futures Commission and the Stock Exchange of Hong Kong will continue to work closely and exchange information to tackle backdoor listings and shell activities

30% but circumstances suggest that the shareholder is able to exercise de facto control over the company.

- Transactions may be arranged in a sequence designed to circumvent the related rules. For example, when a disposal of the original business to the outgoing controlling shareholder is deferred to a later stage instead of before or at the time of the change in control.

In most cases, the end result would be a fundamental change in the nature of the listed company's business and substantial changes in its major shareholders, directors and management.

The role of shell companies

Closely related to backdoor listings are various activities involving shell companies. These are listed companies that are maintained with a low level of business operations as vehicles for backdoor listings. These shell activities include:

- listing businesses in order to monetise the premium attached to the listing status rather than to genuinely develop an underlying business
- disposing of all or substantially all of the listed company's original business in preparation for a

subsequent change in control and injection of assets by the new controlling shareholder, and

- pursuing new businesses with low entry barriers and little commercial substance (for example, a moneylending business with only a few customers) in an attempt to maintain the shell company's listing status.

Regulatory response

To enhance our listing regime and maintain market quality, the SFC and The Stock Exchange of Hong Kong Ltd (the Exchange) have conducted a thematic review of the regulation of

Key provisions of the SMLR

Section 6(2)

Under Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (SMLR), the SFC is empowered to object to a listing application if it appears to the SFC that:

- the application does not comply with a requirement under Section 3 of the SMLR
- the application is false or misleading as to a material fact or is false or misleading through the omission of a material fact
- the applicant (i) has failed to comply with the SFC's request for information under Section 6(1) of the SMLR, or (ii) in purported compliance with such request, has furnished the SFC with information

which is false or misleading in any material particular, or

- it would not be in the interest of the investing public or in the public interest for the securities to be listed.

Section 8(1)

Section 8(1) of the SMLR provides that the SFC may direct The Stock Exchange of Hong Kong Ltd to suspend all dealings in a listed corporation's shares if it appears to the SFC that:

- any materially false, incomplete or misleading information has been disclosed by the corporation in any document (such as a prospectus or circular) issued in connection with the listing of its shares, or in any announcement, statement, circular or other document made or issued by or

on behalf of the listed corporation in connection with its affairs

- it is necessary or expedient in the interest of maintaining an orderly and fair market in securities traded on the stock market
- it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in any listed securities, or
- there has been a failure to comply with conditions imposed by the SFC in the context of a resumption of dealings under Section 9 of the SMLR following a previous suspension.



listed companies. The Exchange has since introduced a series of amendments to the listing rules to address issues relating to GEM, highly dilutive capital raising activities and the prolonged suspension of trading in some companies' listed securities. The Exchange has published a consultation conclusions paper on backdoor listings and continuing listing criteria together with related amendments to the listing rules (see 'New reverse takeover rules', CSj August 2019).

In addition to the Exchange's regulation of listed companies based on the listing rules, the SFC will not hesitate to use its statutory powers, including its investigation powers, and take action against the parties involved, including companies, directors, major shareholders and intermediaries, where appropriate. In particular, under the Securities and Futures (Stock Market Listing) Rules (SMLR), the SFC may object to a listing application based on one or more of the grounds set out in Section 6(2), and it may also direct the Exchange to suspend trading in a listed corporation's shares under Section 8(1) of the SMLR (see 'Key provisions of the SMLR').

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backdoor listings and shell activities... can undermine the integrity and quality of our market, and may affect investor confidence and our market's reputation
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Factors SFC considers in exercising its statutory powers

In deciding whether to exercise its powers of investigation under the Securities and Futures Ordinance or its powers under the SMLR in cases involving backdoor listings and shell activities, the SFC will have regard to the facts and circumstances of each case including whether there are any red flags:

- indicating a possible scheme designed to mislead regulators and/or the investing public or to circumvent applicable rules, or
- suggesting that other forms of serious misconduct have been or will be committed.

Set out below are some non-exhaustive factors that the SFC considers are likely to be relevant.

- Whether there are any red flags indicating concealed arrangements or understandings (such as one involving a change in control or a change in de facto control) between the parties involved, including the directors, shareholders, intermediaries and advisers.

- Whether the listed company or the listing applicant has disclosed the true nature or extent of its business, affairs and plans.
- Whether there are any fundamental issues relating to the new assets or businesses being or to be injected that would lead to concerns as to whether these assets or businesses should be allowed to be listed and have access to public investors' capital.
- Whether there are any concerns that the directors might not have fulfilled their fiduciary duties and acted in the interests of the shareholders as a whole.
- Whether sufficient due diligence has been conducted on the assets or businesses acquired, and whether the scope of due diligence is appropriate.

Cooperation between the SFC and the Exchange

The SFC and the Exchange will continue to work closely and exchange information to tackle backdoor listings and shell activities.

Source: Statement on the SFC's approach to backdoor listings and shell activities (26 July 2019).

Further information is available in the review the 20th Annual Corporate and Regulatory Update (ACRU) of The Hong Kong Institute of Chartered Secretaries (CSj July 2019), the article 'New reverse takeover rules' (CSj August 2019), and on the websites of the Securities and Futures Commission: www.sfc.hk, and Hong Kong Exchanges and Clearing Ltd: www.hkex.com.hk.

Professional Development

Seminars: July and August 2019

4 July

Is your company complying with the new AML/CDD requirements?



Chair: Ken Yiu ACIS ACS(PE), Institute Chief Operating Officer and Director of Professional Development

Speaker: Leon Liang, Head of Solution Consultants, North Asia, Refinitiv

5 July

Practical company secretarial workshops: part 1 – how to manage board meetings effectively, module 1 – effective board meetings (re-run)



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

11 July

Grow your business in Southeast Asia – incorporation, property and tax in Malaysia



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

Speakers: Chai Chuan Long, Partner; Lew Choon Meng, Partner; Ong Yee Chee, Partner; Julius Leonie Chai; and Janice Chew, Principal, JC Legal

12 July

Practical company secretarial workshops: part 1 – how to manage board meetings effectively, module 2 – board dynamics at meetings (re-run)



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

12 July

Company secretarial practical training series: company meeting and AGM: practice and application



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

15 July

Company secretarial practical training series: non-Hong Kong company and dormant company: practice and application



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

16 July

Practical guidelines to Hong Kong initial public offering (IPO)



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

Speaker: Daniel Wan, Institute Technical Consultation Panel member, and Partner and Head of IPO/ECM Hong Kong, Addleshaw Goddard (Hong Kong) LLP

17 July

Introduction of convertible preference share in a business valuation



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

Speaker: Kenneth Lam, Associate Director, RHL Appraisal Ltd

18 July

Effective dispute resolution and how to achieve it – the Hong Kong position



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

Speaker: Joe Liu, Deputy Secretary-General, Hong Kong International Arbitration Centre

19 July

Practical company secretarial workshops: part 2 – getting to know your board, module 3 – board composition and succession planning (re-run)



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

23 July

Execution of company documents under the Companies Ordinance (Cap 622) and proof of due execution for use in Hong Kong & overseas



Chair: Caron Lee FCIS FCS(PE), Executive Director, Corporate Services, Tricor Services Ltd

Speaker: Samuel Li, Notary Public & Solicitor, Samuel Li & Co

24 July

Nip conflicts in the bud: effective corporate governance tools for family business succession



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

Speakers: Anna Chan, Partner; and Gon Yeung, Associate; Oldham, Li & Nie Lawyers

Professional Development (continued)

26 July

Practical company secretarial workshops: part 2 – getting to know your board, module 4 – board directors (re-run)



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

29 July

Practical guide to implementing AML/CTF internal policies, procedures and controls



Chair: Philip Miller FCIS FCS, Institute Education Committee member and Technical Consultation Panel member, and Deputy Corporation Secretary, HSBC
Speakers: Martin Lim, Founder and Director, Ingenique Solutions; and Sachin Singh, Director of Partnerships – APAC, Risk & Compliance, Dow Jones

1 August

Formation and administration of companies limited by guarantee for charitable purpose (re-run)



Chair: Christine Chung FCIS FCS, Institute Professional Development Committee member, and Company Secretary, Virtual Banking by Standard Chartered Bank
Speaker: Susan Lo FCIS FCS(PE), Institute Company Law Interest Group member, and Executive Director of Corporate Services, Tricor Group/Tricor Services Ltd

2 August

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



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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
17 September 2019	4.30pm–7.00pm	CG week - corporate governance forum: advising the board in time of crises - the governance landscape in the darkest hours	2
27 September 2019	6.45pm–9.30pm	Company secretarial practical training series: share capital and capital raising: practice and application (re-run)	2.5
4 October 2019	6.45pm–9.30pm	Company secretarial practical training series: continuing obligations of listed company: practice and application (re-run)	2.5
10 October 2019	6.45pm–8.15pm	Taking a closer look at the state of governance in Hong Kong and the Mainland	1.5

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

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.

Membership

Final reminder: membership/graduateship renewal for the 2019/2020 financial year

The membership/graduateship renewal notices for the 2019/2020 financial year, together with the demand note, were posted to members and graduates in early July 2019.

Members and graduates should settle the payment, as well as complete and return the personal data update form to the Institute as soon as possible, but no later than Monday, 30 September 2019.

Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

Members and graduates who have not received the renewal notice should contact the Institute Membership Section immediately: 2881 6177, or email: member@hkics.org.hk.

New graduates

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

Kwong Wai Ni, Anita
Li Wing Hong

Members' activities highlights: July – August 2019

20 July 2019
Mentorship Training
– Manage Conflicts
and Development
Positive
Relationships



24 August 2019
Fun & Interest Group
– Joint Professional
Indoor War Game



Forthcoming membership activities

Date	Time	Event
5 October 2019	10.00am–1.00pm	Community Service Month – Fun-day with children
8 October 2019	6.00pm–9.00pm	HKICS Annual Convocation 2019 (By invitation only)
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.

Advocacy

HKICS attends the 'Lunch-time Talk' for Gender Focal Point Network among Listed Companies

Institute Council Member and Chairman of Education Committee Dr Eva Chan FCIS FCS(PE) was invited by the Women's Commission of the HKSAR Government to attend their Lunch-time Talk for Gender Focal Point Network among Listed Companies on 26 July 2019. The event aimed to promote the importance of unleashing women's potential to the business community.



HKICS attends the Hong Kong International Dental Expo and Symposium 2019

On 2 August 2019, Institute President David Fu FCIS FCS(PE) attended the opening ceremony and gala dinner of the Hong Kong International Dental Expo and Symposium (HKIDEAS) 2019, entitled 'Better Tomorrow Through Innovation'. Launched in 2010, HKIDEAS has become one of the most important professional meetings for the dental community in the region.



Yuen Long District Secondary School Students Internship Programme

The Institute supports the growth of young people through a number of projects and internship opportunities. The Institute, which has been a member of The Hong Kong Coalition of Professional Services (HKCPS) since 2011, once again supported the HKCPS Yuen Long District Secondary School Students Internship Programme and arranged for two Form 5 students from the Yuen Long District to work at the Secretariat as summer interns for two weeks from 22 July to 2 Aug 2019. The students found the exposure practical and valuable.

A few employers of Institute members, including China Aircraft Services Ltd, CLP Holdings Ltd and Reanda EFA Secretarial Ltd, also participated in this meaningful project. Under this programme, 24 internship opportunities were offered to students.



HKICS' Orientation

The Institute held an orientation session for over 80 new students of the Master of Corporate Governance programme offered by The Hong Kong Polytechnic University on 3 August 2019. Institute Senior Manager, Membership Section, Melani Au provided information on student registration, the dual qualification of Chartered Secretary and Chartered Governance Professional and routes to membership to the participants.



The Hong Kong Institute of Chartered Secretaries 2019 Annual General Meeting

Wednesday
11 December 2019
6.30pm

Call for nominations for Council election

Members are invited to nominate candidates for election to Council of the Institute at the 2019 AGM. The Articles of Association of the Institute provide that Fellows who are ordinarily resident in the Divisional Territory are eligible to stand for election. More details are available on the Institute's website: www.hkics.org.hk.



Members please
mark your diary
and join us at the
AGM.

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

Examination enrolment period: 21 August to 30 September 2019.

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

December 2019 Examination Diet enrolment

The examination enrolment period is from 21 August to 30 September 2019. The Examination Entry Form can be downloaded from the Studentship section of the Institute's website: www.hkics.org.hk. All entries must be received by the Secretariat by 6.00pm on Monday 30 September 2019, and, if by post, with a postmark of the same date. For students who wish to submit the completed form via email, please send to exam@hkics.org.hk. No late enrolments will be accepted under any circumstances. To avoid possible postal loss or delays, students are recommended to submit their enrolments as soon as possible. No change to the selected subject(s) and examination centre can be made after the enrolments has been submitted.

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 WoltersKluwer Hong Kong's customer service by email: HK-Prime@wolterskluwer.com.

HKICS Examination Technique Workshops

The Institute will organise a series of three-hour IQS examination technique workshops from mid-October 2019. These workshops aim to help students improve their examination techniques. The enrolment fee is HK\$500 for each workshop. Students may download the enrolment form from the Studentship section of the Institute's website: www.hkics.org.hk.

HKICS Examinations Preparatory Courses for December 2019 diet

The HKICS Examinations Preparatory Courses conducted by HKU SPACE will commence on Monday 2 September 2019. Please refer to the timetable and enrolment form on the Examinations tab under the Studentship section of the Institute's website: www.hkics.org.hk. For enquires, please contact HKU SPACE at: 2867 8317 or email: hkics@hkuspace.hku.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.

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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CSj, the journal of The Hong Kong Institute of Chartered Secretaries (www.hkics.org.hk), is published 12 times a year by Ninehills Media (www.ninehillsmedia.com).



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International Qualifying Scheme (IQS) examinations (continued)

IQS examination pass rates (May 2019)

The Institute would like to congratulate the students who passed their examinations in the May 2019 diet.

Pass rates

Subject	Pass rate
Part I	
Strategic and Operations Management	42%
Hong Kong Corporate Law	38%
Hong Kong Taxation	17%
Hong Kong Financial Accounting	60%

Subject	Pass rate
Part II	
Corporate Governance	52%
Corporate Administration	26%
Corporate Secretaryship	28%
Corporate Financial Management	34%

Subject Prize and Merit Certificate awardees

The Institute is pleased to announce the following awardees of subject prizes and merit certificates at the May 2019 examination. The subject prizes were awarded by The Hong Kong Institute of Chartered Secretaries Foundation Limited. Congratulations to all awardees!

Subject	Subject prize awardees
Hong Kong Corporate Law	Chan Ka Ning Duan Ying Lin Haizhou Mak Hau Yin, Melody Tsoi Hoi Yin Yuen Sze Man
Hong Kong Financial Accounting	Chan Wai Shan Leung Hoi Ting, Vanessa Sze Tong
Corporate Governance	Kwan Ping Mui Lai Mei Ha Sun Hoi Yan Wong Yee Ting
Corporate Financial Management	Fok Emma Heung Wan Lan Linwen

Subject	Merit certificate awardees
Hong Kong Corporate Law	Choi Shui Sum Chong Tsz Yan Fung Sau Laam, Susanna Fung Ching Kwan Lai Yee Man Lo Pui Ling Mandy Mak Pui Ki Poon Wing Sim Tse Yan Man Zhang Le
Hong Kong Financial Accounting	Cao Rui Ho Hoi Fu Kwong Man Yin Law Hei To Vela Wong Hong Chee, Andre Yeung Lok Yan
Corporate Secretaryship	Cheung Yin Hei Ho Ka Yan Lee Pui Kei Kris

Subject	Merit certificate awardees
Strategic and Operations Management	Yeung Lok Yan
Corporate Financial Management	Chung Kit Ting Lai Lai Ngar Lee Ethan Yu Leung Tsz Yan Man See Nga So Wing Chun Wong Tsz Ying Wu Shuk Ling
Corporate Governance	Chan Yuen Kwan Chan Pui Kei, Esther Chan Yun Tong Choi Ho Yi, Phyllis He Linying Ho Wan Ngai Hui Sin Nga Kam Kwo Fung Kwan Ka Ho Lam Yik Kwan Lam Shuen Kuen Lo Pui Ling, Mandy Ren Fang Tai Yan Na Tsang Hiu Tung Tsang Tik Man Tsang Kwok On Wong Ka Yu Wong Pui Yin Yin Yue

Corporate Governance Paper Competition and Presentation Award 2019

The HKICS Corporate Governance Paper Competition has been held annually since 2006. This year, six finalist teams will present their papers and compete for the Best Presentation Award in September. The event details are as follows:

Theme:	How is good governance of Non-Governmental Organisations (NGOs) similar to, and different from, good corporate governance of public companies
Date:	Saturday 21 September 2019
Time:	10.00am–1.00pm
Venue:	Lecture Hall LT401 (Herbalgy LT), City University of Hong Kong
Fee:	Free of charge
CPD points:	2

Members and students who are interested in attending, please email: student@hkics.org.hk or submit your registration for Corporate Governance Paper Competition and Presentation Awards 2019 online via the Events section of the Institute's website: www.hkics.org.hk.

Student Ambassadors Programme (SAP) 2019/2020 – recruitment of mentors

SAP is an effective platform to introduce the dual qualification of Chartered Secretary and Chartered Governance Professional to local undergraduates. Your participation as mentors is important to introduce the qualification and profession to SAP members. Mentors can share their working experience and professional knowledge, and provide career guidance.

Mentors will be invited to join the Tea Reception to be held on 12 October 2019, the kick-off event of the SAP 2019/2020, to meet with their mentees. Interested members please contact Helen Fung: 2830 6001, or email: student@hkics.org.hk for details.

Studentship

Summer internships

Under the Institute's Student Ambassadors Programme (SAP), 70 summer internship opportunities were offered by 19 companies to the student ambassadors this year. Amongst these, the Institute has offered summer internships to four student ambassadors. Gratitude goes to the participating companies, listed below in alphabetical order, for their kind support of the programme.

- | | | |
|------------------------------------|--------------------------------------|---|
| 1. Alex So & Co | 8. Fountain Set (Holdings) Ltd | 15. SWCS Corporate Services Group (Hong Kong) Ltd |
| 2. BDO Ltd | 9. Hang Lung Properties Ltd | 16. TMF Hong Kong Ltd |
| 3. CK Hutchison Holdings Ltd | 10. Intertrust Hong Kong Ltd | 17. Tricor Services Ltd |
| 4. Companies Registry | 11. LT Business Consultants Ltd | 18. Vistra (Hong Kong) Ltd |
| 5. Cotai Services (HK) Ltd | 12. MTR Corporation Ltd | |
| 6. East Asia Sentinel Services Ltd | 13. PricewaterhouseCoopers Hong Kong | |
| 7. Fosun International Ltd | 14. Reachtop Consulting Ltd | |

Summer internships photo gallery





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Studentship (continued)

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 of 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).

New Qualifying Programme (NQP) – reminder

With effect from 1 January 2020, the New Qualifying Programme (NQP) will replace the current International Qualifying Scheme (IQS). The first examination diet of the NQP will be held in June 2020. The NQP 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 NQP 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 fees

Students who received exemption confirmation letters issued in June 2019 are reminded to settle the exemption fee by Saturday 21 September 2019.

Studentship renewal

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

Proposal to codify waiver on the experience and qualification of company secretaries

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), published a consultation last month (August 2019) which proposes, among other things, to codify the discretionary waiver that has been granted on a number of occasions to listed issuers from compliance with the requirements of Main Board Rule 3.28 in relation to the experience and qualification of company secretaries.

The consultation paper – 'Codification of General Waivers and Principles Relating to IPOs and Listed Issuers and Minor Rule Amendments' – proposes to codify in the listing rules a number of waivers granted by the Exchange, including those related to:

- publication and distribution of annual and interim results and reports
- shareholder approval requirement for bonus or capitalisation issues by PRC-incorporated issuers
- calculation of the consideration ratio for PRC incorporated issuers dually listed on the Exchange and a PRC-exchange
- inclusion of stock code in documents
- disclosure of financial information of subsidiaries and businesses acquired or to be acquired after trading record period
- disclosure of financial information by overseas banking companies, and
- change of financial year period.

The consultation paper also contains proposals for a number of minor amendments to the listing rules to provide greater clarity and to codify administrative guidance currently provided in guidance letters or listing decisions. It also proposes to make a number of housekeeping amendments to the listing rules to improve clarity, to correct clerical errors and/ or update outdated references.

The proposal to codify the waiver relating to the experience and qualification of company secretaries has been strongly opposed by the Institute's Council (see this month's President's Message on page 4 of this journal).

Main Board Rule 3.28 requires a company secretary of an issuer to possess certain academic or professional qualifications, or relevant experience to be considered capable of discharging the functions of company secretary. Notes to Rule 3.28 set out:

1. the academic or professional qualifications to be considered acceptable by the Exchange, including:
 - (a) being a member of The Institute of Chartered Secretaries; (b) a solicitor or barrister under the Legal Practitioners Ordinance; and (c) a certified public accountant under the Professional Accountants Ordinance; and
2. the Exchange's assessment criteria for 'relevant experience' of an individual, including: (a) length of employment with the issuer and other issuers and the roles they played; (b) familiarity with the listing rules and other relevant laws and regulations; (c) relevant training taken and/ or to be taken in addition to the minimum requirement

under Main Board Rule 3.29 (that is 15 hours per financial year); and (d) professional qualifications in other jurisdictions.

The intention of Rule 3.28 is to ensure that individuals appointed to the role of company secretary are familiar with securities regulation in Hong Kong. The Exchange has in the past granted waivers to issuers from the requirements under Rule 3.28 in relation to a company secretary who does not have the qualification or experience required under Main Board Rule 3.28 for a specified period. The waiver, if granted, is on the condition that the proposed company secretary must be assisted by a person who possesses the qualifications or experience as required under Rule 3.28 throughout the waiver period. This arrangement is intended to allow the proposed company secretary to perform the regulatory functions of a company secretary and acquire the relevant experience required under the listing rules (in particular, the familiarity with the relevant regulatory requirements) over time.

The Exchange proposes to codify in the listing rules that it may grant a Main Board Rule 3.28 waiver to an issuer taking into account the following:

1. whether the issuer has principal business activities primarily outside Hong Kong
2. the reasons why the directors consider the individual to be suitable to act as the issuer's company secretary, and
3. whether the proposed company secretary will be assisted by a qualified person throughout a period of not more than three years.

The Exchange considers that the period of assistance should not be longer than three years as the proposed company secretary is generally expected to be able to acquire the relevant qualification or experience required under Rule 3.28 within three years. However, the consultation states that the length of the period of assistance will depend on:

1. the proposed company secretary's experience in handling company secretarial matters and his/ her relevant professional qualifications and/ or academic background
2. the measures and systems in place to facilitate the proposed company secretary in discharging his/ her duties as a company secretary, and

3. the issuer's regulatory compliance and/ or material deficiencies/ weaknesses in internal controls.

The consultation paper – 'Codification of General Waivers and Principles Relating to IPOs and Listed Issuers and Minor Rule Amendments' – is available on the HKEX website: www.hkex.com.hk.

SFC and the ICAC sign MoU to strengthen cooperation in combating financial crime

Last month, the Securities and Futures Commission (SFC) and the Independent Commission Against Corruption (ICAC) entered into a memorandum of understanding (MoU) to formalise and strengthen cooperation in combating financial crime. The enhanced collaboration between the SFC and the ICAC under the MoU, which covers referral of cases, joint investigations, exchange and use of information, mutual provision of investigative assistance, and capacity building, is designed to augment the overall effectiveness of both organisations in combating wrongdoings and illegal activities affecting the integrity and reputation of Hong Kong's securities and futures markets.

As envisaged in the MoU, a three-day joint investigation training workshop was also launched, providing investigators of the SFC and the ICAC invaluable opportunities to share their respective expertise and experience in tackling serious financial crime.

The MoU was signed by the SFC's Executive Director of Enforcement, Thomas Atkinson and the ICAC's Deputy Commissioner and Head of Operations, Ricky Yau Shu-chun.

'The arrangement under the MoU will enable the SFC to perform its statutory duties with greater efficiency and effectiveness in combating financial crime and maintaining the integrity of Hong Kong's securities and futures market. We look forward to closer collaboration with the ICAC,' Mr Atkinson said.

'The MoU sets out the framework for cooperation and collaboration between the two agencies in various aspects, showing our common determination in maintaining a level-playing field for doing business in Hong Kong,' Mr Yau said.

More information is available on the SFC and ICAC websites: www.sfc.hk and www.icac.org.hk.

HKEX consults market on proposed microstructure enhancements

Hong Kong Exchanges and Clearing Ltd (HKEX) has published a consultation paper on proposed enhancements to the pre-opening session (POS) and volatility control mechanism (VCM) in the securities market. The enhancements to the POS are designed to help improve price discovery and increase trading liquidity before the market opens. The VCM enhancements are designed to help reduce risks caused by extreme price volatility in individual stocks, and reflect changes in international practice and regulatory guidance.

The consultation paper and related questionnaire are available from the HKEX website: www.hkex.com.hk.

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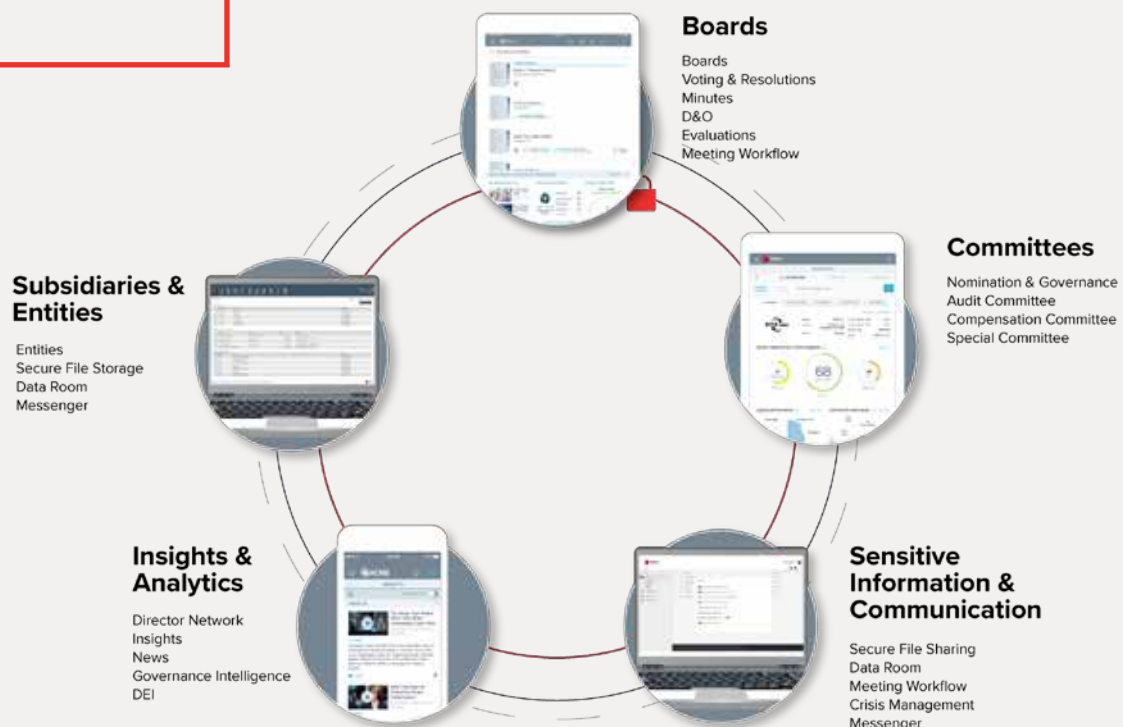
Registration: <https://ecentre.ouhk.edu.hk/cpdcourse/en/HKICS/index.jsp>

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

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