

# CSj

June 2012

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The journal of The Hong Kong  
Institute of Chartered Secretaries

香港特許秘書公會會刊



## Global profession

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## Good governance comes with membership

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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout China, as well as the development of the profession of the Chartered Secretary.

The HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994, and today has more than 5,500 members and 3,100 students.

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## June 2012

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上海证券交易所原拟于2010年推出国际板，现又再延期。国际板目前并无正式的实施时间表，然而中国计划在2020年把上海建设为国际金融中心，成立上海国际板是当中的重要举措。本刊今期探讨有关国际板的构思。

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# ACRU and international recognition

The Institute's Annual Corporate and Regulatory Update (ACRU) was held on 23 May 2012 and it once again proved that members' thirst for knowledge and information is unquenchable. More than 850 Chartered Secretaries, as well as colleagues from the legal and accountancy professions, filled the conference centre hall to capacity to hear – and question – representatives from the Securities and Futures Commission, Companies Registry, Hong Kong Exchanges and Clearing and the Inland Revenue Department. My thanks to all of them for their continuing support of ACRU and thanks also, of course, to the attendees. It was a long but informative and interesting day, a full account will be given in the next issue of *CSj*.

This edition deals with the global profession, or perhaps more correctly, recognition of the role of the corporate secretary in all its manifested forms throughout the world. This is a timely theme as delegates from the Institute will soon leave for Geneva, Switzerland and, along with delegates from other member organisations of the Corporate Secretaries International Association (CSIA), will present to the WTO Trade in Services Committee on 25 June 2012 regarding the creation of a new heading – 'Corporate Governance, Compliance and Secretarial Advisory Services' – in the WTO's trade in services sectoral classification list.

Our Institute and other CSIA members have put a lot of effort into trying to secure the creation of this new sectoral classification. This endeavour is important because the lack of a formal and official recognition of those who work in, and the companies that make up, this sector puts us at a disadvantage compared to our peers in other professions. In real terms, this lack of recognition excludes the profession and the services our members offer from preferential trade agreements such as the Hong Kong Closer Economic Partnership Arrangement (CEPA) between Hong Kong and mainland China. This in turn restricts trade and hinders the free flow of ideas regarding corporate governance and compliance which would help standardise corporate governance practices and procedures.

To my mind one of the most significant benefits of recognising this new sector would be that it would provide a focal point for corporate governance within organisations. This role is increasingly being taken on by the company – or corporate – secretary, and the formal recognition of this role via the new CGCSA classification would give corporate governance a massive boost globally. It would not exclude other professionals from undertaking the governance role – just as recognising the role accountants have in ensuring the financial well-being of a company does not exclude

or excuse directors and other senior officers from being fiscally responsible. Such a recognition would ensure that everyone within and indeed outside the company knows who is the guiding force and responsible person or officer for corporate governance policies within the organisation.

The current fragmented approach to global corporate governance in terms of its practices, policies and procedures, with no one being delegated the lead role, is something that must be fixed if we are to make real progress in terms of having global principles of corporate governance that are applicable and relevant wherever one is based or conducts business.

I wish the CSIA delegation all the best in its endeavours, and I hope that the WTO will recognise a reality and right a wrong by the creation of the new 'Corporate Governance, Compliance and Secretarial Advisory Services' heading in its services sectoral classification list. I will keep members updated on progress.

A handwritten signature in black ink, appearing to read 'Edith Shih'. The signature is fluid and cursive, with a long horizontal line extending to the right.

Edith Shih *FCIS FCS(PE)*

# ACRU与国际认可

公会一年一度的公司规管最新发展研讨会 (ACRU)，已于2012年5月23日举行，再度见证会员求知若渴的精神。会议场地座无虚设，超过850名特许秘书以及法律会计专业人员，聆听证券及期货事务监察委员会、公司注册处、香港交易及结算所和税务局的代表讲解，并向他们提问。感谢多个监管机构和政府部门多年来对ACRU的支持，当然亦感谢各位参加者。研讨会为期一整天，内容丰富有趣，本刊下期将报道详情。

今期的主题是公司秘书这个遍布全球的专业；更确切地说，是世界各地对不同形式的公司秘书这个角色的认可。这个主题相当合时：公会代表即将前赴瑞士日内瓦，与公司秘书国际联合会 (CSIA) 的其他成员代表，于2012年6月25日向世界贸易组织服务贸易委员会陈述诉求，提出将「公司治理、合规及秘书顾问服务」纳入世贸服务业分类目录中。

公会和CSIA其他成员一直致力争取新增这个服务类别。这项工作十分重要，原因是这个界别的从业员和公司从未正

式得到官方认可，以致较其他专业人员欠缺优势。具体而言，由于并未得到认可，业内人士和业界提供的服务便无缘被纳入内地与香港关于建立更紧密经贸关系的安排一类的互惠贸易协定中，继而限制了贸易发展，妨碍有关公司治理和合规方面的思想交流，及其实务和程序的标准化进程。

我认为这个新增界别若能取得认可，最大的好处是可以为机构的公司治理工作聚焦。公司治理角色日渐由公司秘书或企业秘书担当，假如藉着新增「公司治理、合规及秘书顾问服务」类别，令公司秘书的身份获正式认可，将可全球性大大提升公司治理的重要性。这并不排除其他专业担当治理的角色，正如认可会计师在确保公司财政健康的角色时，不会排除或免去董事及其他高级人员的财务责任一样。此种认可，可确保公司内外人士都明解，机构的公司治理政策由谁主导，谁是相关政策的负责人员。

目前全球各地的公司治理工作相当分散，在实务、政策和程序上，没有人担

当主导角色。假如我们要有真正的进展，建立放诸四海皆准的公司治理原则，让世界从事此等业务的人士都能跟循，便必须改变这种现状。

谨此祝愿CSIA代表团此行成功，希望世界贸易组织承认事实，拨乱反正，将「公司治理、合规及秘书顾问服务」加入世贸服务业分类目录中。我将继续向会员报告最新进展。



施熙德



# A global profession

Who are your global peers? This seemingly simple question is not as easy to answer as you might imagine. Corporate secretaries around the world don't always carry the same job title or carry out the same duties. This month, *CSj* looks at the many faces of the global corporate secretarial profession.

The launch of the Corporate Secretaries International Association (CSIA) in March 2010 was a defining moment for the global profession. This is not only because the organisation gives corporate secretaries a much higher international profile through its lobbying activities, but because the organisation is the first truly global association of corporate secretaries.

Before the CSIA launch, the nearest thing to a global association for corporate secretaries was the Institute of Chartered Secretaries and Administrators (ICSA) based in London. The ICSA Chartered Secretarial professional bodies comprise those in Hong Kong, Australia, New Zealand, Canada, Malaysia, Singapore, South Africa, and Zimbabwe. Outside the ICSA, there are a number of other national corporate secretarial professional bodies (including those in the US, India, Kenya, Nigeria, Indonesia, Mongolia, and Sri Lanka), but before March 2010 they worked independently at a national level.

The launch of the CSIA changed all of that. The 16 member bodies represent approximately 100,000 corporate secretaries and governance professionals around the world. The CSIA is currently

lobbying the World Trade Organisation to create a new sector classification of 'corporate governance, compliance and secretarial advisory' (CGCSA) to give due recognition to the profession at an international level.

'The CGCSA sector is a major global industry but it is not officially recognised by any international or inter-government organisation. Without a WTO classification we are excluded from preferential trade agreements such as CEPA [the Hong Kong Closer Economic Partnership Arrangement],' says Phillip Baldwin, HKICS Chief Executive.

## Highlights

- while the job title varies from jurisdiction to jurisdiction, the corporate secretarial function is broadly similar around the world
- upholding corporate governance standards has become the highest profile aspect of the corporate secretarial role globally
- the global profession now has a global voice in the Corporate Secretaries International Association (CSIA)

So, now that the global profession has its international voice, and may soon have its own classification in the WTO, corporate secretaries can feel part of one, big, international family, right? Well, while there is a growing sense of affiliation with the global profession, most corporate secretaries around the world are not that well informed about their international peers. Most company secretaries in Hong Kong, for example, may be reasonably familiar with the work of their peers in the mainland or in the ICSA jurisdictions, but would they readily recognise a fellow corporate secretary going under a completely different job title working in an unfamiliar jurisdiction?

This month, *CSj* gives you some help identifying, and identifying with, your global peers. This cover story casts some light on the similarities and differences in the corporate secretarial role globally, and on the following pages (12–18) the first interview in our new 'Peer to Peer' series investigates the life and work of corporate secretaries in Russia.

## Tracking down your global peers

### 1. The job title

Internationally, it doesn't make much sense to attempt to identify a corporate secretary from his or her job title. This works in jurisdictions that use the term 'secretary' (for example, 'chartered' or 'company' secretary in the ICSA jurisdictions, 'corporate' secretary in the US, or 'board secretary' in mainland China), but elsewhere, particularly where no corporate secretarial professional body exists, the person performing the corporate secretarial function could be working under almost any title – deputy general manager, senior compliance consultant, regulatory compliance officer – or the role might have been delegated

to an existing officer of the company such as the treasurer, chief counsel or chief financial officer. No sense relying too much, then, on the job title.

### 2. The job description

The job description, should, of course be a dead giveaway. There is no mistaking the corporate secretarial function – board support and advisory, regulatory compliance, preparing and holding general meetings, etc. However, readers of this journal will know very well that there can be a diversity, even in professionalised jurisdictions such as Hong Kong, in the corporate secretary's duties from company to company. This is one aspect of the job which many corporate secretaries say they appreciate most, it is less narrowly defined than, say, the sister professions of law and accounting. The corporate secretarial role will depend on the skill sets of the person taking on this role, and on size and structure of the company itself. Different aspects of the role are sometimes delegated to different departments within companies, for example investor relations may be the responsibility of the company secretary where companies do not have a separate department for this function.

### 3. The governance role

Despite all this diversity, however, there has been a surprisingly uniform global convergence around one key aspect of the corporate secretarial role – corporate governance. While board members have the ultimate responsibility for maintaining good corporate governance, they increasingly rely on the services of corporate secretaries to advise them on matters of business ethics and corporate governance.

This has been increasingly recognised by governments and regulators around

the world. The UK Combined Code on Corporate Governance gives explicit recognition to the governance advisory role of the corporate secretary. Principal A.5 of the code, for example, states that the corporate secretary 'should be responsible for advising the board through the chairman on all governance matters.'

Similarly, the recent revisions to Hong Kong's corporate governance code have centralised the company secretary's role in maintaining governance standards. In April this year a new section on corporate secretaries (Section F) was added to the code with a principle describing the role and its responsibilities, including *inter alia*, 'advising the board on governance matters'.

Upholding corporate governance standards has become the highest profile aspect of the corporate secretarial role. It has also become a unifying theme running through the many different aspects of the corporate secretarial role, such as their many board support functions, regulatory compliance, communication with regulators and shareholders, induction of directors, investor relations, etc.

'The role is constantly evolving,' says Phillip Baldwin. 'As governance comes into focus more governance professionals such as corporate secretaries have broadened, and will continue to broaden, their horizons and influence. At present, we have what I call "fragmented governance". We need a focal point – a person in the organisation who takes the lead governance role, like a CFO does for accounting issues. We believe that person should be the professional corporate secretary.'

Should then, corporate secretaries take on the role of corporate governance

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## ICSA/ ecoDa board support survey

While the CSIA's 'International benchmarking survey on responsibilities of the corporate secretary' will be the first global survey of corporate secretaryship, a previous survey jointly carried out by the Institute of Chartered Secretaries and Administrators (ICSA) and the European Confederation of Directors' Associations (ecoDa) gave valuable insights into the nature of the corporate secretarial role in Europe.

The ICSA/ecoDa board support survey, conducted between June and September 2009, shed some light on the status and work of 'board support officers' – corporate secretaries in all but name – in a number of EU jurisdictions, including the UK, Ireland, Malta, Finland, France, Slovenia, Austria, Belgium, Luxembourg, the Netherlands and Spain.

It found that board support roles in Europe, where they exist, are relatively high-level. This is an important finding since the provider of corporate governance advice to the board clearly needs to have a status sufficient to give that advice the influence it needs. However, the caveat 'where it exists' is not to be underestimated. Board support roles in Europe are not always carried out by dedicated personnel within companies. Some EU countries have never had a legal or compliance requirement for a board support role, and in many cases the role is carried out by other executive functions – such as the compliance officer, head of legal or finance director.

officer? In some jurisdictions this is already a reality. In the US, for example, the concept of a 'chief governance officer' started to take hold after the corporate scandals of Enron and Worldcom. Today, in many US listed companies, the corporate secretary is also the company's governance officer.

HKICS President Edith Shih points out, however, that corporate governance is not the only thing corporate secretaries do. 'It seems that there is a focus now on corporate governance as being the only work that company secretaries do, which is not the case,' she says. She believes it is important to bear in mind that the role is, as Phillip Baldwin says, 'constantly evolving'. While corporate governance has caught the limelight because of the financial crisis, at a future date another aspect of the corporate secretarial role might come to the fore.

### Unity in diversity

The diversity in the corporate secretarial role at the international level is not, of course, unique to this profession. While the last few decades have seen a dramatic convergence of codes of corporate governance, financial reporting standards, securities legislation and auditing standards, the forces of global convergence can be overstated. As governance expert Bob Tricker pointed out in his article in this journal (see 'The cultural dependence of corporate governance', *CSj*, November 2011, pages 14–19), 'A global convergence of corporate governance systems at any greater depth would need a convergence of cultures and that seems a long way away.'

The nature and status of the corporate secretarial role is mainly dependent on the cultural, political and economic

context of the local jurisdiction. Consider, for example, the following:

**Does a professional body of corporate secretaries exist?** As mentioned at the beginning of this article, readers of this journal will be very familiar with those jurisdictions with local professional bodies, particularly those within the ICSA, but there are many others where no such body exists. Indeed, this month's 'Peer to Peer' interview (see pages 12–18) takes a look at how corporate secretaries in Russia are building their own professional community in the absence of dedicated professional body.

**Does the jurisdiction require all companies to have a corporate secretary?** Currently this is the case in Hong Kong and, spectacularly, in India where even subsidiaries have to have separate corporate secretaries, but it is not the norm internationally. Indeed, the trend towards business facilitation and deregulation in company law reform globally has seen even jurisdictions like the UK (which formerly had this requirement) deregulate the corporate secretarial requirement – in the UK having a company secretary is now only a mandatory requirement for listed companies.

**Do corporate secretaries have to be qualified?** Once again, while this is the case for listed companies in Hong Kong, this should not lead us to believe that the requirement for *qualified* corporate secretaries is commonplace. In many other jurisdictions, even major jurisdictions like the US for example, there are no specific requirements in either legislation or regulation for corporate secretaries to be qualified.



“ while there is a growing sense of affiliation with the global profession, most corporate secretaries around the world are not that well informed about their international peers ”

The further you look, then, the bigger the differences between jurisdictions internationally. Does the jurisdiction follow the civil or common law? How effective is the local legislative, regulatory and corporate governance regimes? What is the predominant ownership structure of companies? Is a two-tier or unitary board structure the norm? All these factors will have a major influence on the nature and status of the corporate secretarial role locally.

CSIA believes that this diversity is not a problem for the global profession. In the context of the current geopolitical trend towards a multipolar world in which developing nations are gaining a more equal footing when it comes to world affairs, the CSIA is not looking to homogenise the profession. Many of the CSIA projects currently underway, for example, are designed to bring about a better understanding of the differences and similarities among its member jurisdictions. Under the 'International benchmarking survey on responsibilities of the company secretary', for example, each country within CSIA is doing its own research on the roles and responsibilities of its members. This will be collated to produce the first ever global survey of corporate secretaryship.

Former CSIA president (and former HKICS president) April Chan, believes the diversity among CSIA members is a source of strength. 'I think the diversity of CSIA members is one of the great strengths of the organisation,' she says, 'it brings many different perspectives to the issues the global profession faces'. April points out that the organisation has been able to pull together on projects despite the fact that expectations and agendas are not always the same among the various CSIA members.

She cites the current 'toolkit' project – the development of a corporate secretarial toolkit for use in multiple jurisdictions – as an example. April presided over the discussions of CSIA Council regarding the content of the toolkit. Developing jurisdictions within the CSIA wanted the toolkit to cover the basics of what corporate secretaries do, whereas developed jurisdictions, where this information is already widely available, were keen to focus the toolkit on higher-level functions such as governance advice to the board. The upshot will be that the toolkit will give guidance on both the corporate secretarial basics and the higher-level aspects of the role.

'The more we communicate, the more we learn,' says Phillip Baldwin, who chaired

the steering group which brought the CSIA into being and was its first president. He stresses that the profession can reach a consensus on the issues of relevance to the profession internationally. 'Good corporate governance principles are universal – how they are applied varies considerably,' he says.

This conviction is behind another CSIA project, perhaps its most ambitious to date, which aims to identify a set of 'universal' corporate governance principles and give guidance on how they can be implemented at the local level in member jurisdictions. The international Corporate Governance Conference, jointly organised by the CSIA and the Shanghai Stock Exchange in September 2011, launched this project. Principles raised by the conference were: transparency, accountability to stakeholders, stewardship, integrity, separation of governance and management, and corporate social responsibility. 

*This edition of CSj launches our new 'Peer to Peer' series of interviews. See the interview with Alexander Kamensky, Corporate Secretary of one of the largest power companies in Russia, on the following pages.*



# Russia: building a governance community

In this first article in our 'Peer to Peer' series, *CSj* talks to Alexander Kamensky, corporate secretary of one of the largest power companies in Russia, about the way corporate secretaries in Russia, in the absence of a dedicated professional body, are building their professional community.

***T***hanks very much for talking to us today, can we start with some background about yourself?

'Certainly. I am 29 years old. I am a Russian citizen living in Moscow. I studied law at Moscow State University and started my career in 2003 with an insurance company, AlfaStrahovanie, one of the main insurance companies in Russia. I started working as a lawyer and then I specialised in corporate matters. In 2005, I joined the corporate secretary department of one of the biggest oil and gas companies in Russia – TNK-BP, a joint venture between British Petroleum and the AAR consortium in Russia. This gave me a good introduction to working in a complex corporate structure with a huge number of subsidiaries. Then I worked as corporate secretary for one of the major privately-owned banks in Russia, MDM Bank, and now I am corporate secretary of Enel OGC-5, an energy-generating company and member of Enel Group – one of the biggest energy companies in the world.'

***You mention that you studied law, are you currently mainly involved in legal or corporate secretarial work?***

'In my current position I am a corporate secretary and I am fulfilling the duties of a corporate secretary. In Russia legal and corporate matters are closely connected, but mainly I am involved in corporate rather than legal matters.'

***What are the major challenges you face as a corporate secretary in Russia?***

'The role of the corporate secretary is not very well established and different companies have varied attitudes to this role. In practice the role exists only in public companies and is mostly still a technical and procedural position. I have been lucky enough to work for companies where the role is given its due recognition as a stand-alone and very important role.'

Also, Russian legislation changes every year. For sure, it is a good thing to seek continual improvement of legislation but this is certainly a challenge for corporate secretaries and for all stakeholders in corporate governance. The constantly changing rules are also not very good for the investment climate here.'

***Is the corporate secretarial role mentioned in Russian law?***

'No, it is not mentioned in legislation but many provisions of our 'Code of Corporate Conduct' [Russia's corporate governance code – see 'Russia: a governance profile' on page 17 for more information] relate to the role of corporate secretaries. This is a formal document which was recommended by the Federal

Commission for the Securities Markets (FCSM) [the Russian regulatory authority]. It is mostly based on the UK corporate governance code and the main provisions were incorporated from there, so it provides a good guidance model for best practice.'

***Is there a professional body or association of corporate secretaries in Russia?***

'We have a professional community of corporate secretaries in Russia. Many well-established local institutions promote the roles of independent directors and corporate secretaries in Russia – these include our Business Club of Corporate Secretaries of the Russian Institute of Directors, the Independent Directors Association ([www.nand.ru/en](http://www.nand.ru/en)) and the National Council on Corporate Governance (<http://nccg.ru/en>). These institutions, together with some Russian universities, provide training opportunities for independent directors and corporate secretaries. In fact, the Independent Directors Association has an agreement with the British Institute of Directors for the training and certification of Russian corporate secretaries.'

These training courses tend to be targeted at helping companies keep up to date with amendments to Russian legislation. You can find other more general subjects of relevance to corporate secretaries, such as ethics, etc, but legislation is the main focus of the training, in particular the amendments requiring obligatory disclosure of public information. The requirements relating to the disclosure of information have been changing every year in an attempt to make Russian companies more transparent. The training helps us to follow all these changes and amendments to be fully in line with the legislation.'

***Did you learn the corporate secretarial role through your work experience, or did you have help from these institutions you mention?***

'I learned about the corporate secretarial role through my work but I also took training courses provided by the Russian Institute of Directors. I didn't do the specialised courses for corporate secretaries but I did directors' training courses which focused on the higher-level issues. For me it was more valuable to do these courses since the corporate secretary courses focus more on technical issues.'

***Did you find these courses useful? Is there a need for more training specifically for corporate secretaries?***

'There are specialised courses for corporate secretaries and those courses are very good. Of course, the Institute of Directors'



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 I have been lucky enough to have worked for companies where the [corporate secretary] role is given its due recognition as a stand-alone and very important role  
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courses are focused on providing directors training, but, in the end, all of the courses are focused on corporate governance.'

*Do you think the role of the corporate secretary is well understood in the business community and the wider public in Russia?*

'The public is still not very well informed about the role of the corporate secretary. In fact, the whole concept of corporate governance is relatively new in Russia. One anecdote I heard from my colleagues is that a group of foreign investors came to Russia in 1995 for a meeting with the owners of Russian businesses. The foreign investors asked about the corporate governance system in these companies, but the management and shareholders didn't understand the question. The interpreter found it hard to translate the term 'corporate governance' correctly into Russian.

In the 17 years since then, however, there has been rapid growth in the understanding of the importance of corporate governance and this is one of our successes in corporate governance. With that understanding has also come an appreciation of the role of the corporate secretary and more companies are now paying attention to this role.

For a while, Standard and Poor's offered corporate governance services in Russia but unfortunately they closed this business

down last year, probably because of its unprofitability. Its 'corporate governance score' service was used only by listed companies and those with listings in the UK or US, so for this reason it was not a big business, but I know that Deloitte is planning to launch its own corporate governance business in Russia. I have been invited to the opening of their Corporate Governance Centre, which will be opening at the end of May. So I hope the fact that another company will handle these issues will lead to improvements in this area.'

*Have you found that the directors of the companies you have worked for recognise the importance of good governance?*

'In my personal experience, yes, board members have taken the importance of good corporate governance very seriously and they understand their roles and responsibilities very well, but I also know examples of companies where this is not the case. I think generally directors' understanding of these issues is growing. One indication of that is the fact that D&O liability insurance is a growing business in Russia.'

*Why do you think attitudes to corporate governance have been changing?*

'There are a number of drivers of these changes. I think the authorities have recognised the importance of improving corporate governance in Russia and their adoption of the Code

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of Corporate Conduct, for example, has had a lot of influence on the market. Another driver has been the growing number of expatriates on Russian boards of directors. Many companies have recognised the value of having additional competencies in their management and on their boards, and this has led to growing numbers of foreign directors on Russian boards. They have brought with them best practices since many have come from well-established markets with good corporate governance standards.'

*Is the role of the corporate secretary changing in Russia?*

'Yes. In the early 2000s, this was just a technical role in most cases delegated to corporate lawyers. Currently it is increasingly becoming a stand-alone function with its own staff and with its own responsibilities and duties. More companies now see the corporate secretary, together with independent directors, as the gatekeeper of good corporate governance. Our job is to bring best practices to the board and promote a new attitude to corporate governance in companies.'

*You mention independent directors, I understand that in Russia most companies follow a two-tier board structure. That is interesting for us in Hong Kong since companies here have unitary boards comprising both non-executive and executive directors. In your experience does the separate supervisory board work well?*

'Well, first I need to explain better what we have in Russia. We have different tiers, at the highest level is the shareholders' meeting for all types of companies. The second level is the board of directors [the supervisory board] which is obligatory for joint stock companies (which equate to public companies in foreign countries), and can be established, though they are not obligatory, in limited liability companies.'

In joint stock companies you can voluntarily establish an executive board. This is basically the management of the company. The CEO must be the chair of any executive board, this is prescribed by law, and they can be elected to the board of directors but they cannot be the chair of the board of directors.

The board of directors usually consists of representatives of shareholders (including minority shareholders) and, in most cases, independent non-executive directors (INEDs). The INEDs shouldn't have any operational influence or have a close relationship with the company. Boards of directors usually create a number of special committees, such as the audit, HR and remuneration committees. In some cases sustainability

committees are also established, depending on the type of business the company is involved in. Usually only [supervisory] board members are represented on these committees. They carry out a preliminary review of items submitted for the board's review, and they provide their recommendations to the board on these items.

I think this system is good and appropriate for Russia. The executive board is a meeting of the management of the company. It is established where shareholders want operational issues to be decided in a collegiate form rather than by one person. For many companies this is a good way to run the business since shareholders can't manage company activities on a day-to-day basis, but they want to have representatives at the operational level able to control some of the core decisions that need to be taken by the management of the company.

Of course the appropriateness of these structures will depend on the size and business of the company. Where you have a big company with a lot of employees, and where a lot of decisions need to be taken on a day-to-day basis, it works well to have a separate board delegated to make operational decisions on a collegiate basis. You can't ask the supervisory board to review those operational decisions since this is the responsibility of management. The supervisory board, by the charter, can delegate some of its authority to the executive board, but it is supposed to review strategic decisions.'

*What would you say are the main corporate governance challenges and successes in Russia?*

'I think the governance system is not very well established and it varies from company to company. You might look at one company that manages it very well and then look at a bigger company that has no corporate governance system at all. Sometimes, of course, as a corporate secretary, it is a good challenge to establish a corporate governance system in such companies.'

Also, as I mentioned earlier, the ever-changing legislation in Russia is a challenge. For sure, ongoing improvement of legislation is a good thing, but if the legislation changes every year it means that we cannot manage our compliance and governance systems in a stable way. As soon as you have adapted your internal controls and your internal processes to the new legislation, you find that you have to change it again because the legislation has already changed.

## Russia: a governance profile

**Legal system:** Civil law. Law enforcement in Russia, however, is a concern to the OECD in its current Roundtable on Corporate Governance in Russia. 'Highest priority should be given to strengthen the legal and regulatory framework to ensure effective implementation and enforcement of existing laws and regulations needed for the proper functioning of companies as well as securities markets,' states the OECD's *White Paper on Corporate Governance in Russia*.

**Key legislation:** The Law on Joint-Stock Companies, Civil Code, Law on Securities Market, Law on Investor Protection, Bankruptcy Law and Tax Law. The corporate secretary is not mentioned in these codes, but features highly in the Russian corporate governance code – the Code of Corporate Conduct introduced in 2002 by the Federal Commission for the Securities Markets (FCSM). The code is voluntary, but the FCSM requires stock exchanges to enforce compliance with the code, or certain parts of it, for larger firms.

**Financial reporting standards:** Currently Russia has its own statutory accounting standards, though it is considering transitioning to international financial reporting standards (IFRS) and imposing international standards of audit

for publicly listed and non-private companies.

**Key statutory/ regulatory bodies:** The Federal Commission for the Securities Markets; the Ministry of Finance; the Ministry of Economic Development and Trade; and the Russian Stock Exchange.

**Predominant ownership structure:** Mostly closely held. The former state-owned enterprises of the soviet union were mostly privatised from 1992 to 1994. In the ensuing struggle for control, managers and insiders gained dominant shareholdings in the majority of companies. Minority shareholdings are growing, however, and protection of minority shareholders has become a governance priority. State interference, particularly in large strategic companies such as enterprises in the petroleum and gas industry, the electric power industry and telecommunications, is still a factor. The state's stake in such companies is usually around 40–50 percent.

**Board structure:** Mostly two-tier.

**Corporate secretary job title:** Company or corporate secretary, or secretary of the board of directors.

**Corporate secretary duties:** Give or take some changes

in terminology, the corporate secretary job description is almost identical to company secretaries elsewhere. These include: regulatory compliance; information disclosure; organising board meetings (called 'supervisory board meetings' in Russia on account of the two-tier board structure of most Russian companies); organising the AGM (called the 'general meeting of shareholders' in Russia); supporting the ('supervisory') board; induction of new directors; investor relations and record keeping. As with other jurisdictions, there has been a shift of emphasis more recently away from the administrative to the advisory aspects of the role.

**Corporate secretarial community:** Informal. While there is no professional corporate secretarial body in Russia, there are a number of different bodies providing networking and training opportunities. These include the Business Club of Corporate Secretaries of the Russian Institute of Directors; the Independent Directors Association ([www.nand.ru/en](http://www.nand.ru/en)); and the National Council on Corporate Governance (<http://nccg.ru/en>).

*The OECD Roundtable on Corporate Governance in Russia will meet again in October 2012. More information on its work is available online at: [www.oecd.org](http://www.oecd.org).*



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These are the main challenges, but I would add also that we don't have many options to influence the way legislation is changed. Basically the relevant government bodies follow their own agenda. They may take into account some 'public' interest, but mainly from a state perspective. As you probably know, we have a number of very large state-owned companies and some of the legislative changes are driven by their interests, not by the interests of all participants in the market. This situation is improving, though. This year, for example, there have been good developments that I hope will lead to wider participation in these processes, but the whole process is still not very transparent or inclusive.'

#### *And the successes?*

'The establishment of a community of corporate secretaries in Russia is one of our corporate governance successes. As I mentioned, we now have a number of institutions working to improve the corporate governance system in Russia and this year they have started to influence Russian legislation. That, I would say, is the main success, but I would also like to mention that a growing number of companies are now listed both overseas and in Russia and they are having a growing influence on corporate governance standards in Russia. Many of the companies that went to the US or UK to list are now seeking IPOs in Moscow. The fact that they are coming back to the Russian market indicates

that they have regained trust in the Russian market and stock exchange.'

#### *Thank you for a very interesting interview, that covers my questions – would you like to add anything?*

'No, I think we have covered everything. I hope I have been able to give you a sense of the corporate governance environment in Russia, and it has been interesting to hear about our differences with foreign practices including those in Hong Kong! 

*Alexander Kamensky, Corporate Secretary, OJSC Enel OGK-5, was interviewed in late April 2012.*

*Our new 'Peer to Peer' series introduces you to your peers in the global corporate governance profession. If you have any suggestions of interest to this column, please get in touch with the CSj editor. Any suggestions on jurisdictions we should cover, or useful contacts you may have, will be highly appreciated. You can contact the CSj editor, by email: [kieran@ninehillsmia.com](mailto:kieran@ninehillsmia.com); by phone: + (852) 2982 0559; or by post: The Editor, CSj, PO Box 9963, General Post Office, Hong Kong. Comments on this column can also be posted on the Institute's new weblog ([www.governancemaze.com](http://www.governancemaze.com)).*



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# Is Hong Kong serious about corporate governance reform?

Hong Kong has the potential to be a world leader in corporate governance, believes Gordon Jones *FCIS FCS*, Hong Kong's former Registrar of Companies, but it will not realise this potential if it continues to allow vested interests to obstruct the corporate governance reform process.

At 6pm on 2 May 2012, some 40 Fellows and Associates of The Hong Kong Institute of Chartered Secretaries (HKICS) gathered at the Hong Kong Club to hear Gordon Jones *FCIS FCS*, Hong Kong's former Registrar of Companies, talk about his new book *Corporate Governance and Compliance in Hong Kong*.

The audience that evening may have been expecting a review of how Hong Kong's corporate governance regime took its present shape. Mr Jones, after all, in his capacity as Registrar of Companies and a member of the Standing Committee on Company Law Reform (SCCLR), has been closely involved in the evolution of the current

regime. Moreover, with the revised Companies Ordinance making its way through the Legislative Council, a revised corporate governance code and new statutory price-sensitive information disclosure requirements in place, the audience may have been feeling fairly upbeat about the direction and pace of corporate governance reform in Hong Kong.

Mr Jones' speech that evening, however, was not an opportunity for backslapping and self-congratulation. He highlighted a number of areas, which are discussed more fully in his new book, where Hong Kong lags significantly behind global best practice and further reform is required.



## Governance weaknesses

### 1. Selection of INEDS and gender diversity on boards

Good corporate governance structures and processes cannot compensate for a lack of ability and integrity in a company's directors. Mr Jones stressed the need to adopt a much more systematic approach to identify and recruit the right talent for a company's board. In addition to independence, a director's ability, knowledge of the company's business and personality are also very important criteria in determining appointments. Nomination committees should be the norm, not the exception, for listed companies. New code provision A.5.2 in the Corporate Governance Code requires all listed companies to establish a nomination committee or give reasons for not doing so.

A subset of this issue is the under-representation of women on company boards. Currently women fill only about 9% of the directorships of Hang Seng



Index companies in Hong Kong and the situation is far worse in other companies. However, board diversity is currently not addressed anywhere in our legislation or even in our Corporate Governance Code. Mr Jones suggested that the code should include a provision along the lines of code provision B.2 in the UK Corporate Governance Code: 'The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender.'

## **2. Corporate directorships**

Corporate directorships, Mr Jones pointed out, have been abolished in virtually all other major commercial jurisdictions, apart from the UK. Moreover, the Financial Action Task Force on money laundering has highlighted the continued existence of corporate directorships in Hong Kong as a weakness in our anti-money laundering defences.

Corporate directorships are currently permitted in private companies which are not part of a group of companies comprising a listed company. In 2008, they were reviewed in the context of Companies Ordinance Rewrite exercise, but it was decided to continue to allow private companies to have corporate directors as long as all such companies have at least one natural person as director (clauses 447 and 448 of Companies Bill).

Mr Jones believes that corporate directorships should be prohibited in Hong Kong since they negate the key corporate governance principles of accountability and transparency. He believes the decision to follow the UK practice here was a mistake since in the UK all private companies have to file audited accounts. This is not the case in Hong Kong. Consequently many private companies in Hong Kong have a double layer of opaqueness – having no natural directors and no filed accounts.

## **3. Initial public offerings**

Recently, there have been a number of major cases involving very sub-standard IPOs, for example, Rusal, China Agriculture Holdings, Hontex etc. In addition, the SFC's *Report on Sponsor Themes Inspection Findings* (29 March 2011) revealed a large number of deficiencies regarding sponsors of IPOs. To ensure the maintenance of standards and the quality of stock market listings, it is essential that the sponsors of IPOs are made liable for the contents of listing prospectuses. On 9 May 2012, the SFC launched a two-month public consultation to enhance the regulatory regime of sponsors by, *inter-alia*, tightening due diligence requirements and introducing criminal and civil sanctions.

## **4. Auditor liability**

Mr Jones considers this to be potentially one of the most serious corporate governance challenges facing Hong Kong. Currently, in the event of a serious audit failure and corporate meltdown, auditors face unlimited liability. The collapse of a major audit firm would have very adverse consequences for Hong Kong's reputation as a major international financial centre and competition and choice as well as the accountancy profession. However, on the other hand, auditors need to remain accountable for errors and the key issue is how to strike an appropriate balance. The Hong Kong Institute of Certified Public Accountants favours a statutory cap on the amount of liability auditors face, but setting an appropriate level for the cap would be very complex and contentious. In the interim, less controversial proposals such as permitting limited liability partnerships and allowing auditors to contractually limit their liability under the Companies Ordinance may need to be considered.

### 5. Public sector governance

Currently, the legal and regulatory framework for not-for-profit entities and statutory public bodies is very fragmented and there are considerable variations in the corporate governance standards adopted by these bodies. The government's appointments to statutory bodies seem to be consistently made from a 'small circle' of appointees while the selection process lacks transparency and there are questions as to how the 'independence' of the appointees has been determined. In addition, as evidenced by the Lau Wong-fat case, the guidelines on how to deal with conflicts of interest in the highest body in the government's policy-making structure clearly require revision. In any reforms, priority needs to be given to subvented and charitable bodies given the degree of support they receive from the public purse and privileged status.

### Two steps forward, one step back?

As Hong Kong's survival as an international financial centre depends on its reputation as a quality market, Mr Jones stressed that it cannot afford to allow standards to slip. 'Good corporate governance, underpinned by the continued maintenance and enhancement of quality and standards, is Hong Kong's competitive advantage. If we abandon these in a possibly chimerical quest to increase listings from jurisdictions with sub-standard legal and regulatory requirements, we lose this advantage and ultimately our market position', he argued.

He also acknowledged that, compared to many other jurisdictions in the region, Hong Kong has some very significant advantages. Corporate governance is not just about complying with laws and regulation but also, and more importantly, about corporate culture, education

and mindset. It's about the free flow of information, capital and talent; integrity of the market and its participants; transparency; and a level playing field. In Hong Kong, these elements are underpinned by the existence of the rule of law; an independent and robust judiciary; an effective, efficient and clean civil service; and strong, independent regulators. However, these cannot be taken for granted and must be strenuously defended.

Since its creation in 1984, the SCCLR has been an important part of that infrastructure. For example, most of the reforms currently under legislative review as part of the Companies Ordinance Bill originated in the SCCLR's review of Hong Kong's corporate governance regime. While this demonstrates that the corporate governance reform process in Hong Kong is very much alive and kicking, Mr Jones pointed out that the Companies Ordinance Rewrite exercise has also demonstrated the difficulty Hong Kong has when it comes to following through with 'good ideas' in corporate governance.

For example, one very obvious weakness that has been on the radar screens of regulators in Hong Kong for quite some time is the fact that the overwhelming majority of listed companies are not subject to the requirements of the Companies Ordinance as they are 'non-Hong Kong companies'. However, the enforcement options under the non-statutory listing rules are very limited and lack teeth. This led to proposals in January 2005 to give statutory backing to listing rules regarding financial disclosure, connected transactions and price-sensitive information (PSI). Seven years later, Hong Kong has only been able to implement this reform for PSI.

### Career notes

Gordon Jones joined the Hong Kong government in October 1973 and served in a large number of branches in the government secretariat. On 1 May 1993, he was appointed the Registrar of Companies for Hong Kong. During his time as the head of the Companies Registry, he played a key role in the modernisation and computerisation of the department's operations, and company law and corporate governance reform, including initiating the rewrite of the Companies Ordinance.

Since retiring from the civil service in May 2008, he has been able to indulge his interests in history, writing, music and hill walking. He is currently involved in a number of pro-bono activities including Opera Hong Kong, where he is a director and chairs the Artistic Committee, and the Hong Kong Institute of Certified Public Accountants, where he chairs the Regulatory Accountability Board.

Mr Jones is a Honorary Fellow of Lingnan University, the Hong Kong Institute of Directors and Hong Kong Securities Institute, and a Fellow of the Institute of Chartered Secretaries and Administrators and The Hong Kong Institute of Chartered Secretaries.

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The Securities and Futures (Amendment) Ordinance 2012, which shifts enforcement of PSI disclosure requirements from the stock exchange to the Securities and Futures Commission (SFC), was passed by LegCo on 25 April 2012. It is not certain whether this is going to be the end of statutory backing, or if it is still the intention to give statutory backing to other key requirements in the listing rules. Until and unless this question is answered, the ability to take effective regulatory action against listed companies will remain limited.

This is certainly not an isolated example. In 2003, the SCCLR proposed that the Companies Ordinance should require listed companies to prepare a separate directors' remuneration report. Seven years later, in May 2010, this proposal finally made its way into draft legislation circulated for public consultation as part of the Companies Ordinance Rewrite exercise. The Financial Services and Treasury Bureau argued against this proposal suggesting that it would give an unfair advantage to non-Hong Kong companies not subject to these requirements. As a result, the proposal was dropped. Mr Jones considers that this is a spurious argument as it would

be a very easy matter to duplicate these requirements in the listing rules as is the case with numerous other requirements in the Companies Ordinance.

Furthermore, proposals to adopt provisions in the UK Companies Act 2006, which were endorsed by the SCCLR, regarding directors' connected transactions have also been dropped. In this respect, proposals to permit shareholders to inspect directors' service contracts and requirements regarding shareholders' approval for a company to enter into a transaction for the purchase/ sale of a major asset to/ from a director have been deleted from the Companies Bill.

Both of these requirements would have strengthened Hong Kong's corporate governance regime but no reasons for their deletion have been given. These examples (and they are not isolated cases) demonstrate, Mr Jones believes, that the problem in Hong Kong is not the lack of reform proposals but a very patchy record when it comes to following through on the good ideas raised by the law reform process. Hence the question of how serious Hong Kong is about corporate governance reform is a very relevant one. Mr Jones believes the government and

regulators must show that they have: first, an overall vision for corporate governance reform; secondly, the leadership and commitment necessary to see through any necessary reforms; and last, but certainly not least, the political courage to face down vested interests as and when necessary. In many, if not most, cases, we know what has to be done but do we have the ability, conviction and courage to do it?

In addition, the government needs to get its own house in order. Mr Jones pointed out that the core principles of corporate governance – such as transparency and accountability – are just as relevant for governments as they are for companies. Governments, after all, like listed corporations, are stewards of public funds. Mr Jones reminded his audience that governments should lead by example. 'The government cannot expect companies to abide by standards they themselves do not honour,' he said. 

*Gordon Jones' speech was delivered at the 'Fellows' Sharing' event organised by the HKICS at the Hong Kong Club on 2 May 2012. This was the first of a series of 'Fellows' Sharing' events designed to provide greater opportunities for senior members of the profession to share their expertise and experience in a relaxed and sophisticated environment. Look out for future events in this series in the 'Institute News' section of CSj, and on the HKICS website ([www.hkics.org.hk](http://www.hkics.org.hk)).*

*Gordon Jones' new book, 'Corporate Governance and Compliance in Hong Kong' was published by LexisNexis earlier this year and is available in bookshops.*



## ESG – why now?

Arguments against companies addressing their environmental and social responsibilities have been soundly trounced, argues Josh Dowse, Principal, Dowse CSP, not so much by moral imperatives, but by the business case for engagement with environmental, social and governance (ESG) issues.

Sustainability is a dreadful word. It originated as business's answer to the global policy push to sustainable development – leaving future generations with the same or better opportunities as past ones. But this morphed into 'corporate sustainability', was abused to mean 'sustainability of the corporate',

then petered out into a morass of acronyms and general suspicion of do-gooders wanting to take the oomph out of capitalism.

So let's ignore the word, and focus instead on what it offers in 2012, and why. Quite a few interesting strands of

investment theory, corporate governance and industrial history come together, with sometimes surprising results.

In recent years, the financial community has sidestepped the S-word by introducing 'ESG' – the environmental, social and governance or 'non-financial'



performance factors of a firm. And investors are becoming increasingly impressed by these factors, and their revealed impact on financial performance.

#### Firms need healthy markets

The value of good corporate governance is relatively well understood. You wouldn't want to invest in a company that gave you little comfort that it would spend your money wisely and accountably. The company may destroy value, in the parlance. In this case, your cash. But what if the company was risking or destroying value elsewhere? What if it were running down social or environmental capital? What if it were relying on those 'externalities' to underwrite its own business model?

That might not concern the company's shareholders, if they had only that

single identity. But they don't. They may hold shares in other companies that may in turn depend on that social and environmental capital. As individuals or institutions, they may see their taxes being spent to protect or restore social and environmental capital. As individuals, they may themselves benefit from that capital, or acknowledge that their

families depend on it, and will do so for generations.

BP's 2010 Deepwater Horizon disaster in the Gulf of Mexico is an extreme example of an all too frequent case. Incalculable social and environmental harm has been 'rounded down' to BP's US\$20 billion compensation fund, its US\$3.2 billion

### Highlights

- investors want, and societies need, companies to manage their environmental, social and governance (ESG) factors
- ESG influences a firm's intangible assets, which in turn comprise most of a typical firm's market value
- governments are increasingly imposing a duty on directors to take social and environmental issues into account in their decisions

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**companies realise that they themselves depend on the health of the economies, societies and ecologies in which they operate**  
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clean-up costs, and its US\$60 billion loss of equity. Could an investor have predicted such losses? Perhaps not. But they could have known that BP oil refineries had accumulated 760 'egregious willful citations' from the US health and safety authority in the three years prior. Quite a lot. The rest of the US industry, together, had only one. That statistic rang alarm bells among some ESG-led investors, but not enough.

In fact, with a little thought, most companies realise that they themselves depend on the health of the economies, societies and ecologies in which they operate. People don't buy much in broke, anarchist desolation, however good a backdrop for Mad Max 5 it may be. In the long run, if you rely on cheap social and environmental externalities, you run down your own markets.

**Firms that support healthy markets do better**

Investors are taking a closer look at such risks. Repeated analyses are showing that

a company that manages its social and environmental issues well outperforms the market, all else being equal. So across portfolios, funds that take these factors into account outperform their peers.

Institutional investors are very comfortable with this. They take a portfolio-wide view: if a company creates no real value by 'winning' only at the expense of another, there is no net gain to their portfolios. Accordingly, they are demanding more information on firms' ESG performance through the Principles of Responsible Investment, the Equator Principles, the Carbon Disclosure Project, the Water Disclosure, the Enhanced Analytics Initiative, and myriad other investor-led calls for disclosure.

Governments are also comfortable with this. They take a similar economy-wide view: if a company 'wins' only by not paying for a public or environmental good, society has to pick up the tab. Accordingly, they are reviewing corporations law to clarify that directors should take social

and environmental issues into account in their decisions. In the UK, this is now a positive obligation under the Companies Act. In addition, most legislation since 1992 has had 'sustainable development' in its objectives clause, so that those who partner with, or supply to, a government entity may have to show that they are supporting that objective.

Employees are also comfortable with this. As well as employees, they are investors, citizens and consumers. Ideally, they could align the interests of these split personas. Accordingly, companies that transfer costs to others – notably tobacco companies – have to pay far more than market rates for people to work for them.

**Objections have been overcome**

Among each of these stakeholders, there have been strong voices reacting to what they see as 'the imposition of irrelevant responsibilities'. It hasn't been the shrill calls of external do-gooders that have silenced these doubts; rather it's the business case being repeatedly proven. By

better managing social and environmental issues, risks are being avoided, and opportunities are being taken.

Some investors relied on financial theory to argue that imposing any ESG constraint would limit the investment universe, and so necessarily reduce returns. Cautious investors were happy to limit their investment universe by preferring good managers. Investors that incorporate ESG factors will also see lower risk for the same returns. Superannuation funds are a special case here. Their trustees recognise that they're investing for their beneficiaries over 10 to 40 year time frames, and that superannuation

contributions are mandated by society through the voice of its legislature. It makes sense then that superannuation fund investments take into account the longer-term social and environmental effects of their investments.

Some directors (or those claiming to speak on their behalf) claimed it was their legal duty to maximise the profitability of the firm, so that considering ESG factors may breach that duty. Lawyers quickly replied that, in fact, their duty was to the best interests of the company as a whole, and that included future shareholders. Further, while directors should use their business judgment to determine what to

do about social and environmental issues, ignoring them may be extremely poor risk management, possibly in breach of their duties.

Some conservative thinktanks spent energy in the 1990s attempting to influence public policy against the consideration of social and environmental issues by corporates. They have been singularly unsuccessful since, as noted above, it is the free market that has decided to incorporate ESG factors, not governments.

Some employees have felt constrained from engaging on social and

## Should ESG reporting be mandatory in Hong Kong?

Reporting on ESG is increasingly becoming a regulatory issue around the world. Denmark, France, South Africa, Australia, China, Sweden, the Netherlands, Norway, Spain, the US and the UK have introduced some form of mandatory ESG reporting. Since 2008 mainland China has required its largest state owned enterprises to produce CSR reports. In parallel to mandatory obligations, many voluntary reporting standards have been produced, such as the Global Reporting Initiative framework, introduced in 2000.

Currently ESG reporting is voluntary in Hong Kong, but the Companies Bill under review by the Legislative Council contains a proposed requirement for companies (subject to certain size criteria) to

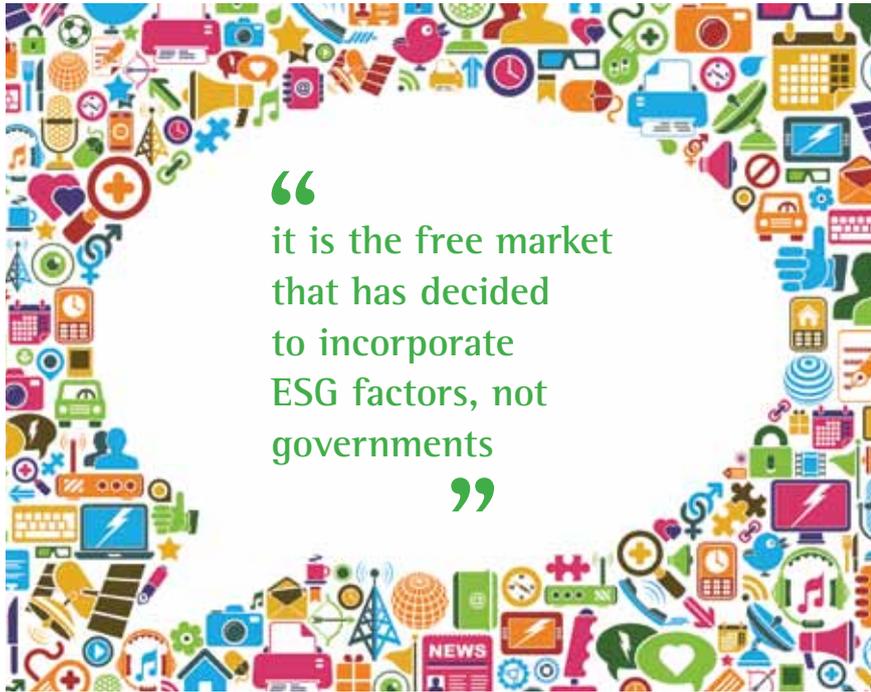
include in their reports a business review which must address ESG issues. These issues include the company's environmental policy and performance; compliance with relevant laws and regulations; and key relationships with employees, customers, suppliers and others that have a significant impact on the company.

Moreover, Hong Kong Exchanges and Clearing (HKEx) launched a new initiative last year to encourage wider adoption of ESG reporting in Hong Kong. Its *ESG Reporting Guide* was subject to a public consultation between December 2011 and April 2012, and HKEx hopes to finalise the guide later this year. Initially the guide's ESG reporting recommendations will not be mandatory, they will be

equivalent to 'recommended best practices' in Hong Kong's Corporate Governance Code. However, the long-term vision is to upgrade the requirements to 'comply or explain' provisions, equivalent to 'code provisions' in the Corporate Governance Code. [CSj](#)

*The draft ESG Reporting Guide and other guidance materials are available on the HKEx website ([www.hkex.com.hk](http://www.hkex.com.hk) – see *Rules and Regulations/ Rules and Guidance on Listing Matters/ Environmental, Social and Governance*).*

*The Global Reporting Initiative website ([www.globalreporting.org](http://www.globalreporting.org)) has a wealth of information on ESG reporting, as well as the GRI's most recent generation of Sustainability Reporting Guidelines (G3.1).*



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environmental issues, or have actively rejected the notion as a distraction from their core business, which is hard enough already. But, once they've seen that management will support sensible initiatives, employees at all levels have been among the strongest advocates of social and environmental engagement. With tacit or explicit approval, they can sensibly apply their firm's resources to relevant social and environmental issues, to benefit the firm, the issue and their own professional development.

Curiously, CEOs have been among the quickest employees to accept the value of ESG efforts. Their responsibility includes looking beyond the horizon to the emerging business environment, and they can see how social and environmental issues are constraining their firms, and providing it with opportunities. Compared with middle managers, they are more likely to be good systems thinkers – to

see how one thing leads to another – and also have the freedom to consider and act on those second-, third- and fourth-order effects over a longer time frame.

#### Intangibles link ESG to financial performance

The evidence shows that wise social and environmental engagement pays the firm financial dividends. Employee engagement is one of many connecting rods. What are the others, and how do they work?

In 2000, McKinsey & Co analysed international equity markets to show that, of a firm's market value, an average of 55% represented the market's evaluation of the firm's core intangible assets, with the remainder being an evaluation of the firm's physical assets and financial performance, its continuing net profit after tax and cash flows. The figure varied between industries, being as low as 20% for capital-heavy industries such

as mining, and 80% or more for service industries such as media and banking (see 'What is the market telling you about your strategy?' *McKinsey Quarterly*, June 2000).

These intangible assets are not simply existing intellectual property and contracts. They are four: the firm's brand and relationships, and the productivity and innovation capacity of their people. These four deliver future financial performance, which is of course of more interest to investors than past performance.

More recent studies show that, as our economies become more service-based, the average value of the non-physical assets has risen from 17% in 1975, to 68% in 1995, to 81% in 2009 (see Ocean Tomo, 2010, *Intangible Asset Market Value Study*). This is what happens in maturing economies, where physical goods are commodified, consumers seek brands, services and experiences, and firms depend more than ever on their people to deliver.

Most CFOs readily accept these figures. It's then not a stretch to suggest that wise engagement on social and environmental issues can bolster reputations and relationships, and help drive an innovative and productive corporate culture.

**Reputation or brand?** Yes, solid social and environmental performance helps qualify a firm for more opportunities and a lower cost of capital, attract customers, and enables it to become an employer of choice.

**Relationships?** Yes, engaging on significant social and environmental issues with governments and other firms creates new relationships and strengthens

existing ones. As it does personal relationships within the firm. In both cases, there is time to build understanding and appreciation, outside the pressures of purely commercial transactions.

**Innovation?** Yes, ESG engagement means looking at new problems from different perspectives. The solving technology is never far away. ESG provides the financial rationale and will. New products, services and markets follow.

**And people?** Yes, this is the strongest driver. People are satisfied with their job if it gives them a decent income, friends at work and some professional development. But if they're contributing and developing in other ways, then their productivity and capabilities increase.

### What firms do matters

From an historical perspective, a firm's enlightened ESG engagement and people's reactions to it make sense.

For better or worse, firms and their markets are the way societies now organise their most powerful productive forces – it's the way we get things done. If, for whatever reason, we have a social or environmental problem, there is no way it will be resolved without firms being part of the solution.

Firms demand a lot from their employees and, of course, give a lot in return. It can be an all-encompassing relationship. If people feel that that relationship is working on the social or environmental issues that matter to them (or at least it's not against them), they invest more of themselves in that relationship.

These are growing expectations. Consider Maslow's hierarchy of needs (see Abraham

Maslow's 1954 book *Motivation and personality*). Once we have basic physical needs and safety in place, we want to belong, and to gain confidence and respect. At the peak of that hierarchy is creativity, problem-solving and, dare one say it, morality.

As a society, we are well aware that social and environmental problems exist, always have and always will. Having invested enormous amounts in education and social stability, what we have now though are many more tools to deal with those issues (and perhaps create more) through innovations in technology, information and business models.

With these tools, non-government organisations, governments, customers, investors, employees and future employees expect firms to do something about those issues that concern them. Those firms that do so have been very pleasantly surprised. No less a student of corporate strategy than Michael Porter has documented how they have benefited, and the competitive advantage they have earned (see his article 'Strategy and society: the link between competitive advantage and corporate social responsibility', *Harvard Business Review*, December 2006).

### Deciding what to do

If expectations are building for your firm's ESG performance, and there are benefits from your doing so, what should you do?

It's not an easy question, for the number of ESG issues that are relevant to your firm are numerous. Research firms that rate the ESG performance of listed companies keep track of over 1,200 different metrics, everything from the independence and diversity of boards,

to gigalitres of water, to freedom of association. The most prominent voluntary reporting standard, the Global Reporting Initiative, makes do with 130. Some of these might be relevant, some not.

What matters to your firm are the issues that have a potentially material effect on its business or intangibles. That's a list still too long to be actionable. Consider then issues your firm can influence, drawing on its particular assets and capabilities. It helps that your people are interested, more so that an action supports your existing corporate priorities. We're getting closer. The answers won't be obvious, but there are ways of working them out.

One such way is a valuation tool that can calculate the value at risk from ESG issues, and the potential financial returns from any particular action to address them. If there's a public good or 'externality' your firm relies on, cost it in to your business model and see how exposed that model may be. There are rigorous approaches, but they're available.

ESG, sustainability, CSR, 'internalising the externalities'. Call it what you will. It's worth a closer look.

### Josh Dowse

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*Dowse CSP (see [www.dowse-csp.com.au](http://www.dowse-csp.com.au), and [www.thedowsegrill.com](http://www.thedowsegrill.com)) are advisers on sustainable business and investment.*

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# Shareholder disputes

Wilfred Wu, Principal, Specialist Advisory Services, BDO, suggests some simple and practical ways to mitigate or resolve shareholder disputes

Disputes are an unavoidable fact of human life. People will often disagree with one another because of different opinions or perceptions. While some ideologues may argue that disputes help to generate fresh ideas, in most cases they destroy harmony, create tension and ultimately cause relationships to break down. That is a tragic but realistic description of where disputes can lead if no remedial measures are taken quickly to resolve them.

A company is only a legal person that is owned by its shareholders. It cannot get into a dispute with itself, but its shareholders can dispute between themselves. Nowadays, shareholder disputes often end up in a courtroom, where the litigants have to take the witness stand, give evidence and reveal a company's 'confidential' matters to the public. That can lead to personal humiliation and the failure of a business, neither of which is a desirable outcome. Once a dispute materialises, the best course of action is to manage it sensibly. This article aims to provide some observations about the factors

surrounding shareholder disputes, as well as some simple and practical ways to mitigate or resolve them.

## Causes of disputes

If we are to analyse and identify the causes of shareholder disputes, we need to have some insights about human nature. From ancient times to the present day, people have been fighting over wealth, power and passion. While wealth and power are the most obvious causes of disputes, passion should not be overlooked. When a spouse jointly owns a family's assets, that ownership is often served by the establishment of a corporate entity. And disputes between husbands and wives about company matters can become very heated if their relationship turns sour. You may regard them as a kind of matrimonial disagreement. But, in a legal sense, the possible remedy under ancillary relief during matrimonial proceedings is limited. So most aspects of such a dispute will need to be resolved under the company law regime.

Going one level deeper, wealth, power and passion are just the outer shell of the causes of disputes. People are unhappy if their wealth and power seem to be jeopardised. At the heart of such perceptions is the idea of fairness – the antithesis of inequity and the embodiment of equality. It goes without saying that everyone longs for equality. If a shareholder perceives some form of inequity in any matter, the first and most important element of a dispute is already present. The clock has started ticking.

The most common type of shareholder dispute is triggered by a disparity in profit distributions. In essence, that does not refer to actual dividends declared to shareholders. Those are governed





customers will definitely affect a company's results, as its partners in the transaction will benefit from the price differentials.

by the shareholder structure. Instead, a practical example of such a disparity would be if the pre-distribution profits were skewed towards the benefit of one group of shareholders, by way of management compensation such as salaries or other remuneration packages. Such arrangements might be seen by the 'disadvantaged' parties as mechanisms to syphon off significant portions of the economic benefits a company has generated, instead of fairly distributing them to all its shareholders. Another common complaint is when the management camp of shareholders gains unequal benefits by setting up related-party transactions and not trading at arm's length prices. Overpaying related suppliers and undercharging related

Other than monetary issues, management authority is also a common cause of disputes. Unsurprisingly, such power is seen as an important component in an organisation. A shareholder who also plays a role in the company's daily management may choose to deny other shareholders access to information or

fail to give meaningful responses to their questions. That is usually construed as a hostile act. The 'victims' of such behaviour may perceive it to be a disparity of power and seek ways to eliminate it. Power disparity can also come about as the result of who occupies certain key positions in the company. Finance and marketing are usually regarded as core functions that possess important information. If one group of shareholders (or its allies) occupies crucial roles in those departments for lengthy periods of time, it could easily create friction with other shareholders.

#### Types of disputes

It is also worth noting the most common types of shareholder disputes. Although disputes between business partners are seen to be the most widespread, those between family members can sometimes turn out to be the fiercest. Of course, that includes disputes between shareholders who are married to each other.

Disputes between business partners are normally the result of disagreements about strategy, although they can also arise from different interpretations of a shareholders' agreement. Strategy disagreements can be about the direction

### Highlights

- shareholder disputes can do serious damage to a company's reputation
- a well-written shareholder agreement can help to reduce the likelihood of shareholder disputes
- a good shareholder agreement should be tailor-made and not standardised
- as a precautionary measure, disputing parties should seek proper legal advice at the first sign of trouble, but legal confrontation should be regarded only as a last resort



“ although disputes between business partners are seen to be the most widespread, those between family members can sometimes turn out to be the fiercest ”

a business is taking, the use of funds, expansion in the market, etc. Frankly speaking, such issues are likely to be profit-driven rather than emotional. Shareholder agreement disputes generally materialise as the result of a critical incident that has caused the parties to refer to the contractual agreements they previously entered into. They are primarily disputes about legal terminology.

But disputes between family members are a different kettle of fish. They are less formal or legal, and more relational and emotional. Beside disputes between married couples, disputes about inheritances are common. Wrangles over the next generation's succession after a senior family member who has been a company's figurehead retires can cause enormous problems. When you read about various court cases, it is often easy to identify instances where different members of the family have totally opposite management and business styles. Like their familial relationship, their shareholder status is not a matter of choice. They cannot cooperate effectively with each other when significant issues

arise; instead, matters become more and more heated. Finding a practical way to resolve their differences under such circumstances is often difficult.

#### Disputes in action

Besides theoretical analysis and general observations, one must not overlook the practical side of the coin. Disputes can be logically divided into three categories: (i) one-on-one; (ii) one-to-many; and (iii) many-to-many. Their meanings can easily be deduced from their names. One-on-one disputes are the simplest type, but unfortunately they are often the toughest to deal with. They usually have intense emotional undercurrents. If two parties have equal equity and equal representation on a company board, it can result in complete deadlock.

One-to-many disputes normally occur when a minority shareholder raises a complaint that they are being oppressed and that their equity interest is being jeopardised. The complainant generally demands monetary compensation or wants the majority shareholder to buy out their equity.

Many-to-many disputes may involve complex shareholding structures and unusual circumstances that lead to a major dispute. They can be extremely complicated. Nevertheless, the fact that a number of parties are involved may mean there is actually more room for negotiation than in the other two types of disputes.

#### Consequences of shareholder disputes

Some may consider a courtroom to be the most appropriate place to resolve disputes. While that may be true in a legal sense, in practical terms, legal proceedings can bring about undesirable and unpleasant consequences. The parties involved should always bear in mind that legal proceedings not only consume money and time, they also entail stress and psychological discomfort. They require a lot of documentary evidence and/ or witness testimony. That will definitely disturb the operations of the business concerned, and it may undermine its efficiency and morale. The firm's financial performance is likely to be seriously affected too.

Another obvious side effect of dispute proceedings on a company is the loss of its trading partners' confidence. That is obvious and understandable. Customers will worry whether the company will be able to deliver the products they have ordered. Vendors will be concerned about whether the company can pay their invoices. It is unwise to assume that business disputes and friction are private and confidential issues between the parties concerned, and that outsiders will remain unaware of them. In reality, every staff member in the company has the potential to communicate these matters to other people. Experience shows that few customers and suppliers will be willing to continue trading on the existing terms once they find out there is a dispute within their trading partner. Most likely, business will decline, sometimes to the extent where there will be serious doubts about a company's continued viability.

### Suggestions and remedies

As your family doctor will always tell you: prevention is better than cure. To a certain extent, that also applies to managing shareholder relationships. While it is true to say that no shareholder agreement can be perfect, having one is better than having none. In-depth discussion and participation are the keys to making a shareholder agreement a good reflection of the shareholders' intentions. A good shareholder agreement should be tailor-made and not standardised, like a tenancy agreement provided by a property agent. It need not be written in Shakespearean English, but it should take into consideration and deal with all the potential scenarios that the shareholders might face. It should at least cover management authority, representation, responsibility, remuneration and commission, as well as competition

clauses, dividend policies, fundraising rules and equity disposal procedures. If a company is formed for a specific purpose, the unique circumstances surrounding the cooperative partnership should be properly and unambiguously addressed in the agreement. A well-written shareholder agreement can help to reduce the likelihood of shareholder disputes.

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 a shareholder dispute  
 ”

Of course, we must accept that disputes can still occur, despite every reasonable precaution. The disputing parties should try to remain calm if that happens. Rational and sensible behaviour is a crucial factor in mitigating the fallout it might cause. Forceful attitudes and responses just pour oil on the flames, and they do not help matters. A cooling-down period is definitely a useful way to identify and seek common ground for negotiation. Aside from their dispute, the shareholders involved have common interests. Disputes are painful in the short term, but shareholders would be unwise to prolong the agony, which can eventually cause them serious financial damage.

Disputing parties should also seek proper legal advice at the first sign of trouble. That is not for the purpose of launching

hostile actions against their partners. Instead it is a form of self-protection and a precautionary measure. Some actions taken during the daily management of a business may have prejudicial repercussions if legal proceedings later become inevitable. These can often be avoided with legal advice. Conversely, if a shareholder considers himself or herself to be unfairly treated, he or she may need to substantiate this allegation with adequate evidence. Proper legal advice can also place you on a firmer and more advantageous foundation during negotiations. Nevertheless, you should bear in mind that it might not be a good idea to let your opponents know that you are consulting a lawyer too early in the game. Doing so may have an adverse effect, and a legal confrontation should be regarded only as a last resort.

My final piece of advice is to separate your emotions from the subject of a shareholders' dispute. That may not be easy, but it is usually the best way to resolve a dispute. One must recognise that the law is different from morality. Shareholder disputes have their roots in company issues, and they are primarily legal matters. Morality is morality, and it cannot replace the law when dealing with corporate disagreements. If something is immoral, that does not necessarily make it illegal. Putting your faith in your emotions and moral justice can ultimately turn out to be an expensive way of dealing with a shareholder dispute, and it can cause a lot of regret. The best way to handle a dispute is always to seek the best possible outcome. Then put it behind you and look to the future with confidence and a smile.

**Wilfred Wu**

*Principal, Specialist Advisory Services, BDO*



# Shanghai International Board

The launch of an international board on the Shanghai Stock Exchange, originally slated for 2010, has been delayed again. While there is no official timeline for its introduction, it is the centerpiece of China's plans to turn Shanghai into a global financial centre by 2020. CSj takes a look at what is on the drawing board.

The Shanghai Stock Exchange is set to launch a new international board, although no timetable for the launch has been set.

### What is the Shanghai International Board?

The Shanghai International Board would allow certain overseas companies to sell shares in mainland China, and denominated in renminbi, for the first time.

China currently does not allow foreign companies to list on the mainland. The new international board will allow foreign firms to sell shares to mainland investors, thus tapping the mainland market.

It is reported that a number of foreign companies with extensive operations in China including HSBC and Coca Cola, Hong Kong blue-chip firms such as Bank of East Asia, and red-chip enterprises (Chinese enterprises incorporated outside the mainland and listed in Hong Kong) like China Mobile and China National Offshore Oil Corp, have shown interest in listing on the board.

The prospect of listing on an international board in China is attractive. A Chinese listing would allow foreign firms to diversify their shareholder bases and boost public awareness, adding individual investors who may be willing to pay a premium for global brands. Once listed, it would be easier for these firms to seek additional stock sales to finance future growth. They might even be able to sell stakes to mainland strategic investors.

If successfully implemented, the international board could mark a major step forward in the development of China's financial sector and attract companies to move their headquarters to a new regional business hub.

New opportunities will be provided for multinational firms to carry out multiple listings and tap into China's huge pool of domestic savings. Significant business opportunities will be created for financial services firms, including securities companies, accountancy firms and law firms, to support listings of foreign companies. Shanghai will be made a regional financial hub in Asia and a credible competitor to London and New York over the long term.

### Development of the International Board

The idea of establishing an international board in Shanghai first emerged in a study of the Shanghai Stock Exchange in 2007. It was not until two years later that the proposal was brought up in plans at the national level.

In a State Council document promulgated in April 2009 on promoting the development of Shanghai into an international financial and shipping centre, China explicitly defined the positioning of the national strategy of developing Shanghai into an international financial centre. One of the key targets set for Shanghai in the document is, 'by 2020, to have basically completed the establishment of an international financial centre commensurate with the economic strength of China and the international status of RMB'. The proposal to establish the Shanghai International Board is at the centre of this strategic agenda.

Shortly after the release of the document, the China Securities Regulatory Commission and the Shanghai Stock Exchange set up working groups to draft and revise laws relating to IPOs and rules for listing and trading.

On 30 January 2012, the National Development and Reform Commission and the Shanghai Municipal Government jointly issued the Plan for Establishing Shanghai as an International Financial Centre during the 12th Five Year Plan Period. The plan aims to make Shanghai a centre for innovation, trading, pricing and clearing of RMB-denominated financial products by 2015.

To facilitate these goals, the plan seeks to enhance the development of fundamental and derivative financial products, encourage foreign financial institutions to establish regional and global headquarters in Shanghai, and improve the infrastructure of the financial system, especially relating to RMB settlement. According to the plan, Shanghai will accelerate the launch of an international board in Shanghai to support the issuance of RMB-denominated stocks by qualified overseas enterprises.

In the past few years, good progress has been made in strengthening the financial infrastructure of Shanghai. There has been significant growth in the size of the market, the variety of financial products available, and the number of financial institutions. The market is gradually opening up, with increasing participation of foreign financial institutions. The regulatory framework has been enhanced, and support services have become increasingly comprehensive. The groundwork has been laid for further developments in the financial market.

As the rules relating to the operation of the Shanghai International Board have been under development since 2009, it is expected that the international bourse will be ready for launch soon, pending a decision on the right timing. 

# 上海国际板



Los Angeles



New York

上海证券交易所原拟于2010年推出国际板，现又再延期。国际板目前并无正式的实施时间表，然而中国计划在2020年把上海建设为国际金融中心，成立上海国际板是当中的重要举措。本刊今期探讨有关国际板的构思。

**上** 海证券交易所正筹备推出新的国际板，但具体实施日期仍未确定。

## 上海国际板简介

上海国际板将首度容许某些境外公司在中国以人民币发行股份。

目前，中国并不容许境外公司在内地上市。新设的国际板将容许境外公司向内地投资者发行股份，从而开发内地市场。

有报道指，一些在中国有广泛业务的境外公司如滙丰银行和可口可乐、香港蓝筹公司如东亚银行，以及红筹企业（在中国以外注册并在香港上市的中国企业）如中国移动和中国海洋石油等，均显示有兴趣在国际板上市。

有机会在中国国际板上市，对境外公司来说相当有吸引力。在中国上市后，境外公司可广泛吸收不同的股东，增加公众对自己的认识，吸纳一些愿意为国际品牌支付溢价的个人投资者。上市后，这些公司较容易再发行新股，为未来的发展提供资金；更有可能可以向内地的战略投资者出售部分股权。

国际板若能成功推行，将是中国金融业发展史上的重要一步，可吸引公司把总部迁往上海这新兴的地区商业中心。跨国公司将有新机会在多处同时上市，吸纳中国庞大的国内储蓄。国际板可为金融服务机构如证券公司、会计师行和律师行创造大量业务机会，辅助海外公司上市。上海将成为亚洲地区的金融中心，长远而言足以与伦敦和纽约争高低。

## 国际板的发展概况

2007年上海证券交易所的一项研究中首次提出了在上海成立国际板的建议。

2009年4月，国务院颁布有关推进上海建设国际金融中心和国际航运中心的文件，明确说明把上海发展为国际金融中心的国家战略。文件内确立的其中一项主要目标，是「2020年上海基本建成与我国经济实力以及人民币国际地位相适应的国际金融中心」。在这策略计划中，成立上海国际板是重要的建议。

文件颁布后不久，中国证券监督管理委员会和上海证券交易所分别成立工作小组，草拟并修订有关新股上市的法律，和有关上市和交易的规则。

2012年1月30日，国家发展改革委员会及上海市人民政府联合颁布《十二五时期上海国际金融中心建设规划》，力争到2015年基本确立上海的全球性人民币产品创新、交易、定价和清算中心地位。

为达到这些目标，《规划》建议推动发展基础性金融产品和金融衍生产品，鼓励外资金融机构将区域性乃至全球性总部设在上海，并以建设人民币跨境支付清算中心为重点，加快建设金融基础设施体系。《规划》提出推进上海证券市场国际板建设，支持符合条件的境外企业发行人民币股票。

过去数年来，加强上海金融基础设施的工作有良好进展。市场规模大幅增长，金融产品日趋多样化，金融机构的数目也有所增加。市场逐渐开放，外资金融机构的参与日增。规管架构已然加强，支援服务也日益完善。当地已经为进一步发展金融市场奠定基础。

有关上海国际板运作的规则，自2009年起已经开始制订；预计当局议定适当时机后，上海国际板不久以后便可推行。CSj



## 中國董事會秘書實務 單元課程 Corporate Secretaryship in PRC

MS 42-081-16 (21)

本學習模塊旨在為學習者詳細說明及評估董事會秘書在上市公司及非上市公司內承擔其職責時需具備的必要知識和技能。本學習模塊涵蓋董事會秘書對董事會提出建議、領導團隊進行秘書最佳實踐、保證對法律法規的合規，建立有效的董事會決策和信息披露機制。

### 課程大綱

- 董事會秘書定位及職責
- 董事會秘書的價值體現及工作建議
- 董事會秘書實務
- 破冰實例

### 課程時間表

課程為期一個月

授課時間: 4堂, 每堂6小時, 共24小時

上課時間: 逢周六上課一堂, 下午(2:00-5:00) 及晚上(6:00-9:00)

授課日期: 7月7日, 7月14日, 7月21日, 7月28日

授課地點: 香港大學專業進修學院 - 北角城教學中心

香港北角英皇道250 號北角城中心 (炮台山港鐵站B出口)

### 講者簡介

端木梓榕先生

- 廣州市產權交易所專家委員會委員
- 總裁助理, 廣州立白企業集團有限公司
- 董事會秘書, 廣州珠江啤酒股份有限公司(2002-2007)

### 學費

港幣3,500元

### 課程查詢

☎ 2867 8481 (黃小姐) | 2867 8407 (鍾小姐)

✉ [prcprogramme@hkuspace.hku.hk](mailto:prcprogramme@hkuspace.hku.hk)

每個單元課程出席率達75%或以上之香港特許秘書公會會員, 可以獲得18個ECPD學分, 但有關實際可帶往下年度之ECPD學分詳情, 請個別與公會聯絡。

電話: 28816177; 電郵: [ecpd@hkics.org.hk](mailto:ecpd@hkics.org.hk)

## A review of seminars: April 2012

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17 April 2012



Davy Lee (Chair), Eric Yeung and Hung Han Wong

*From Dr Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group, and chair of the seminar delivered by Eric Yeung, Senior Manager, Risk and Controls Solutions, PricewaterhouseCoopers Ltd, and Hung Han Wong, Senior Manager, Risk and Controls Solutions, PricewaterhouseCoopers Ltd, on 'Losing it all and board effectiveness'*

'Board effectiveness is a very good topic for company directors and company secretaries. Very lively case studies were provided during the seminar, which helped attendees to have a deeper understanding of the areas covered.'

19 April 2012



Annette Lee, Richard Leung (Chair) and Rainier Lam

*From Richard Leung, Barrister-at-law, Des Voeux Chambers, and chair of the seminar delivered by Rainier Lam, Partner, Business Recovery Services, PwC Hong Kong, and Annette Lee, Associate Director, Business Recovery Services, PwC Hong Kong, on 'Members' voluntary liquidation (re-run)'*

'This was a re-run seminar and yet it still attracted many people to attend. During the presentation, both speakers not only highlighted the essential features of members' voluntary liquidation but also shared with the audience vivid examples of the potential pitfalls and issues arising from real scenarios. Many thanks to Mr Lam and Ms Lee from PwC for giving us this informative and interesting talk.'

20 April 2012



Aaron Yip, Polly Wong (Chair), Simon McConnell and Ivan Kuan

*From Polly Wong FCIS FCS(PE), Company Secretary and Assistant Financial Controller, Dynamic Holdings Ltd, and chair of the seminar delivered by Simon McConnell, Leading Insurance Practitioners, Allens Arthur Robinson, Ivan Kuan, Executive Director, Willis Hong Kong Ltd, and Aaron Yip, Vice President, Federal Insurance Company, on 'Recent amendments to the Hong Kong listing rules related to the risk exposure of directors and officers and solutions. Case study and lessons learnt'*

'Simon McConnell, Ivan Kuan and Aaron Yip together delivered a well-organised and informative update on the risk exposure of directors' and officers' (D&O) liabilities following the recent amendments to Hong Kong's listing rules and Corporate Governance Code (CGC). Simon concisely explained the crux of recent amendments to the listing rules and CGC, while Ivan and Aaron both highlighted the practical implications of D&O cases and the relevant trends in D&O liabilities and insurance. The seminar enlightened the attendees about the expedient management of D&O risk and liabilities.'

## 23 April 2012



Davy Lee (Chair) and Allan Lee

From Dr Davy Lee FCIS FCS(PE), Group Corporate Secretary, Lippo Group, and chair of the seminar delivered by Allan Lee ACIS ACS(PE), Director, Allan Lee Professional Solutions Ltd, on **'Lessons from election issues: how to manage governance risk and promote corporate governance'**.

'The speaker is very experienced in the area of corporate governance and governance risk. This seminar was very useful and gave helpful insights to company directors and company secretaries. I hope Mr Lee will consider presenting more seminars for us.'

## 26 April 2012



Eric Chan (Chair) and Richard Wong

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Richard CH Wong, Principal, Expense Reduction Advisory, Ascent Partners, on **'Expense reduction'**.

'Through an interactive and interesting presentation, Richard inspired the audience with his tips on expense reduction, both in business and personal life.'

## 27 April 2012



Eric Chan (Chair) and Brian Lo

From Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd, and chair of the seminar delivered by Dr Brian Lo, DBA MBA MScIT MPA FCIS FCS HKPA CEng MIET, Vice-President and Company Secretary, APT Satellite Holdings Ltd, on **'Avoiding insider dealing – from theory to practice'**.

'Dr Lo has the advantage of both a rich academic and a practical experience background. With his in-depth knowledge of the insider dealing issue, both from the theoretical and practical perspectives, he was able to give the audience a comprehensive picture of best practice in insider dealing avoidance.'

## Mandatory CPD

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Members who qualified between 1 January 2005 and 31 July 2011 need to accumulate at least 15 mandatory continuing professional development (MCPD) or enhanced continuing professional development (ECPD) points for the current CPD year ending 31 July 2012 and every CPD year thereafter.

Members who work in the corporate secretarial (CS) sector and/ or for trust and company service providers (TCSPs) have to obtain at least three points out of the 15 required points from the Institute's own ECPD activities.

Members who do not work in CS sector and/ or for a TCSP have the discretion to select the format and areas of MCPD learning activities that best suit them. These members are not required to obtain MCPD points from the HKICS (though they are encouraged to do so), but nevertheless they must obtain 15 MCPD points from suitable providers.

### When to submit the declaration form?

Those who have achieved the MCPD requirements of 15 CPD points during the CPD year (1 August 2011 – 31 July 2012) are required to fill out the Institute's declaration form (see 'MCPD Form I' on the Institute's website). The deadline for submitting the declaration form is **14 August 2012**.

*To learn more about MCPD please visit the Institute's website.*

## Members' networking

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The Institute's networking events aim to assist in your personal development via informal and enjoyable activities. The Institute will organise more networking events this year in three areas: the environment, personal development and IT.

### Environment – visit to an organic farm

A visit to the HKFYG Organic Farm was held on 19 May 2012 giving participants a chance to learn more about organic farming and leading a healthy life. Details with photos will be reported in next issue of CSj.

### IT – tips to be a smart iPhone and iPad user (enriched content)

Ever wondered what functions your iPhone and iPad have that you are not using? How can these IT tools help you in your business and daily life? Come and join this gathering on 21 June 2012 to learn from the expert some practical tips on being a smart iPhone and iPad user.

*For details, please refer to the Institute's website or contact the Membership section at 2881 6177.*

## Enhanced CPD Programme

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The Institute cordially invites you to take part in our Enhanced Continuing Professional Development (ECPD) Programme, a professional training programme that best suits the needs of company secretaries of Hong Kong listed issuers who will need to comply with the new mandatory requirement of 15 CPD hours every year. The Institute launched its mandatory CPD programme in August last year and, since January 2012, its requirement for Chartered Secretaries to accumulate at least 15 CPD points each year has been backed up by a similar requirement in Hong Kong's listing rules.

*More information on the new Hong Kong Exchanges and Clearing (HKEx) requirements can be found in the consultation conclusions to the 'Review of the Corporate Governance Code and Associated Listing Rules' on the HKEx website ([www.hkex.com.hk](http://www.hkex.com.hk)).*

*To learn more about Institute's ECPD programme, please visit the Institute's website ([www.hkics.org.hk](http://www.hkics.org.hk)).*

## HKICS dragon boat team 2012

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The Institute's dragon boat team will enter into the International Dragon Boat Races on 2 July 2012.

*If you want to take part as the cheering team, please contact the Membership section at 2881 6177.*

## New Graduates

Chak Ka Ying, Phyllis  
Fung Wing Sum  
Shi Ye Zhou  
Yim Wai Han

## New Associates

Chan Mei May	Lee Tak Yee
Chan Siu Wah	Lee Ying Kei, Enrica
Chan Sui Wa	Leung Pui Yi, Pearl
Chan Yee Man	Li Chiao Ling
Chanson, David Douglas	Li Miu Yee
Cheang Yee Wah, Eva	Lo Suk Yee, Roxanna
Cheng Sheung Wai	Ng, Andrew Bernard
Cheung Ming Wai	Ng Wai Ching
Chu Cheuk Ting	Ou Yuk Ha
Fe Chun Yeung	Suen Ka Lin
Ho Shuk Han	Wong Ching Sum
Hon So Fan	Wong Hiu Wong
Ip Chi Man	Wong Kam Har, Fiona
Kong Kai Yue	Wong Kang Fong
Kwok, Vanida Teresa	Yam Hiu Laam
Lai Ho Chong	Yan Shuk Ling
Lai Ka Siu, Victor	Yip Tsz Sum, Ophelia
Lam Sau Man	Yung Ka Man
Lau Ching Yin	Zhong Yan
Lau Wai Yi	

## New Fellows

### Chan Yuk Mei Mion *FCIS FCS*

Ms Chan is currently the Head of Corporate Secretarial Services of Squire Sanders, a US originated law firm with around 1,400 lawyers worldwide. She is responsible for the provision of corporate secretarial and compliance services to clients, including listed companies and private companies in various jurisdictions. Ms Chan holds a bachelor's degree in laws from the Nottingham Trent University.



### Liu Chui Ying *FCIS FCS*

Ms Liu is currently the Group Company Secretary of Emperor Group comprising five Hong Kong listed companies, namely Emperor International Holdings Ltd (Stock Code: 163); Emperor Entertainment Hotel Ltd (Stock code: 296); Emperor Watch & Jewellery Ltd (Stock code: 887); Emperor Capital Group Ltd (Stock code: 717); and New Media Group Holdings Ltd (Stock code: 708).



She is responsible for overseeing the company secretarial team which provides a full spectrum of corporate secretarial and compliance services to the group companies. Ms Liu has more than 15 years of experience in corporate secretarial field. She obtained a bachelor's degree in business and finance

Other new Fellows include:

**Poon Chiu Kwok** *FCIS FCS*

**Wong Shuk Yi, Winnie** *FCIS FCS*

## Newly appointed company secretaries

The Institute would like to congratulate the following members on their appointments as company secretaries of listed companies:

Company secretary	Listed company	Date of appointment
Wong Wai Yee, Ella <i>ACIS ACS(PE)</i>	Vedan International (Holdings) Ltd (stock code: 2317)	1 April 2012
Ngai Wai Fung, Maurice <i>FCIS FCS(PE)</i>	China Eastern Airlines Corporation Ltd (stock code: 670)	6 April 2012
So Wai Kei, Godwin <i>ACIS ACS</i>	Sunevision Holdings Ltd. (stock code: 8008)	16 April 2012

## Membership application deadlines

Members and Graduates are encouraged to advance their membership status once they have obtained sufficient relevant working experience. Fellowship and Associateship applications will be approved by the Membership Committee on a regular basis. If you plan to apply, please note the following submission deadlines and the respective approval dates.

*For details, please contact the Membership section at 2881 6177.*

Submission deadlines	Approval dates
Saturday 21 July 2012	Thursday 16 August 2012
Saturday 8 September 2012	Tuesday 9 October 2012
Saturday 24 November 2012	Mid-December 2012

## Institute news – clarifications

On page 39 of last month's journal (*CSj* May 2012), the stock code of 'Allied Group Ltd' was incorrectly given as '3731'. The correct stock code is '373'.

On page 37 of last month's journal (*CSj* May 2012), the company name 'Hong Kong Land' should have been written as 'Hongkong Land'

Apologies for any inconvenience caused.

## Members' Luncheon

The Institute will organise a Members' Luncheon on 18 July 2012. We are delighted to have Mr Andrew Sheng, President, Fung Global Institute, and Chief Adviser, China Banking Regulatory Commission, as the guest speaker to present on the topic '**Post-crisis thinking on corporate governance**'.

*For details, please refer to the flyer on page 49, the Institute's website, or contact the Membership section at 2881 6177.*

## Membership activities

### Fellows' sharing – Gordon Jones' book launch

The first event in your Institute's new 'Fellows' sharing' series was successfully held on 2 May 2012 at the Hong Kong Club.

This new series aims to provide greater opportunities for Fellows, as senior members and leaders of the profession, to share their expertise and experience in a relaxed and sophisticated environment.

Our first event in this series was an excellent opportunity for Fellows to hear from Gordon Jones *FCIS FCS*, Former Registrar of Companies, about his new book entitled *Corporate Governance and Compliance in Hong Kong*. More than 40 Fellows and Associates attended the cocktail reception and Anthony Rogers *FCIS FCS*, former Vice-President of the Court of Appeal, was one of the invited guests. A book signing was arranged after the sharing and was well received by the participants.

*Mr Jones' speech at this 'Fellows' sharing' event is reviewed on pages 20–23 of this month's journal. More photos taken at the event are available at the gallery section on the Institute's website.*



*Group photo of Gordon Jones (centre) and the HKICS Council and Membership Committee members*



*Gordon Jones sharing his views on corporate governance to members*



*Anthony Rogers speaking at the cocktail reception*



*Edith Shih, HKICS President, presenting a souvenir to Gordon Jones*



*At the book signing*

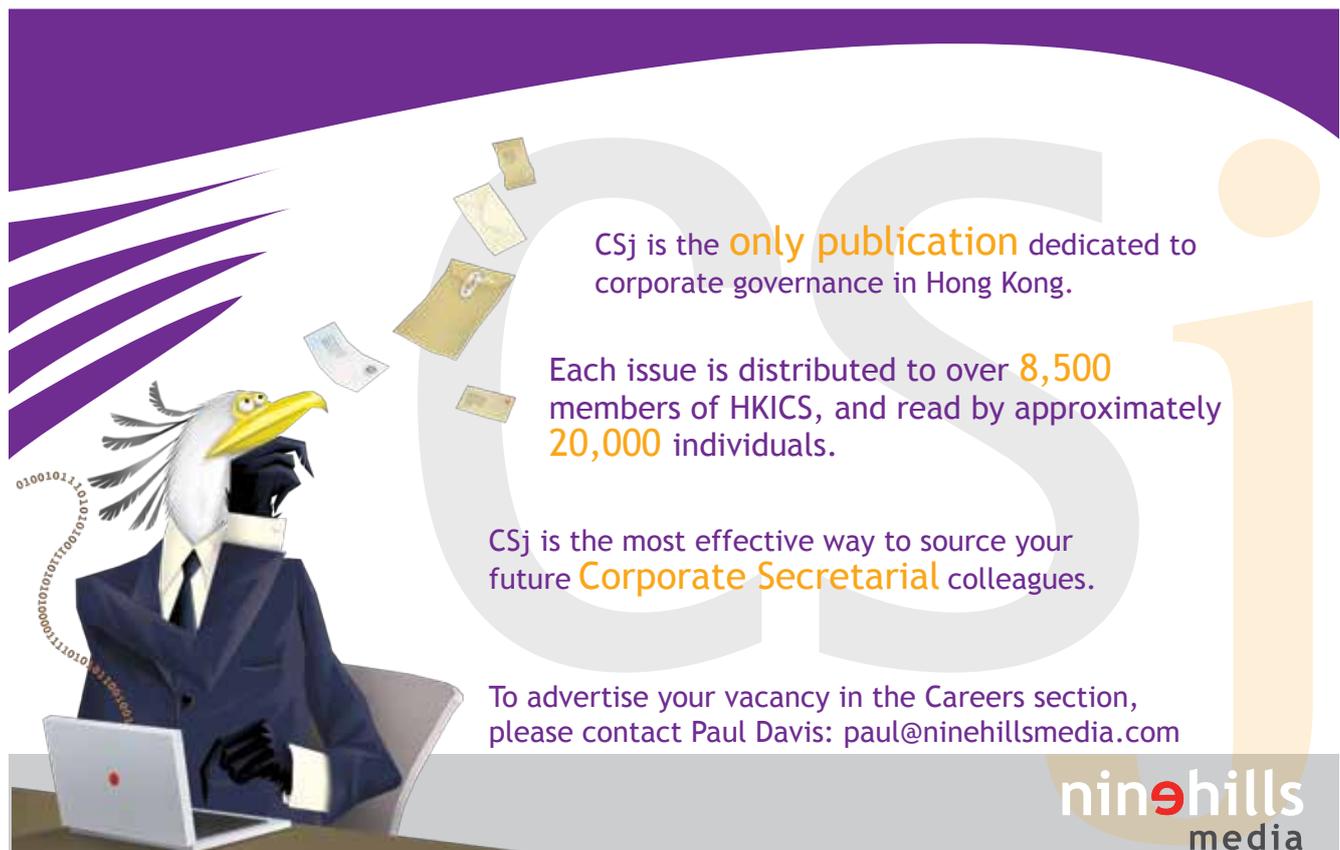
## Special rate for Fellowship election

Our Fellows are the leaders of our profession. They have the most influence over our profession because only Fellows can stand for election to Council. These highly qualified and respected 'role models' are crucial in maintaining the growth of the Institute. Fellows are:

1. eligible to stand for election to Council and to be appointed to committees, working groups and panels, thus giving fellows the opportunity to represent other Members, Graduates and Students and to participate in the development, planning and management of both the profession and the Institute's affairs
2. invited as representatives of the profession to events hosted by the Institute, regulatory or governmental bodies, etc
3. invited to attend the special 'Fellows-only events
4. invited to share expertise and experience at the new Fellows' Sharing events in a relaxed and sophisticated environment
5. given priority to participate in Institute events, and
6. invited as speakers or chairpersons at our ECPD seminars (extra CPD points are awarded for these roles).

To encourage highly-qualified Associates to join our league of Fellows, the Institute will continue to offer a special rate for the Fellowship election fee at HK\$1,000. All applications will be considered by Membership Committee on a regular basis.

*For further details on admission requirements, please refer to the Institute's website or contact the Membership section at 2881 6177.*



CSj is the **only publication** dedicated to corporate governance in Hong Kong.

Each issue is distributed to over **8,500** members of HKICS, and read by approximately **20,000** individuals.

CSj is the most effective way to source your future **Corporate Secretarial** colleagues.

To advertise your vacancy in the Careers section, please contact Paul Davis: [paul@ninehillsmedia.com](mailto:paul@ninehillsmedia.com)

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## Hong Kong Shue Yan University – annual scholarship award ceremony

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Louisa Lau *FCIS FCS(PE)*, HKICS General Manager, attended the annual scholarship award ceremony of the Hong Kong Shue Yan University on 23 April 2012. The recipients were:

1. Kam Wing Yi (Year 3 accounting student) – recipient of The Hong Kong Institute of Chartered Secretaries Subject Prize – Company Law
2. Cheng Yuet Ming (Year 4 business administration student) – recipient of The Hong Kong Institute of Chartered Secretaries Scholarship



Louisa Lau (right) and the recipient Kam Wing Yi



Louisa Lau (right) and the recipient Cheng Yuet Ming

## Open University of Hong Kong – orientation of the Master of Corporate Governance programme

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The Institute organised an orientation for the Master of Corporate Governance students from the Open University of Hong Kong on 2 May 2012. The students were given an introduction to the Institute and its studentship requirements. Simon Lee *ACIS ACS*, an OUHK MCG graduate was invited to share his study experience with the MCG students.



Candy Wong (left) presenting souvenir to Simon Lee

## Examination (June 2012) Policy on submitting applications for examination postponement

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Examination postponement is only allowed if a candidate is sick and can provide a satisfactory medical certificate. Students should submit the examination postponement application within three calendar weeks of the completion of the entire examination diet (that is by 22 June 2012 for the June examination diet). The examination postponement form can be downloaded from the website.

## Professional seminar at the Hong Kong Shue Yan University

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Alberta Sie *FCIS FCS(PE)*, Education Committee Chairman, and Louisa Lau, General Manager, gave a presentation on '**Corporate governance in practice**' to students of the Hong Kong Shue Yan University on 26 April 2012. The seminar was well received.



Presentation on 'Corporate governance in practice'

## High table dinner at United International College, Beijing Normal University – Hong Kong Baptist University

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Edith Shih, HKICS President, and Candy Wong, Director – Education & Examinations, attended a high table dinner at United International College, Beijing Normal University – Hong Kong Baptist University, on 27 April 2012. Ms Shih gave a presentation on 'Looking for a title' which was well received by the 150 students in attendance.



*At the presentation*



*Edith Shih (left) receiving a souvenir from Professor Stella Cho, Dean, Division of Business and Management*

## Student Ambassadors Programme annual general meetings of listed companies

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The HKICS secretariat arranged for its student ambassadors to attend the annual general meetings of the following listed companies:

- CLP Holdings Ltd (8 May 2012)
- Sing Lee Software (Group) Ltd (11 May 2012)
- Hutchison Whampoa Ltd (25 May 2012)

The Institute would like to thank the companies for their support.



*At the CLP Holdings Ltd annual general meeting*



*At the Sing Lee Software (Group) Ltd annual general meeting*



*At the Hutchison Whampoa Ltd annual general meeting*

## HKU SPACE examination preparatory courses – summer term

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The HKU SPACE examination preparatory courses summer term will begin from 8 June 2012. Please refer to the timetable and enrolment form on the Institute's website.

*For queries, please contact HKU SPACE at: 2867 8478.*

## Upcoming activities

### Programme series on 'PRC Corporation Practices' by HKU SPACE

A new programme series on 'PRC Corporate Practices' has been launched in collaboration with the College of Business and Finance, HKU SPACE. This advanced training programme is designed to strengthen professionals' understanding of PRC corporate governance and administration. The modular courses will be conducted in Putonghua/ Chinese.

A total of 18 Enhanced Continuing Professional Development (ECPD) points will be accredited to participants who have attained at least 75% of attendance in any of the courses. For the details of the ECPD points arrangements, please contact the Institute at 2881 6177.

#### Corporate Secretaryship in PRC (中国董事会秘书实务)

Date: 7 July, 14 July, 21 July and 28 July (Four Saturdays in July 2012)

Time: 2:00 – 5:00pm (afternoon) and 6:00 – 9:00pm (evening)

Venue: HKU SPACE Fortress Tower Learning Centre

The other modules include Corporate Administration in PRC (中国公司行政); Financial Accounting in PRC (中国财务会计) and Taxation in PRC (中国税务). Details will be announced later.

For inquiries, please contact Ms Wong (Tel: 2867 8481) or Ms Chung (Tel: 2867 8407) of HKU SPACE.

## IQS information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute has been invited to share his/ her valuable experience and discuss the career prospects of the Chartered Secretarial qualification.

*Members and students are encouraged to recommend this session to any friends or colleagues who may be interested to learn more about the IQS and the Chartered Secretarial profession. For enquiries, please contact the Education and Examinations section at 2881 6177.*

<b>Date:</b>	18 July 2012 (Wednesday)
<b>Time:</b>	19:00 – 20:30
<b>Venue:</b>	Joint Professional Centre (JPC), Unit 1, G/F, The Center, 99 Queen's Road, Central
<b>Speaker:</b>	Winnie Li ACIS ACS Director, CWCC
<b>Enrolment Deadline:</b>	11 July 2012 (Wednesday) [accepted on a first-come-first-served basis. Participants will receive an email confirmation]

## Policy Update

### Application deadline for Collaborative Courses (CCA) full exemptions

CCA graduates are obliged to apply for full exemptions with the HKICS within a period of six months after graduation, that is the date of award on the transcript of their respective master's

degree. Graduates who miss the full exemption application deadline stipulated by the Institute are subject to a penalty. Please refer to the Institute's website for details.



## Company Secretary (HSBC Life)

Headquartered in Shanghai, HSBC Life Insurance Company Limited (HSBC Life) was established in August 2009. With a registered capital of RMB875 million, the company offers comprehensive protection and wealth management services to both affluent and high-net-worth individuals and corporate customers covering protection, retirement, health, education and investment.

The Company Secretary (HSBC Life) works with considerable autonomy in managing his/her portfolio and team and contributes to the corporate governance policies and procedures.

The incumbent will be based in Shanghai.

### Principal Accountabilities

- To lead and manage the Company Secretarial function within HSBC Life Insurance Company Limited (HSBC Life)
- To advise the Boards of Directors of HSBC Life through the Chairman and Chief Executive, on all corporate governance matters.
- Provide direct support to the Board, its Committees and senior management. Responsible for building networks and relationships related to HSBC Life.
- To contribute to the achievement of the objectives of the Region/Country by ensuring that effective Company Secretarial support and advice is provided through an appropriate and consistent corporate governance framework.
- To understand and act upon changes in legislation and regulation related to HSBC Life, with particular regard to the continuing obligations of HSBC Holdings plc.
- To contribute to the development, formulation, communication and consistency of strategic and operational objectives of the Global Company Secretarial function through Company Secretary HBCN

### Technical Skills/Capabilities/Working Experience

- The role holder is a seasoned professional, must be qualified under the Institute of Chartered Secretaries and Administrators (UK) or equivalent.
- Typically has 10+ years working experiences with more than 5 years in the company secretary position in a company environment like HSBC, demonstrating in-depth understanding on the Company Secretary's Handbook of UK, or equivalent authoritative in the US.
- Communication and inter-personal skills including the maintenance and development of relationships with Directors of HSBC Life.
- Detailed knowledge of the HSBC Group and a clear understanding of its corporate culture is desirable.
- Excellent facilitation and leadership skills.
- Excellent influence, mediation and conflict management skills.
- Excellent English and Mandarin written & verbal communication skills.

To apply, please submit your CV to [hr.insurance.cn@hsbc.com.cn](mailto:hr.insurance.cn@hsbc.com.cn).

*HSBC Life is an equal opportunity employer. We value the diversity of individuals, ideas, perspectives, insights and values, and what they bring to the workplace. Applications from all qualified candidates are welcome.*

*Data held by HSBC Life relating to employment applications will be kept confidential and used only for processing applications. Applicants who are not contacted within eight weeks may consider their application unsuccessful.*



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## The Hong Kong Institute of Chartered Secretaries Members' Luncheon

### Post-crisis thinking on Corporate Governance

**Presenter:** Mr Andrew Sheng  
- President, Fung Global Institute  
- Chief Adviser, China Banking Regulatory Commission

**Date:** Wednesday, 18 July 2012

**Time:** 12.15 p.m. to 2.00 p.m.

**Programme:**

12.15 p.m. – 12.45 p.m. Registration & Cocktail Reception

12.45 p.m. – 1.20 p.m. Lunch served

1.20 p.m. – 2.00 p.m. Presentation and Q & A

**Venue:** Main Dining Room  
The Foreign Correspondents' Club Hong Kong  
North Block, 2 Lower Albert Road  
Central, Hong Kong

**Language:** English

HKICS ECPD point: 1 Point (TBC)

**Fee:** HK\$240 per head\*

*\*This event is open to Fellows & Associates ONLY. Places are limited and enrolment is accepted on a first-come, first-served basis.*

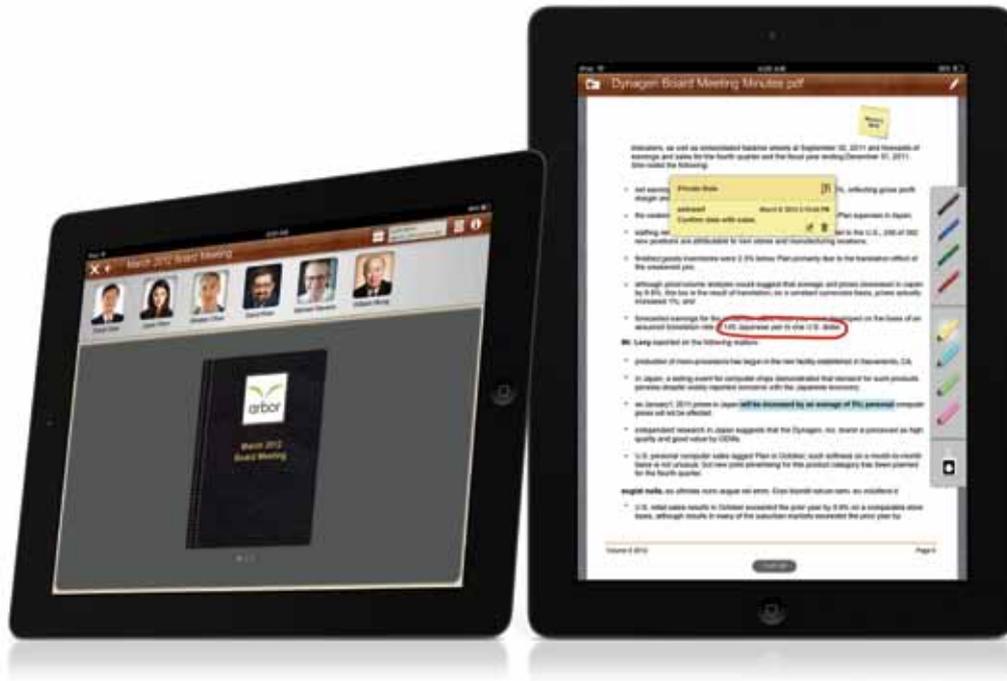


Scan to share with other  
HKICS members!

For more information, please visit the Institute's website at [www.hkics.org.hk](http://www.hkics.org.hk) or contact the Secretariat at 2881 6177.

# The paperless boardroom is here.

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