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April 2016

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



Responsible ownership

Why companies
need engaged
investors

New investor code
Anthony Rogers interview
Career advice



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Annual Corporate and Regulatory Update

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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 over 5,800 members and 3,200 students.

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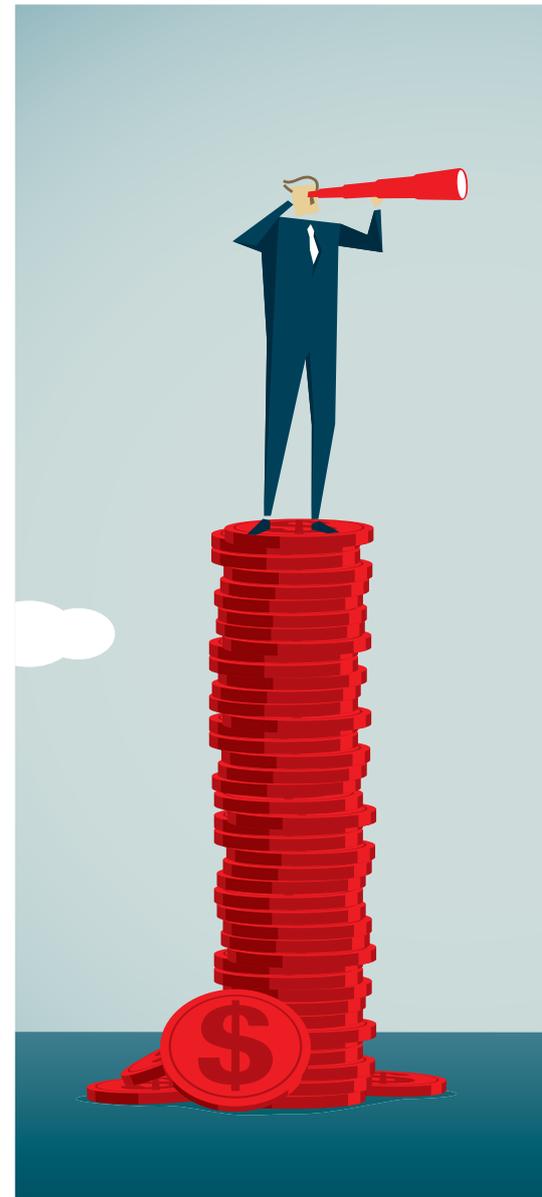
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A busy month

Before I turn to the theme of this month's journal, I'd like to update you on some important developments for our Institute. Last month was a busy month for us. Firstly, we signed a Memorandum of Understanding (MoU) with the Shenzhen Stock Exchange (SZSE). This MoU is similar to the one we signed with the Shanghai Stock Exchange in 2011 and will be equally important in terms of enhancing our strategic partnership with key stakeholders in the Mainland. We look forward to working with the SZSE in areas such as professional training for board secretaries of listed companies; corporate governance research and resource sharing; and the joint promotion of Mainland board secretary professionalisation.

Another key development last month was the ICSA Council Meeting held in London on 10 and 11 March. The meeting discussed key issues for the ICSA in the years ahead, including: ICSA's new branding, its global strategy and the ongoing review of the International Qualifying Scheme. The meeting also successfully elected the new ICSA Honorary Officers for a two-year term starting from 1 July 2016. I am delighted to announce that HKICS Past President Edith Shih was re-elected as ICSA Senior Vice-President with overwhelming

support from the ICSA Council. The new ICSA Honorary Officers line-up is set out in this month's Institute News.

Turning to the journal's theme this month, *CSj* takes us on a tour of another frontier issue in corporate governance – the role that investors can play, and should be playing, in maintaining good governance in our listed companies. As Professor Christine Chow, HKUST, and Associate Director of Hermes EOS, Hermes Investment Management, points out in her cover story, it was not long ago that investor interest in a company's governance arrangements was more likely to be considered 'interference' by directors and senior managers. These days, however, there is increasing realisation among investors, regulators and companies that engaged investors can be a valuable resource for companies in terms of keeping them on the right track. To quote the Securities and Futures Commission (SFC) here in Hong Kong: 'Effective engagement by investors generally leads to better-run companies'. The quote comes from the SFC's recent consultation conclusions on its draft *Principles of Responsible Ownership* – a new investor code which provides guidance on how investors should fulfil their ownership responsibilities in Hong Kong.

We support the SFC's attempt to put investors back into the corporate governance picture. During the consultation on the draft *Principles*, our Institute raised concerns over the proposal to apply the *Principles* on a

'comply-or-explain' basis for institutional investors. We were concerned that such a move may have led to a surge in requests for information from companies by institutional investors simply to ensure compliance with the requirements of the new code. In the final draft of the new code, however, the reference to comply-or-explain has been deleted and the *Principles* have been made entirely voluntary.

We believe this is the right approach. Our Institute will continue to promote a constructive dialogue between investors and investee companies. We have been running a number of CPD events on 'responsible ownership' and its close cousin 'shareholder engagement' in our ECPD programme. We are also working on a research paper on shareholder communications to be published later this year. This will be based on your responses to our shareholder communications survey which was sent out in late March. I would like to take this opportunity to urge all of you to let us have your views on this important issue.

Ivan Tam FCIS FCS

繁忙的三月

在讨论本期的主题之前，我想先报告公会近来的重要发展。公会上月的会务十分繁忙。首先，我们和深圳证券交易所（深交所）签订了合作备忘录。这与公会于2011年与上海证券交易所签订的合作备忘录近似，而且同样重要，有助加强我们与内地主要持份者的策略性伙伴关系。我们期待与深交所在多方面合作，包括上市公司董事会秘书的专业培训、公司治理研究与资源共享，以及共同促进内地董事会秘书行业的专业化发展。

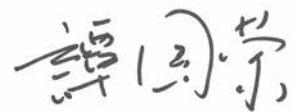
此外，特许秘书及行政人员公会(ICSA)理事会会议于3月10至11日在伦敦举行。会议讨论了未来数年ICSA的要务，包括：ICSA形象重塑、其全球性策略，以及正在进行的国际专业知识评审考试检讨。会议期间亦选出了新任荣誉执事，任期两年，由2016年7月1日起生效。我很高兴向大家宣布，公会前会长施熙德律师获ICSA理事会高票支持，再度获选为ICSA资深副会长。本期的公会消息载列新一届ICSA荣誉执事名单。

现在我们来探究本期的主题：公司治理范畴的新课题，就是投资者在维持上市公司良好管治方面可发挥和应发

挥的角色。正如香港科技大学教授兼Hermes 投资管理基金旗下Hermes EOS副董事周尚颐在封面故事中指出，不久以前，投资者关注公司管治的安排，会被董事和高层管理人员视为「干扰」。时至今日，投资者、监管机构和公司日渐意识到，关心公司事务的投资者可以是公司的珍贵资源，帮助公司维持正确路向。正如香港证券及期货事务监察委员会（证监会）表示：「投资者有效地参与公司事务一般能使公司的运作更为畅顺。」此引文来自证监会最近发表有关《责任的拥有权原则》拟稿的咨询总结，而该等新投资者守则，就投资者如何履行其于香港所投资之上市公司的拥有权责任提供指引。

对于证监会提出投资者应参与公司治理事宜，公会表示支持。在有关《责任的拥有权原则》拟稿的咨询期间，公会对于该等守则以「不遵守就解释」为基础并适用于机构投资者的建议表达关注。我们担心此举可能导致机构投资者纯粹为符合新规定而频频向公司索取资料。然而，在新守则的最终拟稿中，「不遵守就解释」的字眼被删除了，而守则亦改成完全属于自愿性质。

我们相信这是正确的处理方法。公会将继续推动投资者与公司之间的建设性对话。在强化持续专业发展计划之下，我们举办了一些关于「责任的拥有权」和与其息息相关的「股东参与」之持续专业发展活动。公会有关股东沟通的研究工作亦正进行得如火如荼，相关的调查问卷已于3月底向会员发出，研究文件将以会员对调查的回应为基础，在今年稍后出版。我谨藉此机会呼吁各位会员就此重要课题表达意见。



谭国荣先生 FCIS FCS



Responsible ownership

Christine Chow, Associate Director, Hermes EOS, Hermes Investment Management, takes a look at the benefits of a constructive dialogue between investors and companies.

Have you ever wondered what happens to the mandatory provident fund contributions that are deducted from your monthly salary? Of course we understand that they go into a provident fund scheme and its underlying investment funds, but what kind of companies are those funds invested in? Do you have a say in that? And if those companies are not well managed, would you want to know how that could be changed? Is that even possible?

These were the questions that intrigued me 18 years ago when I was working as a graduate trainee in a global fund management firm. To a certain extent they still do, except now I have a better understanding of what the answers to them could be.

Two decades ago, asset managers did not engage with their investee companies, nor did they feel that they had the responsibility to do so. They or their representatives, if they appointed any representatives at all, rarely took active voting decisions. Company directors' views tended to be: 'If you don't like my company, sell the stock.'

This posed a significant problem. In a multi-stage investment chain, there was a complete disconnect between asset owners (collectively known as investors), the asset managers they appointed and their investee companies. This disconnect arose from the lack of communication between investors and companies. Asset

managers lacked a deeper understanding of the corporate culture and strategic outlook that shapes a sustainable company. This contributed to a trading culture that got out of control, damaging the long-term development of capital markets and the economy.

Today, the relationships between investors and companies have moved forward significantly. I am fortunate to have had the opportunity to work closely with investors, asset managers and companies over the years, advising them on environmental, social and governance (ESG) issues. Intelligent voting and corporate engagement are becoming mainstream and, even in Asia where companies have traditionally resisted speaking with investors, we are seeing increased board-level interest in shareholder engagement.

It takes two to tango

April Chan, former Company Secretary of CLP Holdings, points out that the success of the dialogue between investors and companies depends greatly on the willingness of both parties to engage with each other. 'It takes two to tango,' she said at a recent HKICS shareholder engagement forum. 'To do the dance well, we need regular communications so that companies and shareholders understand each other's expectations.'

On the investor side, since 2010 when the UK launched its Stewardship Code, we

have seen the concepts of 'stewardship' and 'responsible ownership' gain ground around the world. We have seen an increased willingness by shareholders to exercise their ownership rights and this means more than simply voting in shareholder meetings. The UK Financial Reporting Council, which revised the UK's Stewardship Code in September 2012, points out that, in addition to voting, responsible ownership activities may include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, remuneration, corporate culture and corporate governance.

Moreover, responsible ownership is no longer the domain of the West. This is

Highlights

- engagement with responsible owners gives companies insights into future risks and outcomes
- intelligent voting and corporate engagement are becoming mainstream, and we are seeing increased board-level interest in shareholder engagement
- in practice, however, the level of engagement in the dialogue between investors and companies varies immensely

reflected in the growing number of Asian codes and guidance on best practice in this area. The Japanese *Principles for Responsible Institutional Investors* and the *Malaysian Code for Institutional Investors*, both launched in 2014, aim to support the long-term success of companies so that the ultimate capital providers also benefit. Hong Kong is poised to join this trend with the imminent introduction of the Securities and Futures Commission's (SFC) *Principles of Responsible Ownership*. Last month, the SFC published its revised principles, incorporating revisions based on submissions received during the consultation held from March to June 2015 (see this month's second cover story for a review of the revised principles).

Admittedly, in practice the level of engagement in the dialogue between investors and companies varies immensely. Among investors, the philosophy of responsible investment has only just begun to enter the mainstream. Companies that actively engage with investors often find that those making voting decisions do so under time

pressure. However, many investors do ask for more information when they need to make a decision. Investors should understand that companies will only put an item on the meeting agenda when it has material impact on the company and that it is the responsibility of shareholders to vote dutifully and carefully.

On the company side, there remains a degree of suspicion of investor requests for dialogue. This is sometimes seen as 'interference'. Some feel that they are under constant surveillance by those who do not understand their business, while others feel unprepared when investors ask to meet board directors, especially independent non-executive directors.

Established global companies can ask internal staff to prepare briefing packs for independent directors and provide these directors with training in how to interact with investors, however smaller listed companies have fewer resources and less expertise to do the same. In the extreme, companies may feel this dialogue is completely unnecessary. Professional

managers and industry specialists are employed to manage the business on behalf of shareholders – why don't they trust us?

The truth of the matter is that we have long left behind an era when business was conducted with a good, solid handshake – with simplicity. We now operate in an environment where transparency, accountability and fairness are required to support the social licence to operate. This means developing a new status quo towards supporting a comprehensive governance system with robust checks and balances, clear reporting standards and key performance indicators. When checks and balances are deployed appropriately and thoughtfully, without over-burdening a business, they enhance a company's ability to excel and expand.

The view from Hong Kong

As mentioned above, Hong Kong is poised to introduce its own code setting out the basic principles for responsible ownership (the SFC's *Principles of Responsible Ownership*), but what do executives and board members of companies listed in Hong Kong expect from responsible shareowners? I recently visited a number of company executives in Hong Kong to discuss responsible ownership and shareholder engagement and some of the key issues to emerge from these discussions are highlighted below.

Is there anybody out there?

Some executives I spoke to were excited about the shareholder engagement trend because, as one respondent put it, 'We have the support of our investors to explore better ways to add value to the business'. Other executives were frustrated by a lack of engagement from the investor side. One respondent said that his biggest

The ESG factor

Environmental, social and governance (ESG) risk management is fast becoming a crucial part of investment analyses and investment decisions made purely on the basis of financial data are increasingly regarded as incomplete. At Hermes, our investment teams take into account a proprietary ESG rating of companies, based on external data and the engagement findings of Hermes EOS, in their investment decisions. We typically believe that it is better to engage than divest, as engagement provides the opportunity to work constructively with a company to enhance its long-term returns to shareholders through a better strategic focus and management of ESG risks. ESG analysis helps our teams value companies more accurately, by identifying risks that may not appear in traditional financial analysis, as well as opportunities. Through our engagement, we may identify clear improvements in a company's corporate governance that are not broadly recognised by the market and initiate a position at an attractive valuation.



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and companies have
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challenge is getting investors to read the circulated information and set aside sufficient time to make voting decisions. 'Many investors will vote against management without even engaging with us ahead of time to discuss the matter,' he said.

This frustration is felt on both sides of the dialogue. On numerous occasions, I have contacted an investor relations manager for further information ahead of an annual general meeting and received no response. It is surprising, but some listed companies do not even display contact information for the investor relations department on their websites. Even if they do, there may be no reply. I acknowledge that some investors may not carry out intelligent voting and tend to follow third-party advice at all times,

but a company could plan to engage with shareholders ahead of time to ensure that sufficient communication takes place prior to shareholder meetings.

Minority rights

The executives I spoke to were working in diverse sectors of the economy and for companies with different shareholding structures ranging from state-, founder- or family-controlled companies, to those with an institutional shareholding structure. These shareholding structures often influence the approach taken to shareholder engagement. One respondent made the point that, for state-controlled companies 'shareholder engagement' has historically been seen as a question of reporting to their largest shareholder – the state – on their business activities. 'As engagement

becomes mainstream,' he said, 'we are familiarising ourselves with the Western style of communication and seeking ways to protect minority shareholder rights in a state-controlled setting. There are practical challenges, but I think open and fair communication with all shareholders is the first step. Under the current reforms, shareholders and the board will become more international over time. As a result, our leadership's commitment to protecting minority shareholder rights and their ability to do so, becomes vitally important to the survival of our business.'

Independent directors

Independent directors can often play an important role in shareholder engagement. One respondent pointed out that in China the appointment of senior executives in state-owned enterprises is

still likely to be determined by the state. One way to improve the dynamics and effectiveness of the board is therefore to create lead independent director roles. The tasks of a lead independent director is to communicate with minority shareholders, consolidate the views of other board directors, and manage the various committees and government investigations – if there are any – as a non-executive but informed party. More detailed succession plans for, and better disclosure of, succession and director candidates meanwhile will improve transparency. 'Culturally, we must learn to respect minority shareholders as part of the audit and monitoring process because we are responsible for other people's capital,' he said.

Another respondent pointed out that appointing a lead independent director to work with investors is not common practice in Hong Kong at the moment but that this practice would be beneficial – particularly for companies with an executive chair. 'The appointment of an independent non-executive lead director would provide a way to obtain the views of investors. After all, this is why we go on roadshows – to speak to investors and to understand their views. It would be great to create a mechanism that enables us to do this more easily and effectively,' he said.

The constructive challenge

Where investors are prepared to engage with companies, they can provide a constructive challenge to the status quo. Having one leg in the investment industry and another in academia allows me to come up with the following comparison: companies should expect from responsible investors committed to stewardship what we should expect

from a good teacher. A good teacher appreciates the efforts made by the best students, but to avoid complacency and a self-congratulating attitude, he or she continues to challenge them in a constructive manner and pushes them to perform and excel beyond their imagination. A good teacher also listens and respects individuality.

Moreover, a good teacher cares for the students who are not top performers and tries to find ways that will help them realise their potential. Sometimes, underperformance can be caused by the complicated family situation of the student, which can be compared to a company operating in a highly regulated industry and a high-risk and complex environment. Underperformance can also be caused by having resources in the wrong places. For example, a student can focus too much on getting the work done without thinking through the lessons he or she should learn. This is

akin to a company trying to fill in various industry questionnaires for rating and awards purposes. The lessons learned from completing questionnaires, such as discovering the areas in which the company could improve and how to prioritise resources is a far better way to support improvement and business excellence.

I would like to highlight a couple of examples of what can happen when the constructive challenge provided by engaged investors is ignored.

The BP case

Between 2000 and 2008, as responsible ownership gained momentum in the UK, oil major BP steadily increased engagement activities with its shareholders. These investors voiced their concerns over the company's environmental performance and health and safety standards. Unfortunately, the company did not respond sufficiently to



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”



what proved to be prescient concerns of investors. The subsequent 2010 Deepwater Horizon oil spill in the Gulf of Mexico, led to BP incurring fines of US\$20bn. Following this crisis, BP significantly increased its dialogue with investors and launched a much deeper investigation into health and safety practices at the company. While some may say that this is an isolated case, it can also be argued that this case demonstrates that proper engagement with responsible owners gives companies insights into future risks and outcomes.

The Volkswagen case

In September 2015, the US Environmental Protection Agency discovered that Volkswagen had installed defeat devices that caused the nitrogen oxide output of its vehicles to meet US standards during regulatory testing, but breached the standards in real life driving. Hermes EOS has been engaging with Volkswagen since 2006. On multiple occasions, we raised

concerns about the corporate governance standards of the company – including the composition and effectiveness of its board and the lack of efficient and independent oversight.

Our Global Equities investment team uses an ESG-risk rating system that measures a company's holistic performance and had observed the decline of Volkswagen's governance rating. This example also serves a warning that investors must monitor and if appropriate, engage with single or multiple party-controlled companies – in this case, the Porsche/Piëch families and the State of Lower Saxony – to verify that the board is taking into account the interests of all shareholders for the long-term success of the company. Family, personal and corporate interests must align for this type of business leadership to work. Investors should also maintain a dialogue with other controlling shareholders to ensure that ongoing strategic and

governance concerns are discussed and addressed in a timely manner.

Christine Chow

*Associate Director, Hermes EOS,
Hermes Investment Management*

Christine Chow is also Adjunct Associate Professor, Department of Finance, Hong Kong University of Science and Technology, and a member of the Investment Committee of the London School of Economics.

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The final draft of the SFC's proposed 'Principles of Responsible Ownership' is available on its website: www.sfc.hk.

The SFC's *Principles of Responsible Ownership*: a review

CSj reviews the finalised draft of Hong Kong's new investor code which seeks to provide guidance on how investors should fulfil their ownership responsibilities in relation to investments in Hong Kong listed companies.



There is currently no guidance in Hong Kong on how investors should engage with investee companies, vote or even to disclose how they exercise their voting rights. The Securities and Futures Commission (SFC) regards this as a gap in Hong Kong's corporate governance regime which it intends to remedy. Last month the SFC announced that it will implement its proposed voluntary code on responsible ownership, though no date has yet been fixed for its implementation. The SFC launched its draft code – entitled *Principles of Responsible Ownership* – for a three-month public consultation in March 2015. Last month the SFC published the consultation conclusions and the finalised draft of the code.

'The *Principles of Responsible Ownership* describe what we perceive as best

practices for share ownership and we encourage investors to adopt them,' said Ashley Alder, the SFC's Chief Executive Officer. 'This can encourage an investment culture where engagement with investee companies is seen as paramount and fundamental and which in turn strengthens corporate governance.'

Key features of the code

During the consultation on its draft principles last year, the SFC received written submissions from 56 respondents, including one from the HKICS. The SFC has modified the principles in view of the responses and comments received and the revised principles are included in Appendix A of the consultation conclusions (available in the 'Consultations and conclusions' section of the SFC website: www.sfc.hk).

Highlights

- Hong Kong's new investor code is entirely voluntary and, at least in the initial stage of its implementation, will not be subject to 'comply or explain' requirements
- the code is primarily intended to apply to investors who invest money, or hold shares, on behalf of clients and other stakeholders and are accountable to such clients and other stakeholders
- the code does not give investors the right to information beyond that available in compliance with legislation or regulation



There has been no change to the seven basic principles included in the code. These are that investors should:

1. establish and report to their stakeholders their policies for discharging their ownership responsibilities
2. monitor and engage with their investee companies
3. consider and establish clear policies on when they will escalate their engagement activities
4. have clear policies on voting guidance
5. be willing to act collectively with other investors where appropriate
6. report to their stakeholders on how they have discharged their ownership responsibilities, and
7. have policies on managing conflicts of interests when investing on behalf of clients.

The changes made as a result of the consultation relate to the scope and application of these principles.

To whom does the code apply?

The draft principles launched for consultation last year were unusual in that they were intended to target all investors rather than just institutional investors. Most overseas investor codes exclusively apply to institutional investors. The SFC argued that the benefits of responsible ownership apply whether or not the person exercising these rights is an institutional investor or a beneficial owner. 'Accordingly we consider that any guidance should be aimed at all investors and we have drafted the principles on that basis,' the SFC's March 2015 consultation states.

In the finalised draft of the principles, however, references to individual and retail investors have been deleted. The principles do not define the scope or meaning of the term 'investors', as the SFC intends to leave it to investors to determine whether the principles are applicable to them, but the SFC has narrowed the focus of the code to investors who invest money, or hold shares, on behalf of clients and other stakeholders and are accountable to such clients and other stakeholders.

The SFC still hopes that individual and retail investors will use the principles as valuable guidance on share ownership engagement. 'Although individual and retail investors are in a different position (in terms of accountability) from other investors like institutional investors, they still play an important role in terms of corporate governance in listed companies. They should recognise the ownership rights that are available to them, including the right to exercise their votes at annual general meetings,' the SFC's consultation conclusions state.

The conclusions add that individual and retail investors can also exercise their market power by choosing asset managers who have adopted the principles.

Is the code voluntary?

The original text of the principles stated that – 'The principles are non-binding and are voluntary in that they operate on a "comply-or-explain" basis'. This was somewhat confusing. Within the context of Hong Kong's Corporate Governance Code there is a very clear distinction between the 'Recommended Best Practices' which are entirely voluntary, and the 'Code Provisions' which are subject to "comply-or-explain". The "comply-or-explain" expectation therefore sits mid-way between voluntary 'Recommended Best Practices' and the mandatory listing rules.

In the finalised text, this confusion has been cleared up with the deletion of the reference to comply-or-explain. The SFC makes it clear that the principles are voluntary although it seeks to encourage investors to adopt the principles. In particular:

- investors who hold or receive funds from the public that are invested

Inside information

Some respondents to the SFC's March 2015 consultation on the *Principles of Responsible Ownership* expressed concerns that listed companies engaging with shareholders may result in accidental dissemination of inside information, especially where companies are pressed by aggressive fund managers or analysts. The SFC emphasises that the principles do not give investors the right to information beyond that available in compliance with legislation or regulation. An amendment has been made to the notes to Principle 2 to this end. The amended notes make it clear that investors should not seek inside information under the guise of engagement, and investee companies answering requests for meetings or information have a duty to ensure that confidential inside information is not leaked and to ensure that investors are treated equally.

in shares of Hong Kong listed companies are encouraged to adopt the principles and disclose to their stakeholders in accordance with the principles, and

- investors who do not think that the principles are relevant or suitable for them are encouraged to provide their stakeholders with disclosure which clearly explains why the principles have not been adopted at the outset and, if applicable, explain what alternative measures they have in place.

If investors choose to adopt the principles, they do so by first disclosing to their stakeholders that they have done so,

and then proceed to apply the principles in their entirety or explain any deviations. At this stage, the SFC does not intend to keep or publish a list of investors who have chosen to adopt the principles.

The issue of whether certain types of investors, such as statutory asset owners and public institutions managing funds collected from the general public, should be obliged to apply the principles on a comply-or-explain basis has not been resolved. 'The SFC will monitor the Principles' reception and development to determine whether any amendments or the introduction of obligations or requirements may be necessary at a future stage,' the SFC states. In particular, the SFC will review the issues set out below:

- Should there be requirements for specified institutions to disclose whether they have adopted the principles and, if not, explain why?
- Should the disclosure of a fund manager's engagement policy be mandated, whether by adoption of the principles or an equivalent overseas stewardship code and, if so, how it should be disclosed?
- If intermediaries hold investments on behalf of individual investors, should intermediaries explain, if appropriate, in writing whether ownership responsibilities rest with the intermediaries or individuals and, if the latter, whether the



“
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 ”

Ashley Alder, Chief Executive Officer,
 Securities and Futures Commission

“
 the SFC sees the new investor code as complementary to the existing legal framework for promoting corporate governance, which has historically been focused on corporate and directors’ obligations
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individuals should be advised on how they can exercise their ownership responsibilities?

What difference will it make?

What will be the impact of Hong Kong's new investor code? In the short term, it is unlikely to have much impact on the level of investor engagement with companies in Hong Kong. While there has been a rising trend for institutional investors to engage with investee companies in Hong Kong, the average voting rate at AGMs in Hong Kong and Mainland China has been declining for five consecutive years (see Lucy Newcombe's article '2015 AGM season review' in the November 2015 edition of CSj).

The publication of this best practice code should, however, promote greater understanding among investors of their share ownership responsibilities. Its emphasis on the need for investors to report to stakeholders on their policies for discharging their ownership responsibilities (this is the first principle in

the new code, coming before the principle on the need for investors to monitor and engage with investee companies), should also promote greater transparency between investors and their stakeholders.

The SFC hopes that the impact of the code will go beyond that, however. It hopes that the code will put investors back into the corporate governance picture. Hong Kong's corporate governance regime is based on the notion that investors provide 'market discipline' by making informed choices about where to invest. This mechanism only works, of course, if investors are well informed and sufficiently 'active' to take action where companies fall below expected standards. The consultation conclusions released last month point out that 'strong corporate governance requires listed companies and their directors to be proactive, as well as shareholders to be both reactive and proactive. Without shareholders' involvement, the efforts of listed companies and their directors cannot be measured or appreciated'.

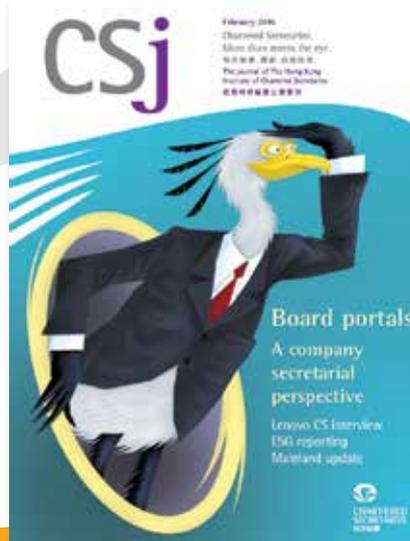
The SFC sees the new investor code as complementary to the existing legal framework for promoting corporate governance, which has historically been focused on corporate and directors' obligations. 'Investors who take the initiative to review their investee companies' disclosures and monitor their investee companies (including the companies' performance, decisions and corporate actions) tend to have a better understanding of their investments. Well-informed investors are able to react effectively to their investee companies' disclosures and, in exercising their rights, are thereby able to engage effectively with investee companies. Effective engagement by investors generally leads to better-run companies,' the SFC's consultation conclusions state. 

The SFC's 'Consultation Conclusions on Responsible Ownership' are available on the 'Consultations and conclusions' section of the SFC website: www.sfc.hk.

A bird's eye view

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

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- continuing professional development
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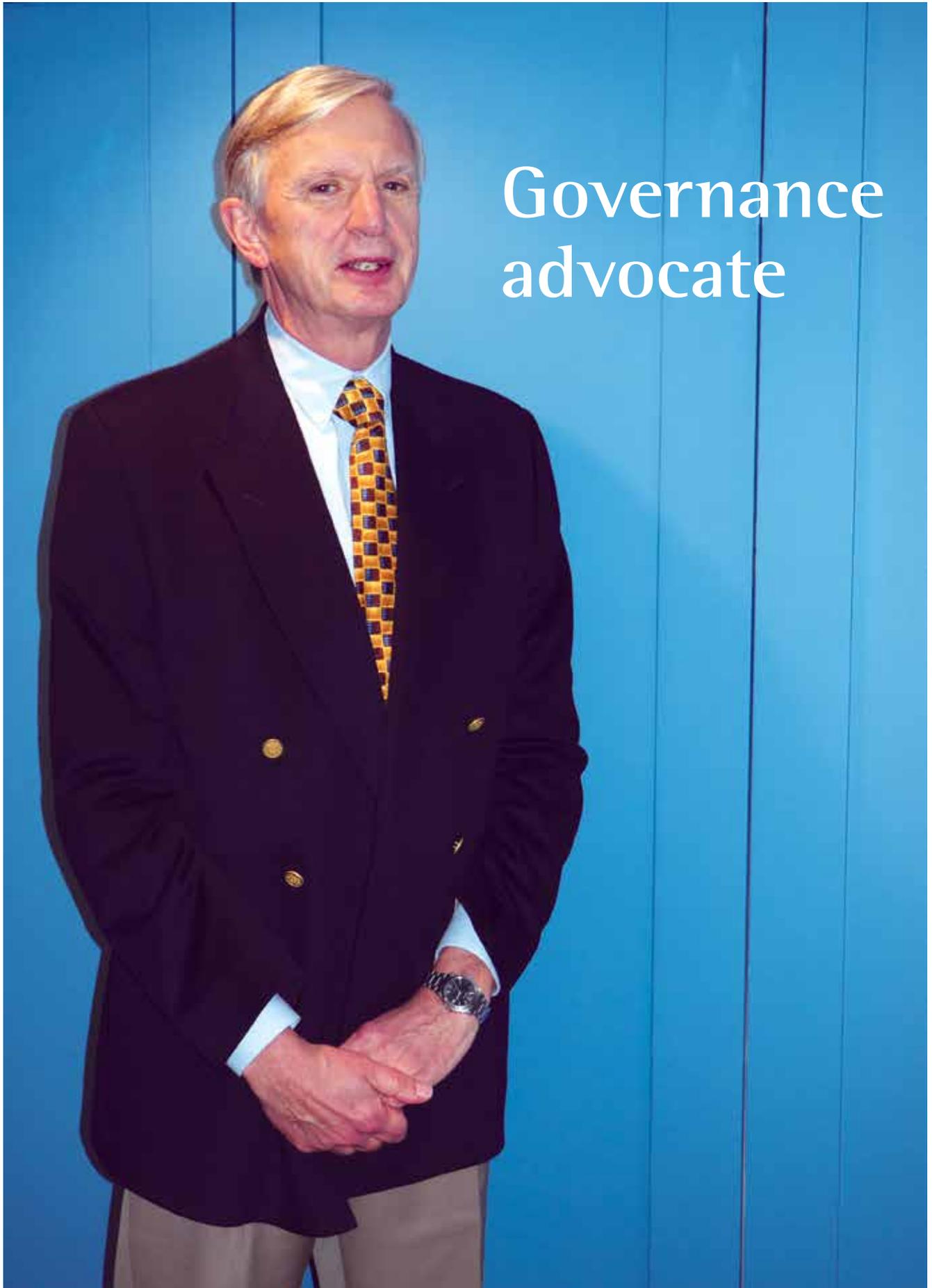
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Governance advocate

CSj interviews the winner of the 2015 HKICS Prize – Anthony Rogers GSB QC JP FCIS FCS, former Vice-President of the Court of Appeal of Hong Kong and Chairman of the Standing Committee on Company Law Reform.

Congratulations on receiving the HKICS prize – can we start by discussing your background?

'I was born in the UK. My father was English and my mother Romanian. I studied law and went on to do the bar exams at Gray's Inn, London. I was a bit of a young man in a hurry and decided to do two years' work in one year. That was possible because they held "resit" exams in September every year for those who didn't pass the bar exams in May. I sat for the May exams and then did my next years' exams in September.

This meant that I had an extra year or more. Instead of travelling around the world, which in those days had not yet become fashionable, I worked for a patent agent for a year because I wanted to do patent work. After that I was lucky to have an excellent common law pupillage [a one-year period of practical training for trainee barristers], then I did a year of patent pupillage and went into patent chambers in 1969.

I had met my wife while I was still studying at Gray's Inn. She's from Hong Kong but she was working as a paediatric nurse at Great Ormond Street Children's Hospital at that time. We got married and lived in England for six years, then I decided to come to Hong Kong. My wife had a large family in Hong Kong (including eight aunts and four sisters) and all their families. Her uncle was a barrister who had always been encouraging me to come out to Hong Kong.

We arrived in 1976 and after a year or so of a mixed practice, I did mostly IP work, though I also did some company work. Then I took silk [became a Queen's Counsel] in 1984. I was appointed a member of the Basic Law Consultative Committee as one of the bar representatives when it was set up in 1985, and I served on that Committee until it finished its work in 1991. I became Chairman of the Bar Association in 1991 and in 1993 I decided to become a judge. With the handover looming, I wanted to keep our system of law going and I thought that was the best way I could do it.

The first thing that happened was that I was asked to be the companies judge. Soon thereafter, in 1994, I became the

Chairman of the Standing Committee on Company Law Reform. Gordon Jones had become the Registrar of Companies in 1993 and he was keen to have a complete review of the Companies Ordinance. It was through my work with the Standing Committee and the Companies Ordinance review that I became involved with the work of the Hong Kong Institute of Chartered Secretaries. There has always been at least one Chartered Secretary on the Standing Committee.'

Is that by design?

'It would have been very strange not to have had Chartered Secretaries on the Committee. The idea is to have a broad range of people from different sectors and different professions on the Standing Committee – if we hadn't had their expertise to draw on we would have been missing something.'

Do you think that having the right corporate governance infrastructure in place – such as having effective regulatory and legislative bodies; an independent and commercially literate judiciary; a pool of qualified professional practitioners; and a free and active media – is a key element in keeping companies honest?

'Yes. All those elements are very important. I think we need to bear in mind that good corporate governance is not just about rules and regulations – it is about having a well-run company. Since I've never had to run a company I'm only speaking as an outsider, but often all the recommendations for raising governance standards tend to end up with new regulations. The emphasis seems to be on how to force people to do things but that's not my idea of what good corporate governance is about.

But the elements you mention are essential for Hong Kong. If Hong Kong didn't have a sound judiciary then we'd be totally lost.

Highlights

- good corporate governance is not just about rules and regulations – it is about having a well-run company
- the rule of law and a free press are essential elements of Hong Kong's infrastructure
- the administrative and advisory functions of the company secretary are linked – the company secretary is the one who housekeeps the company



“
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”

People often ask me how I see the rule of law in Hong Kong and, of course, you can only see so far into the future, but as far as I can see Hong Kong's rule of law is sound. I think the judiciary is well equipped and independent. Of course, we are all human and our system of law is subject to human error, but even where mistakes are made I think they are made for the right reasons.

It is a bit sad, though, that the judiciary has so many vacancies at the moment. The *South China Morning Post* recently reported that there are nine vacancies in the High Court which have had to be filled with temporary appointments. Many of my retired colleagues sit as a judge for two or three months a year and that helps to fill the gap.

You also mentioned the role of the press and I think the free press is also very important. You have to have an insightful press and a challenging press. You need to have journalists who feel they can publish something without looking over their shoulders.'

Do you think ethics also plays a key, and perhaps underestimated, role in corporate governance?

'Undoubtedly. I think all rules should be based on the need for common honesty. As far as I'm concerned, good ethics starts in the cradle – it starts with the way kids are brought up and that follows through to how they live both their personal and their business lives.

Take one example – corporate accounts. There are many different ways of presenting them, but at the end of the day the question

must always be asked – do the reports give a true and fair view of the company's financial health? Companies like Enron can find ways to skirt around the rules, but how would the directors answer the question – "does this report give a true and fair view of the state of the company?"

I was a panellist at the HKICS corporate governance conference in 2014 and I put forward a question to the conference via the electronic voting poll which was designed to bring out the point that corporate governance rules were, or should be, based on common honesty. The vast majority of the conference attendees agreed with this suggestion.

So, as I said, honesty is the common denominator of good corporate governance and whatever decision you've taken you always have to sit back and ask is this right? Even as a judge, whatever the complexities of the case and whatever you think might be the right statutory interpretation, at the end of the day you have to ask yourself whether the decision you've come to is right. If you are not sure about that, you should go back check where you may have gone wrong.'

Do you support the move towards principles-based corporate governance regulation in Hong Kong?

'Absolutely. The crooks are always going to get around the rules and the good guys are going to spend billions on ensuring they jump through all the hoops. Money laundering is a good example of that – banks these days are inundated with rules and regulations about money laundering. Another example would be

the proposal for quarterly reporting in Hong Kong. This is a good idea to a certain extent, but not all businesses in Hong Kong will be given to reporting on a quarterly basis. The business cycle of a toy manufacturer, for example, is annual. It starts in January with the toy fair and ends in December with Christmas when most toys are sold. Much more important surely would be regulations requiring the announcement of material changes rather than a quarterly reporting cycle.'

You are the company secretary of a number of sports associations – what role do you think company secretaries should be playing in corporate governance?

'I think the company secretary is very important. Things are getting much more complex than they ever were and there has to be someone who housekeeps the company.'

The role of the company secretary has been evolving towards a trusted advisory role to the board – do you think the role will move away from administrative functions such as minute drafting?

'But those two aspects of the role are part and parcel of the same thing. That's what I meant by "housekeeping" – company secretaries are key to ensuring that the company is well run and to do that they have to be knowledgeable about so many different aspects of corporate governance. They need to keep up to date in their knowledge of relevant legislation, such as the new Competition Ordinance and the new Companies Ordinance – that one is a minefield, I have to use word searches to find my way around it!

Drafting minutes is, of course, where company secretaries first started. I recently did a seminar on drafting minutes for the HKICS and the more I looked into what lay behind drafting minutes, the more I realised how crucial good minute drafting is, and how that, in itself, leads directly into properly run meetings and good corporate governance.

As the company secretary of several sports associations, I am not involved in the commercial side of things but, like any company secretary, I have to advise on what the law says. The company secretary is an important part of the conscience of the company. The directors will come up with many ideas, but the company secretary is the one who has to advise them where those ideas may take the company down the wrong route.'

We digressed from your career path – can we bring that up to date and discuss your current work? I think we had got

as far as your work with the Standing Committee and the review of the Companies Ordinance.

'I retired from the Standing Committee in 2005 and from the Court of Appeal in 2011. As regards the Standing Committee, when we had finished the consultation process and mapped out what we were going to do, we were ready to enter the drafting stage. I knew I would be retiring before that process would be finished so I thought that was the time to go and let someone else take over.

Now I'm involved in mediation. I always thought that Hong Kong people knew how to settle cases if they wanted to. All the time I was in practice at the bar we settled cases left, right and centre, but there is a different mindset now and I have found that mediation is a useful process and does work. Some people would only settle cases at the court door and mediation works in a similar way – it gets people into the right frame of mind where they have to think of a solution.

I also do some arbitration. I have been asked to give evidence on Hong Kong company law in a couple of cases, one of them is still going on. I'm the Chairman of the Disciplinary Committee of the Hong Kong Anti-Doping Committee. As I mentioned, I also look after a few sports associations – in particular the Hong Kong China Rowing Association. Rowing has been a lifelong interest and an important recreation for me. I still row!

Anthony Rogers was interviewed by Kieran Colvert, Editor, CSj.

Career notes

Anthony Rogers was called to the English Bar in 1969 and appointed Queen's Counsel in 1984. He joined Hong Kong's judiciary in 1993 and became Vice-President of the Court of Appeal in 2000. Before his retirement in 2011, Anthony held a number of high-profile appointments in Hong Kong, including as Chairman of the Standing Committee on Company Law and as a member of the Basic Law Consultative Committee. He is the Company Secretary of the Hong Kong China Rowing Association and a number of other sports associations, and the Chairman of the Disciplinary Committee of the Hong Kong Anti-Doping Committee. He is also a CEDR Accredited Mediator and Member of Chartered Institute of Arbitrators.



Keeping an open mind

Most people associate the Chartered Secretarial qualification with the job of an in-house company secretary of a listed company, but the qualification can lead to many different career paths. In this first interview in our new 'Career Paths' series, James Wong, Chief Executive Officer, Computershare Asia, shares insights into the challenges and rewards of his career in Hong Kong.

Thanks very much for giving us this interview – can we start with some background about yourself?

'I graduated with a higher diploma in accountancy in 1977 from the Hong Kong Polytechnic. I then went on to get my company secretarial and my taxation qualifications. My first job after graduation was with the Hong Kong Inland Revenue Department (IRD). After three and a half years with the IRD, I joined HSBC and stayed with the bank for 25 years in a variety of roles. I started as a credit analyst and then joined the bank's newly set up Syndications and Project Finance division.

In 1986 I moved to the banks' Securities Division. As you know we had the "Black Monday" stock market crash in 1987 which led to reforms of Hong Kong's securities and futures market infrastructure. That was when I got involved in working on market infrastructure reform in Hong Kong.

In 1991 I moved to Canada and worked in the commercial banking arm of HSBC in Canada. I moved back to Hong Kong in 1994 and went back to the bank's custodial business. I left HSBC in 2005 and joined Computershare to run the group's Asian businesses.'

When you acquired your professional qualifications did you have a career goal in mind?

'Not really. I came from a science school and would have gone into engineering but the teachers advised us to explore other possible careers. That's why I started looking at the professions and chose to study accountancy. But it is really by chance that I ended up in securities and finance – in fact it is quite ironic that, despite having accountancy and company secretarial qualifications, I haven't done a single day's work as an accountant or a company secretary, though I have been using those skills every day of my life.'

Has your training been relevant to your work?

'Yes, my professional training has been useful throughout my career. It's like being given a screwdriver, a hammer and a spanner – it is good to have various tools in your tool box because you never know when you will need them. In fact – taking office administration as an extreme example – when I first started work, company secretarial examinations included office administration but no one had the faintest idea where we would end up having to use it. Now, when I am doing automation and project engineering here, I need to use that knowledge. So a good professional training will include many different basic

elements. I think you need to keep your mind open and don't get fixated on a particular job type because you never know where your career will take you. It is best to build up your skills and work experience and get deeper insights in different areas – eventually you can decide where you want to specialise.'

Was there anything that you wish had been in your training that you found you needed later?

'Half of my career has been in banking and half in the securities industry – no school in Hong Kong provides in-depth training on the securities and the financial services industries, not even the universities. Hong Kong is a major international financial centre and I think we need to provide more training in these areas.'

Do you think that one of the main attractions of the company secretarial training is that it can lead in many different directions?

'Yes. Some people, when they start their company secretarial training assume that they will end up as a company secretary – they assume that that is the only career path possible, but that is not the case. Similarly, people might assume that if you choose to get involved in the registry business, you will only be involved in maintaining shareholder records. When I got involved in the registry business that quickly led me into database management, and I started learning about the underlying processes. It is important to keep an open mind. A practicing company secretary's role does not have to be limited to the secretarial and governance functions. As a member of senior management, the job can often be involved in all facets of running the company so the information and knowledge you acquire from this

Highlights

- the Chartered Secretarial qualification does not only lead to a career as an in-house company secretary of a listed company – it will be useful in many different jobs depending on where your career takes you
- it is best to build up your work experience and get skills in different areas – eventually you can decide where you want to specialise
- Hong Kong needs to expand the opportunities for in-depth training in the securities and the financial services industries

qualification will be useful in many different jobs depending on where your career takes you.'

What temperament do you think is required to make a success of this career path?

'You need to be a good listener. You need to be always in listening mode, absorbing ideas along the way. You also need to take a "helicopter" view of things – looking not just at a single factor involved in your work, but at all the potential different factors and the relationships between them.'

Would you recommend your career path to new recruits to the Chartered Secretarial profession?

'Yes, I would highly recommend this career path – I have been fortunate in my career. Most of the things that I have been involved in were new to the market. While with HSBC, I was the first credit analyst for Hong Kong business at that point. When I moved into the project finance business, that was also quite new and I was able to learn about the latest financing techniques and the required legal documentation. When I then moved into securities I learnt about trading and settlement processes and I was able to try automating those, and building new services along the way. The job also gave me opportunities to deal with regulators and get involved in market infrastructure development. My current regional responsibility has also meant more variety in my work. I look after Asia for Computershare which means that Hong Kong is just one element. Most companies coming to Hong Kong for listing are from China or from other jurisdictions, so what I have been able to learn and have worked on in the past are also very relevant here though the nature of the businesses are fundamentally different. I also look after India where we have a big registry and funds services business. I joke with my boss that

Career notes

James Wong is CEO of Computershare's business lines across North Asia and India, providing registry, employee share plans, shareholder identification and proxy solicitation and governance services to more than 800 clients. James is currently a member of the Hang Seng Index Advisory Committee, a member of the Disciplinary Subcommittee of the Treasury Markets Association and Vice-Chairman of the Hong Kong Federation of Share Registrars. He also sits on the Hong Kong Scripless Working Group, chaired by the Securities and Futures Commission.

since I am responsible for China and India I am looking after half of the world's population.'

Your work on market infrastructure reform in Hong Kong has also had a big impact – can we discuss that in more detail?

'I find market infrastructure reform particularly interesting. It involves thinking about the critical issues for the market and, if you work at the infrastructure level, you impact every stakeholder in the industry rather than a particular counterparty in a transaction.

As I mentioned, after the "Black Monday" stock market crash in 1987, I got involved with the reforms to the market launched after the Ian Hay Davison report. At that point I was a member of the working group representing HSBC. We were working with the brokerages and the Hong Kong Stock Exchange to design and build the processes for centralised clearing and depository in the Hong Kong market.

That experience gave me exposure to market infrastructures in other parts of the world as we needed to look at best practices in other markets and the challenges of bringing those best practices into the Hong Kong market. I think working in that area was quite a rare opportunity and I gained many insights during my bank days. In those days, HSBC was playing a quasi central bank function in Hong Kong. After my return from Canada I started working on developments in China, and got a chance to work with the Chinese regulators on the development of the Qualified Foreign Institutional Investors scheme and get a deeper insight into the working of the China securities market.'

What is your view of the plans for scripless shares in Hong Kong and how will that change the centralised depository arrangements?

'What is happening is that, at the depository level, there will be changes to who gets to be registered as legal shareholder on the share register if one holds securities deposited into the HKSCC [Hong Kong Securities Clearing Company Ltd] nominee. Currently, all the shares in the central clearing system are actually registered in a single name – the HKSCC nominee. Under the scripless market, the HKSCC nominee will basically disappear and be replaced by the names of intermediaries or their underlying clients, if they are willing.'

What will this mean for Computershare?

'It will mean that we will be running a more meaningful register for companies. Right now, even major shareholders are rarely directly

included on the register. For ease of trading, they mostly hold their shares through custodians who are participants in the central clearing system, meaning that those shares will then be held under the HKSCC name. The new scripless model will open a window for the market to become more transparent in terms of ownership and for investors to have more sovereignty in their legal title.'

Will Computershare, as the share registrar, have a closer relationship with the regulators?

'Computershare will be directly regulated. Right now we are indirectly regulated through the Federation of Share Registrars, but under the scripless model we will be maintaining a more important set of ownership records and regulators recognise that the responsibilities will be higher so they want to be able to directly supervise and regulate our activities. The supervising relationship aside, Computershare has always worked very closely with different regulators on various market initiatives in all the markets in which we operate.'

What will these reforms mean for companies?

'The way companies run their register of shareholders will be largely the same. There will potentially be a bigger set of shareholders on the record, but they will have increased the level of transparency regarding the identities of those holding their shares. So from an investor relationship perspective, they will be able to engage more if they know more about their shareholders.'

That sounds like a good development from the perspective of shareholder engagement – can we discuss how attitudes to shareholder engagement have evolved over your career?

'Shareholder engagement is a very broad subject and different stakeholders interpret it in different ways. Issuers will be primarily interested in reaching the people who make investment decisions and vote on company resolutions. Regulators want to ensure that all shareholders are treated equally, particularly in terms of the information they receive and protection of their rights; but they also expect shareholders to get more involved. From the intermediaries' perspective, I think the first thing that comes to their mind is the level of service versus cost to them.'

When it comes to shareholder engagement, your starting point will always be information. If you want your shareholders to be more involved, you need to give them all the information they need. There is a cost to this, however, and as more shareholders come onto the register through the scripless regime, there will

“
A good professional training will include many different basic elements. I think you need to keep your mind open and don't get fixated on a particular job type because you never know where your career will take you.

”

be an increase in shareholder communication costs – the more people you have to communicate with, the more it adds up.

Companies can reduce this cost by using more electronic communication. Most of the larger companies in Hong Kong have exercised this option and offer electronic shareholder communication. Our statistics here indicates that only about 10% to 15% of the registered shareholder base will opt for physical communication, but that can still represent a significant cost. For example, we mail out about a million packages, including bulky annual reports, in peak season. With advances in technology particularly in the mobile environment, we should be able to do more electronically.'

One final question – what do you think will be the big trends to look out for in the years ahead?

'Technology is playing a more important part in our daily life, and anyone working in the securities and financial services industries will see a big impact from the new technologies becoming available. I think we will see some fast-paced developments in these industries as a result of new technology and we need to be ready for that. My worry is that Hong Kong might be moving too slow on this.'

James Wong was interviewed by Kieran Colvert, CSj Editor.

This new series of interviews in CSj is designed to give readers insights into the challenges and rewards of the many different career paths open to Chartered Secretaries. Look out for further interviews in our Career Paths series in future editions of CSj.



Are you sure you want to join a board?

So you've been asked to join a board? You'll surely do your own due diligence, but beware of a potentially dangerous threat: your own brain.

I often ask senior executives and experienced directors if they want to join the board of a hypothetical company. I disguise its name but the company is Parmalat, a multinational Italian dairy company that collapsed in 2003 with a EUR14 billion hole in its finances. With all the information in front of them, typically about a third accept. It is not lack of data, of expertise or of ethics. It is deeper than that. Our brain wants to believe. So, before you accept the offer of a position on a board, consider the following pitfalls.

F is for fool

Imagine you are a Westerner living in Hong Kong and someone asks you to join the board of a Chinese company.

There is only one catch, meetings will be held exclusively in Mandarin and you don't speak the language. Absurd? Maybe not from the point of view of the Chairman. Ask why you received an offer. If the answer sounds hollow, it is probably time to walk away.

O is for over-confidence

One of the reasons for being asked to join a board is your past success. But people grow over-confident and quickly suffer from an illusion of control. In one experiment, traders were asked to gauge how much control they had over a white spot moving on a computer screen when they move a mouse. The most common answer was 50% with many traders saying 100%. The real answer was 0%. Interestingly, individuals who suffered less from this illusion in the experiment did better in real life. One useful technique to mitigate this bias is to prepare a 'pre-mortem'. Before you accept the offer, write a letter explaining why the company failed two years after you join.

I is for Icarus

As we all know, trees don't grow to the sky. Often selection committees tout the recent company performance as a reason to join their board. For example, several high-quality individuals were

asked to become directors of OW Bunker, a large Danish company right before its IPO. And why not? Despite a very competitive environment, the company had done well over recent years. Sadly, just a few months after a successful listing, it entered into liquidation. Risk management had been over-stretched to maintain growth. Don't only ask 'why me', but also 'why now'?

B is for blindness

We have tunnel vision when it comes to risk. We focus on the risks that are salient in our lives. Thousands of Americans died in car accidents in the months following the September 11 tragedy. People stopped using planes, a relatively safe mode of transportation, to use cars, a relatively risky one. Similarly, joining a non-profit board may sound like a low-risk proposition. Unfortunately, this may not be the case. For example, fraud risk is typically exacerbated by weaker internal controls and this has not escaped criminals laundering money. Before accepting a director position, ask a person with a different skill set to play devil's advocate.

L is for life

Yes, we have one and no, it does not stop when we join a board. We over-commit. When Tidjane Thiam (a former

“
people grow over-
confident and quickly
suffer from an
illusion of control
”

INSEAD MBA student) accepted the offer to join the board of Société Générale, smack in the middle of steering his own company through a major take-over, furious shareholders at Prudential forced him to give it up. Before accepting the offer, ask your partners if this is feasible. And don't forget you also have one at home. An additional commitment can be the proverbial straw for a relationship stressed by external commitments.

Joining a board is often an exhilarating experience and no, not every selection committee is out to get you. But, do your due diligence and it starts with you. Don't let a foible be your demise!

Gilles Hilary

INSEAD Professor of Accounting and Control

Gilles Hilary is also the Mubadala Chaired Professor in Corporate Governance and Strategy, and a contributing faculty member to the INSEAD Corporate Governance Initiative.

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Highlights

- your due diligence process before accepting a board appointment should include taking an honest look at your own motivations and biases
- over-confidence is a common bias that may interfere with making a rational decision about a potential board appointment
- potential board recruits should also consider whether they can make the level of commitment that will be required of them





Going paperless

Not gone paperless in the boardroom yet? Phillip Baldwin, Director ICSA Boardroom Apps (HK) Ltd, hopes to change your mind.

There are many digital meeting solutions on the market, some better than others and a lot has been written about why companies should go paperless in the boardroom. These mostly revolve around companies (such as mine – guilty as charged) bombarding directors and CEO's about all of the advantages such as saving time and money, being more secure etc. The latter is a big one; vendors focus on directors' insecurities about misplaced/ undelivered couriered meeting packs and the lack of security surrounding popular email services (which, to be fair, is mostly true). The other big advantage is that papers will always be up-to-date. Again all of these are true and good reasons to go digital.

The other often cited reason for going digital is saving of paper – “Look at the amount of paper you will save by using X board portal” goes the pitch. This is then more often than not converted into a monetary saving. Again all true, but it misses the point.

If none of the above arguments have yet convinced your board to go digital, let me give you one excellent and unassailable reason to do so; or more accurately 11 million reasons, because 11 million is the number of trees cut down every day to make paper. That equates to an incredible – and unsustainable – four billion trees each year just to make paper.

To put it into perspective, every year 11.5 billion trees are cut down and 35% of these are cut down specifically to make paper. It is true that many of them are from tree farms and specially grown; but many aren't and we've all seen the photographs of the Amazon and Borneo rainforests devastated by unscrupulous and often illegal logging. These devastated areas may never recover – it's not just the trees but a whole ecosystem that is destroyed and lost forever.

Dirty business

But cutting down 11 million trees daily is only part of the equation because making paper is a dirty business. In fact, as far back as the early 1990s the US Environmental Protection Agency identified pulp mills as among the worst industrial polluters of air and water. This was reinforced in its June

Highlights

- every year 11.5 billion trees are cut down and 35% of these are cut down specifically to make paper
- pulp mills are among the worst industrial polluters of air and water
- switching to a digital meeting solution would mean significant environmental gains

“
 most of the corporate
 world outside Asia
 has embraced digital
 meeting solutions and
 is benefitting greatly
 from doing so
 ”



2015 discussion paper 'A Retrospective Study of EPA's Air Toxics Program under the Revised Section 112 Requirements of the Clean Air Act', written by Art Fraas and Alex Egorenkov. The paper finds that, although the level of hazardous air pollutants produced by the pulp and paper industry apparently declined by between 20–30% per year, this may have been merely as a result of fluctuating demand rather than a real mill-by-mill reduction. The paper cites evidence of the poor performance of the US pulp and paper industry in terms of reducing its pollutants.

It gets worse. To make 1,000kg of paper requires 20 full-grown trees and up to 90,000 litres of water (alternative sources state 25,000 litres, but that is still a lot of water – see 'Paper facts' below) and produces 1,460kg of greenhouse gases as waste. Just to make paper. Don't get me

wrong, I like and use paper; it is both useful and necessary for some things, but board meetings are not one of them. There are viable – and arguably better – alternatives. At the very least, board portals are a credible and acceptable alternative.

In much the same way as the argument for using whale oil (and so the hunting and killing of whales) has been discredited as superior modern alternatives have been developed, the argument for using paper in a formal meeting setting such as a board meeting has all but disappeared and has no credibility. The often heard argument that my directors are too old or not tech-savvy (or both) is simply blown away when confronted with the facts.

My company's product has users in their 80s and, to my knowledge in Hong Kong, we have only once had to train a director

twice on how to use our digital solution. I'm sure my competitors would give you similar figures. Today's digital meeting solution using tablet computers such as iPads and Surface Pros are incredibly easy to use. I bought my 75-year-old mother an iPad a year ago and she is now an avid user. Technology is no longer a barrier to going paperless.

Is using paper really worth it?

If you take the average sized board in Hong Kong as consisting of (conservatively) 12 directors and the average meeting pack weighing approximately 1kg, the figures for each meeting are stark. For each meeting your board would use approximately 1/4 of a fully-grown tree (say 15-25 years old and 60 feet/ 18 metres tall), 1,080 litres of water and would produce (as waste) 17.52 litres of greenhouse gases. If you used a digital meeting solution you could save



every year (presuming 11 board/ committee meetings per year):

- 132kg of paper
- 2.75 fully grown trees
- 11,880 litres of water, and
- 192.72 litres of greenhouse gases.

So ask yourself, is using paper really worth it? Regardless of your company's directors' thoughts on using an iPad or similar devices, regardless of whether you think the meetings will be more efficient, effective and/ or convenient (they will be by the way), can you honestly justify using paper when you know that each meeting creates such waste? Can you as a director or executive of your organisation look your children or grandchildren in the

eye and say "Your future is not worth my (slight or perceived) inconvenience"?

The choice should not be difficult. Most of the corporate world outside Asia has embraced digital meeting solutions and is benefitting greatly from doing so. But the real benefit is yet to be seen. That is where trees are still plentiful in the natural world and where you as a corporate leader can say to your grandchildren – I did my part, I went digital.

Phillip Baldwin

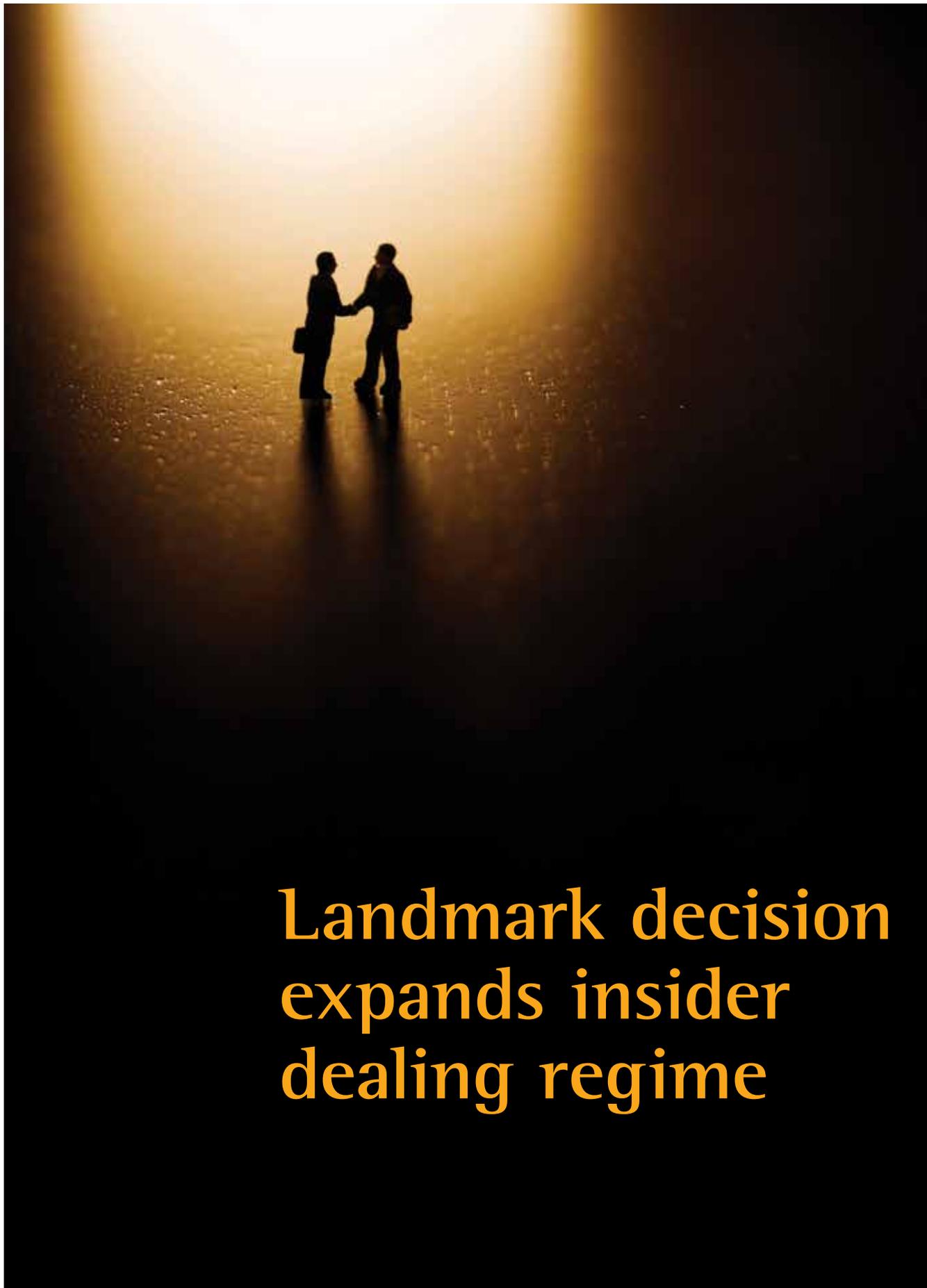
Director of ICSA Boardroom Apps (HK) Ltd

Sources used in the preparation of this article include: Bureau of International Recycling; US EPA; RISI (www.risi.com); and The Economist.

Paper facts

- 11.5 billion trees are cut down annually – 35% are used to make paper
- that's four billion trees per year just to make paper
- that's 11 million trees cut down every day just to make paper
- the world consumes about 300 million tons of paper every year
- every tree requires 490 litres of water for growth
- the production of 1,000kg of paper requires:
 - o 17-20 trees (average)
 - o 24 trees for white office paper, 12 trees for newsprint
 - o 25,000 litres of water (this is a conservative figure, some estimates are as high as 90,000 litres)
 - o 10,061 kWh of electricity
 - o 2.57 cubic metres of oil

Additional information/ alternative figures are available at: <https://engineering.dartmouth.edu/~d30345d/courses/engs171/Paper.pdf>.



Landmark decision expands insider dealing regime

Mark Johnson, Partner, Debevoise & Plimpton, looks at the recent decision by the Court of First Instance in *The Securities and Futures Commission v Young Bik Fung and Others* which has expanded the insider dealing regime in Hong Kong.

The Court of First Instance has recently handed down a landmark decision in the case of *The Securities and Futures Commission v Young Bik Fung and Others* (HCMP No 2575 of 2010) on 15 January 2016. Under the Hong Kong market misconduct regime, insider dealing is typically enforced under Sections 270 or 291 of the Securities and Futures Ordinance (SFO). However, these provisions are expressly subject to a territorial limitation, in that these provisions can only be used to prosecute insider dealing in relation to securities listed on the Hong Kong Stock Exchange. The *Young Bik Fung* case is of significance because it is the first case in which a Hong Kong court has accepted the use of Section 300 of the SFO (which prohibits the use of fraudulent or deceptive devices in a transaction involving securities) in relation to insider dealing in securities listed overseas.

Background

By way of background, the Securities and Futures Commission (SFC) brought two cases against Ms Young, the first of which concerned the takeover of Hsinchu International Bank Co Ltd, a bank listed in Taiwan, by Standard Chartered Bank group (SCB) (the Tender Offer); and the other concerned the privatisation of Asia Satellite Telecommunications Holdings Ltd by its major shareholder, CITIC Group (the Privatisation).

The focus of this article will be on the Tender Offer, in respect of which the court made its important interpretation on the territorial scope and applicability

of Section 300 of the SFO. It is important to note that the court's interpretation of Section 300 was in the context of a compensation claim by the SFC under Section 213 rather than in relation to a prosecution under Section 300.

The parties

There were four defendants in the *Young Bik Fung* case. Betty Young, the first defendant, was a solicitor employed by a law firm engaged by SCB. At the material time, Betty was seconded to SCB, spending the majority of her time working on the Tender Offer. The second defendant, Eric Lee, was a solicitor employed by a law firm engaged by CITIC in respect of the Privatisation. Betty and Eric were in a relationship and cohabited between 2003 and 2006. The third and fourth defendants, Patsy Lee and Stella Lee, are Eric's sisters. Through Eric, Betty became acquainted with Patsy and Stella.

The Tender Offer case

The basic facts of this case were undisputed and they are summarised as follows.

In 2006, SCB was in confidential negotiations with Hsinchu Bank to takeover the latter by making a recommended tender offer for all its shares, and in respect of which the management of Hsinchu Bank would recommend its shareholders to accept the offer.

SCB's Group Legal Department in Hong Kong was involved in handling and managing the legal and regulatory work. In April 2006, Betty was seconded by her then employer to SCB to work on the Tender Offer. In the course of Betty's secondment, she was an 'insider' who had access to highly confidential materially price-sensitive information (MNPI).

In August 2006, SCB and Hsinchu Bank started negotiations on the price of the Tender Offer. By 14 September 2006, the proposed tender price of New Taiwan dollars (NT\$) 24.50 per share was approved by SCB and inserted into a draft press release which was circulated internally, when Hsinchu Bank's shares were then

Highlights

- this case represents the first time a Hong Kong court has accepted the use of Section 300 of the Securities and Futures Ordinance (SFO) in relation to insider dealing in securities listed overseas
- the defendants sought to argue that Section 300 of the SFO should have no application at all because the securities transactions were completed outside Hong Kong
- Section 300 of the SFO captures insider dealing by identifying fraudulent or deceptive conduct occurring in Hong Kong associated with overseas trading

trading at around NT\$14 per share. Such information constituted MNPI in relation to Hsinchu Bank's shares until the public announcement of the Tender Offer was published on 29 September 2006.

Prior to the public announcement of the Tender Offer, on 20 September 2016, Patsy opened a new securities account with a local securities brokerage, which allowed her to trade in shares listed on the Taiwan Stock Exchange. Between 21 and 29 September 2006, the four defendants put together substantial funds and injected them into the said account. Patsy used those funds to make a total of six purchases of Hsinchu Bank shares, acquiring a total of 1,576,000 shares at an average price of NT\$16.99 per share and at an aggregate cost of NT\$26,782,000.

In the afternoon of 29 September 2006, SCB announced the Tender Offer. The offer price was at a substantial premium to the market price. For the defendants, the offer price was 44% above the average price of their acquisitions, generating a total profit of approximately HK\$2,685,000.

The court found that Betty had shared her knowledge of the Tender Offer with Eric, and they both decided to trade with such knowledge by arranging for Patsy to open an account in Patsy's name to create some distance between themselves and the trading.

Points of law

Extra-territorial effect?

As mentioned above, the SFC had to rely on Section 300 of the SFO, instead of the usual insider dealing provisions under Sections 270 and 291 of the SFO, in the Tender Offer because Hsinchu Bank's shares were listed outside Hong Kong on the Taiwan Stock Exchange.

The defendants sought to argue that Section 300 of the SFO should have no application at all because the securities transactions took place (or were completed) outside Hong Kong. The court rejected the argument and it was held that 'transaction' is widely defined in Section 300 of the SFO to include any offer or invitation, and that the transaction in question did not have to be completed in Hong Kong. The court took the view that any fraudulent or deceptive conduct employed in making an offer to buy securities in Hong Kong would fall within the scope of Section 300 of the SFO, regardless of whether the securities were traded overseas. In other words, the court retained jurisdiction in the Tender Offer case because the offer to buy the Hsinchu Bank shares, which the SFC argued involved fraudulent or deceptive conduct, took place in Hong Kong, and it matters not whether the trade was in fact executed or completed overseas.

In this context, the court held that the application of Section 300 in the Tender Offer case did not involve an extra-territorial application of the law, and the court held that Section 300 does not have extra-territorial application.

Fraud and deception

Section 300(1) of the SFO is a fraud provision and it provides that it shall be an offence for a person, in a transaction involving securities, to 'employ any device, scheme or artifice with intent to defraud or deceive', or 'engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud of deception'. In other words, Section 300 of the SFO captures insider dealing by identifying fraudulent or deceptive conduct occurring in Hong Kong associated with the overseas trading.

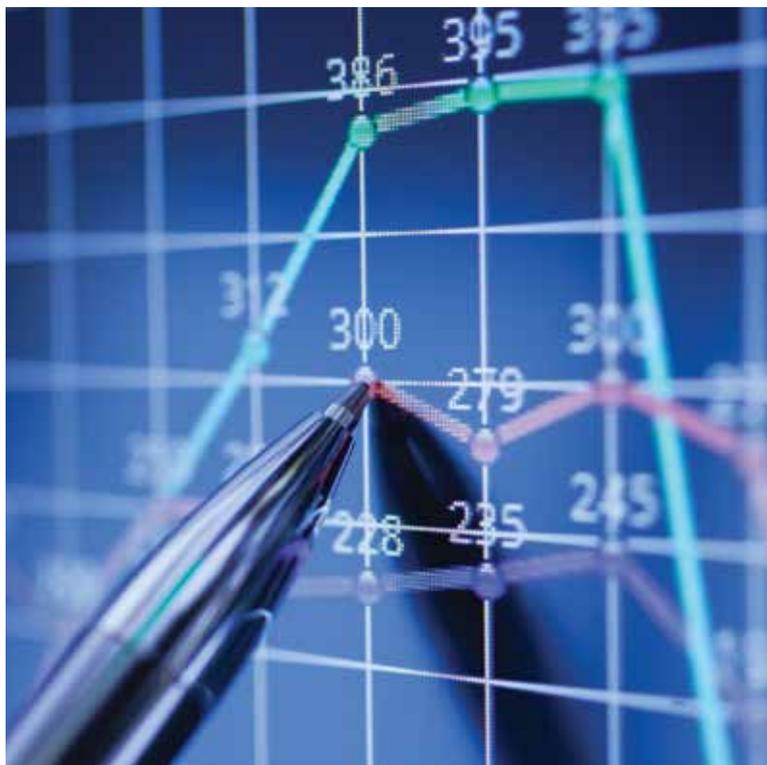
In *Young Bik Fung*, the court made reference to the fiduciary duties owed by Betty to SCB and in particular, the following:

- an email sent by Betty months before the trading took place in which she acknowledged reading and understanding SCB's memorandum on inside information which imposed a duty of confidence and prohibited disclosure or use of inside information
- Principle 8.06 of the *Solicitor's Guide to Professional Conduct* which prohibits a solicitor from making personal profits by using confidential information acquired in the course of a professional relationship, and
- the common law fiduciary duty to act in good faith and not to act for her own benefit or the benefit of a third person without the informed consent of his principal.

It was held that SCB was defrauded and deceived by Betty's conduct as Betty's acknowledgement of the dealing restrictions applicable to her as a person working within SCB on the Tender Offer must be a continuous representation by her that she would not deal in the shares of Hsinchu Bank. It was further held that:

- Betty's decision and actions to misuse the MNPI secretly constituted a scheme or act of deception as SCB must have been labouring under the belief that Betty was abiding by her representation and therefore, by Betty's deception, SCB was deprived of the right to take action to protect its MNPI

“
 the court’s judgment in
 this case... sends a very
 clear message to all market
 participants that the SFC may
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 insider dealing in respect of
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 ”



- SCB acted to its economic detriment by paying the defendants via the Tender Offer for their shares in Hsinchu Bank, when, if they had known the shares had been bought in breach of fiduciary duties owed to it by Betty, they would obviously have refused to pay out to her and her tippees, and
- Eric and Patsy had employed or engaged in the same deceptive or fraudulent scheme or had aided and abetted in Betty's conduct.

Legal proceedings

The SFC brought proceedings under Section 213 of the SFO seeking, among other things:

- declarations that the defendants had contravened or were concerned in fellow defendants' contravention of Section 300 of the SFO in the Tender Offer case, and

- remedial orders for the return of the profits from the defendants' illicit dealings in the Tender Offer case.

In light of the court's factual findings, the court proceeded to find that Betty had employed a scheme with intent to defraud or deceive or engaged in an act or practice which was fraudulent or deceptive or would operate as a fraud or deception, and that Eric and Patsy had either employed or engaged in the same scheme, or aided and abetted Betty's conduct, in contravention of Section 300 of the SFO.

Outcome

The court found that the SFC had established its case against Betty, Eric and Patsy in respect of the Tender Offer case and directed the parties to endeavour to agree the terms of relief for the court's approval. Stella was found not guilty under Section 300 of the SFO as the court was not satisfied that Stella had the same 'guilty knowledge' as Patsy.

In light of the professional qualifications of Betty and Eric as solicitors, the court also made a direction to send a copy of its judgment to the Secretary General of the Law Society and it is expected that disciplinary action will be taken.

Remarks

In recent years, the market has seen increasing cross-border securities trading activities and cross-border investigations and enforcement cooperation between regulators in different jurisdictions. The court's judgment in this case, by giving a wide interpretation of the ambit of Section 300 of the SFO, sends a very clear message to all market participants that the SFC may investigate and prosecute insider dealing in respect of shares listed overseas.

Mark Johnson

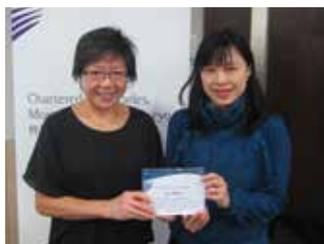
Partner, Debevoise & Plimpton

Professional Development

Seminars: February and March 2016

15 February

Company secretarial practical training series: how to handle corporate changes – such as, company name, officer, auditor, accounting reference date (re-run)



Chair: Susan Lo FCIS FCS(PE), Institute Professional Development Committee Member, and Executive Director, Director of Corporate Services and Head of Learning & Development, Tricor Services Ltd

Speaker: Ivy Chow FCIS FCS, Senior Manager, Corporate Services, Tricor Services Ltd

24 February

Schemes of arrangement: issues and case studies



Chair: Edith Shih FCIS FCS(PE), Institute Past President, and Head Group General Counsel and Company Secretary, CK Hutchison Holdings Ltd

Speakers: Grace Huang, Partner; Richard Blair, Senior Associate, Freshfields Bruckhaus Deringer; and Richard Hall, Partner, Conyers Dill & Pearman

22 February

Operation of part XIVA of the Securities and Futures Ordinance



Chair: Duffy Wong JP, FCIS FCS, Institute Past President, and Senior Partner, Ho, Wong & Wong, Solicitors & Notaries

Speaker: Mark Johnson, Partner, Debevoise & Plimpton LLP

1 March

Corporate governance and developments in risk management and internal control (re-run)



Chair: Edmond Chiu FCIS FCS, Institute Membership Committee Member, and Director, Corporate Services, VISTRA Hong Kong

Speakers: Roy Lo, Managing Partner, Shinewing (HK) CPA Ltd; and Gloria So, Senior Risk Manager, Shinewing Risk Services Ltd

Breaking news

The Institute and the Shenzhen Stock Exchange signed a memorandum of understanding (MoU) in Shenzhen on 31 March 2016. Please visit the News section of the Institute website: www.hkics.org.hk for details.

Invitation to HKICS shareholder communications survey

The Institute is conducting a survey on the shareholder communication practices of listed issuers in Hong Kong and Mainland China, to help listed issuers navigate the regulatory maze, and shape best practices and regulatory discussions on this topic with high-level suggestions based on the survey results. We invite members as well as their colleagues and management to participate. Participants will have a chance to win an iPad mini in a lucky draw.

Please visit the News section of the Institute website: www.hkics.org.hk.

ECPD

Forthcoming seminars

Date	Time	Topic	ECPD points
20 Apr 2016	4.00pm – 6.00pm	ESG reporting made easy	2
4 May 2016	4.30pm – 6.00pm	From whistleblowing to investigations – what should senior management do when an internal fraud is discovered?	1.5
10 May 2016	6.45pm – 8.15pm	Execution and proof of company documents for overseas use under the new Companies Ordinance (Cap 622) (re-run)	1.5
27 May 2016	6.45pm – 8.45pm	中国公司法调整对外资企业的影响	2
2 Jun 2016	6.45pm – 8.15pm	Directors' liability risks in corporate financial distress/ failure	1.5

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

Don't miss the HKICS' signature seminar: ACRU 2016

The HKICS Annual Corporate and Regulatory Update (ACRU) seminar brings together regulators and market participants in a direct dialogue about regulatory compliance. This year's ACRU, which is to be held on Friday 20 May 2016, will feature speakers from the Companies Registry, Hong Kong Exchanges and Clearing Ltd, the Official Receiver's Office, and the Securities and Futures Commission. This signature event will provide first-hand knowledge about the latest corporate and regulatory developments, as well as emerging trends from leading regulatory bodies. Don't miss this opportunity to further your professional development.

Register online at: www.hkics.org.hk/ACRU2016.

MCPD requirements

Members are reminded to observe the MCPD deadlines set out below. Failing to comply with the MCPD policy may constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's Memorandum of Articles.

CPD year	Members who qualified between	MCPD or ECPD points required	Point accumulation deadline	Declaration deadline
2015/2016	1 January 1995 – 31 July 2015	15 (at least 3 ECPD points)	31 July 2016	31 August 2016
2016/2017	1 January 1995 – 31 July 2016	15 (at least 3 ECPD points)	31 July 2017	31 August 2017

MCPD requirement extends to graduates

Effective from 1 August 2015, all graduates who acquired graduate status before 1 August 2015 are required to comply with the Institute's MCPD requirements.

Professional Development (continued)

The Companies Ordinance turns two

On 2 March 2016, the Institute held a seminar giving an update on the new Companies Ordinance (NCO) two years after its implementation in March 2014. Ada Chung JP, Registrar of Companies was the keynote speaker at 'The Companies Ordinance Turns Two' seminar which also featured valuable sharing from a group of distinguished speakers and panellists and was attended by over 200 participants.

The seminar identified areas of difficulties practitioners have been facing to ensure compliance with the NCO, and outlined proposals for the next stage of reform. In addition to Ms Chung, the speakers and panellists at the event comprised: Karen Ho, Consultant (Company Law), Companies Registry; Natalia Seng FCIS FCS(PE), Institute Past President, and Chief Executive Officer – China & Hong Kong, Tricor Group/Tricor Services Ltd; Ernest Lee FCIS FCS(PE), Institute Council Member, and Partner, Assurance, Professional Practice, Ernst



& Young; David Simmonds, Group General Counsel & Company Secretary, CLP Holdings Ltd; and Professor Say Goo FCIS FCS, Professor, Faculty of Law, The University of Hong Kong.

The seminar was chaired by Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Senior Director and Head of Technical & Research, HKICS, and was organised in association with the Hong Kong Institute of Certified Public Accountants and The Law Society of Hong Kong. This event was sponsored by the Companies Registry.

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AD

Advocacy

HKICS strategy meeting 2016

The HKICS Council and senior management team held its annual strategy meeting on 20 February 2016. For more information, please refer to the interview with President Ivan Tam FCIS FCS in the CSj March edition pages 24–27.

Professional Services Panel meeting

On 29 February 2016, the Institute's Professional Services Panel (PSP) members attended a focus-group meeting with the Narcotics Division, Security Bureau, HKSAR Government. The Narcotics Division consulted PSP members on its anti-money laundering and counter-financing of terrorism (AML/CFT) risk assessment exercise.

HKICS attends MoF Spring Reception in Hong Kong

Institute Chief Executive Samantha Suen FCIS FCS(PE) attended the Spring Reception hosted by Commissioner Song Zhe at the Office of the Commissioner of the Ministry of Foreign Affairs (MoF) in the Hong Kong Special Administrative Region on 24 February 2016. The event was attended by over 500 guests.

HKICS serves for social good

In line with the Institute's initiatives to give back to the community, Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research, served as one of the judges in the 14th Red Cross International Humanitarian Law Moot – an inter-university competition for the Asia-Pacific Region organised by the Hong Kong Red Cross and the International Committee of the Red Cross in collaboration with The Chinese University of Hong Kong and The University of Hong Kong from 9–12 March 2016.

ICSA Council meeting

At the Council meeting of the Institute of Chartered Secretaries and Administrators (ICSA) held in London on 11 March 2016, new Honorary Officers were elected for a term of two years from 1 July 2016 to 30 June 2018.

President	David Venus (UKRIAT)
Senior Vice-President	Edith Shih (Hong Kong)
Vice-President	Peter Turnbull (Australia)
Executive Committee member	Jill Parratt (Southern Africa)
Professional Standards Committee Chairman	Frank Bush

CAPCO visit

An HKICS delegation led by President Ivan Tam FCIS FCS visited the China Association for Public Companies (CAPCO) in Beijing on 4 March 2016 and met with senior CAPCO officials. This was the first President-level meeting following the signing of the HKICS/CAPCO Memorandum



From left to right: Carrie Wang, He Longcan, Liu Rong, Samantha Suen, Yao Feng, Ivan Tam, Bi Xiaoying, Gao Wei, Kenneth Jiang and Yang Zhiying

of Understanding in July 2015. At the meeting, the two parties gave an update on developments and discussed proposed cooperation initiatives for 2016 and onwards, including joint training programmes and a joint research project. The two parties also exchanged views on board secretary professionalisation in Mainland China.

The senior CAPCO officials at the meeting comprised: Party Secretary and Executive Vice-President Yao Feng; Vice-President Bi Xiaoying; Party Committee Member and Vice-Secretary-General Liu Rong; Vice-Secretary-General and Head of Corporate Governance Department He Longcan; and Vice-Secretary-General and Head of Public Relations Department Yang Zhiying. The Institute's delegates included: Vice-President Dr Gao Wei FCIS FCS(PE); Chief Executive Samantha Suen FCIS FCS(PE); and Chief Representative of the Beijing Representative Office Kenneth Jiang FCIS FCS(PE).

Advocacy (continued)

'Passing the Torch' project 2016 with HKUST

Riding on its success in 2015, the 'Passing the Torch' project has been held again for over 200 students of The Hong Kong University of Science and Technology (HKUST). The project was funded by The Chartered Secretaries Foundation Ltd, which was established by the Institute on 5 January 2012 as a company limited by guarantee under the Hong Kong Companies Ordinance.

In collaboration with the HKUST Department of Accounting, this project aims to promote business ethics and corporate governance awareness among students and enrich their studies. Senior HKICS members were invited by the HKUST to share knowledge and real-life cases in maintaining ethical standards at both the individual and corporate level.

Dr Davy Lee FCIS FCS(PE), Institute Past President and Group Corporate Secretary, Lippo Group; Dr PM Kam FCIS FCS; and Wendy Yung FCIS FCS, Institute Council member and Director, Practising Governance Ltd; were the guest speakers from the Institute. They delivered three lectures to the HKUST students on 24 February, 2 and 9 March respectively.

The Institute thanks the Hong Kong Companies Registry for its kind sponsorship and the three speakers for their generous sharing.



Dr Davy Lee



Dr PM Kam



Wendy Yung

Assembly talk at Hong Kong Shue Yan University

On 1 March 2016, April Chan FCIS FCS(PE), Institute Past President and former Company Secretary, CLP Holdings Ltd, delivered a talk 'What do you know about Chartered Secretaries?' to around 400 students of the Department of Journalism and Communication of the Hong Kong Shue Yan University (HKSJU). April introduced the role and mission of the Institute and shared her work experience in the company secretarial field with the students.

Following the talk, she was interviewed and gave her views about the prospects and challenges of the Chartered Secretarial profession in Hong Kong.

The full version of the interview clip is posted on the 'News' section of the Institute's website: www.hkics.org.hk.



April Chan presenting to the students

Membership

New graduates

Congratulations to our new graduates listed below.

Au Wing Sze	Ho Yui Pang	Sun Xin
Cha Fei	Hon Chi Chung	Tang Ting Ting
Chak Wai Ting	Hui Yin Shan	Tian Jinghua
Chan Cheuk Fai	Kwok Siu Lai	Tsang Hiu Pan
Chan Ho Wai	Lai Ho Wai	Tsang Mei Ying
Chan Mei Wing, Marlene	Lam Hoi Kei	Tsui Kai Fung
Chan Wai Yan	Lam Pui Wa	Wan Kwong Kei
Cheng Wai Kin	Lam Wai Tsing	Wong Mei Yan
Cheung Jason	Lau Ka Ho	Wong Tin Yu
Cheung Man Ki	Lau Pui Kwan	Wong Wang Kit
Cheung Wai Yin, Clarice	Lau Yu Wa	Wong Wing Yan
Chin Pui Kei	Lee Ching Yi	Xiao Junguang
Chow Chun Fung	Lee Lai Yi	Yeung King
Choy Le Quan	Lee Man Na	Yeung Man Sun
Chui Wan Ngai	Lei Sai Hung, Thomas	Yip Man Ching
Fok Chi Wing	Li Wancheng	Yip Wing Shan
Fu Yuen Hung	Li Wing Sze	Yu Ching Sum
Fung Ching Nga	Lo Ming Wan	Yu Hoi Zin
Gan Wai Man	Lung Shi Fung	Zhu Ruili
Ho Pui Ka	Sun Jie	

Chartered Secretary Mentorship Programme 2016

Following the success of the inaugural Chartered Secretary Mentorship Programme last year, the Institute invites aspiring members and graduates to join this year's programme as mentors or mentees for mutual sharing and personal growth. By joining the programme, mentees will learn from experienced members of the profession. Mentors will have the opportunity to give back to the profession and society, and to stay in touch with the current trends of the younger generation.

The 2016 programme will run from April to December 2016 with a series of training events and social activities for mentors and mentees. A launch ceremony will be held on 20 April 2016. More information on the training events and social activities planned for this year will be forthcoming in this journal and on the Institute's website: www.hkics.org.hk.

For enquiries, please contact the Membership Section at: 2881 6177, or email: member@hkics.org.hk.

Recruitment of HKICS dragon boat team

The HKICS dragon boat team, which comprises Institute members, graduates and students, is recruiting paddlers for upcoming races in 2016. The paddlers will join a six-month training programme in Tuen Mun River on Saturdays commencing in April 2016. The Institute will sponsor the training conducted by a professional coach and the race fees. Each paddler will pay the 2016 membership fee of HK\$200, and a dragon boat team t-shirt will be provided.

This year, the Dragon Boat Team plans to join five races including The Dragon Boat Lovers to be held on 1 May 2016 and The Hong Kong International Dragon Boat Races to be held on 11 June 2016. The Institute also invites members, graduates and students to join the support group which will assist the team during the races and take photos of their activities.

For enquiries, please contact the Membership Section at: 2881 6177, or email: member@hkics.org.hk.

Change of Company Secretary

Carman Wong FCIS FCS was appointed Company Secretary of the Institute in place of Louisa Lau FCIS FCS(PE) with effect from 1 April 2016. In the meantime, Louisa Lau as Registrar will focus on membership affairs in line with the Institute's strategic development to enhance the services and support the Institute provides its diverse membership.

Membership (continued)

Membership activities

Welcome drinks for new fellows

On 24 February 2016, a drinks gathering for the 2015 newly elected fellows was held at the Institute secretariat. The event was an opportunity for the new fellows to get to know the Institute's Council and Membership Committee members and to update themselves on the latest developments of the Institute and the profession.



Council and committee members and new fellows at the secretariat office



From left to right: New fellows Jenny Poon FCIS FCS, Julian Leung FCIS FCS and Membership Committee member Stella Lo FCIS FCS

Community Service – bake to feed

The Institute organised a Community Service workshop – 'bake to feed' for members and graduates on 5 March 2016. This event was held jointly with Food Angel which serves the needs of people in the community while reducing food waste. Bakery products made by participating members and graduates were distributed to beneficiaries on the next working day. The enrolment fee paid by each participant was donated to Bo Charity Foundation, the organiser of the Food Angel food rescue and food assistance programme. The Institute also donated HK\$300 per participant to support the community.



Group photos at Food Angel

Forthcoming membership activities

Date	Time	Event
6 April 2016	7.00pm – 8.30pm	Members' Networking – appreciation of jewellery and watches
20 April 2016	6.45pm – 8.30pm	Mentorship Programme – launch ceremony (by invitation only)
27 April 2016	6.45pm – 8pm	Mentorship Programme – Mentors Training (by invitation only)
30 April 2016	8.45am – 12.45pm	Community Service – low carbon living workshop (re-run)

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

International Qualifying Scheme (IQS) examinations

June 2016 examination diet

Examination timetable

	Tuesday 31 May 2016	Wednesday 1 June 2016	Thursday 2 June 2016	Friday 3 June 2016
9.30am - 12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2pm - 5pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

HKICS examination technique workshops

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

IQS information session

The Institute's IQS information session provides information on the IQS examination and on the career prospects of Chartered Secretaries. Eric Fung ACIS ACS will share his work experience at this upcoming session. Members and students are encouraged to recommend this session to friends or colleagues who are interested in the Chartered Secretarial profession.

For enquiries, please contact Karin Ng at: 2830 6010, or email: student@hkics.org.hk.

Date:	Wednesday 22 April 2015
Time:	7.00pm – 8.30pm
Venue:	Joint Professional Centre, Unit 1, G/F, The Center, 99 Queen's Road, Central, Hong Kong
Speaker:	Eric Fung ACIS ACS Manager – Investor Services, Tricor Services Ltd

New corporate governance postgraduate programme launched in Shanghai

The Institute is collaborating with The Open University of Hong Kong (OUHK) to launch a new postgraduate programme in Corporate Governance in Shanghai in September 2016. The enrolment deadline is Wednesday 31 August 2016.

Please visit the Institute's Chinese website: www.hkics.org.cn for programme details. For enquiries, please contact Iona Li of the HKICS Beijing Representative Office at: (8610) 6641 9368, or email: bro@hkics.org.hk.

International Qualifying Scheme (IQS) examinations (continued)

Tips from subject prize winners

Subject prize winners from the December 2015 IQS examination diet share their study experiences and tips on preparing for the IQS examination.

Kong Wing Hung (subject prize winner, Corporate Secretaryship)

Mr Kong is a professional accountant who graduated with a bachelor's degree in economics from the Hong Kong University of Science and Technology. He achieved distinction grade at his first attempt at the Corporate Secretaryship examination at the December 2015 diet.

'Good time management is important', says Mr Kong. To prepare for the examination he studied the examination past papers from 2010 to 2015. 'Apart from the examination past papers, it is also useful to read the publications of HKICS, regulators such as Companies Registry and other professional services firms', he adds. He also comments that he enjoyed the experience of taking the IQS examinations and that the IQS has helped him gain practical knowledge and has benefited his career. 'The Chartered Secretarial qualification is very valuable to professionals working in the financial industry', he says.

Ho Mei Yi, Natalie (subject prize winner, Hong Kong Corporate Law)

Ms Ho is working as a sales information and business development manager. She graduated with a bachelor's degree in business administration from the Chinese University of Hong Kong. She achieved distinction at her first attempt of the Hong Kong Corporate Law examination in the December 2015 diet.

'Be Focused!' says Ms Ho. She points out that having a good study plan is important. She took the HKU SPACE examination preparatory course and made good use of the Institute's study materials. She studied the examination past papers, suggested answers and examiners' reports for the past five years in order to make herself more familiar with the examination format. She also comments that this qualification will help her career development and that she intends to devote herself to the Chartered Secretarial profession.

Joanne Pui (subject prize winner, Hong Kong Corporate Law)

Ms Pui graduated with a bachelor's degree in commerce (majoring in accounting and commercial law) from the University of Auckland. She achieved distinction grade at her first attempt at the Hong Kong Corporate Law examination in the December 2015 diet.

Ms Pui emphasises that it is important to prepare for the examination early as there is quite a lot to study. She started to prepare for the IQS examination eight weeks ahead. 'You need to spend time to read through all the material in the syllabus and go through the examination past papers extensively so as to get a good grasp of the answering skills', she says. She found the Institute's study pack and examination past papers to be very useful for her examination preparation. 'The study pack provided a guideline of all the topics that would be covered with

many relevant cases and examples', she says. She also joined the HKU SPACE examination preparatory course and found it helpful to supplement the HKICS study pack with company law textbooks. 'There are more in-depth explanations and elaboration of the law provisions and subsections', she points out.

Ms Pui explains that she decided to pursue the Chartered Secretarial qualification because the role of the company secretary is challenging and interesting due to its importance and the high impact it has on companies' corporate governance standards. 'The IQS examination is highly regarded and the Chartered Secretarial profession is widely recognised by regulatory and professional bodies', she says. She also believes that taking the IQS examinations will equip her with a broad set of skills and knowledge that will be essential and relevant to her career development.

Wong Mei Yan, Yanda (subject prize winner, Hong Kong Financial Accounting)

Ms Wong is currently working at the company secretarial services department at Ernst and Young. She obtained a bachelor's degree in international business (Japan studies) from City University of Hong Kong. She achieved distinction grade at her first attempt of the Hong Kong Financial Accounting examination at the December 2015 diet.

'As a candidate with no accounting background, it was rather difficult

for me to study accounting-related subjects', Ms Wong says. She therefore spent more time revising. 'I recommend students read through the study text and examination past papers provided by the Institute. I studied the past papers, suggested answers and examiners' reports for the past 10 years', she adds. Besides study, Ms Wong also spent time maintaining her health. 'Eat well, sleep well and set aside some time for exercises', she advises. She also comments that the Chartered Secretarial qualification is a good way for students to gain adequate knowledge for further career development. For example, the qualification is a good stepping stone for a senior management position or to be considered eligible to be a named company secretary in a listed company.

Leow Ka Lee, Cally (subject prize winner, Hong Kong Financial Accounting)

Ms Leow is currently the investor relations manager of a listed company in Hong Kong. She graduated with a bachelor's degree in Actuarial Science and Statistics from the University of Toronto and will be taking all eight subjects of the IQS examinations since she was not eligible to apply for any exemptions. She achieved distinction grade at her first attempt at the Hong Kong Financial Accounting examination at the December 2015 diet.

'Concentrate and be well-prepared, it takes time to prepare for the examinations', says Ms Leow. She studied after work and during the weekends. Three days before the examination, she

took study leave to study and practice the examination past papers as much as possible. 'I practiced the examination past papers and read through the suggested answers to prepare myself which was extremely helpful!' She also suggests students should go to sleep early the night before the examination since a well-rested mind will be better able to concentrate in the examination. She adds that this examination has helped her acquire the skills and knowledge she needs for her career development in the company secretarial field. 'With better knowledge of Hong Kong financial accounting, I am more confident to work with the board of directors, and this qualification will add value not only to myself but also my company.'

Studentship

Student Ambassadors Programme seminar – sharing from a company secretary

On 27 February 2016, Nereid Lai FCIS FCS, Company Secretary, General Manager and Head of Corporate Affairs of Chong Hing Bank Ltd, shared her work experience and career development with 25 student ambassadors.



At the seminar

Payment reminders

Studentship renewal

Students whose studentship expired in February 2016 are reminded to settle the renewal payment by Friday 22 April 2016.

Exemption fees

Students whose exemption was approved via confirmation letter on 3 February 2016 are reminded to settle the exemption fee by Tuesday 3 May 2016.

Inside information disclosure: new guidance

The Securities and Futures Commission (SFC) has published new guidance on the disclosure of inside information in the latest issue of its *Corporate Regulation Newsletter*. The newsletter is part of the SFC's initiative to enhance the quality of disclosures by listed companies and to improve corporate behaviour in general.

Issue 3 of the newsletter (March 2016) reminds listed companies to disclose inside information in an accurate, clear and balanced manner, and to ensure equal, timely and effective access by the public. Section 307C of the Securities and Futures Ordinance (SFO) provides that inside information must be disclosed in a manner that can provide for equal, timely and effective access by the public. Whilst the legislation does not set out a particular system that must be used to ensure such disclosure, a company will be considered as complying with the statutory requirement if it has disseminated the inside information through the platform set up by Hong Kong Exchanges and Clearing Ltd – namely, the HKExnews website. In addition, under the listing rules, a listed company is required to publish announcements of inside information through the HKExnews website.

The *Corporate Regulation Newsletter* focuses on potential problems that may arise when disclosing information through alternative means, including social media and corporate websites. 'A company using other means to communicate inside information to the public may run the risk of uneven disclosure,' the newsletter points out, citing instances where the market has reacted to information posted exclusively on a company's website which

may not have been generally known to the public.

Listed companies should also ensure that they have a clear understanding of how inside information is disclosed using their own website, even when the information is intended to be published simultaneously through the HKExnews system. A lack of care taken when posting information on a listed company's own website may result in premature publication of information or share-price volatility.

The use of social media, such as Weibo, Facebook or Twitter, raises similar problems in terms of timing and uneven disclosure. The newsletter adds that the use of corporate websites and/ or social media to release information also carries a greater risk that the company pays less attention to the content of the information. Section 307B of the SFO provides that any inside information disclosed must not be false or misleading as to a material fact, or false or misleading through the omission of a material fact. The newsletter cites instances where corporate communications contained 'piecemeal, unbalanced or inaccurate information' which could be regarded as a breach of the SFO.

The newsletter also reminds listed companies to present both good news and bad news equally, in a clear and balanced way without glossing over or omitting any material facts. 'The disclosure should contain sufficient details for investors to make a reasonable and realistic assessment of the company's affairs,' the newsletter points out.

The 'Corporate Regulation Newsletter' is available on the SFC website: www.sfc.hk.

ESG disclosure: new guidance

Hong Kong Exchanges and Clearing Ltd (the Exchange) has launched a revamped environmental, social and governance (ESG) webpage on its website to provide listed issuers with updated guidance on ESG reporting. The webpage is a one-stop-shop provides the full text of the Exchange's revised *ESG Reporting Guide* (the ESG Guide), plus FAQs, other Exchange publications on ESG and links to relevant websites.

The recent revisions to the ESG Guide (which forms Appendix 27 to the Main Board listing rules and Appendix 20 to the GEM listing rules) restructured the guide into two subject areas – environmental and social – and upgraded the general disclosures in both subject areas to comply or explain. In addition, the key performance indicators (KPIs) under the environmental subject area have been upgraded to comply or explain – the KPIs under the social subject area remain voluntary recommendations. The upgrade of the general disclosures came into effect for issuers' financial years commencing on or after 1 January 2016. The upgrade of the KPIs in the environmental subject area will come into effect for issuers' financial years commencing on or after 1 January 2017.

The revamped ESG webpage sets out practical steps, tools and reporting guidance aimed at helping issuers to start ESG reporting under the revised ESG Guide.

The revised ESG webpage can be found at: www.hkex.com.hk/eng/rulesreg/listrules/listsptop/esg/index.htm.

Listing matters: an update

Hong Kong Exchanges and Clearing Ltd (the Exchange), has just published its *Listing Committee Report 2015*, a review of the work of its Listing Committee in upholding market quality in 2015 and an overview of its policy agenda for 2016 and beyond. The Listing Committee acts both as an independent administrative decision maker and an advisory body for the Exchange. It oversees the Listing Department, provides policy advice to the Exchange on listing matters, takes decisions of material significance for listing applicants, listed issuers and the individuals concerned, and acts as a review body.

The *Listing Committee Report 2015* raises a number of issues of relevance to governance professionals, some of which are highlighted below.

Backdoor listing-related transactions

The Listing Department conducted an extensive review of backdoor-related transactions, cash companies and reverse takeovers, which aimed to identify trends and potential issues in these areas. The review looked at issues relevant to the listing rules, for example attempts to circumvent the reverse takeover rule. There was a slight decrease in reverse takeover transactions (RTOs) in 2015, following the tightening of the reverse takeover rule in 2014. A new trend has arisen, however, where listed issuers propose large-scale fundraisings that involve investors injecting substantial amounts of cash into issuers and, after taking control of issuers, those investors invest the cash in new businesses with the original businesses of the issuers being marginalised. In response to this trend, the Exchange has issued

a guidance letter on its approach to applying the cash company listing rules in fundraising activities – see Guidance Letter (HKEX-GL84-15) published in December 2015 and available on the Exchange's website.

Overseas company listing regime

The Exchange and the Securities and Futures Commission (SFC) have published a *Revised Joint Policy Statement Regarding the Listing of Overseas Companies*, which clarified the requirements and provided certainty for overseas companies seeking to list in Hong Kong. The Exchange has also published 'Country Guides' setting out user-friendly guidance for companies incorporated in these jurisdictions that are seeking a listing on the Exchange. In 2015, the Listing Committee approved The State of Nevada, the United States of America, India and Russia as 'acceptable jurisdictions' (jurisdictions where the standards of shareholder protection are at least equivalent to those provided in Hong Kong under Chapter 19 of the listing rules). Country Guides on these jurisdictions have now been published.

Listing document simplification

The Listing Committee considered a paper in 2014 which raised concerns that the average Hong Kong listing document was not fulfilling its intended purpose of enabling investors to make informed investment decisions. The Committee considered and endorsed the publication of a *Listing Document Simplification Guide*, which contains, among other things, general guidance on producing clear and concise listing documents, and a consolidation and an update of existing guidance on disclosures in

listing documents. The *Listing Document Simplification Guide* (HKEX-GL86-16) was issued in February 2016 and is available on the Exchange's website.

2016 and beyond

In 2016, the Exchange will conduct a holistic review of regulations in connection with listed company activities including RTOs, cash companies, the handling of long-suspended companies, delisting and related requirements. The Exchange will also conduct a holistic review of the GEM board.

The 'Listing Committee Report 2015' can be found on the Exchange's website: www.hkex.com.hk. The website also has information on the role and mode of operation of the Committee.



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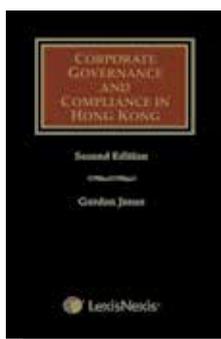
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