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January 2020

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The journal of The Hong Kong
Institute of Chartered Secretaries

香港特許秘書公會會刊



Reimagining the company secretary

New qualifying programme
Anti-sexual harassment
Guidance notes



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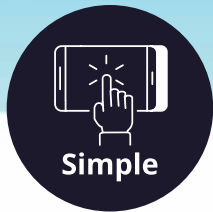
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About The Hong Kong Institute of Chartered Secretaries

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

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As of 30 November 2019 membership statistics were as follows:

Students: 3,442

Graduates: 395

Associates: 5,672

Fellows: 714

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Representative

January 2020

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Contents

Cover Story

Reimagining the company secretary 06

This month, the Chartered Governance Qualifying Programme replaces the International Qualifying Scheme as The Hong Kong Institute of Chartered Secretaries qualifying programme. CSJ looks at the significance of this important milestone in the ongoing evolution of the Chartered Secretary and Chartered Governance Professional.

In Focus

Anti-sexual harassment policy 12

Ricky Chu Man-kin IDS, Chairperson of Hong Kong's Equal Opportunities Commission, states the case for proactively implementing corporate anti-sexual harassment policies, not only for the benefit of all personnel as human beings, but also for the company's bottom line.

Risk and compliance in troubled times 16

Colum Bancroft, Managing Director, AlixPartners, argues that companies should prepare for the increasing compliance risks resulting from the ever-changing regulatory environment and economic downturn.

International Report

Stakeholder interests: directors' views 20

Andrew Carrick, Vice-President, Customer Success, Diligent, highlights the findings of a new global report assessing directors' views on stakeholders and society.

Technical Update

New guidance notes 24

CSJ highlights the latest additions to the Institute's guidance note series, providing members with new guidance on non-governmental organisations, anti-bribery and corruption, competition law, and mergers and acquisitions.

Combating cyber risk 30

Jason Yau, Partner, IT Consulting & Audit and Assurance, RSM Hong Kong, maps out a series of concrete measures to help combat cyber risk, charting a course of action for company secretaries to confront cybersecurity exposure and comply with regulatory stipulations.

HKICS News

President's Message 04

Student News 43

Institute News 34

Bulletin Board 46



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I am honoured to be addressing you as president of our Institute after my election at the Council meeting following our Annual General Meeting on 11 December 2019. The start of a new year is traditionally a time to look ahead to the future, but also a time to reflect on the year gone by, which has been a challenging one, not only for our members in Hong Kong but globally. For me, as a governance professional, a common thread through the various challenges the world has faced has been the increasing importance of good stakeholder-led governance – the need for all organisations to engage with and understand the views of their stakeholders, the need for effective risk management and internal control frameworks and the need for transparent communication and disclosure.

I therefore take up the presidency at a time of great opportunity for members of our profession. The majority of respondents to the Institute's latest research report, 'Taking the temperature: The state of corporate governance practices in Hong Kong and the Mainland' (available on the Institute's website: www.hkics.org.hk) believe that corporate governance requirements are expected to increase substantially in the next five years. This will inevitably mean that the trend we have seen for increased reliance on governance professionals will continue in the foreseeable future.

In addition to this rising demand, The Chartered Governance Institute, together with its divisions around the world, including

The future of the profession

the Institute here in Hong Kong, continues to facilitate the transition to our new identity as governance professionals. 'New' is something of a misnomer here, since the work we do as company secretaries, whether fulfilling the administrative or advisory components of the role, has always been all about good governance. Nevertheless, as our cover story this month points out, the role of company secretaries has been changing. Moreover, our membership base has been expanding as our Institute becomes increasingly recognised as the professional home for anyone involved in governance work.

Our cover story updates us on the progress of our Institute's ongoing rebranding and repositioning exercise. This month we pass a major milestone in this exercise – the implementation of the Chartered Governance Qualifying Programme (CGQP), which went live earlier this month replacing the International Qualifying Scheme as our Institute's qualifying programme. Since September 2019, the majority of our members in Hong Kong and the mainland of China (the Mainland) have transitioned to the new Chartered Secretary and Chartered Governance Professional (CS/CGP) designation. On 16 September 2019, our international body, The Institute of Chartered Secretaries and Administrators adopted its new name – The Chartered Governance Institute. Many divisions around the world, including Australia, Canada, Malaysia, New Zealand and the UK, have already adopted the term 'governance' as part of their local institute's names. Here in Hong Kong we hope to consult members on a similar change to our Institute's name later this year.

I hope to be able to keep up this momentum during my tenure as president, taking forward our strategic goals and building on the excellent work of our Immediate Past President David Fu FCIS FCS(PE), and indeed all of my predecessors in this role. Our Institute has achieved a great deal in recent years thanks to the hard work not only of its past presidents, but also of Council, the secretariat and all of our members in Hong Kong and the Mainland.

Before I go, I would like to remind you of our Annual Dinner 2020, which will be held on Thursday 16 January 2020 at the JW Marriott Hotel Hong Kong. Our Annual Dinner provides an excellent opportunity for our members and friends to get together in an informal and enjoyable setting. This year's event is shaping up to be particularly interesting since our Guest of Honour will be Tim Lui Tim Leung SBS JP, Chairman of the Securities and Futures Commission. I look forward to meeting many of you there.

In the meantime, I wish you all a good Year of the Rat!

A handwritten signature in blue ink that reads "Gillian Meller". The signature is written in a cursive, flowing style.

Gillian Meller FCIS FCS

特许秘书专业的未来

在2019年12月11日周年会员大会后的理事会会议上，我很荣幸获选为公会会长。新年伊始，历来是回顾过去与展望未来的时机。2019年充满挑战，不仅对香港的会员如是，对全球会员也如是。作为治理专业人员，我认为全球面对的各种挑战，均突显以利益相关者为主导的良好治理日益重要：所有机构均需要让利益相关者参与，了解利益相关者的看法；需要建立有效的风险管理及内部管控制度；需要保持透明度，披露数据，与利益相关者沟通无间。

因此，我接任会长之际，正是特许秘书尽展所长的大好时机。公会最近发表了《探讨现状：香港与内地公司治理实践状况》研究报告（可于公会网站www.hkics.org.hk浏览），该项研究的大部分响应者认为，在未来五年，有关公司治理的要求将大幅增加。这显示在可以预见的未来，对治理专业人员依赖日增的现象将会持续。

在这方面的需求增加的同时，特许公司治理公会及其全球属会（包括香港公会）将继续协助会员过渡至治

理专业人员的新身分。其实「新」是不太正确的说法，原因是公司秘书的工作，不论是行政还是谘询方面的角色，一直都与良好治理相关。不过，正如今期的封面故事所指，公司秘书的角色正在转变；而且，公会日渐被公认为是所有涉及治理专业人士的专业组织，会员基础一直在扩大。

封面故事报告了公会建立新品牌形象和重新定位的工作进展。本月，我们这方面的工作跨越了重要的里程碑：特许公司治理专业资格课程(CGQP)在月初推出，取代国际专业知识评审考试(IQS)，成为公会新的专业资格考试。自2019年9月起，香港和内地的部分会员已获得特许秘书和Chartered Governance Professional(CS/CGP)的双重称号。2019年9月16日，我们的国际总会特许秘书及行政人员公会更名为特许公司治理公会。许多世界各地的属会，包括澳大利亚、加拿大、马来西亚、新西兰和英国，均已在名称中采纳「治理」一词。至于香港公会的名称是否作相应更改，我们准备在今年较后时间徵询会员的意见。

在出任会长期间，我希望保持这股动力，在上届会长傅溢鸿及其他前会长的卓越工作的基础上，向我们的策略目标进发。有赖公会前会长、理事会、秘书处以及香港和内地所有会员的努力，公会近年的工作成果丰硕。

最后，我想提醒大家，公会2020年的周年晚宴，将于2020年1月16日（星期四）在香港JW万豪酒店举行。公会的周年晚宴，是会员和好友轻松共聚的极佳场合；今年更邀到证券及期货事务监察委员会主席雷添良SBS JP为嘉宾，晚宴必定生色不少。期望当晚与大家相会。

最后，祝愿各位鼠年进步，万事如意！



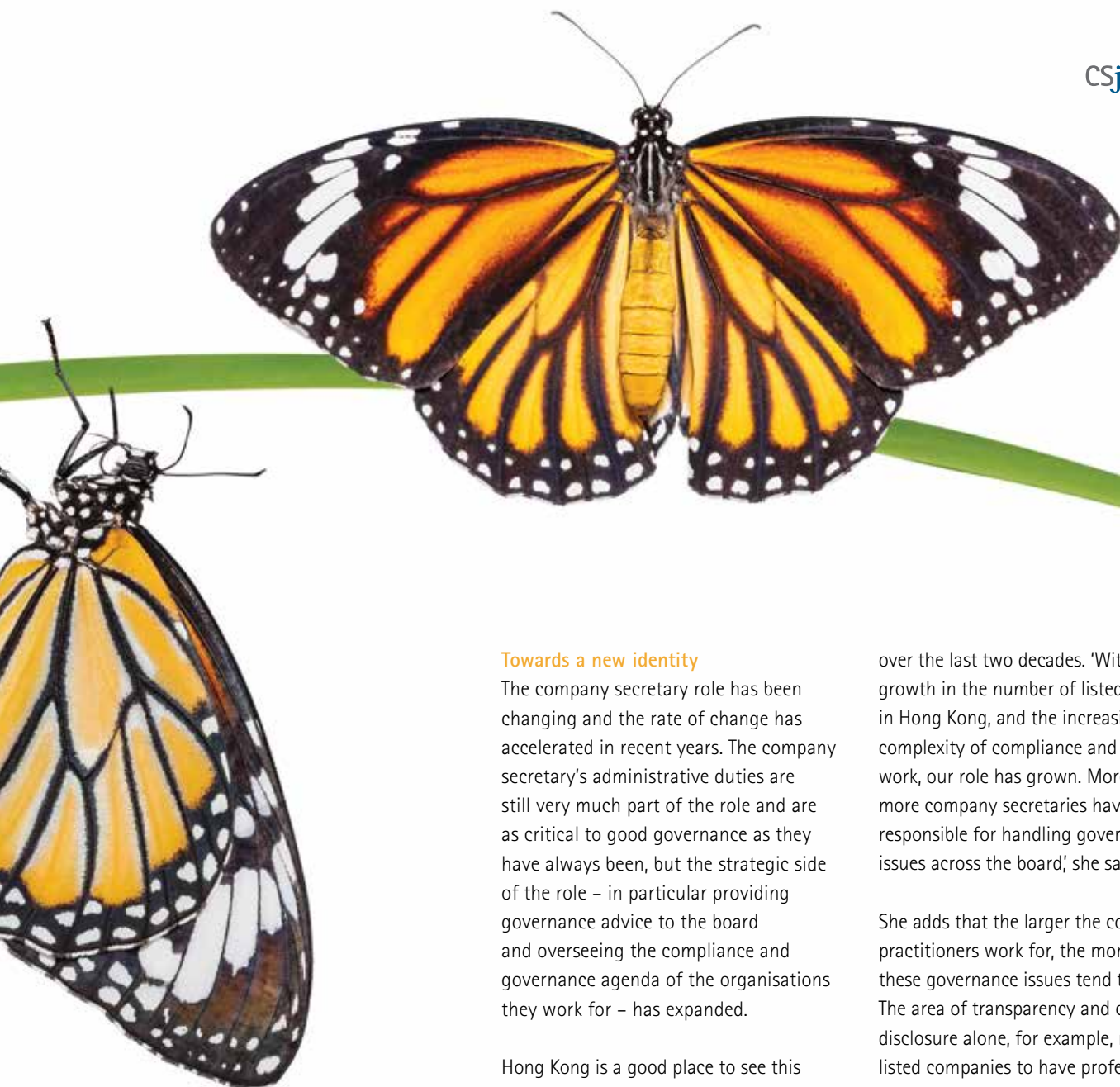
马琳 FCIS FCS



Reimagining the company secretary

Meet the governance professionals of the future

This month, the Chartered Governance Qualifying Programme replaces the International Qualifying Scheme as The Hong Kong Institute of Chartered Secretaries qualifying programme. *CSj* looks at the significance of this important milestone in the ongoing evolution of the Chartered Secretary and Chartered Governance Professional.



With effect from 1 January 2020, the Chartered Governance Qualifying Programme (CGQP), the new qualifying programme of The Hong Kong Institute of Chartered Secretaries (the Institute), goes live. This is one of the most critical elements of an ongoing strategy of the Institute, as well as the Institute's international body – The Chartered Governance Institute – to refocus the profession on the core value that its members bring to the organisations they work for – excellence in governance. This article will look at the practical, as well as the strategic, implications of the CGQP in the context of the wider aims of the Institute's rebranding and repositioning exercise.

Towards a new identity

The company secretary role has been changing and the rate of change has accelerated in recent years. The company secretary's administrative duties are still very much part of the role and are as critical to good governance as they have always been, but the strategic side of the role – in particular providing governance advice to the board and overseeing the compliance and governance agenda of the organisations they work for – has expanded.

Hong Kong is a good place to see this transition in action, points out Edith Shih FCIS FCS(PE), International President, The Chartered Governance Institute, due to the rapid expansion of the stock market

over the last two decades. 'With the growth in the number of listed companies in Hong Kong, and the increasing complexity of compliance and governance work, our role has grown. More and more company secretaries have become responsible for handling governance issues across the board,' she says.

She adds that the larger the companies practitioners work for, the more complex these governance issues tend to be. The area of transparency and corporate disclosure alone, for example, requires listed companies to have professional company secretaries able to navigate the hugely complex listing rule requirements for disclosable and connected transactions.

Highlights

- the profession recognises the need for a qualifying programme which better reflects the knowledge and skill set that members require for their expanded role
- the Institute, globally and locally, has been pursuing a strategy that gives governance a more prominent place in the training and the identity of the profession
- practitioners will need to have a good sense of the relationships and personalities involved in the way organisations operate and, critically, in the way decisions are made by the board

“ I hope we can grow into our new identity as Chartered Governance Professionals and build up our capacities for getting the job done ”

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

This transition has prompted the Institute, globally and locally, to give governance a more prominent place in the training and the identity of the profession. On 16 September 2019, The Chartered Governance Institute, formerly known as The Institute of Chartered Secretaries and Administrators, adopted its current name. Many of its divisions around the world, including Australia, Canada, Malaysia, New Zealand and the UK, have already adopted the term 'governance' as part of their local institute's names. The term governance has also been incorporated into the professional designation of members. In September 2018, the Institute here in Hong Kong implemented the new Chartered Secretary and Chartered Governance Professional designation. The majority of Institute members in Hong Kong and the mainland of China (the Mainland) have already transitioned to this new dual designation.

Ms Shih welcomes these developments. She recounts that she has been in the situation where the word 'secretary' in her job title has been misunderstood as meaning 'personal secretary' or 'typist'.

'If you have the wrong job title to start with, you have to spend a lot of time correcting misconceptions before you can start telling people what you do. There is a Chinese saying: '欲成其事必先正其名' [to succeed at one's work, one must have the right title]. I hope we can grow into our new identity as Chartered Governance Professionals and build up our capacities for getting the job done,' she says.

She adds that the rebranding exercise will have benefits for the profession both internally and externally. Internally the rebranding will help to foster a better sense of the shared purpose and common values within the profession, while externally it will help to clarify the value that members of the profession bring to the organisations they serve. 'Hopefully it will give our members a bit more gunpowder when they do their work and will psychologically help them to feel better equipped as governance professionals for the jobs they are doing. As governance professionals we are responsible for the many diverse aspects of ensuring that organisations benefit from good governance,' she says.

Peter Greenwood FCIS FCS, International Council member of The Chartered Governance Institute and the Chairman of the Institute's biennial Corporate Governance Conferences in Hong Kong, seconds this point. 'If our individual members have the backing of a better understanding of what their profession actually does, and a sense that they belong to a well-recognised and respected organisation in the form of the Institute, that will set them on the path to be a more credible voice within the senior management of the organisations where they operate,' he says.

He adds that the rebranding exercise should not just be a change of name however. 'We have to backfill it with real substance and that process has started with the revised educational requirements for joining the profession,' he says.

Training for the future

The 'revised educational requirements' Mr Greenwood refers to starts of course with the CGQP. Samantha Suen FCIS FCS(PE), the Institute's Chief Executive, agrees that the launch of the CGQP gives substance to the profession's rebranding exercise. 'This is actually the backbone for the future of the profession,' she says.

The CGQP updates and expands the syllabus of the International Qualifying Scheme (IQS), which had been the Institute's qualifying programme since 2004. The profession recognises the need for a qualifying programme which better reflects the knowledge and skill set that members require for their expanded role. Since 2014, the Institute has been working with The Chartered Governance Institute to review the IQS syllabus and the CGQP syllabus reflects many of the findings of that review. Not only has the company secretary been moving towards a role as the overseer of organisations' governance agendas, but the role has also become a central link that brings expertise together from diverse professionals in the company.

This has meant that the importance of having a detailed knowledge of the minutiae of financial accounting, human resources, administration and operational matters has diminished, while the importance of having a detailed knowledge of risk management, board dynamics and a broader understanding of the business environment and

changing stakeholder expectations has increased. Advances in technology have been accelerating this trend. Company secretarial software, board portals and the many different automated compliance solutions now available on the market have made the administrative aspects of the company secretarial role a lot easier to handle, freeing up practitioners to give greater time and attention to the more strategic and advisory aspects of the role.

The CGQP syllabus reflects these changes (see 'What's new?'). For example, under the IQS there were two papers aimed at building students' knowledge of corporate financial matters. Under the CGQP these have been combined into the Interpreting Financial and Accounting Information paper. 'The IQS papers required students to do a lot of calculation, but our members are more likely to be working with accountants to do that part of the work. What is really critical is to have the ability to understand and interpret the financial information,' Ms Suen points out.

The shift away from administrative and operational matters has enabled the CGQP to bring in new elements relating to governance, board dynamics and risk management without expanding the number of papers students are required to take – the qualifying examinations of CGQP have been consolidated into seven papers. The Corporate Governance paper under the IQS has been upgraded. An entirely new Risk Management paper has been added and a Boardroom Dynamics paper is offered as an elective – students can choose either this paper or the Hong Kong Taxation paper, depending on their area of focus.

These new areas are expected to become much more critical to members of the

profession in the years ahead. 'Even until recent times, risk management wouldn't have been a core element of a corporate secretary's skill set and was not part of their education requirements. Now it clearly is,' says Mr Greenwood.

Similarly, as the board advisory component of the role increases in importance, practitioners will need to have a good sense of the relationships and personalities involved in the way organisations operate and, critically, in the way decisions are made by the board. Hence the addition of the Boardroom Dynamics paper to the CGQP syllabus. 'The education of the profession now requires a much better understanding, not just of what constitutes good governance, but of the underlying drivers of good governance,' Mr Greenwood says.

Staying relevant

The CGQP is only the beginning of the journey that new recruits to the

“ communication skills... are particularly critical when it comes to advising the board – practitioners need to know when to speak and when to remain silent and smile

”

Samantha Suen FCIS FCS(PE), Chief Executive, The Hong Kong Institute of Chartered Secretaries

profession need to make. Respondents to this article emphasise the importance of continuing education – continuing professional development (CPD) is a mandatory requirement for members

What's new?

A comparison of the International Qualifying Scheme (IQS) and Chartered Governance Qualifying Programme (CGQP) programme structure is set out below.

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

“
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requires a much better
understanding, not just
of what constitutes
good governance, but of
the underlying drivers
of good governance
”

Peter Greenwood FCIS FCS, International Council member, The Chartered Governance Institute

of the Institute, as a way for members to stay relevant in the fast-changing business environment. Ms Suen points out that, in addition to updating the syllabus of the qualifying programme, the Institute has been working on updating its Enhanced CPD programme (ECPD) to ensure that it offers training relevant to their changing roles.

The ECPD programme already has a strong focus on keeping members up to date with developing areas of compliance and governance. In addition, the programme cannot afford to neglect the practical administrative side of the company secretary role. 'Even if you have passed the Corporate Secretaryship and Compliance paper of the CGQP, that doesn't mean you can put what you have learned into practice. Our members need to know how to take minutes of meetings, as well as how to ensure compliance with the latest rules and legislation, so our Practical Company Secretarial Workshops will continue,' Ms Suen says.

One new area of focus, however, will be soft skills. 'The company secretary is at the centre of the organisation and soft skills are really crucial if you are responsible for bringing so many different people in the organisation together. Communication skills, for example, are essential to help our members advance their careers. They are particularly critical when it comes to advising the board – practitioners need to know when to speak and when to remain silent and smile,' Ms Suen quips.

The future of the role

The process of change described in this article is still ongoing and Mr Greenwood emphasises that it will take time for the full benefits of the changes now being made to be felt. Nevertheless he believes the direction that the profession has taken will mean that members are much better placed to contribute to the difficult and challenging issues as they emerge in the organisations they serve. Updating the training, both initial and continuing, to make it relevant to the needs of the profession and to allow individuals to speak with authority and confidence on the topics that cross their desks is a crucial part of that. 'I hope that will give individual members of the profession more confidence, because a lot of this comes down to confidence. You have to portray confidence and then you will be listened to. You cannot be listened to if people don't understand what your job is or have any doubt of your mastering the job,' he says.

Looking further ahead, how will the role continue to adapt to the changing business environment? This is difficult to predict, but some broad trends are already visible. There can be little doubt that the marketplace will increasingly need qualified people to handle the many different aspects of maintaining governance standards, but

this task is already a collective effort of a number of different players. 'As governance professionals, we are part of a practice that is everywhere,' points out Ms Suen. 'Governance is relevant to many different jobs. If you are an engineer, acquiring our qualification will help you to do your job better. It will also help individuals move up to a director's position whatever their professional background.'

As the role changes, the Institute here in Hong Kong and globally is also changing. The goal of The Chartered Governance Institute is to be the global qualifying body for anyone involved in governance – including company secretaries, directors, compliance professionals, lawyers, accountants and risk managers. This is still a work in progress, but Ms Shih points to the recently launched e-community (available from The Chartered Governance Institute website: www.cgiglobal.org) as an important step forward on this journey.

'Members from all of our divisions around the world can dial log into the e-community to learn about the latest developments relevant to our profession. It provides a central webpage where people can go to access our latest thought leadership papers and community news, or to link up with fellow professionals globally,' she says.

With this and the other developments discussed above, Ms Shih believes that the profession has reached a critical moment in its evolution. 'Going forward, equipped with the new name and qualification, I think we are ready to conquer the world. Anyone who is interested in becoming a governance professional should contact the Institute,' she says.

Kieran Colvert, Editor, CSj



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From
1 January
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Anti-sexual harassment policy

Not just a box to check off



Ricky Chu Man-kin IDS, Chairperson of Hong Kong's Equal Opportunities Commission, states the case for proactively implementing corporate anti-sexual harassment policies, not only for the benefit of all personnel as human beings, but also for the company's bottom line.

It was 1 November 2018. From San Francisco and São Paulo to Sydney and Stockholm, more than 20,000 employees and contractors in Google offices spanning 50 cities staged a walkout to protest the tech giant's handling of sexual harassment complaints. The backlash erupted after *The New York Times* reported that Google had allegedly paid off executives accused of sexual misconduct with exit packages worth millions of dollars, panned by the protest organisers as 'the latest example of a culture of complicity, dismissiveness and support for perpetrators'.

Allegations of workplace sexual harassment, as well as the way they are handled, are putting the interests of corporations at stake. To state the obvious, their reputation and credibility are on the line, a risk exacerbated in this age of social media when there are an estimated 317,000 new posts on Facebook every minute, 21 million tweets on Twitter every hour and 500 million people publishing stories on Instagram every day.

The toll goes beyond a tainted brand name. Under the Sex Discrimination Ordinance (SDO) in Hong Kong, employers may be held vicariously liable for any act of sexual harassment committed by an employee – even when they have no knowledge of it – unless they can prove that practicable steps have been taken to prevent the transgression, such as adopting an anti-sexual harassment (ASH) policy. Financial remedies may be ordered by the court and, in the case of small and

medium-sized enterprises (SMEs), this can deal a crushing blow to their business.

The human and financial cost of workplace sexual harassment

In the absence of a transparent ASH policy and an impartial complaint-handling procedure, employees are bound to work in an atmosphere of fear and intimidation. It saps their morale. A study published in the academic journal *Personnel Psychology* in 2007 found that companies could face a loss of up to US\$22,500 per employee in terms of productivity drops and turnovers due to sexual harassment. The idea that victims and witnesses will stay silent and remain devoted employees – an assumption perhaps particularly popular among large corporates who pride themselves on attractive wages and career opportunities – is simply untrue.

The impact of sexual harassment on the cherished 'bottom line' is therefore real, immediate and far-reaching. Profitability aside, in 2016 the Stock Exchange of

Hong Kong Ltd (the Exchange) made it compulsory for listed companies to disclose their performance in relation to environmental, social and governance (ESG) issues on an annual basis. Employment and labour practices, including those concerning 'equal opportunity, diversity, anti-discrimination, and other benefits and welfare', fall under the 'social' reporting area. As professional compliance advisers, company secretaries can and should enable management and the board to appreciate the value of an ASH policy for employee well-being and good corporate governance.

Indeed, data shows there is room for much progress to be made. According to a research report released by the Hong Kong Institute of Chartered Secretaries (the Institute) in October 2019, 216 of its members skipped the question when asked about the quality of ASH policies and procedures of companies listed on the Exchange; among the 155 who responded, only 5.84% gave a 'very strong' rating.

Highlights

- under the Sex Discrimination Ordinance (SDO) in Hong Kong, employers may be held accountable for any act of sexual harassment committed by an employee
- companies can face very real losses from productivity drops and turnover, as well as financial penalties and reputational damage, due to workplace sexual harassment
- businesses are being urged to demonstrate a true commitment to combatting sexual harassment and to implementing a comprehensive anti-sexual harassment policy

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Over the years, in fact, sexual harassment has consistently accounted for a significant portion of complaints lodged with the Equal Opportunities Commission (EOC) under the SDO. In the financial year 2018/19, out of the 420 SDO complaints handled by the EOC, 185 were sexual harassment cases, over 80% of which were employment-related.

Evidently, workplace sexual harassment is an entrenched problem affecting all industries and walks of life. And company secretaries, working closely with directors, managers, shareholders and regulatory bodies, are well-positioned to help familiarise their organisation with the law, formulate an ASH policy and monitor its implementation. In December 2019, a trainer from the EOC delivered a seminar to members of the Institute, explaining how the SDO defines sexual harassment and dispelling widespread myths, such as that bantering about a voluptuous colleague is nothing more than harmless play; that putting a racy screensaver on one's computer is equally innocuous; or that acts directed at a person of the same sex do not count.

Mitigation measures

As mentioned, to mitigate potential vicarious liability, organisations should

proactively carry out preventive measures against sexual harassment. These can begin with drafting a comprehensive ASH policy, which should consist of not only a declaration of zero tolerance, but also a clear definition and relatable examples of sexual harassment; contact details for the designated complaint-handling personnel; a transparent mechanism for investigating complaints and avoiding conflict of interest; a note about possible disciplinary action; an assurance of impartiality, confidentiality and protection from victimisation; and information on alternative avenues of redress, such as lodging a complaint with the EOC (within 12 months of the incident), filing a civil lawsuit in the District Court (within two years of the incident), or reporting to the police when criminal acts are involved (such as unwanted touching of private parts).

Next, care should be taken to publicise the policy through as many channels as possible, from emails, posters and intranets to staff meetings and orientation sessions. The message must reach all parties sharing the same workplace, including full-time and part-time staff, temporary workers, contractors, service providers, trainees, interns and volunteers alike. Only with this level of commitment can organisations

cultivate an environment that is safe and supportive enough for all aggrieved persons to come forward for help.

As the sole statutory body tasked with eliminating discrimination, harassment and vilification in Hong Kong, the EOC provides both regular courses and on-demand, tailor-made training programmes for organisations determined to tackle workplace sexual harassment. Our website (www.eoc.org.hk) also features a detailed framework for formulating a corporate policy against sexual harassment.

Stepping up the fight

One of the greatest legacies of the global #MeToo movement is the conversation it has inspired about abuse of power, corporate responsibility, bystander apathy and inadequate victim support services. With plans in the pipeline to set up a special ASH unit, the EOC is looking to build on these reflections and step up the fight against workplace sexual harassment on multiple fronts, from conducting a holistic review of the law and recommending amendments to fill its gaps, to exploring collaboration with non-governmental organisations to establish a one-stop support platform for victims.

But then again, corporations too have an indispensable role to play, from both an economic and ethical perspective. As silence breakers around the world send one wake-up call after another to businesses, management – and the company secretaries who advise them on governance – must quit paying lip service and instead proactively demonstrate a true commitment to combatting sexual harassment.

Ricky Chu Man-kin IDS, Chairperson
Equal Opportunities Commission



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Risk and compliance in troubled times

Colum Bancroft, Managing Director, AlixPartners, argues that companies should prepare for the increasing compliance risks resulting from the ever-changing regulatory environment and economic downturn.



Hong Kong's economy is in recession and is entering a period of further challenges. Donald Trump has just signed the Hong Kong Human Rights and Democracy Act (the Act), part of which brings renewed focus on sanctions compliance and potentially even putting Hong Kong's special trade status at risk. Uncertainty over the status of the trade deal between the Mainland of China (the Mainland) and the US has been compounded by the impact of sustained social unrest over the last six months.

Meanwhile in the Mainland, in addition to the trade issues with the US, the impact of the government's deleveraging campaign (to curb the excessive borrowing of local governments, financial institutions, businesses and individuals in the Mainland) continues to weigh on growth, with the National Bureau of Statistics reporting 6% GDP in the third quarter of 2019, the slowest growth rate in over 25 years. The ongoing trade talks mean that companies continue to live with uncertainty on key supply chain risks. The current environment also brings about additional challenges as multinationals operating in the Mainland are reporting increased regulatory pressure.

Many companies in the region will be forced to review business and investment plans and adjust accordingly. All of these factors present heightened compliance risks.

What are the possible implications?

In particular, the Act will require attention in relation to provisions focusing on Hong Kong's compliance with both US export regulations regarding sensitive dual-use items (those items which have both commercial and military or proliferation applications) and US and United Nations sanctions, particularly regarding Iran and North Korea. Any perceived weaknesses of Hong Kong's

compliance with these regulations could mean the remote but significant risk that the US Government will revoke the special treatment afforded Hong Kong by the US Hong Kong Policy Act of 1992.

A 2017 CNN report identified Hong Kong as a base for trade with North Korea. The Act potentially gives the US Government new powers to enforce the US sanctions regime. While it is difficult to predict how the US will exercise the new powers under the Act, or the short- and longer-term outcome of the ongoing trade negotiations between the US and the Mainland, even the most optimistic forecasters are resigned to the fact that a long-term solution is unlikely to be found any time soon, meaning that companies operating in the region will be facing significant uncertainty for the foreseeable future.

What are the risks in this environment?

Fraud or compliance issues are more likely to arise when individuals or entities are subject to increased pressure. As economic pressure mounts, one can expect to see a re-emergence of classic financial statement fraud issues, as well as more sophisticated schemes designed to pacify regulators, attract and retain investment, and maintain access to liquidity. Managed earnings, as well as aggressive and fraudulent accounting practices, are likely to be an increasing reality in the region.

Highlights

- companies operating in the region will be facing significant uncertainty for the foreseeable future
- fraud or compliance issues are more likely to arise when individuals or entities are subject to increased pressure
- companies in the region should conduct a holistic risk assessment of operations

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which means the
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Bribery and corruption risks in the region have been the focus of attention for regulators for many years. While investment in compliance programmes and awareness of these issues has undoubtedly raised standards in this area, significant risks remain. A survey by the American Chamber of Commerce in China released last year shows that nearly half of their member companies are experiencing an increase in non-tariff barriers, including increased inspections, slower customs clearance and increased bureaucratic oversight or regulatory scrutiny. Cutting corners or offering bribes to government officials could be seen as one of the solutions to minimise the impact of the added tariff and non-tariff barriers.

How can companies try to proactively manage the increasing risks?

1. Conduct a holistic risk assessment of operations

The environment has changed, which means the risks have changed. Companies

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companies should undertake a review to identify emerging or heightened risks, including geopolitical and regulatory risks, and work to put in place appropriate mitigation measures
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should undertake a review to identify emerging or heightened risks, including geopolitical and regulatory risks, and work to put in place appropriate mitigation measures. This exercise needs to be done with appropriate rigour and frequency, and a mindset that recognises the economic and regulatory enforcement environments are changing at a rapid pace. Maintaining compliance in an ever-evolving landscape of tariff and non-tariff barriers, trade sanctions and other issues presents considerable challenges and requires vigilance. The situation requires organisation-wide, that is top-down as well as bottom-up, commitment and critically requires buy-in from the front-line business and not just those functions tasked with controls implementation or oversight on a day-to-day basis.

2. Ensure robust measures are in place to identify and deter fraud risk

The organisation's most recent fraud risk assessment should be reviewed and updated to ensure that the full landscape of fraud risks, including new and emerging risks, have been considered, and each risk appropriately weighted in terms of likelihood and severity of occurrence. Data analytics procedures should be

applied to assist in identifying potential anomalies or outliers in key areas of heightened fraud risk, and identified control gaps or weaknesses appropriately remediated. Attention should also be given to ensuring that there is sufficient employee awareness of key fraud risk indicators and behavioural red flags to shore up the company's front-line defenses against illicit or otherwise inappropriate activity, which can have severely adverse financial, regulatory and reputational, not to mention employee morale, implications.

3. Conduct or update due diligence on intermediaries and third parties

The majority of compliance cases arise through intermediaries or third parties working in conjunction with company employees. A risk-based due diligence and monitoring programme is critical to mitigating risk of third party schemes. An appropriate level of screening and due diligence procedures are required to understand the profile, business affiliations and operating history of business partners in order to assign appropriate risk ratings. One area where companies commonly fall short in this area is that efforts are focused on on-boarding third parties without performing

ongoing checks or responding to changes in the circumstances of either the company or the third party itself.

4. Review and update your existing compliance programme

In determining a penalty, many regulators will consider a number of factors. In addition to a well-designed and -executed compliance programme, regulators will look at whether companies provide an effective and trusted mechanism by which employees can anonymously or confidentially report allegations of misconduct, as well as the company's response to such allegations and complaints when they arise. Therefore, companies should have an appropriate policy and relevant procedures in place for handling such allegations and complaints. This includes the scoping of investigations, identification of personnel responsible for the investigation and procedures to ensure investigations are conducted in a confidential, independent and objective manner.

Colum Bancroft, Managing Director
Edward Boyle, Director
Selena Tsang, Senior Vice-President
AlixPartners

A bird's eye view

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

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Stakeholder interests: directors' views

Andrew Carrick, Vice-President, Customer Success, Diligent, highlights the findings of a new global report assessing directors' views on stakeholders and society.





Recently, more than 180 CEOs in the Business Roundtable amended the association's Statement on the Purpose of a Corporation and for the first time embraced a commitment to address the interests of all stakeholders – not just shareholders. A new report, *Stakeholders Take Centre Stage: Director Views on Priorities and Society*, by the Diligent Institute in partnership with the Rock Centre for Corporate Governance at Stanford University, shows that boards of directors consider stakeholder needs a key priority.

The report found that 89% of the 200 company directors surveyed consider and represent the full range of stakeholder interests, both from shareholders and other stakeholders. Moreover, 92% of these board members feel that their company is doing a good job of that representation.

The directors surveyed have particular sensitivity on this issue, partly in response to pressure from advocacy groups, which more than half (57%) of directors surveyed say have influence. But the survey shows that there is a pervasive concern by directors around the world for shareholder rights and stakeholder issues, as most directors (77%) do not believe that shareholder interests are prioritised over stakeholder interests.

Highlights

- the directors surveyed consider stakeholder needs a key priority
- 77% of directors surveyed do not believe that shareholder interests are prioritised over stakeholder interests
- the environment is directors' largest long-term worry

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the survey shows
that the vast majority
of directors (87%)
give a priority to
employee concerns
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'Broadly, my role as an independent board member [involves] strategic oversight and management accountability,' says one non-executive director in response to a survey question. 'In each of those cases, we have to take into account many impacted parties, and not just shareholders.'

The survey queried respondents about BlackRock Chairman and CEO Larry Fink's support for increased prioritisation of stakeholder interests by boards. Fink, as leader of one of the world's largest asset managers with US\$6.84 trillion in assets under management, has great influence on international governance policy. It is worth noting that almost all (94%) of the directors surveyed agree with Fink that 'Society is increasingly looking to companies, both public and private, to address pressing social and economic issues,' and 65% say they are motivated by this statement to implement new initiatives that address these issues.

“ if you treat your employees terribly, have a lousy culture and are not competitive in compensation, how are you ever going to achieve shareholder returns? ”

One respondent qualifies this perspective: 'I want to hear what stakeholder concerns are. I want to hear with equal weight, but I may not act with equal weight. Our job is to decide, take input from all kinds of sources, and make sense of it.'

Directors reject accusation of 'short-termism'

Boards are often accused of taking a short-term view, strategising intensely for the bottom line each quarter rather than planning for the longer term in a way that would encompass all stakeholders. Directors surveyed strongly rejected the accusation of 'short-termism', with 72% of respondents saying their company predominantly considers an investment horizon of three or more years in managing the business and 25% of respondents adopt an investment horizon of one to two years. Practically none (4%) use an investment horizon of less than a year.

Says one director: 'Investment horizon varies a lot by company, depending on where they are on the maturity curve, market influences and what the competitive landscape looks like. There may be times that a company rightfully should be focused on the short term, but in general, they should be more focused on the long term.'

With an eye to long-term strategy, the environment is directors' largest long-term worry. 41% of directors say that environmental issues, including climate change, pollution, waste or recycling, are the single most important environmental, social and governance (ESG)-related issue that has the power to negatively impact their business over the long term.

'The environment cannot speak for itself, but there are NGOs and people who speak

on its behalf. We treat the environment as effectively represented by those people and monitor the environment as a stakeholder in the same way,' explains one director.

Other issues that are top concerns for directors are increased taxes and regulations (19%), macroeconomic factors that influence trade and the economy (18%) and workforce-related issues including the availability of employees, unionisation and regulation (14%).

Employees are the most important stakeholders

In terms of attention to stakeholder concerns, the survey shows that the vast majority of directors (87%) give a priority to employee concerns. This is not surprising because employees have a direct influence on the success or

Survey statistics

The report reviewed in this article is available on the Diligent website: www.diligentinstitute.com. The report is a companion survey to one conducted of 200 CEOs and CFOs by Stanford Graduate School of Business and the Rock Center for Corporate Governance at Stanford University in the spring of 2019, available on the Stanford Graduate School of Business website: www.gsb.stanford.edu.

The report surveyed directors from around the world, but respondents were predominantly from the US. The table sets out the countries where survey respondents' companies were domiciled.

United States	45%
Africa	8%
North America (outside the US)	13%
South and Central America	1%
Asia Pacific	5%
Australia or New Zealand	15%
Europe	7%
Middle East	1%
Other	5%

failure of strategy and operations. In Asia and Oceania there is little interest in creating a board-level position for employee representatives of the type found in Europe. Yet board members do understand the importance of the employee perspective: 'If you're not responding to the needs, wants and interests of employees, I guarantee customers will suffer. They'll respond in ways that are negative to the business and your investors will suffer. This is an ecosystem that is interrelated,' one director comments.

Another director points out: 'If you treat your employees terribly, have a

lousy culture and are not competitive in compensation, how are you ever going to achieve shareholder returns?'

The wider implications

It can be concluded from the survey that corporate leaders are taking ownership for leadership in the communities they serve. It is certain that board members are spending attention, time and resources to fulfil these leadership roles. As Larry Fink says in a letter to CEOs at the companies BlackRock invests in: 'One thing, however, is certain: the world needs your leadership. As divisions continue to deepen, companies must demonstrate

their commitment to the countries, regions and communities where they operate, particularly on issues central to the world's future prosperity. Companies cannot solve every issue of public importance, but there are many – from retirement to infrastructure to preparing workers for the jobs of the future – that cannot be solved without corporate leadership.'

**Andrew Carrick, Vice-President,
Customer Success**

Diligent

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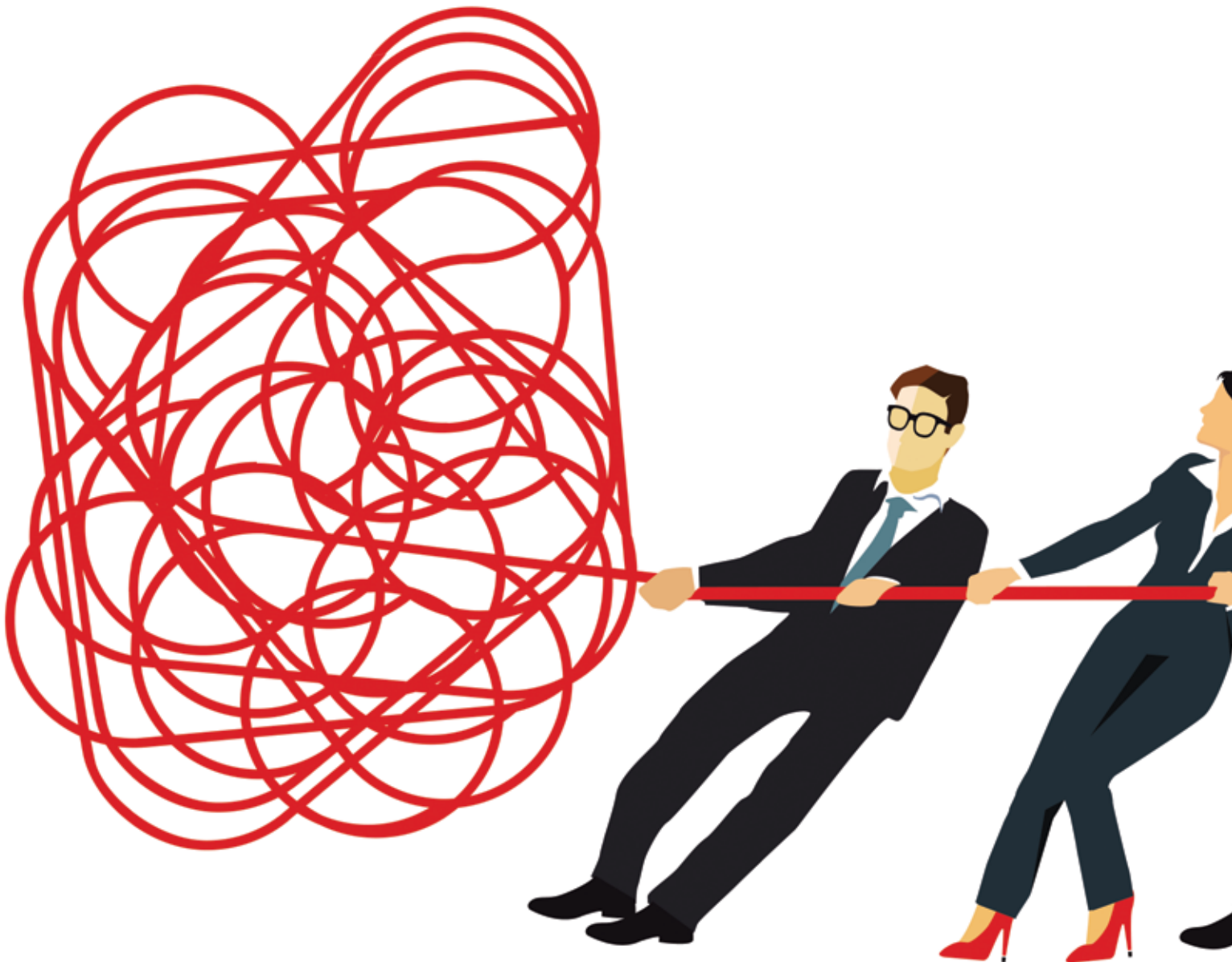
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New guidance notes

CSj highlights the latest additions to the Institute's guidance note series, providing members with new guidance on non-governmental organisations, anti-bribery and corruption, competition law, and mergers and acquisitions.



The Institute's seven Interest Groups, set up under the Technical Consultation Panel in 2016, have built up a substantial body of practical guidance on the Institute's website (www.hkics.org.hk) for the benefit of the Institute's members and the wider profession and community. This article highlights the latest additions to this series.

Governance best practice for NGOs

The fifth in the series of guidance notes by the Institute's Public Governance Interest Group (PGIG) was published on the Institute's website in October 2019. This new guidance note focuses on board governance best practice for non-governmental organisations (NGOs).

Board delegation

Most NGOs in Hong Kong adopt the structure of companies limited by guarantee. Under the Companies Ordinance, the model articles for companies limited by guarantee (available on the Companies Registry website: <https://www.cr.gov.hk>) make it clear that the board of directors should be in charge of the day-to-day operational governance of the NGO. In this context it is usual for the board to delegate some of its roles and responsibilities to committees reporting to the board. This is permitted – for example Model Article 4 states that the directors may, 'if they think fit, delegate any powers that are conferred on them under these articles to any person or committee.'

While the board can delegate its powers, the new guidance note makes the important point that directors cannot delegate their responsibilities. They must at all times retain personal attention as to the overall workings of their NGO, including proper oversight of the delegated committees. The guidance note cites a recent case where directors were found to be in breach of their directors' duties under the Companies Ordinance for

failing to check that requisite government building approvals had been given for the construction of certain building works. The board had delegated oversight of the construction to a member of a committee.

'Therefore, do delegate, but remember that you will be judged by what a reasonable director in your position would have done,' the guidance note states. 'We would like to emphasise that whilst it makes sense and enhances board efficiency to delegate the workload of directors to board committees, the ultimate responsibility for decisions taken rests with the board of directors itself. As such, directors should be vigilant in delegating their responsibilities to board committees, and having sound policies and procedures to guide the practices of the NGO does help.'

Board committees

The new guidance note also reminds readers that there is no one-size-fits-all in terms of what committees should be adopted by NGOs. The Hong Kong Council of Social Services (HKCSS) recently conducted a survey under its NGO Governance Platform Project, to which 77 NGOs responded. Based on the findings of this survey, the guidance note sets

Highlights

- directors of non-governmental organisations are allowed to delegate the powers conferred on them to any person or committee, but the ultimate responsibility for decisions taken rests with the board of directors itself
- companies should be particularly vigilant when doing business in jurisdictions where public sector corruption is rife and where officials are unaccountable to electorates or face little public scrutiny
- the first two full judgments handed down by the Competition Tribunal show that the Competition Commission is serious about being an effective and active enforcer



out the types of committee commonly adopted by NGO boards in Hong Kong. Rather surprisingly, only around a fifth to a quarter of the NGOs responding to the HKCSS survey stated that they had governance-related committees such as nomination, remuneration and audit committees.

'In a commercial enterprise it is expected that there would be these types of governance-related committees. The disconnect is that an NGO seeking donor and third-party funds would be expected to demonstrate that they have proper audit, nomination and remuneration committees as part of good governance. This would help to attract more funding and help to ensure the long-term sustainability of the NGO,' the guidance note states. It recommends that NGOs should at least have audit, nomination and remuneration committees to demonstrate commitment to good governance.

The guidance note directs readers to useful best practice advice available online on the issues raised above. A good place to start is the provisions relating to the audit, nomination and remuneration committees in Hong Kong's listing rules. In addition, the Independent Commission Against Corruption (ICAC) has useful information and advice on these committees in its *Best Practice Checklist, Governance and Internal Control in Non-Governmental Organisations* (available on the ICAC's Corruption Prevention Advisory Service website: <https://cpas.icac.hk>).

As easy as ABC?

The fifth guidance note by the Ethics, Bribery and Corruption Interest Group, published on the Institute's website in October 2019, addresses the risks of cross-

border corruption for listed companies in Hong Kong and recommends practical prevention measures that companies should consider.

The guidance note points out that Hong Kong has a good anti-bribery and corruption (ABC) track record. This has been achieved over many decades by building up institutions such as the ICAC to root out corruption and foster an atmosphere where competition can flourish. Hong Kong cannot afford to drop its guard, however. As trade becomes ever more global, cross-border corruption risks have become increasingly evident. The guidance note addresses this issue in three steps:

1. identifying the corruption risks facing Hong Kong-listed companies operating across borders
2. highlighting their obligations under local and international law, and
3. setting out meaningful steps they can take to reduce risks to an acceptable level.

Cross-border corruption risks

Companies should be particularly vigilant when doing business in jurisdictions where public sector corruption is rife and where officials are unaccountable to electorates or face little public scrutiny. Moreover, bribery and corruption risks tend to be concentrated in certain business functions. For example the ICAC, in its Anti-Corruption Guide for Listed Companies, singles out procurement as 'generally the most corruption-prone business function' due to its power over spending. Corruption involving procurement staff can take many forms. It may involve a bribe being paid to

persuade staff to choose one vendor over another, or a contract being agreed above market prices, with staff splitting the difference with the supplier, or some form of favour being offered to staff or to their friends or relatives.

Human resources is another high-risk function – jobs, promotions or even internships may be offered in exchange for cash or favours. The guidance note points out that the medium of exchange is not important; what matters is the substance of the deal. If somebody receives a benefit to modify their behaviour in a way that breaches laws, internal rules or codes of conduct, they are corrupt.

Corruption of this type poses serious problems for companies. There are the obvious costs, money paid as bribes for example, but also the legal and reputational costs. The guidance note points out that there are also systemic costs since corruption can cripple national economies, as it has done in parts of the developing world including some of Hong Kong's major trading partners.

The legal implications

Governance professionals and Chartered Secretaries are responsible for helping businesses navigate the maze of ABC regulation. In terms of cross-border business, this can be highly complex due to the confusing web of international laws and regulations in this area.

Within Hong Kong, companies must abide by the Prevention of Bribery Ordinance (POBO), which is enforced by the ICAC to combat bribery and corruption in both the public and private sectors. While the POBO's reach is technically restricted to

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whilst it makes sense and enhances board efficiency to delegate the workload of directors to board committees, the ultimate responsibility for decisions taken rests with the board of directors itself
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Hong Kong, the guidance note points out that bribery acts taking place outside Hong Kong may still be punishable under the POBO if any part of the act occurred in Hong Kong. There have also been calls to extend the POBO's reach to cover activities involving Hong Kong residents overseas.

Hong Kong companies involved in cross-border trade also need to consider the laws in the other jurisdictions where they operate and the guidance note warns that there has been a trend for tougher ABC rules internationally. In addition, companies can find themselves subject to extraterritorial laws such as the US Foreign Corrupt Practices Act and the UK's Bribery Act.

Practical recommendations

The guidance note also offers practical advice on the steps companies can take to reduce bribery and corruption risks. The first step involves risk review and planning. 'A business should understand the nature of the risks it faces, taking into account its industry, corporate structure, countries of operations and applicable

jurisdictions and laws. These will provide a basis for planning and help identify risk areas to address,' the guidance note states.

Businesses should also have written codes of conduct for employees. 'Issues frequently arise when employees lack guidance, or when rules are treated as informal and flexible. It would help to define to staff what is considered acceptable or not. This is particularly important when a business operates across borders with different cultural norms,' the guidance note states.

Such codes of conduct should be backed up by staff training in the form of an ongoing training programme rather than a one-off training session. Whistleblower channels should also feature in companies' ABC programmes and the guidance note offers best practice advice for setting up and maintaining such channels.

Competition compliance

The fourth guidance note issued by the Competition Law Interest Group, published in October 2019, reviews the first two full judgments handed down by the Competition Tribunal (the Tribunal) under the Competition Ordinance. *The Competition Commission v Nutanix Hong Kong Ltd and Others* [2019] (the Nutanix case), and *Competition Commission v W Hing Construction Co Ltd and Others* (the W Hing case) cases provide valuable insight into the methods of investigation by the Competition Commission (the Commission), as well as the Tribunal's approach in applying the First Conduct Rule, which targets cartel behaviour. The guidance note looks at the two judgments and recommends practical steps to be taken by companies to ensure compliance with Hong Kong's competition law.

Can companies be held liable for the conduct of their employees?

The Nutanix case indicates that companies will be liable for an employee's infringing conduct if it is sufficiently related to the course of employment. This will be so in most cases where the employer has authorised or given the impression that an employee can perform certain acts for the company which turn out to infringe competition law. The Nutanix case indicates that the company will not be held liable only in exceptional cases, such as where the employee acts on his or her own interest and outside the scope of delegated authority. Steps should be taken, therefore, for clear delineation of authority and for records of delegation to be maintained, such that opportunistic conduct of individual employees will not constitute infringement by the company.

Can individuals be held liable for antitrust contraventions?

While no sanctions were sought against individuals in the Nutanix and W Hing cases, the Commission is seeking fines against individuals and a director disqualification order in its third enforcement action, which has not yet been decided by the Tribunal. This is a timely reminder that individuals may be held liable for their involvement in a contravention of the Ordinance and be fined for their conduct, while directors may also be disqualified from being a director for up to five years.

Can anti-competitive practices be inferred?

The Tribunal in the Nutanix case clarified that the existence of anti-competitive practices can often be inferred. This may be the case, for instance, where a number of unexplained coincidences viewed together appear to constitute an infringement. It

is therefore insufficient for companies to deny responsibility by showing an absence of certain communications or agreements. Companies should keep records reflecting the underlying rationales of their conduct. In the event of an investigation by the Commission, these records may support the company's explanations and defend against unfavourable inferences.

Powers of the Commission

The guidance note emphasises that both the Nutanix and W Hing cases show that the Commission is serious about being an effective and active enforcer. The cases also demonstrate that the Commission can access all forms of communication. In addition to office raids and the seizure of documents, the Commission also relied on emails, WhatsApp messages and audio recordings from employees' personal phone devices as evidence of infringing conduct in the Nutanix case. Any misperceptions held by management and front-line staff that personal devices are not subject to investigation should be corrected.

'With its first wins under its belt and with increased funding for litigation from the government, companies should be prepared for an uptick in enforcement in the area of competition law in Hong Kong in the coming years,' the guidance note states. It adds that it will be increasingly important for companies of all sizes to continuously review and, where appropriate, update their compliance policies and ensure that employees are well aware of the risks associated with any contravention of the law.

Closing strategies in mergers and acquisitions

The fourth guidance note from the Institute's Takeovers, Mergers and

Acquisitions Interest Group was published on the Institute's website in October 2019. The new guidance note gives company secretaries and governance professionals an overview of a common closing mechanism for mergers and acquisition (M&A) transactions – the locked box mechanism.

The guidance note reviews the key differences between the 'Locked Box' and the 'Completion Accounts' mechanisms in M&A transactions. Under the Locked Box mechanism, the equity price is 'locked' with known amounts of cash, debt and working capital at a pre-signing date (Locked Box date) based on

a historical balance sheet (Locked Box balance sheet). Under the Completion Accounts mechanism, in contrast, the enterprise value is agreed upon at signing date and then adjusted for actual cash, debt and working capital movements between the signing and closing date to determine the equity price.

The guidance note points out that, in essence, the transfer of risks and rewards takes place earlier under the Locked Box approach at the Locked Box date compared to at the completion date under the Completion Accounts approach. The Locked Box mechanism is

Credits

The Institute would like to express its thanks to the members of the Interest Groups set out below (membership is as at date of publication). In addition, thanks are due to Alastair Mordaunt, Partner, Freshfields Bruckhaus Deringer LLP, for contributing to the latest Competition Law Interest Group guidance note.

Public Governance Interest Group

April Chan FCIS FCS (Chairman), Lau Ka-shi BBS, Rachel Ng ACIS ACS, Samantha Suen FCIS FCS(PE), Stella Ho and Stella Lo FCIS FCS(PE).

Ethics, Bribery and Corruption Interest Group

Dr Brian Lo FCIS FCS (Chairman), Lily Chung, Michael Chan, Ralph Sellar, Robert Hunt and William Tam.

Competition Law Interest Group

David Simmonds FCIS FCS (Chairman), Brian Kennelly QC, James Wilkinson, Mike Thomas and Neil Carabine.

Takeovers, Mergers and Acquisitions Interest Group

Michelle Hung FCIS FCS (Chairman), Dr David Ng FCIS FCS, Henry Fung, Kevin Cheung, Lisa Chung, Patrick Cheung and Philip Pong.


Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research, serves as Secretary to the the Institute's Interest Groups. He can be reached at: mohan.datwani@hkics.org.hk.

particularly attractive for transactions where the parties value greater certainty on the transaction price, or when a quick integration is required post-completion. It also provides a way for the seller to minimise the risks and complexities of post-deal negotiation with the buyer, who may attempt price-chipping (that is, bridging a value gap through Completion Accounts adjustments).

However, the adoption of the Locked Box mechanism relies heavily on the buyer's confidence in the quality of the Locked Box balance sheet and the guidance note gives practical advice to practitioners on the many governance and due diligence

implications of adopting the Locked Box mechanism for M&A transactions. 'It may appear to be more advantageous for a seller to adopt a Locked Box mechanism. However, if appropriate comfort can be offered to the buyer over the integrity and accuracy of the Locked Box balance sheet, accompanied by sufficient warranties and indemnification over the Locked Box accounts, the mechanism can still be attractive to the buyer,' the guidance note states.

Ultimately, the pricing considerations and mechanisms are the same for Locked Box and Completion Accounts.

Both mechanisms end up with the buyer paying the seller the equity price (that is, enterprise value adjusted for cash, debt, and difference between the target and actual working capital). However, different mechanisms should be selected under different circumstances. A wrong choice can make negotiations complex, or may even risk failure to complete the deal, the guidance note warns. 

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




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Combating cyber risk

How technological risk and cybersecurity affect corporate governance

Jason Yau, Partner, IT Consulting & Audit and Assurance, RSM Hong Kong, maps out a series of concrete measures to help combat cyber risk, charting a course of action for company secretaries to confront cybersecurity exposure and comply with regulatory stipulations.



Cybersecurity has become a hot topic of conversation over the past few years across a wide range of industries in both the private and public sectors. The frequency, velocity and severity of data breaches, especially from external hackers, intensified in 2019 and there is no evidence of it slowing down.

Confronting the rise of data breaches

According to Verizon's 2019 Data Breach Investigations Report, there is a significant uptick of data breaches initiated by external hackers, whereas past data indicates that the ratio between external hackers and internal intruders was about 50:50. What this latest observation by Verizon means can be interpreted as follows: (1) organisations are doing a much better job in implementing proper preventive controls against intruders from within, and (2) external hackers with malicious intent are getting more sophisticated with their technical hacking techniques and social engineering skills.

Because of the emergence of professional external hackers, regulators the world over are keen on enacting more rules and regulations to ensure organisations are doing enough to defend themselves against cyber risks, while organisations are scrambling to keep up with the ever-changing cyber landscape and to implement controls that meet the expectations of regulators, management, customers and other stakeholders. The pressure on the board of directors, corporate secretaries and senior management to properly address cybersecurity risk as part of an overall risk management strategy is accelerating.

We are living in a digital age where data is rapidly becoming the most valuable commodity in our world and whoever

can capture, generate, process and analyse data in the most efficient and effective manner will enjoy a distinctive advantage over the competition. With data turning into gold, external hackers and internal intruders with malicious intent are being incentivised to penetrate organisations to steal valuable data such as personal information, board minutes, corporate strategy documents, and pricing and customer data, as well as other intellectual property. Standard hackers will sell the information on the dark web, where smart hackers can potentially use the insider information to reap lucrative profits in the financial markets.

Recent data breaches, including those of British Airways and Capital One, have caught the eye of management boards because of the potential impact on stock prices and corporate earnings. Other risk exposures relating to data breaches from a corporate governance perspective include reputational damage, intellectual property losses, lost productivity, damage to corporate culture and even potential litigation. As such, it is imperative that company secretaries – as well as the boards of directors – take relevant action to confront cybersecurity exposure as it relates to reputational, compliance and privacy risks.

Compliance with regulatory stipulations

As more and more jurisdictions come out with their own cybersecurity laws and data privacy regulations, it is vital that company secretaries guide their boards of directors to address all potential compliance risks to which the organisation is exposed, as well as help ensure they comply with all the relevant regulations. A number of significant regulations have been enacted and become effective in recent years, including the General Data Protection Regulation (2018) in the European Union, the Cybersecurity Law (2017) in the mainland of China, the Macau Cybersecurity Law (2019) in Macau and the Cybersecurity Act (2018) in Singapore. As for Hong Kong, there are industry-specific regulations and guidelines for banking, financial services and insurance from the respective regulators, including the Hong Kong Monetary Authority, Securities and Futures Commission and Insurance Authority.

The aforementioned laws, regulations and guidelines have extremely burdensome requirements, compliance with which demands that management works closely with the legal and IT departments to implement necessary changes within an

Highlights

- data breaches and cybersecurity risks intensified in 2019, with a significant increase in invasion by external hackers
- more cybersecurity rules and data privacy regulations are being enacted globally, resulting in a heavier burden of compliance
- corporate governance professionals are being tasked with a greater responsibility to properly address cybersecurity risk as part of an overall risk management strategy

organisation. Any violations can potentially lead to hefty fines and penalties and, more importantly, significant business disruptions, reputational damage and the necessity of dealing with regulatory investigations should there be a data breach due to non-compliance.

Preventive measures

Much recent empirical research and academic study compares the cost of implementing preventive measures against the cost of performing corrective action. Although there is no 'one-size-fits-all' type of research, with a derivative cost ratio between preventive and corrective controls, the analysis all points to the same conclusion, which is that preventive measures cost significantly less than corrective action.

Other than the financial costs, some of the unmeasurable costs relating to a data breach can involve employee turnover, time spent on regulatory or legal matters, loss of customer and stakeholder confidence and brand damage.

Understanding and refraining from bad practices

We can categorise our observations on 'bad practices' into those carried out by IT departments and those performed by employees.

Bad IT department practices:

- implementation of poor password requirements and authentication rules
- lack of awareness of the latest cybersecurity and data privacy regulations
- poor network structure design and default system configurations

- inadequate preventive and detective IT solutions
- no corrective controls or action planning (such as business continuity or disaster recovery planning), and
- lack of data log and periodic reviews.

Bad employee practices:

- ignoring batches or security update messages
- downloading applications from an unauthorised source (such as input methods)
- opening and replying to phishing emails without employing a sceptical mindset
- opening attachments from unconfirmed sources sent to personal email accounts on work machines
- using unencrypted USB and other portable storage devices for sensitive company information, and
- using instant messaging services or social media to share company information.

Implementing detective and preventive controls

An IT department alone will not be able to plug all the holes within an organisation from a cybersecurity risk perspective. Strong IT governance requires that the leadership team sets the right tone from the top and that everyone within the organisation enhances their security awareness,

as well as actively addresses the risks through small steps.

Ongoing security awareness education and the sharing of observations from the IT department are also essential for keeping employees up to date about potential cyber risks. With a collective effort across the organisation as part of the detective and preventive controls, along with a strong IT security culture, it will be a lot harder for hackers to achieve their goals.

Practical tips for combating cyber risk

The process of identifying and combating potential hacking risks in our daily work is greatly facilitated by paying attention. The following is a list of practical tips of what to look out for:

- internet traffic is suddenly and suspiciously increased
- computer gets extremely hot without any usage
- alert about a security solution, such as an antivirus or firewall, being disabled
- appearance of unfamiliar desktop icons
- extremely slow machine boot-up process
- downgraded system performance
- unexpected pop-up windows from browsers or taskbar
- unexpected software installation
- unexpected sounds from the machine, and

“
 it is imperative that company secretaries – as well as the boards of directors – take relevant action to confront cybersecurity exposure as it relates to reputational, compliance and privacy risks
 ”

- random connections to unknown websites.

If your computer encounters any of these situations, it is strongly recommended that you get your IT department involved to perform detective and corrective measures.

A number of other suggestions should be followed to help prevent a potential data breach.

Password and encryption:

- use multifactor authentication
- use advanced passwords
- check your social media security settings
- protect your phone and gadgets with strong passcodes
- use encryption on portable storage devices
- verify the encryption function on mobile device apps, and
- lock your machine (use both physical and logical locking).

Staying alert:

- be suspicious of emails

- check hyperlink locations
- never open attachments from an unconfirmed source
- put a sticker or sellotape over any unused webcams
- be vigilant about suspicious connectivity
- on public wi-fi, avoid accessing sensitive accounts or sharing personal data, and
- back up your data.

Conclusions

The following phrase is commonly used amongst IT security experts: 'Data breaches are not a matter of *if*, but a matter of *when*.' Cybersecurity is increasingly becoming a business risk and not just an isolated IT problem; a collaborative approach is now needed in order to tackle cybersecurity risks and data threats.

It is essential that the company secretary takes the initiative to emphasise the significance of putting cybersecurity firmly on the board agenda. In addition, the board should consider employing someone in a chief information security officer role to drive the IT risk culture. The leadership team must recognise that the



ad hoc or reactive approach to dealing with cybersecurity risk no longer works in today's cyber environment. An integrated action plan with a proactive attitude and a proven security framework is indispensable to get buy-ins from all business users. Along with a strong corporate culture and an internal-control mindset, IT risk management and digital transformation will set the foundations for the next-generation business model, which will in turn enhance the value of the brand and the company.

Jason Yau, Partner, IT Consulting & Audit and Assurance

RSM Hong Kong

Jason is a US CPA and Certified Information Technology Professional certified in the state of New York. He is Head of Technology and Management Consulting (TMC) at RSM Hong Kong, having established its TMC division to focus on providing high-quality IT solutions to corporate customers, including the implementation of enterprise resource planning and customer relationship management systems, cloud strategy, IT risk assurance, infrastructure, hardware implementation and computer forensics.

Professional Development

Seminars: November 2019

6 November

Financial technology (fintech)
– helping the governance professional understand the inevitable need to deal with digital and virtual banks/
potential solutions for bank account opening



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

Speakers: Carson Wen, BBS, JP, Founder & Chairman, Bank of Asia (BVI) and BOA International Financial Group; and Michael Leung, MH, Chief Executive Officer, BOA International Financial Group

8 November

Practical company secretarial workshops: part 4 – what you can do more, module 9 – risk and business continuity planning (re-run)



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

22 November

Practical company secretarial workshops: part 4 – what you can do more, module 11 – corporate finance (re-run)



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

26 November

The governance professional – practical understanding of competition law developments, their impacts and being prepared for the compliance challenge



Chair: David Simmonds FCIS FCS, Institute Vice-President; and Group General Counsel, Chief Administrative Officer and Company Secretary, CLP Holdings Ltd

Speaker: Alastair Mordaunt, Partner & Co-head of Asia Competition Practice, Freshfields Bruckhaus Deringer LLP

27 November

The direction of TCSP regulation and the impact of the FATF mutual evaluation report on Hong Kong



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

Speakers: Natalia Seng FCIS FCS(PE), Institute Past President and Council Member and Vice Chairman of Tricor Hong Kong & Offshore, Tricor Group/Tricor Services Ltd, and William Hallatt, Partner, Head of Financial Services Regulatory, Asia and Hannah Cassidy, Partner; Herbert Smith Freehills

29 November

Practical company secretarial workshops: part 4 – what you can do more, module 12 – financial oversight & analysis (re-run)



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

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



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

Online CPD seminars

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
12 February 2020	6.45pm–8.15pm	Shareholder activism in Hong Kong	1.5
18 February 2020	6.45pm–8.15pm	Company secretarial practical training series: change of name of company incorporated in HK/PRC	1.5
20 February 2020	6.45pm–8.45pm	Hybrid AGM* *participants may attend this seminar in person or virtually from anywhere with broadband access	2

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

Membership

New graduates

Congratulations to our new graduates listed below.

Au Wing Sze	Lai Sum Yi, Serene	Leung Wing Yung	Tsang Wing Yan
Chan Ching Bun	Lai Yau Yan, Gladys	Li Shu	Wong Man Chung
Chan Huen Wai	Lam Hiu Shun, Hilda	Li Xiaowen	Yiu Lai Wa
Chan Kui Ming	Lam Ming Hei, Maggie	Man Sin Yee	You Fangyuan
Choi Yuen Ting	Lau Cheuk On, Jason Philip	Or Wing Ki	
Chu Ka Ying	Lee Hang Siu	Poon Ping Yeung	
Han Yu	Lee Hiu Man	So Kai Ming, Eric	
He Yuan	Lee King Fung	Tong Ka Yan	

Membership

New Associates

Congratulations to our new Associates listed below.

Au Kan Yee, Queenie	Ding Weizhi	Law Ka Ho	Ng Lok Ki	Tsui See Wing
Chan Ho Kei	Fang Yina	Law Sau Man	Ng Tsz Ying	Veremeev Nikolay
Chan Ka Ki	Fong Man Sai	Law Yeung Ho	Ng Wai Kam	Wang Hongyan
Chan Kin Kwan	Fong Oi Ying	Lee Ki	Ng Wing Yan	Wang Jing
Chan Kin Man	Fu Ching Yi	Lee Ngo Kiu	Ng Yat Ming	Wong Hoi Ki, Charlotte
Chan Kwok Wing	Fung Chee Yin	Lee Po Yu	Ngan Nga Yin	Wong Chee Chung
Chan Kwun Yat	Fung Ka Ki	Lee Pui Kei, Kris	Nishimura Akira	Wong Hung Pan
Chan Ngai Fan	Ho Man King	Lee Sze Ning	Or Yuen Kei	Wong Ka Yee, Anita
Chan Pui Shan	Ho Man Tsun, Mandy	Lee Tin Yan, Angel	Pang Cheuk Yu	Wong Kiu Fung
Chan Sze Yan	Ho Sau Wah	Lee Wing Shan	Pang Sze Man	Wong Man Yi
Chan Tsz Kit	Ho Sin Ying	Leung Cheuk Hang	Qi Yong	Wong Pui Yee
Chan Wing Kin	Ho Ting Ting	Leung Chi Kit	Si Yaqi	Wong Pui Yin
Chan Wing Yam, Eugenia	Ho Yuen Man	Leung Kim Ching	Sin Ka Fung	Wong Shuk Sai
Chan Yi Kiu	Hu Biqing	Leung Mei Kuen	Sin Wing Man	Wong Sin Tung
Chan Yuen Ting	Hu Ying Zhi	Leung Po Ling, Pauline	Sit Ka Po	Wong Suet Yan
Chao Pui Ki	Huang Jingkai	Leung Pui Shan	Siu On Chin, Angie	Wong Sum Yi, Summy
Chau Chiu Yi	Huang Ming Fung	Leung Tat Yuen	Siu Yuen Shan	Wong Wan Gee, Anita
Chen Xi	Hui Chung Ying	Leung Tsz Man	So Shuk Wan	Wong Wan Ting
Chen Xiuzhu	Constanzia	Li Chui Man, Samantha	So Tsz Lui	Wong Yui Ling
Chen Xuehui	Im Kai Chuen, Stephen	Li Jiling	So Tze Yun	Wu Ka Man
Chen Yingyue	Ji Qing	Li Lai Kwan	So Wing Chun	Wu Manjie
Chen Yuan	Kwok Wai Ting	Li Man Ting	So Wing Fat	Wu Wing Yat, Day
Cheng Kei Tung	Kwok Wing Ho	Lin Dapeng	Suen Ho Yi	Xian Fang
Cheng Lai Yee	Kwong Wai Ni, Anita	Lin Yanfeng	Suen Ka Yan	Xu Zhitao
Cheng Man Yuen	Kwong Wing Yee	Liu Hoi Lan	Suen Pui Chun, Hannah	Yang Xianfu
Cheng Sheung Yin	Lai Bing Ho	Liu Ming	Tam Cho Hei	Yao Jie
Cheuk Sau Chun	Lam Ka Yee	Liu Wei	Tam Sze Wai, Sara	Yau Ka Yee
Cheung Hang, Erika	Lam Kam Yin	Liu Yu Hang	Tam Wing Yan, Vinci	Yeung Cham, Kay
Cheung Oi Yan	Lam Kit Yan, Iris	Liu Yunlan	Tan Tsz Yan	Yeung King Hang
Chiang Ka Man	Lam Tak Ming	Lo Eraine	Tan Wing Sze	Yeung Wai Ying
Ching Chau Wa	Lam Tsz Kwan	Lo Ka Man	Tang Ching Yui	Yeung Wing Kam
Chiu Oi Lam	Lam Wing Yan, Wendy	Lok Mei Kwan	Tang Lok Ming	Yeung Yu Chun
Chiu Sze Wan	Lam Wing Yin	Lu Ou	Tang Siu Fung, Calvin	Ying On Ki
Cho King Lung	Lam Yan Yan	Lui Lai Chun	Tang Wai Yi	Yip Wai Man
Choi Tsun Kit	Lam Yu Yi, Annie	Ma Sing	Tang Yuet Yung	Yu Weilin
Chong Natalie	Lanuza Esmyralda Ho	Ma Wai Chun	Ting Hau Ling	Yue Man Siu
Chow Pik Yan	Lau Ka Man	Mak Lai Ki	Tiu Ching Yee	Yuen Wai Shan
Chow Sze Law, Fanny	Lau Kai Ming	Mak Lok Ki	Tong Wai Mun, Vivian	Zhang Huifang
Chu Cheyenne	Lau Mei King	Mak Ming Hoi	Tsang Chung Yan	Zhang Li
Chung Cheuk Kwan	Lau On Yee, Angel	Mak Ping Yuen	Tsang Hing Fai, Steve	Zhang Shihuan
Chung Chi Fung	Lau Wing Chu	Mak Pui Ki	Tsang Mei Ying	Zhu Xu
Chung Chui Yi	Lau Yin Ni	Man Hiu Lam, Katrina	Tsang Wing Yin	Zi Xuan
Chung Sze Man, Mandy	Lau Yung Yung	Mok Chun Wa	Tsui Hin Chi	
Ding Ka Hei	Law Chun Wa	Ng Kwan Wai, Claudia	Tsui Ka Yiu	

Forthcoming membership activities

Date	Time	Event
11 January 2020	8.45am–5.00pm	Fun & Interest Group – Day-tour at Lai Chi Wo & Kat O

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

Governance Professional Mentorship Programme 2019

The Governance Professional Mentorship Programme was first launched in 2015 with the aim of nurturing young professionals and developing future leaders for the Chartered Secretarial and Governance profession. Since then, nearly 500 mentors and mentees have participated in and benefited from the programme in many ways.

A ceremony was held on 10 December 2019 to celebrate the completion of the 2019 Mentorship Programme and to launch the 2020 programme. At the ceremony, Institute President David Fu FCIS FCS(PE) thanked the mentors for their time and contribution and welcomed all participants who volunteered to join the 2020 programme. He also encouraged mentees to make use of this platform to broaden their horizons. Institute Council member and Membership Committee Chairman Stella Lo FCIS FCS(PE) provided a review of the 2019 programme and announced the activities for the 2020 programme.



Advocacy

The 9th Golden Bauhinia Awards Ceremony

The Institute participated in the 9th Golden Bauhinia Awards Ceremony organised by Hong Kong Ta Kung Wen Wei Media Group Ltd on 5 December 2019 as one of the joint organisers. Institute Past President and Council member Mrs Natalia Seng FCIS FCS(PE) presented the Annual Distinguished Board Secretaries Award (年度卓越董事会秘书奖) at the ceremony and Chief Executive Samantha Suen FCIS FCS(PE) also attended this event.

Congratulations to the following Institute members and Affiliated Persons who received the Best Board Secretaries of Listed Companies Award (Lifetime Achievement) (最佳上市公司董事会秘书(终身荣誉奖)) and Annual Distinguished Board Secretaries Award, respectively:

Best Board Secretaries of Listed Companies Award (Lifetime Achievement)/最佳上市公司董事会秘书(终身荣誉奖):

- Huang Qing FCIS FCS, Board Secretary, China Shenhua Energy Company Ltd
- Huang Wensheng FCIS FCS, Vice President, China Petroleum & Chemical Corporation
- Wu Enlai FCIS FCS, Board Secretary, PetroChina Company Ltd
- Xie Jilong FCIS FCS, Board Secretary, CRRC Corporation Ltd

Annual Distinguished Board Secretaries Award/年度卓越董事会秘书奖:

- Du Chunye, Board Secretary, Postal Saving Bank of China
- Gan Liwei, Board Secretary, AVIChina Industry and Technology Co, Ltd
- Wang Jun, Director of Capital Operation Department, China Aluminum International Engineering Corporation Ltd
- Xie Mao, Board Secretary, Kunlun Energy Company Ltd



Best Board Secretaries of Listed Companies Award (Lifetime Achievement)



Annual Distinguished Board Secretaries Award

The 51st Affiliated Persons Enhanced Continuing Professional Development seminars in Beijing

The Institute held its 51st Affiliated Persons Enhanced Continuing Professional Development (ECPD) Seminars under the theme of 'Information Disclosure and Annual Result Promotion' in Beijing between 18 and 20 December 2019. The seminars attracted over 300 participants from H share, A+H share, red chip, A share and to-be-listed companies.

Institute Chief Executive Samantha Suen FCIS FCS(PE) gave the opening remarks. At the seminars, Institute Vice-President Dr Gao Wei FCIS FCS(PE) introduced the findings of the Institute's survey conducted from February to April 2019 and published in the research report 'Taking the temperature - The state of corporate governance practices in Hong Kong and the Mainland'.

Other speakers shared their knowledge and experiences on topics ranging from the latest regulatory updates and directors' continuous obligations; preparation of financial audit and annual reports; connected transactions; and employee incentive schemes.

The Institute would like to thank all speakers, participants, associate organiser (ShineWing CPA) and sponsors, including Ernest & Young Hua Ming LLP, Herbert Smith Freehills LLP, Clifford Chance LLP, Equity Financial Press Ltd, SWCS Corporate Services Group (Hong Kong) Ltd, Tricor Services Ltd, Computershare Hong Kong Investor Services Ltd and Vistra Corporate Services (HK) Ltd, for their generous support.



Advocacy (continued)

HKICS Double Anniversary Celebration in Beijing

The Institute held a celebration dinner on 18 December 2019 in Beijing to close the year-long celebration of its Double Anniversary Year.

About 300 participants from H share, A+H share, A share, red chip, to-be-listed companies, business partners and the Institute's Council and senior management team joined the dinner.

The Institute would like to express sincere gratitude to the honourable guests who commended the Institute's contribution in promoting good corporate governance practices in the Mainland at the occasion:

- Pamela Lam, Deputy Director, Beijing Office of Hong Kong Special Administrative Region of the People's Republic of China
- Gu Renrong, Vice President, ShineWing CPA Group
- Wei Fang, Assistant Board Secretary, PetroChina Company Ltd, and Company Secretary of Chinaoil (Hong Kong) Corporation Ltd

The Institute also thanks table prize sponsors for their generous support of the Institute:

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- Equity Financial Press Ltd
- SWCS Corporate Services Group (Hong Kong) Ltd
- Tricor Services Ltd
- Computershare Hong Kong Investors Services Ltd
- Vistra Corporate Services (HK) Ltd
- China Southern Airlines Co, Ltd
- Shanghai Sunwising Insurance Services Ltd



Secretariat year-end parties

Hong Kong office

A Christmas lunch party for the Secretariat team in Hong Kong was held on 12 December 2019. Institute President David Fu FCIS FCS(PE), Council members Bernard Wu FCIS FCS and Natalia KM Seng FCIS FCS(PE) joined the lunch. The Secretariat team had a heartwarming lunch gathering and would like to express their gratitude to the Council, the Chief Executive and the department heads.



Beijing office

The Institute's secretariat staff in Beijing held a lunch party on 24 December 2019 to welcome the new year.



London–Hong Kong intern exchange 2019

The Institute launched a reciprocal intern exchange in May 2019 in conjunction with the Worshipful Company of Chartered Secretaries and Administrators (WCCSA) in the UK. The aim of the intern exchange is for both the Institute and WCCSA to identify an individual in their jurisdiction with international ambition who will use this amazing opportunity to both fuel and test that ambition.

The Hong Kong intern is Yuen Hoi Ka, Kate who is taking the Master of Corporate Governance programme of The Open University of Hong Kong. The intern from WCCSA is Rory Herbert GradICSA who has just completed his studies at the LLM, Corporate Governance and Law programme at the University of Portsmouth.

An interview with both intern candidates will feature in next month's journal.



Institute Chief Executive Samantha Suen FCISFCS(PE), right, and WCCSA intern Rory Herbert

Advocacy (continued)

HKICS President and Council for 2020

The Institute held its Annual General Meeting (AGM) in December 2019 with over 30 members attending. At the Council meeting following the AGM, the Honorary Officers for 2020 were elected (see list below) with Ms Gillian E Meller FCIS FCS being elected as President. Ms Meller is currently the Legal and European Business Director of MTR Corporation Ltd. Mr David YH Fu FCIS FCS(PE), who will retire from the presidency after two years on 31 December 2019, will continue to serve as a Council member in the capacity of Immediate Past President.



HKICS Council 2020

Honorary Officers:

Gillian E Meller FCIS FCS	President (re-elected to Council)
Dr Gao Wei FCIS FCS(PE)	Vice-President
David J Simmonds FCIS FCS	Vice-President
Dr Eva YW Chan FCIS FCS(PE)	Vice-President
Ernest CH Lee FCIS FCS(PE)	Treasurer

Council Members:

- Loretta WM Chan FCIS FCS
- Edmond MK Chiu FCIS FCS(PE) (newly elected)
- Daniel WS Chow FCIS FCS(PE) (newly elected)
- Wendy WT Ho FCIS FCS(PE) (newly elected)
- Arthur K Lee FCIS FCS(PE)
- Stella SM Lo FCIS FCS(PE) (re-elected to Council)
- Professor CK Low FCIS FCS
- Natalia KM Seng FCIS FCS(PE)
- Xie Bing FCIS FCS
- Wendy WY Yung FCIS FCS

Ex-officio:

David YH Fu FCIS FCS(PE)	Immediate Past President
Ivan KW Tam FCIS FCS	Past President

Studentship

Chartered Governance Qualifying Programme

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

The CGQP programme structure, full syllabus, exam format, admission requirements and exemption policies are available on the Institute's website.

Examination results slips

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

Student Gathering: Update on the New Qualifying Programme

On 2 December 2019, the Institute organised a student gathering to provide updates on the new Chartered Governance Qualifying Programme (CGQP) which was launched on 1 January 2020. Institute Council member and Education Committee Chairman Dr Eva Chan FCIS FCS(PE) and Institute Chief Executive Samantha Suen FCIS FCS(PE) provided information for the participants on the development of the Institute and the chartered secretarial and governance profession, the changes from the current IQS to the CGQP, and the services and support offered by the Institute to students, as well as the career prospects of Chartered Secretaries and Chartered Governance Professionals.



Studentship

Student Ambassadors Programme 2019/2020

The Institute's Student Ambassadors Programme (SAP) for the new academic year (2019/2020) has commenced. The first SAP gathering was held on 7 December 2019 with 43 mentors, student ambassadors and guests attending. It provided a good opportunity for SAP mentors and mentees to meet with one another, as well as with their peers. At the gathering, Institute Registrar Louisa Lau FCIS FCS(PE) introduced the Institute, the routes to becoming a Chartered Secretary and Chartered Governance Professional and career prospects. Institute Chief Executive Samantha Suen FCIS FCS(PE) introduced the International Internship Programme jointly organised by the Institute and the Worshipful Company of Chartered Secretaries and Administrators of England. Three student ambassadors, Michelle Li (The Hang Seng University of Hong Kong), Chloe Wong (The Hang Seng University of Hong Kong) and Ingrid Yau (The University of Hong Kong) shared their experiences of joining different SAP activities, including the mentorship programme and summer internship. Ms Suen also presented Certificates of Appreciation to the mentors of the last academic year.

The Institute would like to thank the following members (in alphabetical order of surname) for their valuable contribution as mentors of SAP in 2018/2019. The Institute would also like to welcome new mentors for 2019/2020. (See box.)

Mentors for the 2018/2019 programme

Brian Chan ACIS ACS
 Caroline Chan FCIS FCS
 Agnes Cheuk ACIS ACS
 Nick Cheung ACIS ACS
 Victor Ho ACIS ACS
 Donald Lai ACIS ACS
 Iris Lai ACIS ACS
 Ricky Lai FCIS FCS
 Davis Lau ACIS ACS
 Simon Lee ACIS ACS
 Jerry Tong FCIS FCS(PE)
 Patrick Wong ACIS ACS
 Sandy Yan ACIS ACS(PE)
 Cathy Yu FCIS FCS

New mentors for the 2019/2020 programme

Ada Au ACIS ACS
 Mike Chan ACIS ACS
 Daniel Chow FCIS FCS
 Professor Jay Chui ACIS ACS
 Anna Kong ACIS ACS
 Nereid Lai FCIS FCS
 Carmen Lam FCIS FCS
 Crystal Lee ACIS ACS
 Kitty Liu FCIS FCS
 Ling Qin ACIS ACS
 Anna Sum FCIS FCS
 Andrew Tsang FCIS FCS
 Dr Davy Wu
 Dominic Wu ACIS ACS
 Margaret Yan
 Paul Yeung
 Trevor Yu ACIS ACS



Professional seminar at The University of Hong Kong

Institute Registrar Louisa Lau FCIS FCS(PE) delivered a seminar on 'Corporate Governance' to the Master of Accounting students at The University of Hong Kong on 13 December 2019. Information about the Chartered Governance Qualifying Programme and route to membership of the Institute and The Chartered Governance Institute were also shared with the participants.



Notice

Policy – payment reminder

Studentship renewal

Students whose studentship expired in November 2019 are reminded to settle the renewal payment by Thursday 23 January 2020.

Exemption fees

Students who received exemption confirmation notice issued in November 2019 are reminded to settle the exemption fees within three (3) months, that is by February 2020. Please refer to your exemption confirmation email for the payment deadline.

Important notice to students – further exemption application and exemption policies under the Chartered Governance Qualifying Programme

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

Featured job openings

Company name	Position
Oriental Patron Asia Ltd	Legal Executive
Link Asset Management Ltd	Senior Manager – Company Secretarial
TAK Consulting Ltd	Board Secretariat
SIT, FUNG, KWONG & SHUM, SOLICITORS	Company Secretarial Assistant / Officer

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

The Exchange publishes ESG consultation conclusions and disclosure review findings

On 18 December 2019, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), published conclusions to its consultation on the Review of the Environmental, Social and Governance (ESG) Reporting Guide (ESG Guide) and Related Listing Rules (ESG consultation conclusions) and the findings of its latest review of listed issuers' ESG disclosures (ESG disclosure review).

ESG consultation conclusions

The Exchange reports strong support for its consultation proposals to enhance the ESG reporting framework. It will implement the consultation proposals with modifications reflecting comments received. The changes will be effective for financial years commencing on or after 1 July 2020. Key changes to the ESG Guide and related listing rules include new mandatory disclosure requirements, including:

- a board statement setting out the board's consideration of ESG matters
- application of Reporting Principles 'materiality', 'quantitative' and 'consistency', and
- explanation of reporting boundaries of ESG reports.

Other key changes include:

- introducing mandatory disclosure requirements
- requiring disclosure of significant climate-related issues which have impacted and may impact the issuer
- amending the 'environmental' key performance indicators (KPIs) to require disclosure of relevant targets
- upgrading the disclosure obligation of all 'social' KPIs to comply or explain, and
- shortening the deadline for publication of ESG reports to within five months after the financial year-end.

ESG disclosure review

The Exchange reviewed ESG reports for the financial year ended 31 March, 30 June or 31 December 2018 from 400 randomly selected issuers (sample issuers). The review provides insight and guidance to issuers on the possible improvement areas on which to focus in their approach to assessing ESG-related risks and when preparing ESG reports. Key findings and recommendations of the disclosure review are highlighted below.

- All sample issuers published an ESG report within the time frame set out in the listing rules. A majority published their ESG reports on the same day as their annual report (63%).
- Two-thirds of sample issuers disclosed that a materiality assessment had been undertaken, some described the assessment in a more detailed manner than others. The Exchange emphasises the importance of materiality since it is a fundamental element for a company to assess ESG-related risks it faces.
- ESG reports from a majority of sample issuers contained little or no description of board involvement. It is important for boards to be meaningfully involved in assessing and addressing ESG-related risks.
- When an issuer is required to comply or explain, only 3% of such provisions were explained. The high percentage of reports adopting the comply option may suggest that issuers have not properly determined what is material to them, or that the explain option is believed to be a less-preferable option. Issuers are reminded that if a comply or explain provision is immaterial to them, then an explanation to that effect may well be appropriate. Explanation is not a less preferred or secondary option.

The consultation conclusions, respondents' submissions and amendments to the listing rules, as well as the 'Analysis of Environmental, Social and Governance Practice Disclosure in 2018', are available on the HKEX website: www.hkex.com.hk.

New SFC survey on ESG, climate change and asset management

On 16 December 2019, the Securities and Futures Commission (SFC) released the findings of its Survey on Integrating Environmental, Social and Governance (ESG) Factors and Climate Risks in Asset Management. This survey is one of the initiatives in the SFC's Strategic Framework for Green Finance, published in September 2018.

Of the licensed asset management firms surveyed (794 firms currently active in asset management responded to the survey), 660 considered at least one ESG factor when evaluating a company's investment potential. Of these 660

firms, 68% saw ESG factors as a source of financial risk, although only 35% consistently integrated ESG factors into their investment and risk management processes. Nearly two-thirds of licensed firms active in asset management plan to strengthen their ESG practices in the next two years.

When the focus narrows to the management of climate-related risks, only 23% of the 660 asset management firms have processes in place to manage the financial impact of risks arising from climate change. While ESG factors are important and interlinked, in the near

term the SFC will focus on promoting the management of climate change risks in asset management by developing expected standards and providing practical guidance and best practices. The SFC will also establish an industry group to exchange views with experts in environmental and climate risks, as well as sustainable finance.

The survey is available on the SFC website: www.sfc.hk.

SFC proposes changes to the open-ended fund companies regime

On 20 December 2019, the Securities and Futures Commission (SFC) launched a consultation on enhancements to the open-ended fund companies (OFC) regime, which came into effect on 30 July 2018. The proposed changes would allow licensed or registered securities brokers to act as custodians for private OFCs. The SFC proposes to allow intermediaries licensed or registered for the regulated activity of dealing in securities to act as custodians of private OFCs, provided that the intermediary meets certain requirements as set out in the consultation paper. The proposed changes would also expand the investment scope for private OFCs to include loans as well as shares and debentures of Hong Kong private companies.

'The proposed enhancements seek to encourage more private funds to set up in Hong Kong,' said Ms Christina Choi, the SFC's Executive Director of Investment Products. 'This in turn will help further the SFC's strategy to develop Hong Kong as a full-service international asset management centre and preferred fund domicile.'

The SFC also proposes to introduce a statutory mechanism for the re-domiciliation of overseas corporate funds to Hong Kong and will require OFCs to keep a register of beneficial shareholders to enhance anti-money laundering and counter-terrorist financing measures. Requirements are proposed to be imposed on OFCs for the keeping of a register of

beneficial shareholders similar to the requirements for conventional companies under the Companies Ordinance.

The proposed enhancements would involve changes to the Code on OFCs, the Securities and Futures Ordinance and the Securities and Futures (OFCs) Rules. Details are set out in the consultation paper.

The consultation paper is available on the SFC website: www.sfc.hk. The deadline for responding to the paper is 20 February 2020.

IMF acknowledges Hong Kong's robust policy frameworks for safeguarding financial stability

On 30 December 2019, the International Monetary Fund (IMF) released its Staff Report, which reinforces its assessment of Hong Kong's economic and financial positions published on 4 December 2019. The IMF visited Hong Kong from 23 October to 4 November 2019 to conduct its annual 'Article IV' consultation. The concluding statement of the IMF mission's assessment was published on 4 December 2019.

Affirming Hong Kong's position as a global financial centre and a regional trading hub with one of the most open economies in the world, the IMF Staff Report recognises that Hong Kong

continues to maintain its competitiveness in the financial sector, which is marked by the free movement of capital and information, a simple tax system, a sound regulatory system, the rule of law and quality professional services.

The IMF notes that Hong Kong is well placed to address both cyclical and structural challenges given its significant buffers, despite weakened economic activity and mounting headwinds on the growth outlook. The IMF welcomes the government's recent introduction of fiscal stimuli to support the economy. It also supports the government's three-pronged approach to containing housing market

risks and increasing housing affordability. The IMF commends Hong Kong for its strong regulatory framework and prudential supervision, which helps ensure the resilience of the financial sector and safeguard financial stability. The IMF also reaffirms its long-standing support for the Linked Exchange Rate System as an anchor of financial stability for Hong Kong.

The Staff Report was considered and endorsed by the IMF Executive Board on 13 December 2019. The IMF's Staff Report can be accessed from the websites of the Financial Services and the Treasury Bureau (www.fstb.gov.hk) and the IMF (www.imf.org).



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Looking for new career opportunities?

Considering a company secretary career?

Becoming a governance professional?

Interested candidates please join one of the Governance Professionals Information Sessions in 2020

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Tuesday 17 March 2020	PwC, The Landmark
Thursday 18 June 2020	Vistra, Lee Garden One
Thursday 24 September 2020	TBC
Thursday 26 November 2020	TBC

The Institute reserves the right to change the details of the events as deemed necessary.

Stay tuned

Registration for Session (1) will be available soon. For enquiries, please contact Leaf Tai: 2881 6177 or email: student@hkics.org.hk.

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會
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